

# Investing and Doing Business in Ukraine 2021

A guide covering over 25 sectors and industries

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# Introduction

The country is vastly different today as compared to when CMS first opened in Ukraine. During the last decade, Ukrainians have been steadily turning their gaze from East to West, as evidenced by the Association Agreement that Ukraine entered into with the European Union in 2014, setting the path for gradual harmonisation with Western ways of doing business.

Reforms are already underway at fast pace, and the country is attracting attention from foreign investors. It is hoped that further funding from the International Monetary Fund is also just around the corner. The IMF loan is of course important for the financial health of the country as a whole. What is potentially even more powerful however is the message that this sends to the global investor community. The IMF loan serves as a stamp of approval. It says that Ukraine is reforming, and that it is on track to doing what is necessary to attract foreign investment into the country.

The journey is not yet complete of course. But the future upside is potentially enormous. With a population of 44 million, Ukraine is one of the largest countries in Europe, but yet a country that has received some of the lowest amounts of foreign investment to-date. Some of the highest returns have historically been made in countries which are opening up for the first time. Could this now be Ukraine's turn?

On top of this, the global supply disruption arising out of the COVID-19 pandemic demonstrates some of the dangers associated with relying too heavily on China for supplies. Why obtain a bulk of the World's supplies from the other side of the World, when we have countries like Ukraine, right on Europe's doorstep, able to manufacture and supply at similar costs?

And it's not just about manufacturing. The EU's battery industry will reportedly need 18 times more supply of lithium by 2030, and 60 times more by 2050. Europe imports close to 70% of cobalt from Congo and other far-away places. Europe imports 98%-99% of rare earths from China. Just a few examples of minerals which can be extracted and supplied from Ukraine.

The country is very well placed to capitalise on all of this. President Zelenskiy is actively seeking to attract investors. The red-carpet treatment is being rolled-out for foreign investors — with the Government offering 'investment nannies' for investments above a certain size.

All of this suggests that Ukraine might be poised to potentially undergo its most important revolution yet – an economic one.

CMS is a top-five global law firm. With the support of over 1,100 partners and 5,000 lawyers in 73 offices across 44 countries, our clients have a worldwide network at their service. In Kyiv, we have a full-service offering in our own right, with our lawyers advising on all aspects required by businesses, and all aspects of transactions – from beginning to end — from on the ground.

We have used the benefit of our experience to compile this guide, which we hope you will find useful.



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# Where to find CMS



# CMS in numbers

*Staff*

> **8,000**

*Lawyers*

> **5,000**

*Partners*

> **1,100**

**52 new partners in 2021**, taking the total to over 1,100

*Operating in*

**73** cities

*Across*

**44** countries

**EUR**

**1.475bn**

turnover for 2020

*19 Practice and Sector Groups working across offices*

**Top rankings in M&A league tables by deal count**

*(Bloomberg, Mergermarket and Thomson Reuters)*

» **#1 Germany, DACH, Austria**

» **#2 Europe, UK, Switzerland, Benelux**

# Hot topics and areas for investment in 2021 and beyond

Modern Ukraine is attracting investors from all over the world. With its natural and human resources, the country offers a multitude of dynamic investment opportunities in numerous sectors. Opportunities in agriculture, energy, IT, infrastructure and manufacturing have grown to a level unparalleled in the region. With its highly skilled workforce and strategic geographic location, Ukraine has a great deal to offer. Now that we know “Why Ukraine?”, we can explore the “Where?”

## Agriculture

Unlike most European countries, the Ukrainian agricultural industry offers the greatest scope for foreign investment into the economy. Key positive factors include climatic and demographic variations as well as Ukraine's favourable location in the region. Ukraine has low-cost local resources and a historical predisposition to agriculture. Situated close to the world's leading consumer markets, the EU and the Middle East, it also benefits from developed infrastructure and agricultural machinery. The most successful Ukrainian businesses have their roots in agriculture. Now, with the cancellation of a moratorium on the sale of agricultural land that had been in force for 15 years, this industry has become one of the most attractive sectors for investments. In 2020, the Ukrainian parliament adopted Law No. 2178-10, which enables Ukrainian citizens to sell and buy, as well as change the designated use of private agricultural land plots. The moratorium on the disposal of agricultural land was lifted on 1 July 2021 (for more on the newly introduced land regulation, see “Property right to real estate“.)

## Software and hardware

Experts and financial analysts often note the high profits of Ukrainian companies that provide software development outsourcing.

In the last couple of years, Ukrainian IT-start-ups have attracted significant investments. For example, Google bought Viewdle for EUR 41.3 million, and the Odesa start-up Lookserly and Snapchat entered into a EUR 137.6 million deal<sup>1</sup>.

Recently, the American internet giant Amazon bought Ukrainian start-up Ring for EUR 917 million. Ring develops and sells smart, internet-connected security systems for all types of doors and entrances<sup>2</sup>.

Today, Ukrainian IT companies are actively strengthening their positions in the most promising technological areas: data science, AR/VR, machine learning, and artificial intelligence, and can boast a large number of foreign investment success stories.

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<sup>1</sup> [https://project.liga.net/projects/ukraine\\_investment/](https://project.liga.net/projects/ukraine_investment/)

<sup>2</sup> <https://www.kyivpost.com/technology/purchased-by-amazon-for-1-billion-startup-ring-relies-on-ukrainian-experts.html>



## Telecommunication

In early 2015, Kyivstar, MTS (Vodafone) and Lifecell paid the Ukrainian state UAH 8.7 billion for new licences at a 3G auction. Since then, these companies have invested more than UAH 20 billion in new-generation infrastructure<sup>3</sup>. The shareholders of all three companies are non-Ukrainian entities, meaning foreign investment in the sector has totals about UAH 30 billion, or almost EUR 1 billion.

5G internet, however, which is available in many developed countries today, has been hampered in Ukraine insufficient implementation of the needed technologies and a lack of investment, even though the mobile network in Ukraine is one of the cheapest in the world<sup>4</sup>.

The top telecom operators expect to launch 5G in 2022/2023.

## Automotive components

Despite all the difficulties Ukrainian industry has faced over the last few years, it is constantly exploring new markets. This is most noticeable in the automotive components sector, where large Western corporations have found opportunities to invest in Ukrainian engineering.

Ukrainian goods are now used by BMW, Mercedes, Nissan, Ferrari, Porsche, Volkswagen, Opel, Audi, Fiat, and others. For example, in 2016 the Japanese company Fujikura, which specialises in the production of electrical equipment, opened two factories in the Lviv region to produce auto components. German automotive parts suppliers are also interested in Ukraine. Currently, about 25,000 people work at the manufacturing sites of German companies in western Ukraine. Kromberg & Schubert, which already has a factory in Lutsk producing electrical wiring for Volkswagen, Mercedes and BMW cars, built new production facilities in Zhytomyr a couple of years ago.

The main machine-building giants in Ukraine are now: Motor Sich, Turboatom, and Kryukov Railway Car Building Works PJSC<sup>5</sup>.

## Pharmaceutical industry

According to the European Business Association, in the last five years the Ukrainian pharmaceutical industry has seen investments totalling about EUR 184 million. The industry offers enormous potential for foreign investors in Ukraine.

What attracts investors to the Ukrainian pharmaceutical sector? Primarily, as in other sectors, it is the availability of qualified and trained personnel in Ukraine. The relatively free market and the availability of government programs to support pharmaceutical businesses add to the sector's attractiveness.

Not only in Ukraine but also globally, pharmaceuticals and biotechnology remain the most attractive high-tech industries in terms of absolute and relative costs. Last couple of years, global spending on medicine reached EUR 1.1 trillion and is set to increase to almost EUR 1.4 trillion by 2023<sup>6</sup>.

Auchan has opened "express" shops and pick-up points in Ukraine.

According to a study by GT Partners Ukraine, sales of small retail outlets increased by 22% to reach UAH 24.1 billion in last two years<sup>7</sup>. The largest foreign retailers in Ukraine now are Metro Cash&Carry and Auchan<sup>8</sup>.

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<sup>3</sup> [www.medium.com/@KateDobromishev/foreign-investment-opportunity-in-ukraine-10-attractive-industries-3a5f7cde1f3f](https://www.medium.com/@KateDobromishev/foreign-investment-opportunity-in-ukraine-10-attractive-industries-3a5f7cde1f3f)

<sup>4</sup> <https://www.kyivpost.com/technology/ukraines-mobile-internet-one-of-worlds-cheapest.html>

<sup>5</sup> [https://project.liga.net/projects/ukraine\\_investment/#mash](https://project.liga.net/projects/ukraine_investment/#mash)

<sup>6</sup> <https://www.iqvia.com/insights/the-iqvia-institute/reports/the-global-use-of-medicine-in-2019-and-outlook-to-2023>

<sup>7</sup> <https://guideme.com.ua/foreign-investment-opportunity-in-ukraine-10-attractive-industries/>

<sup>8</sup> [https://project.liga.net/projects/ukraine\\_investment/#shops](https://project.liga.net/projects/ukraine_investment/#shops)

### Summing up

Many Ukrainian business sectors are seeking investments today, including transport, heavy industry, restaurants, and hotels. In addition, over the years of its independence, Ukraine has built up a range of companies that have invested billions of dollars in the country, creating production from scratch or buying ready-to-operate businesses.

For investors, Ukraine's most prosperous sectors, as well as those that are underestimated, offer the greatest opportunities.



# Ten reasons to do business in Ukraine

## **Attractive growth**

The country is reforming, and the future growth potential is significant.

## **Europe's last untapped country**

With a population of 44 million, Ukraine is one of the largest untapped economies in the whole of Europe.

## **Unique opportunity in agriculture**

With 41.5 million hectares of agricultural land covering 70% of the country, agriculture is Ukraine's largest export industry. The sector is operating at a fraction of the efficiency of other countries in the world, and hence the potential for growth is compelling.

## **Vast opportunity in infrastructure**

Roads, airports, ports, hospitals, railways, rolling stock, you name it – the country is crying out for investment. With a new concessions law just having been passed, legislation is now in place to ensure that investment across all classes of infrastructure is a reality.

## **At the forefront of IT**

From artificial intelligence, blockchain, FinTech to software development and more, Ukraine has over 90,000 IT specialists, and is at the forefront of developments in the industry, with IT outsourcing Ukraine's third-largest export.

## **An expanding middle-class**

As the country prospers, disposable incomes will likely rise, driving a nascent consumer products market.

## **Greenfield opportunities**

Ukraine has a skilled workforce at a fraction of the cost of elsewhere, and local governments are keen to offer incentives to attract investors. Strategically close to the European Union, Ukraine allows companies to manufacture at a lower cost and sell into the European market.

## **Security and rule of law**

Kyiv is as safe as any other major capital city. The government is taking real steps to clamp down on corruption and uphold the rule of law, and Ukraine has bi-lateral investment treaties with most major countries, ensuring investors adequate recourse (against the country itself) through an independent arbitration process in a neutral third-party country.

## **It's a beautiful country!**

From skiing in the Carpathian Mountains and the historical wonders of Lviv, to the beaches and restaurants of Odesa and beyond, Ukraine has something for everyone. It is only a matter of time until foreign tourists discover this hidden gem of a country.

## **An investment boom**

Ukraine has received just a fraction of the foreign direct investment of its former communist neighbours. With the government implementing investor-friendly reforms at a faster pace than ever before, the shackles are finally off, and Ukraine's investment boom is already starting.



# Starting a business in Ukraine

## General

Establishing and operating, as well as liquidating, a business in Ukraine is governed mainly by Ukraine's Civil Code, Commercial Code, the Business Entities Law, the Limited and Additional Liability Companies Law, and the Joint-Stock Companies Law. These laws provide for different forms of legal entities that can conduct business in Ukraine. A foreign investor may also conduct its activities in Ukraine through a representative office, which does not have the status of a separate legal entity.

The most common business structures in Ukraine are:

- **Limited liability company**, in which shareholders (participants) are liable for the company's debts and liabilities only to the value of their contributions to the charter capital
- **Joint-stock company**, in which shares issued by the company must be registered with the National Securities and Stock Market Commission ("Securities Commission"), and shareholders are liable for the company's debts to the extent of the par value of their shares; and
- **Representative office**, a place through which a foreign company carries out its activities in Ukraine (similar to a branch with the authority to act on behalf of the foreign company in Ukraine).

## Registration and the Companies Register

Legal entities in Ukraine, including LLCs and JSCs, are considered to be established from the moment of their inclusion (registration) in the Unified State Register of Legal Entities, Private Entrepreneurs and Public Formations. This state register of companies is nationwide, but it is administered by competent state registrars on the ground, including public and private notaries. Currently, state registration is free of charge.

State registration is a "one-stop shop" procedure, which not only saves time and money but also makes the process more transparent and accessible. The initial state registration can include a number of other post-registration formalities with tax authorities and government bodies, such as tax and statistics registrations, VAT registration, and state pension fund registration.

An LLC may be registered through a simplified procedure based on the Model Charter, which was approved by the Cabinet of Ministers of Ukraine in March 2019.

Forming a JSC, however, is a more complex and time-consuming process, in particular since it includes share issuance and registration with the Securities Commission.

## Limited Liability Company

An LLC is the simplest and the most common form of business entity in Ukraine since it provides numerous corporate and operational benefits, including among others the following:

- the limited liability of the participants (shareholders), which means that each participant is liable for debts and liabilities of the LLC only to the extent of its contributions to the charter capital;
- establishing and operating an LLC is significantly less burdensome and time-consuming;
- there is no minimum capitalisation requirement;

- virtually any type of business activity can be conducted by an LLC, except for those activities that fall under specific regulatory regimes; banks and insurance companies, for example, cannot be registered as LLCs.

An LLC has a charter capital, which can be formed in cash or in kind. There is no requirement to make any capital injections prior to its formation, and the LLC can be capitalised within six months after its state registration or within another period established by the LLC's charter.

Equity (participatory) interests in an LLC do not have the status of "securities" and, therefore, are not subject to registration with the Securities Commission.

Except for a very limited number of express legal restrictions, founders (participants) of an LLC are free to agree on the allocation of participatory interests among them in the charter capital.

### Corporate Governance

An LLC has the following governing bodies:

- the general meeting of participants, being the highest governing body;
- the executive body - a sole director or a management board consisting of two or more directors; and
- other governing bodies as may be created by the LLC, including a supervisory board.

**General meeting of participants.** At the general meeting of participants ("GMP"), each participant in the LLC has a number of votes proportional to the size of its interest in the charter capital (unless otherwise provided for by the LLC's charter).

Most resolutions are passed by a simple majority of votes, while certain important issues, such as amending the charter or altering the charter capital, require more than three quarters of all votes (75%). Other decisions require a unanimous vote, for example, the valuation of an in-kind contribution or the re-distribution of participatory interests among participants.

If an LLC has only one participant, then any decision on matters reserved to the GMP can be adopted by a sole participant resolution, without convening the GMP.

**Executive body.** The executive body is responsible for day-to-day operations of the LLC. The executives are appointed and removed from office by decisions of the GMP or the supervisory board, depending on what is envisaged by the LLC's charter. Both Ukrainian and foreign individuals may serve as members of the executive body of the LLC.

**Supervisory board.** If created, the supervisory board exercises control over and oversees the activities of the LLC's executive officer(s). Members of the supervisory board may be vested with broad powers, save for those reserved by law to the GMP. Both Ukrainian and foreign individuals may serve on the supervisory board, except that members of the executive body cannot serve as members of the supervisory board at the same time.

### Charter Capital Increase

The charter capital of an LLC can be increased (a) by additional injections of equity from participants and/or third parties and (b) on account of the LLC's non-distributed profit.

LLC's participants can increase the charter capital from time to time through a rather straightforward procedure. Contributions to the charter capital can also be made by way of a debt-to-equity swap.



## Joint-Stock Company

Despite the heavy regulation of JSCs, especially compared to LLCs, this form of business entity is the second most popular in Ukraine.

**Founders (shareholders).** A JSC may be established by a sole founder or several founders (either corporate and/or individual). The number of founders or shareholders in JSCs is not limited.

**Share capital.** The capital of a JSC is divided into shares of equal par value. The JSC must have a minimum share capital equal to 1,250 minimum statutory wages (approx. EUR 230,000 in 2021). Additional minimum capital requirements can also be found in industry-specific regulations.

**Limited liability of shareholders.** Similar to an LLC, shareholders in a JSC are only liable for the company's debts to the extent of the par value of the shares they hold.

**Types of JSCs.** JSCs can be public or private. Only those JSCs whose shares are publicly offered and/or listed on a stock exchange are deemed to be public.

**Ownership restrictions.** Ukrainian law restricts a JSC from (a) being solely owned by another solely-owned company, and (b) having all of its shareholders being owned by the same person (e.g., being under the same umbrella).

**Right of first refusal and pre-emptive right.** Only shareholders in a private JSC with no more than 100 shareholders may, if the charter allows, have a pre-emptive right to purchase shares offered to a third party. As a general rule, unless it has been disallowed by the decision of a general shareholders meeting, shareholders in a JSC have a pre-emptive right to acquire any additional shares that the JSC issues.

## Corporate Governance

A JSC has the following governing bodies:

- the general shareholders' meeting, being the highest governing body;
- the supervisory board, which must be created in any public JSC and in private JSCs with ten or more shareholders;
- the executive body — a sole director or a management board consisting of two or more directors; and
- other governing bodies as may be created by the JSC, including the audit committee or auditor.

**General shareholders' meeting.** The general shareholders' meeting ("GSM") consists of the JSC's shareholders and has the exclusive competence to decide on the JSC's most significant matters.

A shareholder can participate in the GSM if the shareholder's name is included in the list of shareholders who have a right to participate in the GSM and has been registered by the JSC's registration commission. As a rule, quorum for the GSM is 50% of the voting shares. At the GSM, each shareholder has a number of votes corresponding to the total number of shares owned by it. Resolutions are generally passed by a simple majority of votes, while certain important issues require more than three-quarter of votes (e.g., amendments to the charter, alteration of charter capital, etc.). Some special voting procedures, such as cumulative voting, are used to appoint the members of certain governing bodies.

If a GSM has only one shareholder, then any decision on matters reserved to the GSM can be adopted by a sole shareholder resolution, without convening the GSM.

**Supervisory board.** The supervisory board protects the shareholders' interests and controls activities of the executive body. The supervisory board has broad and exclusive competence established by law. Among other restrictions, members of the executive body or the audit committee cannot be elected to the supervisory board.

**Executive body.** The executive body is responsible for the day-to-day operations of the JSC and reports to the supervisory board and the GSM. Executives are appointed and removed from office by decisions of the supervisory board or the GSM (depending on what the JSC's charter provides). Similarly, members of the supervisory board or the audit committee cannot be members of the executive body at the same time.

**Audit committee or auditor.** Private JSCs with up to 100 shareholders may elect an auditor or an audit committee, while private JSCs with 100 or more shareholders must elect an audit committee. The auditor or audit committee is generally elected for a certain period of time, or in some circumstances to conduct a special audit of the JSC's financial activity. The JSC's officers may not serve on the audit committee.

## JSC Shares

### Types of shares

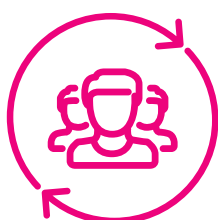
A JSC may issue two types of shares, common and preferred. The key differences are as follows:

- *Common shares.* All common shares give their shareholders the same set of rights, which include voting rights.
- *Preferred shares.* The voting rights conveyed by preferred shares are based on the same equality principle but can only be exercised with respect to a limited range of matters. Unless the JSC's charter defines the rights of preferred shareholders otherwise, they receive the statutory rights granted by preferred shares. The JSC's charter can provide for several classes of preferred shares with different rights attached to each. The total number of preferred shares, however, may not exceed 25% of the JSC's share capital.

Unlike common shares, preferred shares confer on their holders the right to vote only on the following:

- the termination of the JSC, if such termination implies converting shares into a different class;
- amendments to the company's charter that limit the rights of preferred shareholders;
- amendments to the JSC's charter that entail issuing new classes of preferred shares that give the new preferred shareholders priority if the JSC is liquidated or otherwise distributes its assets; and
- decreases of the share capital.

In a private JSC, the charter may confer additional voting rights to its preferred shareholders. Form of shares. All shares exist only in electronic form and all operations with shares are therefore carried out through a depository institution. An extract from a securities account serves as a valid confirmation of the shareholder's title to shares.





## Representative Office

A representative office is not a legal entity under Ukrainian law but rather a place through which a non-resident company carries out its activities. There are two types of representative offices that can be established in Ukraine: commercial (a “permanent establishment”) and non-commercial. The principal differences are the scope of activity (commercial or non-commercial) that the office can carry out, and the resulting (a) types of bank accounts it may open and (b) its taxation regime.

A representative office must be registered with the Ministry for Development of Economy, Trade and Agriculture of Ukraine (“MEDT”) and certain other state authorities. The registration process may take approximately 20 business days to complete (and approximately 60 business days for residents of an aggressor state). A one-time fee payable for the registration constitutes ca. EUR 66 in 2021 (and ca. EUR 2,000 for residents of an aggressor state).

Representative offices that conduct commercial activities are recognised as permanent establishment and are generally taxed at the same rates as JSCs and LLCs, though there are specific rules for determination of taxable base. The representative office is managed by its head, acting on the basis of a power of attorney from the parent company.

Importantly, Ukrainian legislation is often inconsistent regarding representative offices and in many cases lacks clear guidelines as to their status, permitted operations, and some other regulatory aspects. Among other things, this results in the representative office being a less common business structure in Ukraine.

*Information in this chapter is based on certain aspects  
of Ukrainian legislation as of June 2021*



# Employment of foreigners and immigration

## Employment of foreigners

For a foreigner to work in Ukraine as an employee of a Ukrainian legal entity, a number of formalities need to be fulfilled:

- the employer needs to obtain a permit to employ a foreigner (a “work permit”);
- the foreigner needs to obtain a long-term visa (a “type D visa”);
- the foreigner needs to obtain the employer’s registration number from the State Register of Individual Taxpayers (a “tax ID”); and
- the foreigner may need to obtain a certificate of temporary residence in Ukraine (a “temporary residency permit”).

## Work permit

Under Ukrainian law, any Ukrainian company that uses the labour or services of foreigners is required to obtain a work permit for such foreigners.

As a general rule, a work permit is issued for between one year and three years for certain categories of foreign employees including: (a) founders, participants, or beneficial owners of Ukrainian companies; (b) “highly paid” professionals with a salary of more than UAH 300,000 per month (approx. EUR 9,150); (c) IT specialists; (d) secondees; and (e) graduates of the top 100 world universities. Work permits can be extended up to the length of their original term.

There are two options for obtaining a permit: (a) for foreigners that are employed by a Ukrainian entity; and (b) for foreigners sent by their foreign employer to provide services in Ukraine to a Ukrainian entity under a contract between the two companies. The procedures differ slightly and require the submission of a number of documents. The second option is rarely used and, therefore, as employment and immigration bodies lack practical experience of issuing permits under this procedure, it may take longer.

The minimum monthly salary for foreigners employed by public associations, charity funds, or other types of NGOs is UAH 30,000 (approx. EUR 915) and is UAH 60,000 (approx. EUR 1,830) for all others. However, these minimum salaries do not apply to the categories of employees listed in the paragraph above.

## Visa and Temporary Residence Permit

On obtaining a work permit, a foreign employee may also need to obtain a long-term visa (type D visa) and a temporary residency permit to be able to stay in Ukraine freely.

Normally, a temporary residency permit can be obtained if the foreign employee’s stay in Ukraine will exceed his or her visa-free permitted stay (for EU citizens the permitted visa-free stay is 90 days within any 180-day period). The main preconditions for obtaining a temporary residency permit is a work permit and a Ukrainian long-term type D visa.

A temporary residence permit is issued for the duration of the work permit and may be reissued if the work permit is extended. The application process for a temporary residency permit takes about two weeks and requires the submission of a number of documents.

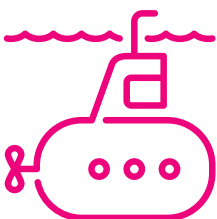
## Tax ID

Obtaining a tax ID is required for the employee to be paid his or her salary. This is a relatively quick and simple process that takes around five to ten business days.

Peculiarities for a representative office of a foreign company in Ukraine

Foreign employees of representative offices do not need to obtain work permits. Instead, special registration cards are issued to the foreign employees indicated in the application to the Ministry of the Economy of Ukraine to register the representative office.

*Information in this chapter is based on certain aspects of Ukrainian legislation as of June 2021*



# Employment and Remuneration

## Introduction

Generally, Ukrainian labour law is very employee protective. It is based on the quite outdated *Labour Code of Ukraine* adopted in 1971. Although the labour code has been amended many times since, it still does not reflect the current dynamics and needs of the labour market and businesses.

Under Ukrainian law, employees are hired either under an employment agreement or an employment contract. The employment contract is a specially tailored form of employment agreement that allows more contractual freedom and can only be signed with certain categories of employees, such as with a company director or a foreign employee. The law allows these employment contracts to contain additional provisions and to deviate from the default provisions concerning the term of employment, grounds for termination, material liability, and other conditions.

## Probation period

Ukrainian law provides for a general three-month probation period. The length of probation must be stipulated in an employment agreement and repeated in an employment order.

Certain protected categories of employees cannot be put on probation, e.g., pregnant women and employees hired for a fixed-term of less than 12 months.

During probation, an employer may terminate employment on three days' written notice if the employee is found to be unsuitable for the position.

## Fixed term and part-time employment

Generally, employment agreements are for an indefinite period. An employment agreement for a fixed term may be signed only where the nature of work does not allow for indefinite employment, when it is in the interests of the employee, and in other cases expressly provided by Ukrainian law, such as for seasonal work or to replace an employee who is temporarily absent. As a consequence, for an employer to justify a fixed-term employment, the nature of the employee's employment must be verified.

A part-time employee is either a person whose employment agreement (contract) provides for shorter working hours during a day or less working days during a week. In this case, the salary is proportional to the working hours.

## Compensation

Employees are entitled to compensation for the work they perform, including salary, bonuses, and other remuneration. The compensation system used in most cases is time-based where the salary depends on the amount of time an employee works, and in which case the salary is paid monthly.

## Monthly salary

A monthly salary is payable in at least two monthly instalments with an interval between them of up to 16 calendar days, with the last instalment payable within 7 days after the end of the month.

For monthly or hourly work, employees in Ukraine must be paid at least the statutory minimum wage. The minimum wage is established in law, is periodically reviewed, and may increase during the year. From 1 January 2021, the monthly minimum wage is UAH 6,000 (approx. EUR 180) and to be increased to UAH 6,500 (approx. EUR 200) starting 01 December 2021.

## Bonuses

Under the general rule, the payment of bonuses is at the discretion of the employer. The rules for paying a bonus may be established in individual employment agreements, collective bargaining agreements, the employer's internal orders, or other employer-employee agreements.

## Other compensation

An employee is entitled to increased compensation for work on holidays, days off, and night work, and to compensation for business trips, relocation, and other work-related travel.

Employees who are unable to work due to sickness or another temporary disability are entitled to compensation for the entire period of their absence. This compensation is paid by the employer for the first five days of sickness and by the Social Insurance Fund of Ukraine for the remainder of the sick leave.

Employers in Ukraine must pay salaries only in the local currency, which is the Ukrainian Hryvnia (UAH), although an employment agreement may set the value of the salary in a foreign currency equivalent (e.g., EUR or USD).

Salary deductions are permitted only in the cases prescribed by law, such as withholdings to cover individual income tax, obligatory contributions to state social funds, and payments under court decisions.

## Working hours

Generally, the maximum work week is 40 hours excluding lunch breaks. The law does not specify the duration of a working day, which is left to the discretion of the employer and is regulated by the employer's policies, individual employment agreements, or collective bargaining agreements.

The standard working week is five working days, eight hours per day. Some categories of employees, e.g., persons under 18 years of age and pregnant women, may require a shorter working week with a proportional decrease in salary.

## Holiday entitlement

All employees are entitled to a minimum of 24 calendar days of paid annual leave after working for an employer for six continuous months. Before the expiration of this six-month period, employees can take paid annual leave on a pro rata basis for the time they have been employed.

At the employee's request, annual leave can be partially replaced by a payment *in lieu*, although only for the part exceeding 24 calendar days.

An additional maximum of 15 calendar days per year in unpaid leave can be mutually agreed between the employer and employee.

There are other types of both paid and unpaid vacations.

Currently, there are 11 national or religious state holidays, which are non-working days and are not included in the minimum holiday entitlement.

## Termination of employment

Under the *Labour Code of Ukraine*, an employment agreement may be terminated on the following grounds:

- mutual consent of the parties;
- termination by the employee;
- termination by the employer;
- expiration of a fixed-term agreement; and
- other grounds, including those stipulated in the employment contract.

### Termination by the employee

Generally, employees, including those working under fixed-term agreements, may terminate their employment by giving two weeks' written notice to the employer. The two-week notice period may be shortened if an employee cannot continue to work for justifiable reasons, such as retirement, university enrolment, or a change of residence. Employees have the right to withdraw a resignation statement within the notice period.

### Termination by the employer

Valid grounds for termination can be divided into those related to the employee's breaches of employment duties (termination with cause on the part of the employer) and those not related to the employee's actions (termination without cause). Termination is not generally allowed while an employee is on annual or sick leave.

Termination for cause is regarded in most of these cases as a disciplinary sanction and must follow procedures prescribed by law. Normally, termination for cause is a quite difficult and a highly challengeable procedure. Hence, it is recommended only if the employer has bulletproof evidence of cause and properly follows all the necessary procedures.

An employer may terminate an employee without cause in limited cases, the most common examples of which are listed below:

- changes in the organisation of work and production (redundancy);
- the employee's unsuitability for the job or position due to a lack of qualifications or appropriate health;
- reinstatement of an employee who previously occupied the position or was absent from work due to sickness for more than four continuous months;
- recruitment to the army or mobilisation within a certain period;
- the employee's unsuitability for the job or position discovered during his or her probation period; or
- dismissal without notice by an employer of certain categories of employees, such as company officials. In the case of the dismissal of a company official, a statutory severance payment must be made in the amount of six months' average salary.

Other than when an employee is absent for four months due to sickness, termination without cause is only possible if the employee cannot be transferred to another position or job.

In all cases, a decision regarding dismissal should be made in the form of a written order, signed by a duly authorised representative of the employer. The employee is to be provided with a copy of the dismissal order on the last day of his or her employment.

The statutory minimum notice period is two months in the case of redundancy. In certain cases, e.g., where there has been a single material breach of employment duties, no notification is required.

Certain categories of employee cannot be terminated by an employer without their prior consent. This “protected” category includes:

- pregnant women;
- women with children under the age of 3, or under the age of 6 if a registered medical practitioner certifies that home care is necessary; and
- single parents or the legal guardians of a child under the age of 14 or a handicapped child.

The law only allows the employment of “protected” employees to be terminated if the employer is liquidated without legal succession.

### **Health and safety regulations**

The employer must provide a safe work environment for its employees and ensure that workplaces and sanitary conditions fully comply with the requirements of Ukrainian law.

Special requirements, including special clothing and protective equipment, additional rest breaks, and regular medical checks, apply to employees whose work involves exposure to dangerous or hazardous conditions.

An employer cannot request an employee to perform work that may clearly endanger his or her life or that does not comply with health and safety laws.

A breach of legal requirements regarding work safety and the workplace may result in a fine of up to 5% of the average monthly salary at the company for the previous financial year, plus administrative and criminal liability, if applicable, for the company’s officials.

State authorities may prohibit, suspend, terminate, or limit a Ukrainian company’s operations, its separate workplaces, buildings, etc., if the work conditions pose a threat to employees’ lives.

### **Compliance**

The employer must comply with employment rules established by the labour code. The current enforcement trend is to target sham employment (e.g., de-facto employment that is either undocumented or covered by sham civil contracts) and payroll and tax evasion relating to this.

Paying fines does not release employers from administrative and criminal liability, if applicable, for breaches of labour legislation.

### **Specifics of the COVID-19 period**

During the COVID-19 period, Ukraine has, among other things, introduced more transparent and adequate regulation of remote and home working to accommodate both the needs of personnel and employing companies. It is expected that the new regulation of home and distance working will remain relevant and broadly used by many businesses including after the pandemic.

*Information in this chapter is based on certain aspects of Ukrainian legislation as of June 2021*





# Foreign investments in Ukraine

## General

Foreign investors in Ukraine generally enjoy the same treatment as domestic investors, with some exceptions.

Under Ukrainian law, any value injected by foreign investors into an investment target to generate profit or to achieve social goals is considered a foreign investment.

Foreign investments can take any form not prohibited by law, including:

- joint ventures with Ukrainian partners;
- the acquisition of shares or other equity interest in an existing Ukrainian company;
- the establishment of Ukrainian legal entities, representative offices, or branches;
- the purchase of movable or immovable property, or other proprietary rights.

Foreign investments can be made in Ukrainian Hryvnia or any foreign currency convertible by the National Bank of Ukraine (EUR, USD, GBP, CAD, etc.)

## Guarantees for foreign investors in Ukraine

**Protection against changes in legislation.** Foreign investors are protected from changes in Ukraine's foreign investment legislation, for ten years following the change at the request of the investor (with certain exceptions). This guarantee does not apply to issues of national security, environmental protection, and some other matters.

**Non-expropriation.** Foreign investments cannot be nationalised or expropriated by the state, except under emergency measures authorised by the Cabinet of Ministers.

**Compensation and reimbursement of losses.** Foreign investors are generally entitled to be reimbursed for losses, including for lost profits and non-pecuniary damages, caused by the acts, omissions, or improper performance of Ukrainian state authorities with respect to a foreign investor or a company with foreign investments. The losses must be reimbursed in the currency of the investment (or another currency acceptable to the investor) based on the market value and/or a justified valuation confirmed by an auditor.

**Return of terminated investments.** Within six months of the termination of its investment activities, a foreign investor is entitled to get back (recover) (a) its investments either in kind or in the currency of investment (in the amount actually contributed and not subject to customs duties) and (b) the revenues from such investments in monetary or in commodity form based on the market value at the time the investment activities were terminated.

**Profit repatriation.** Subject to the currency control rules of the National Bank of Ukraine and after paying all applicable taxes and duties, foreign investors are guaranteed unimpeded

and immediate transfer abroad of the profit, revenues, and other funds in a foreign currency, derived from their investment activities in Ukraine.

Additional guarantees may also be available to foreign investors investing in certain sectors of the Ukrainian economy.

## Limitations and restrictions on foreign investment in Ukraine

**Restrictions applicable to foreign and domestic investors.** Under Ukrainian law, only state-owned companies can perform certain types of business activities, such as weapon manufacturing, printing banknotes, etc.

**Restrictions and limitations on foreign investors.** Foreign investors are currently not entitled to own agricultural land. Ukrainian law also contains controversial provisions regarding the right of foreign-owned Ukrainian companies to own any land. Additional restrictions and limitations on foreign ownership or control of a business or natural resource in Ukraine can be found in specific regulations, such as industry-specific laws, laws on regulated activities, etc.

## State support for foreign investors

In 2021, a possibility to obtain state support for large investment projects with both domestic and foreign capital was introduced. To meet the key eligibility criteria for this state support, an investment project must:

- be implemented in Ukraine in one of the eligible investment spheres, which include transport, postal and delivery services, logistics, scientific activity, and tourism;
- involve the construction, modernisation, technological re-equipment of the subjects of the investment in the designated sectors, the procurement of the necessary equipment or the construction of ancillary infrastructure necessary for the investment project;
- create at least 80 new workplaces with salaries at least 15% higher than average in the region for the same position;
- envisage at least EUR 20 million in new investments; and
- be implemented within five years.

The total amount of state support is limited to 30% of the value of investment in a project and can be provided in the following key forms:

- tax and customs benefits, including an exemption from import VAT and import customs duties for equipment and component parts brought into Ukraine to implement the project, as well as a five-year exemption from corporate income tax on profits made from the project;
- land benefits regarding state- or municipally-owned land, including special rates for rent and land tax, priority rights to land, etc.; and
- construction of infrastructure (e.g. roads and utilities) necessary to implement the investment project at the expense of state or municipal budgets (the latter will only be available from 1 January 2022).

State support is provided on consideration of the investor's application by the Ministry of Economic Development, Trade and Agriculture of Ukraine and on the basis of an investment agreement to be entered into between an investor and the competent Ukrainian authorities.



### **Investment protection treaties and forum for dispute resolution**

Under Ukraine's investment laws, investment disputes between foreign investors and the state of Ukraine are resolved in the courts of Ukraine, unless otherwise provided by an investment treaty. All other investment disputes involving foreign investors are resolved in Ukrainian courts or in arbitration courts, including arbitration courts outside Ukraine.

Ukraine is currently a signatory to 73 bilateral and three multilateral treaties designed to promote investment flows and protect international investors and their investments in Ukraine.

Most of the investment treaties that Ukraine has signed provide for one or more forums where an international investor may submit its investment dispute against the state of Ukraine.

The overwhelming majority of arbitration clauses in investment treaties refer to a tribunal established under the International Centre for Settlement of Investment Disputes (ICSID) or an international ad hoc tribunal under the rules of the United Nations Commission on International Trade Law (UNCITRAL). However, there are also treaties that provide for arbitration before the Arbitration Institute of the Stockholm Chamber of Commerce or the International Chamber of Commerce International Court of Arbitration.

*Information in this chapter is based on certain aspects of Ukrainian legislation as of June 2021*



# Taxation

## Tax at a glance

Below are the key tax rates currently in place in Ukraine.

Type of tax	Rate and Comments
<b>Corporate Income Tax (CIT)</b>	18% general rate; special rates apply to insurance and gambling
<b>Withholding Tax (WHT)</b>	15%, which may be decreased or eliminated by a double-tax treaty
<b>Value Added Tax (VAT)</b>	20% general, 14% for certain agricultural products, 7% for pharmaceuticals, and 0% for exports
<b>Personal Income Tax (PIT)</b>	18% general, 5% on dividends from Ukrainian companies and 9% on dividends from non-resident companies
<b>Military Tax</b>	1.5% applied in addition to PIT on all income
<b>Unified Social Contribution (USC): employer's contribution</b>	22% applied to salaries, subject to a cap of 15 times the statutory minimum salary, which in 2021 is UAH 90,000 or approx. EUR 2,800 (the exchange rate used is EUR 1.00 to UAH 32)
<b>Unified Social Contribution (USC): employee's contribution</b>	N/A
<b>Statutory minimum salary</b>	UAH 6,000 per full-time employee (EUR 188) per month in 2021

## Corporate income tax

### General Information

Resident companies are subject to corporate income tax (CIT) on their worldwide income.

The general CIT rate is 18% with special rates for insurance and gambling companies.

CIT is calculated based on the company's financial results under applicable accounting rules but adjusted for certain tax differences. These largely aim at preventing tax avoidance and relate to: (1) rules on the depreciation of fixed assets; (2) the creation of reserves; and (3) conducting certain financial transactions (see the section "Key Tax Differences").

Small taxpayers with an annual income under UAH 40 million (EUR 1.25 million) may opt out of applying tax difference adjustments.



## Key Tax Differences

### Depreciating Fixed Assets

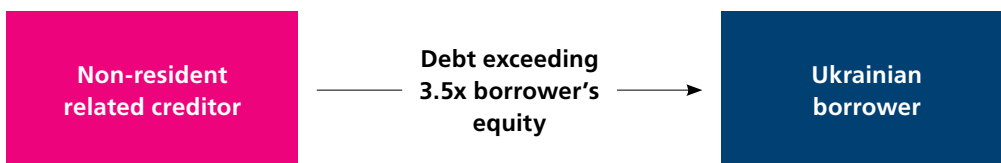
For corporate taxpayers, Ukraine's tax code has special rules for the depreciation of fixed assets, including how intangible assets are amortised.

- All depreciation methods used in generally accepted accounting rules are allowed, except for the units-of-production method.
- Depreciation for tax purposes is based on the value of the fixed assets under the historical cost method, i.e., the purchase cost without any revaluations.
- The following, however, are not subject to depreciation for tax purposes:
  - goodwill; goodwill;
  - the purchase or development of fixed assets, including intangible assets, that are not expected to be used in commercial activities; and
  - the reconstruction, repair and modernisation of fixed assets, including intangible assets, not expected to be used in commercial activities.
- Depreciation must be applied using a minimum rate set by the tax code for different types of assets.

### Thin Capitalisation

From 1 January 2021, Ukraine has applied updated thin capitalisation rules to limit the deductibility of a company's total interest expenses.

The thin capitalisation rules apply whenever the total cross-border debt exceeds three and a half times (3.5x) the company's equity.



In such case, interest accrued by the company on such cross-border debt is deductible for CIT purposes only in the amount of up to 30% of the company's taxable profit increased by the total accrued interest and depreciation. The remaining non-deducted portion may be carried forward but is subject to a 5% annual reduction in the residual amount.

The limitation on the deductibility of interest does not apply to interest accrued under loans from international financial institutions and foreign banks.

The thin capitalisation rules do not apply to companies that conduct leasing activity exclusively. Note that for CIT purposes, interest paid or accrued under a loan agreement with a related non-resident party must comply with the arm's-length principle (see the section "Transfer Pricing Restrictions" below).

### Restrictions on Operations with Low-Tax Jurisdictions and Tax Transparent Entities

For goods and services purchased from counterparties registered in low-tax jurisdictions or which are exempt from corporate income taxation, only 70% of the payment is deductible for CIT purposes. At the same time, for goods and services sold to counterparties registered in low-tax jurisdictions or which are exempt from corporate income taxation, the income from such transaction is increased by 30% for CIT purposes.

The above restrictions apply unless the taxpayer can demonstrate that the terms of the relevant transaction comply with the arm's-length principle.

The list of low-tax jurisdictions currently names 79 jurisdictions, including Hong Kong, Ireland, Cyprus and Liechtenstein, and is determined by the Cabinet of Ministers of Ukraine based on the following criteria:

- a corporate tax five or more percentage points below the Ukrainian CIT, i.e. 13% or less;
- the absence of an agreement with Ukraine on the exchange of information; or
- the failure of the jurisdiction's authorities to ensure full and timely exchange of tax and financial information with Ukraine.

The types of legal entities that are exempt from corporate taxes are also set by the Cabinet of Ministers of Ukraine, and include any entity deemed not to be resident in its jurisdiction of incorporation (registration) for tax purposes. For example, the list currently includes Limited Liability Partnerships in the United Kingdom, Free Zone Companies and Establishments in the United Arab Emirates, and Limited Liability Companies in certain states of the United States of America, such as Delaware and Nevada.

### **Restrictions on Deducting Royalties**

The amount of royalties paid to non-resident counterparties that can be deducted is limited to the taxpayer's royalty income increased by 4% of the taxpayer's gross income for the previous tax year.

Royalty payments are non-deductible if they are paid to:

- a non-resident entity that is registered in a jurisdiction that does not tax royalty income;
- a non-beneficial owner of the royalties, unless the beneficial owner has authorised the recipient to collect the royalty payments; or
- a resident company that is exempt from CIT, subject to a different tax regime, or taxed at a reduced rate.

Royalty payments are also non-deductible if they relate to intellectual property originally developed in Ukraine.

These restrictions do not apply, however, if the transaction complies with the arm's-length principle.

### **Transfer Pricing Restrictions**

Under Ukrainian transfer pricing rules, companies that engage in controlled transactions with related parties must determine their taxable base for CIT purposes in accordance with the arm's-length principle. If a controlled transaction does not meet the conditions for being arm's length, the company must adjust its financial result for taxation to the level dictated by the arm's-length principle.

In this context, the following transactions are deemed to be controlled:

- transactions with non-resident related parties;
- transactions with counterparties registered in low-tax jurisdictions;
- transactions concluded through a non-resident commissionaire; and
- transactions with non-resident counterparties that are exempt from corporate income taxation.

These transactions are subject to transfer pricing control restrictions if the total value of transactions with one counterparty exceeds UAH 10 million (EUR 312,000) in a year and the company's gross income for that year exceeds UAH 150 million (EUR 4.70 million). Transactions between a non-resident and its permanent establishment in Ukraine are also subject to transfer pricing control requirements if the amount exceeds UAH 10 million (EUR 312,000) in a reporting year.



Transactions between related parties conducted through an independent intermediary may also be deemed to be controlled unless the intermediary performs significant functions or bears significant risks.

To comply with transfer pricing rules, companies must file an annual report on transfer pricing that includes information on each controlled transaction.

On 1 January 2021, Ukraine introduced a three-tier reporting system which allows Ukrainian tax authorities to request from a Ukrainian taxpayer not only local transfer pricing documentation, but also global documentation (master file) and country-by-country reports (under certain circumstances).

### **Restrictions on Payments to Non-Profit Organisations**

Any benefit given by a company to a registered non-profit organisation, either as money or by providing free goods or services, is deductible but is capped at 4% of the company's taxable profit in the previous year.

If a company purchases goods or services, including fixed assets, from a registered non-profit, only up to 70% of the payments are deductible, unless the total value of all goods and services purchased from non-profit organisations in the reporting year is less than 25 times the minimum statutory salary, which for 2021 is UAH 150,000 (EUR 4,700). This restriction does not apply to purchases from public institutions.

### **Carrying Losses Forward**

Losses incurred by a taxpayer may be carried forward to subsequent tax periods; losses from operations with securities, however, may only be offset against profits from other operations with securities.

## **Value added tax**

### **General Information**

Ukrainian legislation on value added tax ("VAT") is generally in line with the European Union's VAT, even though Ukraine has no formal VAT harmonisation arrangements with other jurisdictions.

Ukrainian VAT is generally charged on goods and services, including imports, at the following rates:

 **20%**

**General rate on local supplies**

 **14%**

**On supplies of certain agricultural products**

 **7%**

**Procurement of pharmaceuticals and certain devices for medical purposes**

 **0%**

**Exports**

Input VAT is generally deductible against output VAT; a positive difference is remitted, while a negative difference is reimbursed.

VAT on purchases of goods, including fixed assets, qualifies as input VAT regardless of whether the goods have been put into operation or used in taxable transactions. VAT on goods and services intended for transactions that are exempt from, or not subject to, VAT does not qualify as input VAT.

### **Registering as a VAT Payer**

Only registered VAT payers can claim input VAT, but any legal entity, individual entrepreneur or permanent establishment (“PE”) doing business in Ukraine may register as a VAT payer.

In general, taxpayers not registered for VAT are exempt from accruing VAT on their local supplies. Taxpayers that import goods or services, however, are liable to pay VAT regardless of whether or not they are registered. A company must register for VAT when its local supplies exceed UAH 1 million (EUR 31,250) within any 12-month period.

### **Electronic VAT Administration**

VAT in Ukraine is administered through an electronic system. VAT invoices must be issued in electronic form and logged in a unified register of VAT invoices. Only registered VAT invoices can be claimed for input VAT.

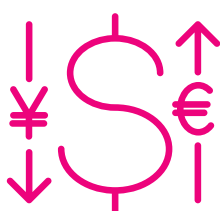
For an invoice to be accepted in the unified register, the amount of VAT on it cannot exceed the registration limit of the respective taxpayer. The limit is calculated primarily on the recognised input VAT of the taxpayer and, if needed, may be increased by monetary transfers from the taxpayer’s bank account.

Remittance of VAT to the State Budget is made through special VAT accounts opened with the State Treasury. VAT refunds (reimbursements) are deposited in the taxpayer’s current bank account.

### **VAT on digital services**

From 1 January 2022, Ukraine is expected to introduce 20% VAT on the revenues of non-resident companies from electronic and digital services provided to consumers in Ukraine. Digital services subject to tax will include any kind of service rendered via an internet connection, through the web or an app, including streaming services, cloud services, content subscriptions, etc.

Non-resident entities that provide such digital services to Ukrainian consumers will need to register as VAT payers in Ukraine once the revenue received from these services exceeds the equivalent of UAH 1million (EUR 31,250) in any calendar year.



## Payroll taxes

### General Information

Ukraine does not impose a separate payroll tax on employers. However, employers must make a unified social contribution for the benefit of their employees and collect income taxes due from employees.



### Personal Income Tax

Withheld by the employer from the employee's income



### Military Tax

Withheld by the employer from the employee's income



### Unified Social Contribution

Paid by the employer at its own additional cost

An employer is responsible for calculating, accruing, withholding and remitting its employees' income taxes and is liable for any violations, including for unified social contributions.

### Employees' Income Tax

In general, any income paid or accrued by an employer to its employees, including in-kind benefits, is subject to 18% Personal Income Tax and 1.5% Military Tax. The following, however, are exempt:

- premiums paid on behalf of employees under private pension plans up to 15% of the accrued monthly salary, but not more than two and a half times (2.5x) the minimum statutory salary;
- free food, special clothes, toiletries and personal protective measures provided to employees within statutory requirements and norms;
- reimbursement of expenses for business trips, within statutory established limits;
- medical care and medical treatment aid, both monetary and in-kind;
- employer's expenses for an employee's education and certification training (conditions apply);
- refundable financial aid; and
- in-kind gifts with a value less than 25% of the minimum statutory salary.

### Unified Social Contribution

An employer must pay a unified social contribution of 22% of each employee's salary. The amount of salary subject to USC is capped at a maximum of 15 times (15x) the minimum statutory salary per employee. The minimum social contribution per employee is 22% of the minimum monthly salary.

Contributions are due monthly on the date salaries are paid and are deductible expenses for the purpose of the employer's CIT.

## Other taxes

### Excise Tax

Ukraine charges an excise tax on certain products, both on import operations and their sale in Ukraine. The Ukrainian tax code specifies the excise rate for the categories of goods below. There are *ad-valorem* and specific tax rates.

#### List of excisable goods

Ethyl alcohol, alcoholic distillates, alcoholic beverages, beer



Tobacco products, tobacco and industrial substitutes



Petroleum products



Passenger cars, car bodies, trailers and semi-trailers, motorcycles



Electricity, except for electricity produced from renewable sources

Payers of excise tax include:

- producers of excisable goods in Ukraine;
- importers of excisable goods into Ukraine;
- retailers of excisable goods;
- producers and suppliers of electricity; and
- sellers of petroleum products.

### Land Tax

Under Ukraine's tax code, land tax is paid by: (i) owners of land in private ownership; and (ii) lessees of land in State or communal ownership. People and organisations that use land without a formal lease pay tax (under certain conditions) at the same rate as land owners.

Land is taxed based on the normative value of the plot, if a valuation is conducted, or on the total area of the plot.

Land tax rates and incentives are set by local municipalities. However, the tax code gives general thresholds. For example, for plots of land where a valuation has been conducted, the tax code stipulates the following:

	Land Tax	Land Lease Payment
<b>Agricultural land</b>	At least 0.3% and up to 1%	At least the land tax set out for the respective land type, but up to 12%
<b>Land of common use</b>	Up to 1%	
<b>Land under forest</b>	Up to 0.1%	
<b>Other types of land</b>	Up to 3%	

### Controlled Foreign Companies

From 1 January 2022, Ukraine is expected to introduce a Controlled Foreign Company (“CFC”) regime.

The Ukrainian CFC regime will cover any foreign entity, including partnerships, trusts funds and other business establishments without a legal personality, under the control of a Ukrainian individual person or Ukrainian legal entity.

A foreign entity may be recognised as CFC in Ukraine if a Ukrainian individual person or legal entity:

- holds directly or indirectly more than 50% of shares in the foreign entity; or
- holds directly or indirectly more than 10% of shares in the foreign entity under the condition that other Ukrainian individual persons or legal entities also hold shares in that foreign company of 50% or more in aggregate; or
- exercises, separately or jointly with other Ukrainian resident related parties, factual control over a foreign entity.

The Ukrainian controller of a CFC must report in Ukraine the portion of the CFC’s profit proportional to the controller’s share held or controlled by the respective taxpayer. For the purposes of Ukrainian taxation, the CFC’s profit will be adjusted by the tax differences set out in the Ukrainian tax code.

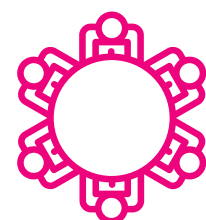
A CFC’s profit may be exempted from taxation in Ukraine in certain cases, including if the CFC pays income tax in its jurisdiction of residence at the effective rate amounting to at least 13%, provided that a double-tax avoidance agreement or tax information exchange treaty are concluded between Ukraine and the jurisdiction in which the CFC has its registered seat.

### Permanent establishments in Ukraine

#### General Information

The legal framework for foreign companies that constitute a permanent establishment (“PE”) in Ukraine is established by both Ukraine’s tax code and the relevant double tax treaty in force with the company’s country of residence.

The tax code and most double-tax treaties share a common definition of a PE. In general, a permanent establishment is a fixed place of business through which the business of a foreign company is fully or partially carried on, including a place of management, a branch, an office, a factory, a server, a workshop, an installation or structure for the exploration of natural resources, a mine, an oil or gas well, a quarry or any other place of the extraction of natural resources, a warehouse or other structure used as a sales outlet.



Apart from the above, Ukraine's tax code recognises the following special types of permanent establishments:

- **Site-based PE:** A building site, construction or installation site, or supervisory activities connected to it, constitutes a PE if the work related to the site (within one or several related projects) lasts longer than 12 months. If the double-tax treaty that governs the foreign company sets a different length of time, it prevails over the Ukrainian tax code.
- **Agent-based PE:** A resident person, either a legal entity or an individual, who has the authority to act on behalf of a foreign company and to negotiate or conclude contracts would constitute a PE unless the authority of the person (or entity) is limited to exempted activities (see section "Exempted Activities" below).
- **Service-based PE:** A foreign entity that provides services in Ukraine through its employees or other personnel in one or more projects that cumulatively last more than 183 days in any 12-month period, amounts to the creation of a PE. Again, if the treaty that governs the company sets a different length of time, it prevails over the Ukrainian tax code.
- **Storage-based PE:** A resident person, either a legal entity or an individual, who has contractual or factual authority to store non-resident's goods that are supplied from such storage on behalf of the non-resident. A PE does not arise if a resident has the status of a customs warehouse operator.

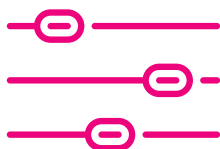
If a few related non-resident companies conduct the same or similar activities in Ukraine, in certain circumstances their cumulative activities may be taken into consideration when establishing whether a PE exists.

### Exempted activities

Universally under Ukraine's tax code and most double-tax treaties, some preparatory and auxiliary activities are exempt from determining if a foreign company has created a PE:

- using facilities solely for the storage, display or delivery of goods or merchandise;
- maintaining a stock of goods or merchandise solely for storage, display or delivery;
- maintaining a stock of goods or merchandise solely for another enterprise to process;
- maintaining a fixed place of business solely for purchasing goods or merchandise or for collecting information; and
- maintaining a fixed place of business solely for carrying on, for the enterprise, any other activity of a preparatory or auxiliary character.

Any of the above activities, even in combination, should not constitute a PE for a foreign company. In practice, the most common such activities recognised by the Ukrainian tax authorities include market research, data collection, and marketing and distributing information to potential clients in Ukraine, as long as no negotiations on the terms of possible cooperation are conducted. In addition, when deciding whether the activities of a representative office in Ukraine constitute a PE, the tax authorities compare those activities to the core activities of the head office. If, on the whole, the representative office conducts the same activities as its company, then the tax authorities would consider it to constitute a PE.



## **Taxation Methods**

Profits received by non-resident entities conducting business in Ukraine through a PE may be taxed under general corporate tax rules. For these purposes, the PE is regarded as a separate taxpayer that conducts its activities independently. The taxable base of the PE will be determined in accordance with the arm's-length principle, meaning that the taxable profit allocated to the PE must correspond to the level of profit which would be earned by an independent enterprise from the same or similar activities in comparable circumstances.

The taxable profit of the PE is subject to an 18% CIT rate. PEs can register as VAT payers.

## **Withholding tax for non-residents**

### **General Information**

The Ukrainian-sourced income of a non-resident legal entity is subject to a 15% withholding tax, unless a double-tax treaty applies. Special withholding tax rates apply to insurance-related income and income earned by advertisement producers.

The following categories of income are generally deemed to be taxable in Ukraine:

- interest income;
- dividends paid by a resident company;
- royalties;
- freight and income from engineering services;
- leasing charges and rent paid or accrued by residents;
- proceeds from the sale of real estate in Ukraine owned by a non-resident;
- profit received from transactions with securities or other corporate rights, including capital gains from sales of foreign shares deriving their value from Ukrainian real estate;
- income from joint business endeavours and from long-term contracts;
- remuneration for non-residents' cultural, educational, religious, sports and entertainment activities conducted in Ukraine;
- brokerage, commission or agency fees received from residents;
- risk insurance or reinsurance premiums in Ukraine;
- gambling gains;
- income from charitable contributions and donations; and
- other income received by non-residents from doing business in Ukraine.

The proceeds from sales of goods or services to residents, including international communications services, are not subject to Ukrainian withholding tax.

## **Application of Double-Tax Treaties**

A double-tax treaty between Ukraine and a foreign company's country of residence may reduce or eliminate Ukrainian withholding tax on its income. To qualify for the exemption or reduction, a foreign company needs to provide the payer in Ukraine with a valid tax residency certificate.

Privileges under a double-tax treaty may be denied by Ukraine if the Ukrainian tax authorities believe that the principle or one of principle purposes of the respective transaction or arrangement is to receive such tax privileges.

Ukraine currently has double tax treaties with 74 countries.

## **Constructive dividends**

Starting from 1 January 2021, the value of goods or services paid for by a Ukrainian company in excess of the arm's-length price in operations with non-resident related parties or companies registered in low-tax jurisdictions is treated as de-facto dividends and, as such, subject to withholding tax at the standard 15% rate or a lower rate if provided under a double-tax treaty.

## Tax responsibility

Breaches of Ukraine's tax regulations, whether in accounting, calculations, withholding, reporting, paying taxes or otherwise, may be subject to:

- financial liability;
- administrative liability; and
- criminal liability.

Financial liability takes the form of a fine. The exhaustive list of tax breaches subject to financial liability are set out in Ukraine's tax code and include, for example:

<b>Failure to file or untimely filing of tax returns</b>	UAH 340 (EUR 11) per instance UAH 1,020 (EUR 32) per repeated instance within one year
<b>Failure to file a transfer pricing report</b>	300 times the minimum subsistence level, which for 2021 totals UAH 713,700 (EUR 22,300)
<b>Failure to file transfer pricing documentation at the request of the tax office</b>	Three percent of the inspected transaction for which documentation was not filed, but not more than 200 times the minimum subsistence level, which for 2021 totals UAH 475,800 (EUR 14,900)
<b>Failure to register VAT invoices on time</b>	Up to 50% of the value of such VAT invoice depending on the delay in registration
<b>In the case of additional tax liabilities charged by the tax office during a tax audit</b>	10% of such additionally charged tax liabilities 25% if violation is result of taxpayer's wilful and guilty behaviour 50% in the event of a repeated instance within three years

The statute of limitations for financial responsibility is three years, and seven years for breaches of transfer pricing regulations.

Paying a fine for a breach of tax rules does not relieve a company from administrative or criminal liability. Administrative liability is reserved for minor breaches, an exhaustive list of which is given in the applicable legislation. Administrative and criminal liability applies to the officers of the company responsible for accounting and the paying of taxes, typically the directors and chief accountant.

Criminal liability for tax evasion may be invoked whenever the amount of unpaid taxes reaches the minimum threshold set out in the Criminal Code of Ukraine, which for 2021 is UAH 3,405,000 (EUR 106,400).

*Information in this chapter is based on certain aspects of Ukrainian legislation as of June 2021*





# Foreign currency rules

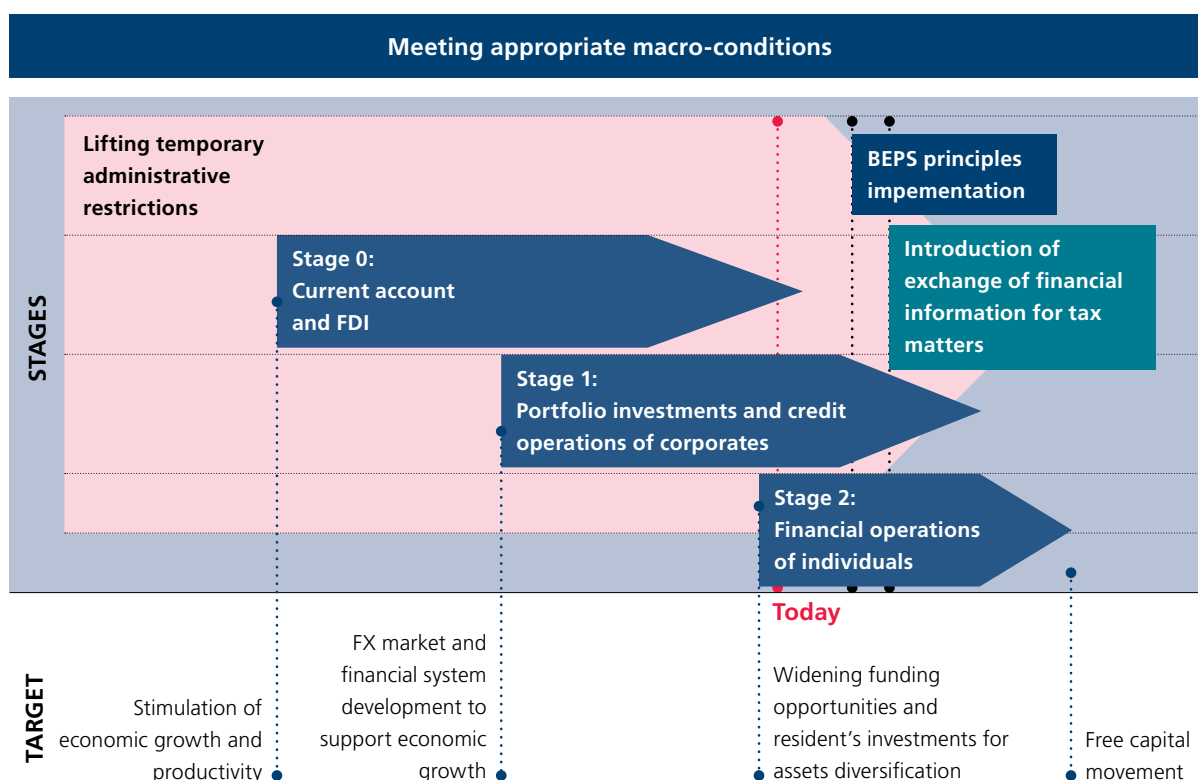
## General

In February 2019, the Law of Ukraine “On Currency and Exchange Transactions” came into force along with a new regulatory framework that cancelled fragmentary, contradictory and obsolete rules and legislation for currency controls.

The key game-changer introduced by the currency law is a new principle: “everything which is not forbidden is permitted”, the opposite of past practice. The currency law significantly limits the discretion of regulatory bodies and gives market players a wider freedom of action. The National Bank of Ukraine (“NBU”) presented an ambitious plan to liberalise currency rules. The currency liberalisation plan has no specific timeline, however, since its implementation depends on macroeconomic improvement and the introduction of international tax-avoidance measures (“anti-BEPS”) in Ukraine.

In May 2020, the Law of Ukraine No. 466-IX “On Amendments to the Tax Code of Ukraine Regarding Improvement of Tax Administration, Elimination of Technical and Logical Inconsistencies in Tax Legislation” entered into force (except for certain provisions). The law significantly revised taxation rules aimed at de-offshorisation, transparency and launched extensive implementation of anti-BEPS in Ukraine. Later, the Law of Ukraine No. 1117-IX “On Amendments to the Tax Code of Ukraine and Other Laws of Ukraine on Ensuring the Collection of Data and Information Necessary for Declaration of Certain Taxation Objects”, which entered into force in January 2021, postponed introduction of certain provisions stipulated by the Law of Ukraine No. 466-IX. According to the NBU, effective implementation of anti-BEPS will allow to proceed with currency liberalisation.

## Our path: Roadmap for currency liberalisation



Transition to the next stage of currency liberalisation can be done in case of implementation of OECD recommendations to BEPS resistance and unified standard of automatic exchange of financial information.

### Use of currencies

The Ukrainian Hryvnia (UAH) is the only valid currency for payments in Ukraine. Nonetheless, foreign investments and cross-border payments can be made in a foreign currency, including recognised hard currencies and currencies from developing countries, such as the Turkish lira and Egyptian pound.

### Regulatory framework

Foreign currency rules are based on eight key NBU regulations:

- Regulation No. 1, covering the structure of Ukraine's currency market and the terms and procedure for trading FX and bank metals;
- Regulation No. 2, covering the conduct of transactions with currency assets;
- Regulation No. 3, covering the cross-border movement of currency assets;
- Regulation No. 4, covering currency protection measures and criteria for their introduction, prolongation, and early termination;
- Regulation No. 5, covering protection measures and procedures for particular FX transactions;
- Regulation No. 6, covering how banks provide information to the NBU about debt obligations of residents to non-resident creditors;
- Regulation No. 7, covering how banks supervise settlements for export/import transactions by Ukrainian residents; and
- Regulation No. 8, covering the analysis and verification currency transaction documents by authorised institutions.

Overall the NBU's new foreign currency regulations follow these three key principles:

- **Simplicity:** minimising the number of rules and regulations;
- **Clarity:** consolidating these rules and regulations to comply with the currency law; and
- **Accessibility:** adding a foreign currency regulation page to the NBU website with an English translation and links to other laws.

### Limits on electronic transfers

Limits on electronic transfers, "e-limits", apply to Ukrainian residents transferring funds outside the country, from both UAH and foreign currency accounts, while no such limits apply to non-residents

Ukrainian residents can purchase and transfer foreign currency abroad on an annual basis in the following amounts:

- **EUR 200,000** for individual residents to perform the obligations of a resident under insurance contracts, make investments, or credit a resident's offshore accounts; and
- **EUR 2,000,000** for resident legal entities and individual entrepreneurs to conduct business.

E-limits do not apply to payments under an exhaustive list of exceptions, which includes transfers for (a) cross-border loans; (b) export-import transactions; (c) suretyships, pledges, mortgages, and guarantees; and (d) leasing and factoring. For these transactions, foreign currency purchases and transfers can exceed e-limits with no additional authorisation.

## Repatriation of investments

There are no restrictions on the repatriation of investments or dividends from Ukraine by foreign investors.

## Cross-border lending

### Notification Rules

A bank servicing a cross-border loan must notify the NBU of the loan agreement as soon as it becomes aware of it, e.g. when the borrower informs them or when the first payment under the loan is received by the bank. Loan payments can be conducted by a servicing bank if it has all the loan documentation and the loan's terms have been reflected in the database of cross-border loans kept by the NBU.

The NBU has instructed banks to ask their clients to notify them of cross-border loans before any payment is due in order to avoid delays in the payments. It is good practice, then, to include protection clauses in agreements to avoid a breach of contractual obligations in the event of delays due to verification procedures by banks.

### Interest Rates

Banks are required to verify whether that the interest rates and other lending costs of the loans they service reflect market conditions. The NBU advises banks to consider two main criteria when they review this aspect of a loan:

- the base rate for loans in the relevant currency in international or local capital markets; and
- whether the additional margin (above the base rate) reflects (a) Ukraine's sovereign risk and (b) the borrower's risk.

This means that even though the NBU has repealed the maximum interest rate cap, banks still might refuse to effect cross-border payments if they believe they are not in line with market standards, the parties' commercial activities, or Ukrainian legislation.

### Early Repayment

There is no prohibition on early repayment. Loans in Ukraine can be repaid at any time as allowed by the terms of the loan agreement.

### Accumulation of Foreign Currency

To service their debt under cross-border loans, borrowers may buy and accumulate foreign currency in their Ukrainian accounts up to an amount necessary for the next scheduled repayment. In the case of a lump-sum repayment on the final maturity date, accumulating the entire outstanding debt should be allowed.

### Borrowing to purchase foreign currency

Foreign currency can be purchased with loans funded in UAH without limit.

### No mandatory sale of foreign currency

Companies may retain any amount of foreign or national currency.

### Current accounts for non-residents

Non-resident legal entities may open foreign currency and UAH current accounts in Ukraine. This expands the range of payments that non-residents can make through Ukrainian banks, which were previously limited to investment accounts only.



### Settlements of export and import contracts

The time allowed for Ukrainian residents to settle any export-import transaction of more than UAH 400,000 (approx. EUR 12,500) is 365 days. Import-export transactions below UAH 400,000 are exempt from this time limit, as are the following transactions:

- exporting and importing goods used in spacecraft and aircraft engineering;
- exporting and importing goods covered by a product-sharing agreement;
- importing goods under state defence contracts; and
- importing goods under procurement contracts between a specialised organisation and the Ministry of Health of Ukraine or one of its affiliates.

Services provided to foreign customers are also exempt from the 365-day settlement period, except for works or services related to insurance and transportation. Other exceptions to the 365-day limit on settlement include the sale of intellectual property rights or other non-proprietary rights and the purchase of medical services to treat Ukrainian citizens for rare diseases.

### Verification of transactions

From 28 April 2020, the threshold for the financial monitoring regarding transactions was increased to UAH 400,000 (EUR 12,500) from UAH 150,000 (EUR 4,600). Currency control is mandatory for regular, related currency transactions that are below the same threshold. When verifying a transaction, banks must take into consideration, among others, the company's good standing and compliance of a transaction with the company's regular business transactions.

Verification does not apply to certain payments made abroad, including payments made by the state or under state guarantees, payments to international financial institutions, and payments made under agreements between Ukraine and the EU.

Banks are also required to carry out additional verification for all of the following currency transactions:

- under a cross-border loan agreement;
- by a Ukrainian surety under a suretyship agreement;
- for repatriating dividends to a non-resident;
- for repatriating proceeds from the sale of corporate rights or securities to a non-resident; and
- for transactions under the threshold of UAH 400,000 that are related and occur on a regular basis.

A bank, of course, may verify any other transaction that it deems necessary.

The process of verification includes the following:

- examining the good standing of the parties;
- checking if the transaction is in line with the regular commercial activities of the parties; and
- identifying the ultimate beneficial owners of the parties.

### Insignificant foreign currency transactions

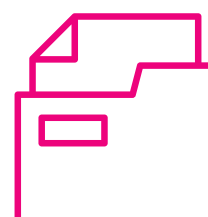
Under the currency law, carrying out small transactions under UAH 400,000 has been simplified. Both residents and non-residents may purchase and transfer foreign currency funds based on an application and without additional documentation, unless such operations performed without opening of the bank account or it is expressly requested by the bank. Subject to certain conditions, individuals may transfer foreign currency funds abroad without opening an account with a bank, and individuals may buy foreign currency online.

### **Economic sanctions**

The Law of Ukraine “On Currency and Exchange Transactions” repeals the Ministry of Economic Development and Trade of Ukraine’s sanctions for violating laws on foreign economic activity. These special economic sanctions included: (i) fines; (ii) a licensing regime; and (iii) the suspension of foreign economic activity for both resident and non-resident businesses.

Instead, the currency law creates a more clear-cut system of sanctions, with different mechanisms applied to banks, non-banking financial institutions, legal entities, and individuals. Sanctions are to be imposed for any breach of currency rules, including a breach of the procedures for (a) conducting settlements under currency transactions, (b) currency trades, and (c) currency transfers. The fines for legal entities other than banks and financial institutions will be determined by the Ministry of Finance and can be up to 100% of the value of the illegal operation. Fines for individuals are set in the Administrative Offences Code of Ukraine and may be up to UAH 68,000 (approx. EUR 2,100) depending on the individual’s status and the violation in question.

*Information in this chapter is based on certain aspects  
of Ukrainian legislation as of July 2021*





# Customs and international trade

## Introduction

### General Information

Ukraine has been a member of the World Trade Organization since 2008, and its customs legislation is generally harmonised with WTO standards and the International Convention on the Simplification and Harmonisation of Customs Procedures.

In 2014, Ukraine and the EU established the Deep and Comprehensive Free Trade Area between Ukraine and the EU, and the country undertook to revise its legislation to comply with EU standards in numerous areas, including customs.

The principal law governing customs in Ukraine is the Customs Code of Ukraine.

### Customs Registration

Both legal entities and individuals acting as a “declarant” or “exporter/importer of record” may declare goods for customs clearance at Ukrainian borders. Only Ukrainian residents may act as declarants, except in a limited list of circumstances such as individuals moving personal belongings or diplomatic missions transporting goods, etc.

To conduct cross-border operations involving moving goods, a company must register with the customs authorities. The procedure is straightforward and can be done in a business day. Only Ukrainian entities and representative offices of foreign companies may register.

### Authorised Economic Operator

Ukrainian companies that conduct regular cross-border operations and have a positive record of tax and customs compliance may apply to become an authorised economic operator, which qualifies a company for simplified customs procedures. The benefits include an assumption of reliability and safety, as well as the following:

- providing less information before initiating customs clearance,
- storing goods that are under customs control on the operator’s own sites,
- conducting customs clearance on the operator’s own sites,
- priority customs clearance, and
- an exemption from the requirement to provide a financial guarantee.

The status of authorised economic operator is granted for an unlimited period but can be suspended or annulled.

### Customs Broker

Exporters or importers of record may clear goods directly or through an authorised representative, namely a customs broker. Ukrainian businesses that conduct customs brokerage activities must first obtain a permit and register with the official register of customs brokers.

## Customs regimes

The following customs regimes are recognised by the Customs Code of Ukraine:

### Regimes allowing goods into the customs territory of Ukraine



#### Import

- allows the importation of goods for their free circulation in Ukraine
- all customs duties and taxes apply



#### Re-import

- allows goods previously exported from Ukraine to re-enter the customs territory of Ukraine
- exemption from customs duties and taxes



#### Temporary Import

- allows goods of foreign origin to be temporarily brought into Ukraine
- full or partial exemption from customs duties and taxes



#### Inward Processing

- allows goods of foreign origin to be brought into Ukraine to be processed in Ukraine and then re-exported onwards
- conditional exemption from customs duties and taxes

### Regimes allowing goods outside the customs territory of Ukraine



#### Export

- allows goods for final exportation out of Ukraine
- export duties and taxes apply (if required)



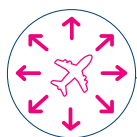
#### Re-Export

- allows goods previously imported into Ukraine to be shipped out of the customs territory of Ukraine
- exemption from customs duties and taxes



#### Temporary Export

- allows goods of Ukrainian origin to be temporarily moved outside Ukraine
- conditional exemption from customs duties and taxes



#### Outward Processing

- allows goods of Ukrainian origin to be shipped outside Ukraine to be processed with further re-import of produced goods into Ukraine
- export duties and taxes apply (if required)



## Regimes allowing for transportation, storing and realisation of goods under customs control



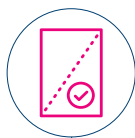
### Transit

- allows goods and vehicles to be moved across Ukraine under customs control
- customs duties and taxes do not apply



### Customs Warehouse

- allows Ukrainian or foreign goods to be stored under customs control
- conditional exemption from customs duties and taxes



### Duty Free Trade

- allows goods not intended for free circulation in Ukraine to be sold under customs control at customs border crossing points intended for international connections
- conditional exemption from customs duties and taxes



### Free Customs Zone

- allows the shipping of foreign goods in and out of a free customs zone, as well as the export of Ukrainian goods into a free customs zone
- exemption from customs duties and taxes for foreign goods
- customs duties and taxes apply on Ukrainian goods (if required for export)

## Regimes allowing for the disposal of goods under customs control



### Destruction

- allows for the destruction of foreign goods under customs control
- conditional exemption from customs duties and taxes



### Surrender to State

- allows foreign goods to be relinquished to the State
- exemption from customs duties and taxes

## Customs clearance

### General Information

As is standard international practice, all goods and vehicles crossing in or out of Ukraine are subject to customs and border control, and must undergo three main procedures:

1. customs control;
2. customs formalities; and
3. payment of duties.

Customs offices located on Ukraine's border clear goods 24 hours a day, while others operate during set business hours. Goods transported through pipelines or power transmission lines are cleared with specially designated offices.

## Customs Declaration

The importer of record or its authorised representative submits a customs declaration to the customs office or, in certain cases, a document which substitutes for a declaration. The customs code recognises the following types of customs declarations:

### Regular Customs Declaration

A declaration comprising the full scope of information needed for customs clearance.



### Preliminary Customs Declaration

A declaration filed in advance of goods reaching the customs territory of Ukraine for a preliminary assessment of the customs risks.



### Temporary Customs Declaration

A declaration that may be filed if an importer does not have all the necessary information to submit a regular customs declaration. A temporary declaration must be supplemented with an additional declaration to file the missing information within 45 days.



### Periodic Customs Declaration

A declaration that may be submitted for the regular movement of identical goods with the same counterparty under the same contract for up to 180 days.



### Simplified Customs Declaration

A declaration that may be filed by a declarant which received the status of Authorised Economic Operator with a right to special simplifications.



### Additional Declaration

A declaration filed in addition to a preliminary, temporary or periodic customs declaration that includes full details of transported goods.

## Customs Clearance Documents

Importers must submit supporting documents to confirm the information in the customs declaration. The most common supporting documents include:

- cross-border contract
- invoice
- packing list
- shipping documents (bill of lading, consignment note, CMR, etc.)
- documents confirming the customs value
- declaration or certificate of origin (if required)
- certificate of conformity (if required)
- documents confirming the payment of customs duties and taxes

Other documents may be required from a declarant by law or at the request of the customs authorities depending on the chosen customs regime, the type of goods being transported, the means of transportation, etc. Supporting documents or their certified copies may be submitted electronically.

The documents must be in Ukrainian or an official language of a customs union of which Ukraine is a member.

## Term of Customs Clearance

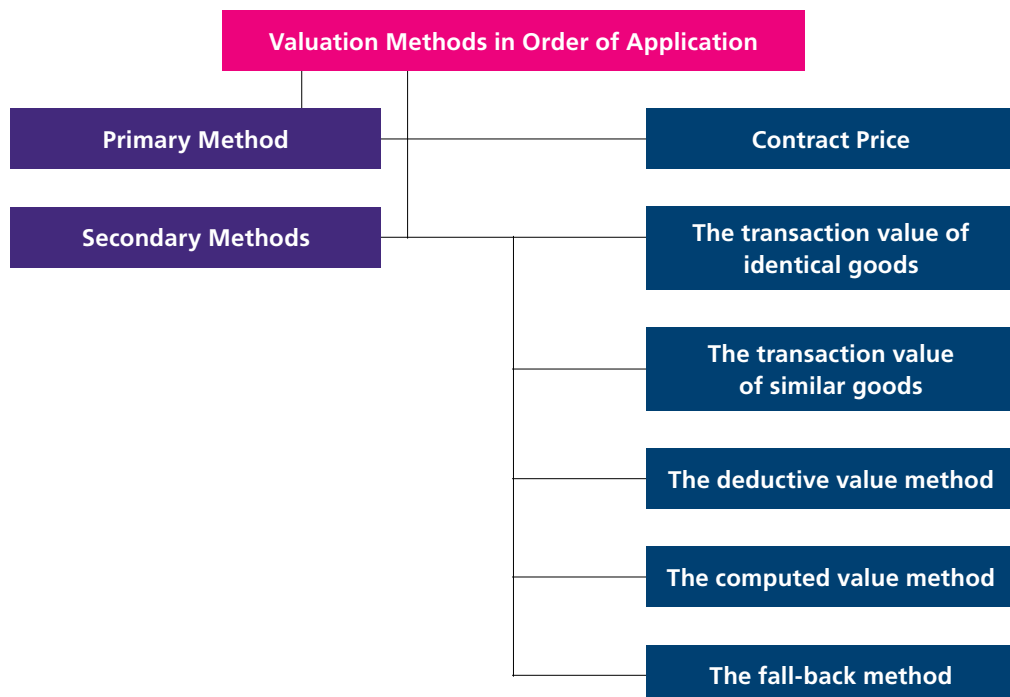
Under Ukraine's customs code, clearance should be completed within four business hours from the presentation of the goods and the submission of the declaration, and accompanying shipping documents; although this may be extended in exceptional circumstances. The goods are officially cleared when the customs office puts its stamp or other mark on the customs declaration and accompanying shipping documents.

## Customs valuation and fees

### Customs Value

Ukrainian rules for valuing goods for customs purposes are generally in line with international standards, namely the Agreement on the Implementation of Article VII of the GATT 1994. The customs value is generally based on the price paid or due for the goods, determined at the transactional value (primary method). If this is not available, then the value is determined by one of five secondary WTO methods, which apply in sequential order:

The customs value of goods imported into Ukraine commonly includes the cost of the goods, as well as insurance costs and transportation costs to the border of Ukraine.



Customs value is determined and declared by the importer of record based on true and correct documents. The exhaustive list of documents required for determination of customs value is set under the Customs Code. In a limited set of cases, the importer may have to submit a formal declaration of the customs value.

The customs office can refuse to clear goods if it believes that the information filed for determining the customs value is incorrect or incomplete, or if the customs value has been determined improperly.

### Classification of Goods

The amount of duty to be paid and other non-tariff measures are based on the type of goods being imported (or exported) according to the Ukrainian Classification of Commodities in Foreign Economic Activities, which is based on the Harmonised Commodity Description and Coding System (2012 edition).

### Customs Duties and Taxes

An importer of record pays (a) customs duties, both import and export, (b) value added tax, and (c) excise tax, if applicable.

Import duties are set under the Customs Tariff of Ukraine. There are three types of customs duties rates applied in Ukraine:



#### Preferential Rate

Charged on goods originating from countries with which Ukraine has preferential customs regimes under free trade agreements (e.g., from EU countries).



#### Reduced Rate

Charged on goods originating from countries who belong to the WTO or from countries that have been granted most-favoured nation status.



#### General Rate

Charged on all cases not covered by preferential or reduced rates.

Export duties are charged only on a few limited types of goods, such as livestock, leather raw materials, some types of oilseeds, gas, or scrap iron.

Value Added Tax is charged on imports at 20% (7% for medicines and medical appliances), while exports are generally charged 0% VAT. Excise tax is charged on imports of excisable goods at the rates set out in the Tax Code of Ukraine. Whenever a particular customs regime provides an exemption for customs duties, in most cases VAT is also exempted. (See sections "Value Added Tax" and "Excise Tax").

### International trade restrictions

#### Trade Restrictions with the Russian Federation

In 2015 the Russian Federation suspended its Free Trade Agreement with Ukraine and placed an embargo on imports of certain Ukrainian products, and Ukraine introduced reciprocal measures in response. Currently, the following restrictions with the Russian Federation are in force:

- Application of preferential import rates to goods originating from the Russian Federation is ceased until 31 December 2021.
- Additional special duties apply on importation of certain goods originating from the Russian Federation, effective until Russian Federation ceases its discriminatory and unfriendly measures.
- An embargo applies to imports of certain listed goods originating from the Russian Federation (including food, medicines, clothes, equipment, vehicles, etc.), effective until 31 December 2021.

### **Trade with Crimea**

When the Russian Federation annexed Crimea, Ukraine introduced a blockade for the duration of the occupation, whereby all supplies of goods from Crimea to mainland Ukraine and vice versa are banned, except for limited items such as personal belongings and certain foods.

The blockade does not apply to electricity, goods of strategic importance, and humanitarian aid. At the same time, Ukraine established a free economic zone called "Crimea", allowing goods to circulate within Crimea as if in a free customs zone (see section "Customs Regimes" above).

However, these blockade measures have been declared unlawful by the court's decision in case No. 826/9502/16 that came into force.

*Information in this chapter is based on certain aspects  
of Ukrainian legislation as of June 2021*





# Real estate and property rights

In Ukraine, real estate refers to land, buildings and structures located on it. Each, however, has a separate legal regime. In each case, ownership and other rights to the real property requires registration in the State Register of Proprietary Rights to Real Estate (the “Property Register”), which can be carried out by both public and private registrars. All real estate information, including who holds title and/or rights to the property, as well as zoning and permitted uses, is publicly available online.

## Legislative framework

A variety of laws and bylaws regulate real estate in Ukraine, among which the main pieces of legislation are:

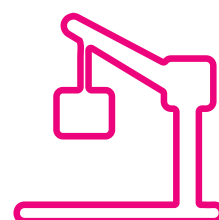
- Civil Code of Ukraine;
- Commercial Code of Ukraine;
- Land Code of Ukraine;
- Law of Ukraine “On Land Lease”;
- Law of Ukraine “On Land Management”;
- Law of Ukraine “On Town Planning Regulation”;
- Law of Ukraine “On Architectural Activity”; and
- Law of Ukraine “On State Registration of Proprietary Rights to Real Estate and their Encumbrances”.

## Use of land plots

Generally, a plot of land is a piece of surface land with established borders whose rights regarding ownership, uses, etc., are defined. From a legal standpoint, a plot is “formed” when its boundaries are determined, its technical specifications and registration have been approved by state bodies, and it is assigned a unique cadastral number, indicating that the parcel of land is registered in the State Land Cadastre.

A plot of land may only be used for the activities permissible for its category under the land code, which divides land into the following categories:

- agricultural land;
- land for residential and public buildings;
- land for nature preservation and other nature protection purposes;
- land for health-improvement purposes;
- recreational land;
- land for historical and cultural purposes;
- forest land;
- water resources land; and
- land for industry, transportation, communications, energy, defence, and other purposes.



A land plot category and permitted use are reflected in its land management documentation, its title documents, the State Land Cadastre, and the Property Register. Both the Cadastre and the Register are available online and contain general information about land plots, their boundaries, total area, ownership and users, if any, etc.

The owner and/or user of a registered land plot may apply to change its category.

The procedure, however, depends on the land plot's current category and relevant town planning documentation.

A land plot's uses can be further restricted if it falls within a zone with special requirements. Thus, it is advisable to check for all existing and specific restrictions on a plot of land before starting a project. The most common restrictions are a prohibition on construction, prohibition on carrying out certain types of activity and a prohibition on residential development.

### **Title to land**

Ukrainian law defines several types of title, each providing for a different range of rights and obligations:

- ownership;
- use:
  - permanent use;
  - temporary use:
  - lease;
  - servitude (easement);
  - emphyteusis; and
  - superficies.

As a side note, ownership to a plot of land automatically transfers when the ownership of a building or structure on the plot changes hands. Furthermore, ownership of real property comes with land use rights for servicing the property; however, a separate agreement must still be concluded, and the rights to the plot registered in the Property Register.

A moratorium currently restricts the change of designated use and sale of certain types of agricultural land. Moratorium was established in October 2001 and was designed as a temporary measure to allow parliament to put in place the legislative infrastructure for the market.

Subsequently, the temporary measure went on for almost two decades.

Under the moratorium, it is prohibited to:

1. Sell state and municipally owned agricultural land; and
2. Sell or change the designated use of certain types of privately-owned land, such as land shares (land distributed among the members of former collective farms), and land for commercial and individual farming.

While this covers the vast majority of agricultural land, there are still some types of private agricultural land, not covered by the moratorium, which can thus be acquired by Ukrainian residents.

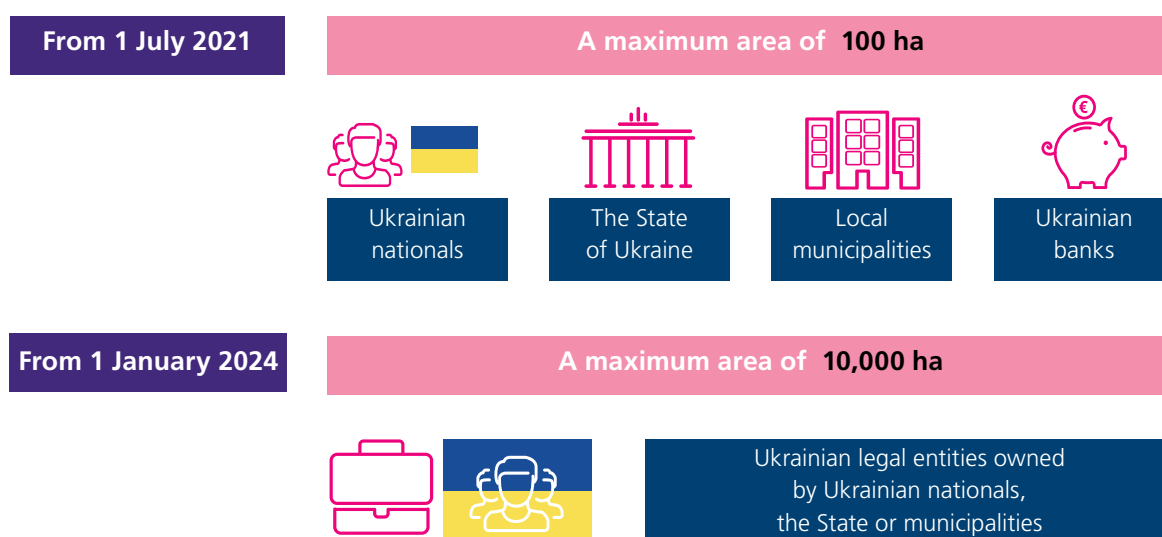
Under Ukrainian law, non-residents are not allowed to own agricultural land. Non-resident individuals and companies, however, may own non-agricultural land, both within a settlement and outside a settlement, if they acquire real property on the land plot, and in a settlement for the development of any building or structure.



However, on 31 of March 2020, the Ukrainian parliament adopted Law No. 2178-10, which lifts the moratorium on the disposal of agricultural land plots. This law enables Ukrainian citizens to sell, buy and change the designated use of private agricultural land. The contribution of land shares to the charter capital of Ukrainian legal entities has also become possible.

Below are some of the highlights and important changes, introduced by this Law:

- **From 1 July 2021**, agricultural land will be available for disposal for: Ukrainian citizens, the State of Ukraine, municipalities and Ukrainian banks. The maximum permitted total area of land, which is allowed to be accumulated by one person, is 100 ha. This limitation does not affect existing ownership and banks. Ukrainian banks, including those with foreign capital are allowed to obtain ownership rights as a result of collateral enforcement. Within two years, such land must be sold via land auctions.
- **From 1 January 2024**, the maximum permitted total area of land, which is allowed to be accumulated by one person will be 10,000 ha. The list of permitted buyers (on top of Ukrainian citizens, the State of Ukraine, municipalities and Ukrainian banks) will be expanded to Ukrainian legal entities owned by Ukrainian citizens, the state or municipalities.



### Permitted buyers

- Foreign citizens and companies remain being restricted from acquiring agricultural land plots, unless otherwise decided at the Ukrainian national referendum.
- State and municipal agricultural land remains under the moratorium.
- According to law, for some persons the prohibition to acquire agricultural lands will remain unchanged regardless of the referendum's results. Those include:
  - legal entities owned or beneficially owned by citizens of a state declared as an aggressor by Ukraine;
  - members or former members of terrorist organisations;
  - legal entities owned or beneficially owned by foreign states;
  - legal entities in which the ultimate beneficiary cannot be determined;
  - legal entities with ultimate beneficiaries registered in offshore zones as determined by the Ukrainian Government;
  - persons and entities under economic or other sanctions imposed by Ukraine that restrict the acquisition of land plots, as well as their affiliated persons.

- Tenants hold a pre-emptive right to purchase agricultural land. The pre-emptive right to purchase land will become transferrable, i.e. a lessee will be able to transfer their pre-emptive right on the purchase of the leased land to a third party.
- If a person or a legal entity acquires agricultural land plot in breach of the new Law (e.g. the area of the land exceeds 100 ha before 1 January 2024 or 10,000 ha afterwards), then such land plot becomes a subject to confiscation by the court. The court then initiates the disposal of such land at the land auction. The same scenario applies if the permitted area of the land plot is exceeded.

### Acquisition of title to land

Three forms of real estate ownership are recognised and protected in Ukraine, namely (i) state, (ii) municipal, and (iii) private ownership. The legal requirements for purchasing land depend on the form of ownership, the type of title (e.g., ownership or lease), and the land's permitted use(s).

As a rule, vacant state or municipal land is sold via auction, with the land going to the highest bidder. Exemptions to this include, among others, when a potential purchaser already owns a building or structure on the land or already leases the land. The Land Code describes the general procedure for acquiring municipal land, while detailed procedures are established by local regulations.

Acquiring state or municipal land for construction purposes requires prior development of a detailed plan of the territory (the "DPT") or a zoning plan, both being a local town-planning documentation providing for the planning organisation and development of the territory. For the development of the DPT, the potential land user obtains a decision on the development of the DPT from the local authority, namely: (i) village or city council (if a land plot is located beyond the boundaries of any settlement) or (ii) the executive body of a village or city council (if a land plot is located within the boundaries of a settlement). Further, the potential land user needs to enter into an agreement on development of the DPT and conduct a public hearing. The local authority that passed the decision on the development of the DPT should approve the developed DPT. The term of development of the DPT usually varies from 2 to 4 months.

Acquiring state or municipal land requires an allocation procedure. Firstly, if the land plot is not yet legally "formed", the necessary land management documentation must be prepared and approved by the state and municipal bodies. Note that each particular purchase of state or municipal land requires a decision by the local municipal or state authorities.

Only when a valid land management documentation has been approved by the competent authority may the state or municipal body lease or sell the plot and subsequently enter into a lease or sale and purchase agreement.

The land management documentation is a set of documents and technical materials that establish the boundaries of the plot and its designation. Land management documentation should be prepared by a land manager who holds a certificate for this work. In some cases, land management documentation is also subject to state expert review.

The purchase of private land does not require an allocation procedure or the preparation of land management documentation. The purchase, however, should comply with general legal requirements for commercial transactions in Ukraine. For example, applicable laws set out the material terms that should be included in a land lease or a sale and purchase agreement for it to be valid. Although the courts tend not to declare agreements that omit one or more material terms invalid when a claimant's rights are not violated. Though complying with all relevant legal rules helps for a smooth and definite transfer of the land title.

### Construction process and registration of title

In Ukraine, the development process is quite complicated and can be notionally divided into the following steps:



Obtaining initial data for the project design



Project design, approval, and state review



Preparatory work



Construction



Commissioning and title registration



Obtaining other permits

### Initial data, construction design and approval

The legal requirements for preparing the design and construction plans are set out in the Law of Ukraine “On Architectural Activity” and the Law of Ukraine “On Town Planning Regulation”, as well as in a number of relevant bylaws.

The first step is to obtain the initial data necessary for designing the planned building or structure. This initial data is found in the following documents:

#### Town planning conditions and restrictions

The design of the building or structure should be developed in compliance with town planning documents. A development restrictions document, issued by the local architectural bodies, will contain a set of planning and architectural requirements for designing a building or structure, such as its maximum allowable height, the maximum area of the plot that can be developed, the minimum space from the planned building or structure to the plot's boundaries, landscaping requirements, and more. The development restrictions are valid until construction is completed.

#### Technical conditions

The technical conditions are a set of terms and requirements of the utility providers, as well as the capacity and availability of their services or networks, such as water, heat, electricity and gas supply, as well as water disposal, external lighting, waste water disposal, and telecommunications. The required set of technical conditions will vary depending on the utilities required for that particular project, but they should be in line with the project's calculated parameters. The technical conditions are issued by the agencies and organisations that own or maintain the relevant engineering networks and are valid until construction is completed.

#### Design assignment

The design assignment is prepared based on the development restrictions and determines the customer's reasonable requirements for the design, architectural, engineering, and technological solutions of the construction project, its key parameters and price. The customer is the individual or legal entity that holds title to the underlying plot of land and intends to develop the property.

The design assignment should be prepared and approved by the customer, with the input of a project designer. The design of the building or structure should be prepared under the supervision, or with the mandatory involvement, of a chief designer who holds a valid certificate, issued in accordance with the requirements of Ukrainian law. The design should comply with construction norms, rules, and standards.

At this stage, the designer must identify which class of construction consequences the project falls under. Ukrainian law divides all construction projects into three consequences classes:

- **CC1:** insignificant construction;
- **CC2:** construction of medium significance; and
- **CC3:** significant construction.

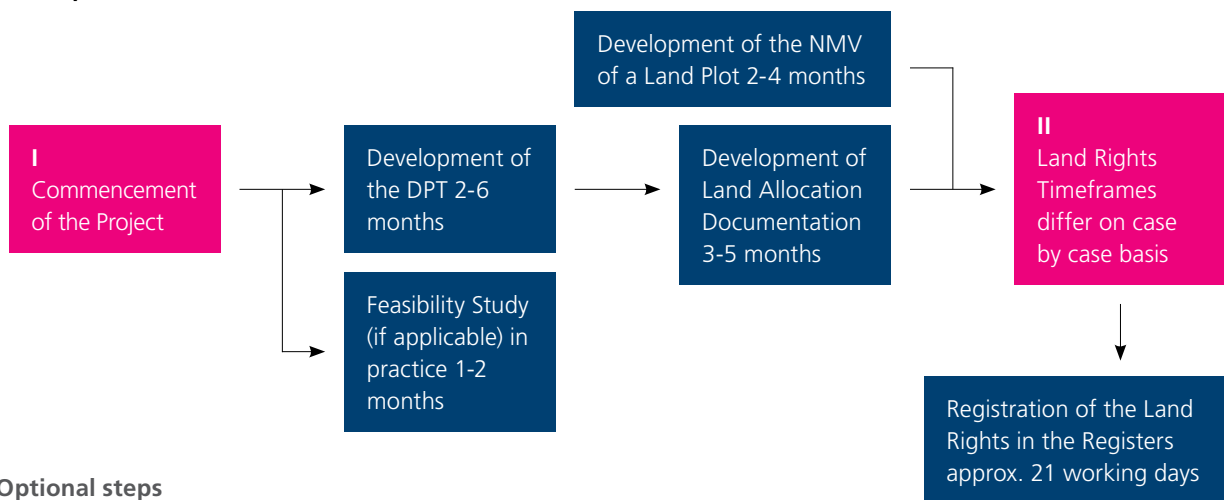
The construction design, prepared in accordance with the development restrictions, is subject to approval by the customer, and does not require approval by state bodies. In certain cases, however, expert review and/or an environmental impact assessment are pre-requisites for the customer to approve the design.

### Classes of construction consequences

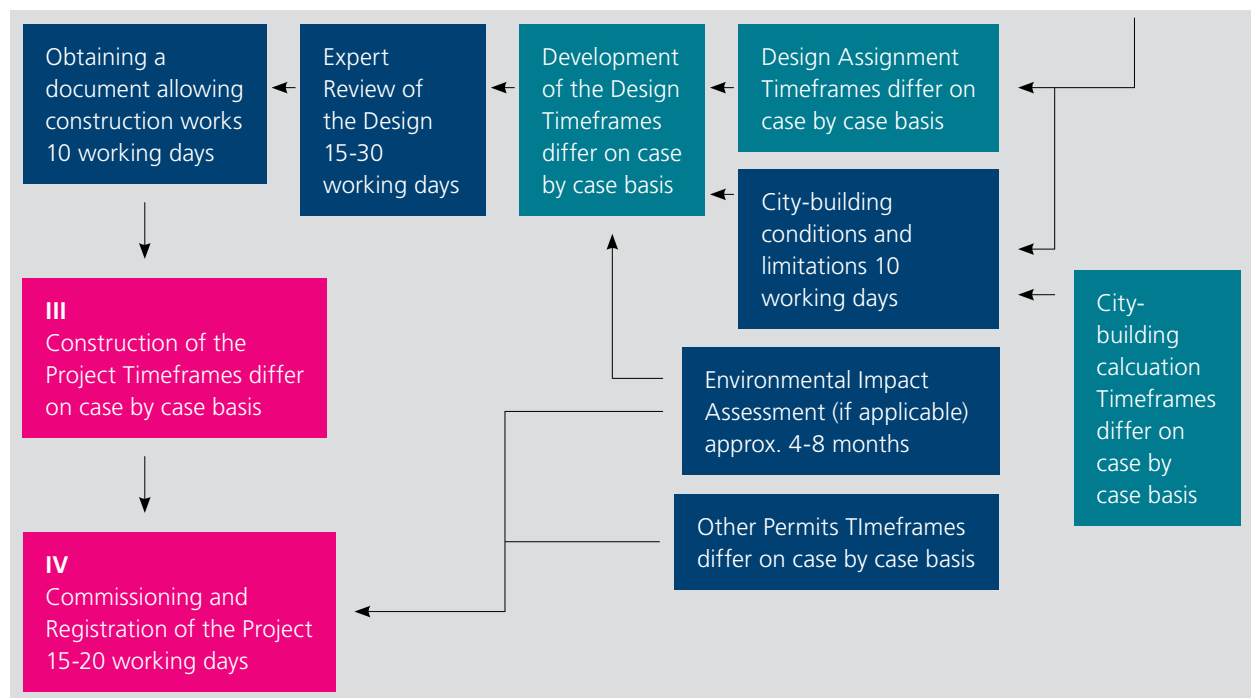
The criteria for assigning the class of construction consequences to a development project are based on the potential effect of the building or structure collapsing or otherwise failing, include the number of people who may be endangered, the financial or social damages, and the effect on infrastructure and transportation. The project's location — on heritage sites or protected zones — and other characteristics also contribute.

### The Standard steps of a development project in Ukraine

#### Development chart



#### Optional steps



■ Crucial steps   ■ Steps involving state or other authorities   ■ Steps that do not involve state or other authorities

## Abbreviations and definitions

- *Design*: design documentation
- *DPT*: detailed plan of the territory
- *Land Allocation Documentation*: a land allocation project or the technical documentation on the determination of the boundaries of a plot of land
- *NMV*: technical documentation on the normative monetary valuation of a plot of land
- *Registers*: State Register of Proprietary Rights to Immovable Property of Ukraine and State Land Cadastre

## Preparatory work

Ukrainian law classifies the following types of work, among others, as preparatory work:

- levelling the ground;
- fencing the site;
- demolition;
- land exploration;
- erecting temporary structures for organizing and servicing the construction;
- access roads;
- placing construction materials on the site;
- installing temporary engineering networks; and
- vegetation removal.

Preparatory work requires either (i) notifying the architectural authority of the start of the preparatory works, or (ii) notifying the architectural authority of the start of construction, or (iii) the architectural authority issuing a construction permit, as the case may be.

## Construction works

The principal act setting out the legal framework for construction is the Law of Ukraine “On Town Planning Regulation”. Under this law, CC2 and CC3 projects may only be carried out by a licenced contractor.

To carry out the actual construction, the customer must file a notification of the start of construction (CC1) or obtain a construction permit (CC2 and CC3).

Information about the start of construction, construction commissioning documents, as well as lists of certified designers and licenced contractors are publicly available and can be reached via the official website of the architectural authority.

Notably, construction activities should be supervised during the entire construction period. Such supervision generally includes design supervision and technical supervision.

Design supervision is carried out by the project designer, other project design developers, or an authorised person, and ensures that the construction and other installations comply with the design documentation.

Technical supervision is carried out by a person engaged by the customer who holds a valid certificate in Ukraine. Technical supervision ensures that state constructions standards, norms, and rules are followed and oversees the quality and scope of the construction work.

If a designer or technical supervisor detects any non-compliance, he or she will request the contractor to remedy the issue. Otherwise the supervisor informs the customer and may inform the architectural authority.

### Commissioning and title registration stage

Once construction is completed the building or structure is commissioned; operating a completed construction project that has not been duly commissioned is prohibited by law.

The legal procedure for commissioning real property depends on its class of construction consequences (CC1, CC2, or CC3). Either the customer, or the contractor on the customer's behalf, submits a commissioning declaration, or the architectural authority issues a commissioning certificate based on signed attestations from the key responsible persons (e.g., the customer, general contractor, subcontractors if any, designer, technical supervisor, and insurance company).

The architectural authority verifies the submitted commissioning declaration or commissioning documents and issues a commissioning certificate. If the architectural authority deems it necessary, it may also examine the building or structure before registering the commissioning declaration or issuing the commissioning certificate, or it may refuse on specific grounds provided for by law. For construction of CC2 and CC3 objects such examination by the architectural authority is mandatory.

When construction is completed, the building or structure must undergo a technical inventory.

A technical inventory measures a number of elements of the completed real property to determine its actual composition and technical condition. After the technical inventory is completed, a technical passport is prepared. This document specifies the key parameters of the property, such as its location, composition, technical characteristics, the area of the plot, its description, etc.

Information about the real property is then entered in the Property Register as part of registering the title. Title registration is generally carried out based on the following documents:

- commissioning document;
- document confirming assignment of a legal address;
- technical passport; and
- document confirming payment of the registration fee.

The registrar verifies the submitted documents, registers the ownership right of the applicant, and issues the relevant extract confirming the registration of the title. The whole procedure, from submitting an application and supporting documents to the registration of ownership may take from two hours to five business days, and the registration fee will vary depending on the time required by the registrar (approx. EUR 7 to 328).

*Information in this chapter is based on certain aspects of Ukrainian legislation as of May 2021*





# Agriculture

## General

Agriculture is one of Ukraine's principal economic sectors. According to the Ukrainian government, Ukraine has 41.5 million hectares of agricultural land and 32.4 million hectares of arable land. Ukraine's agricultural land benefits from its extremely fertile black soil (*chornozem*), which amounts for around of 25% of total black soil reserves in the world.

According to the International Trade Center, Ukraine is globally, by volume and export value, the largest exporter of sunflower oil and sunflower cake, the second-largest exporter of rapeseed, the fourth-largest exporter of corn, barley and dried peas, the fifth-largest exporter of walnuts, and the sixth largest export of wheat and soybeans globally. In 2020, the foreign trade turnover of agricultural products amounted to around USD 22,2bn. The export of agricultural products amounted to 45.1% of foreign exchange earnings from the total exports of Ukraine. The main export markets in 2020 were Asia, the EU, Turkey, Egypt and Georgia.

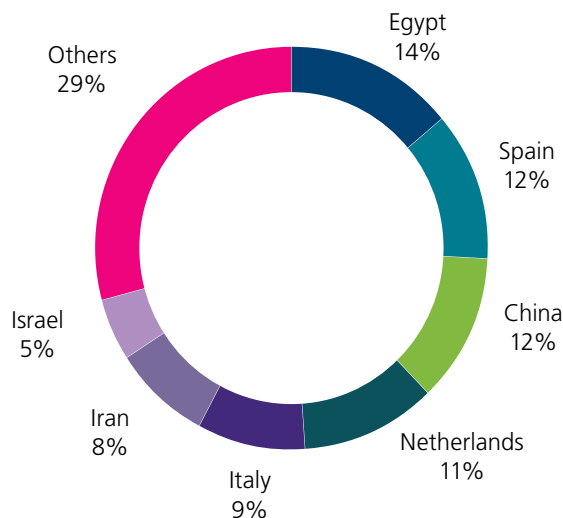
In the 2020/2021 marketing period Ukraine produced 84.2 million and exported 48.8 million tons of grain and oilseed crops.<sup>9</sup>

Ukraine has potential to significantly increase food production. Once called the breadbasket of Europe, Ukraine's black soil's production ability is only 40% utilised.

In 2020 the Ukrainian Parliament adopted a new law that lifted the moratorium on the disposal of agricultural land from 1 July 2021. Please see more about the newly introduced reform in "Real Estate and Property Rights".

Ukrainian corn is a good example of farming development as the following graphs show.

## Main destinations of corn export, 3Y avg<sup>10</sup>

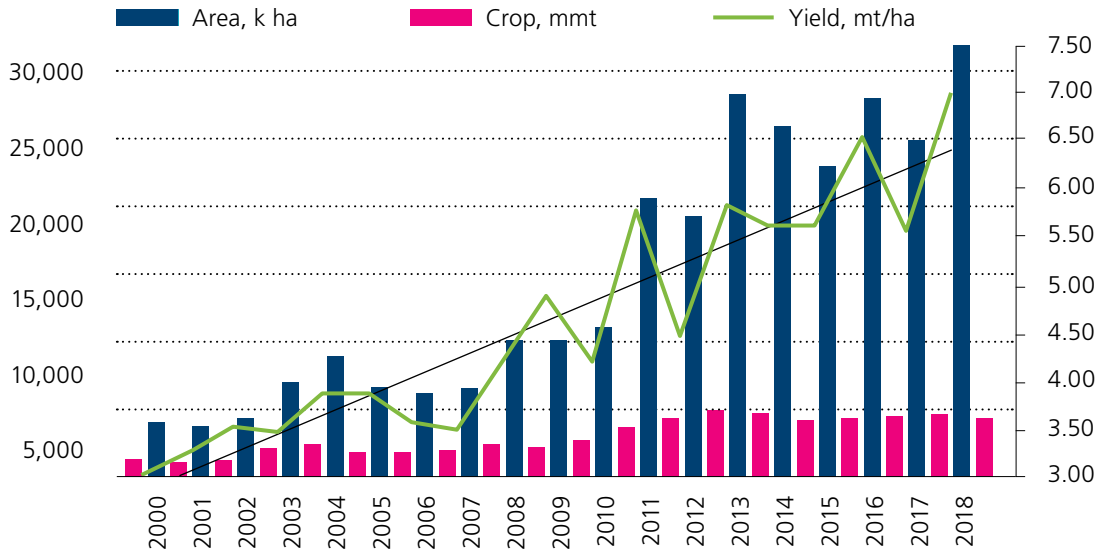


<sup>9</sup> [https://project.liga.net/projects/ukraine\\_investment/#shops](https://project.liga.net/projects/ukraine_investment/#shops)

<sup>10</sup> According to UkrStat data (<http://www.ukrstat.gov.ua/>)

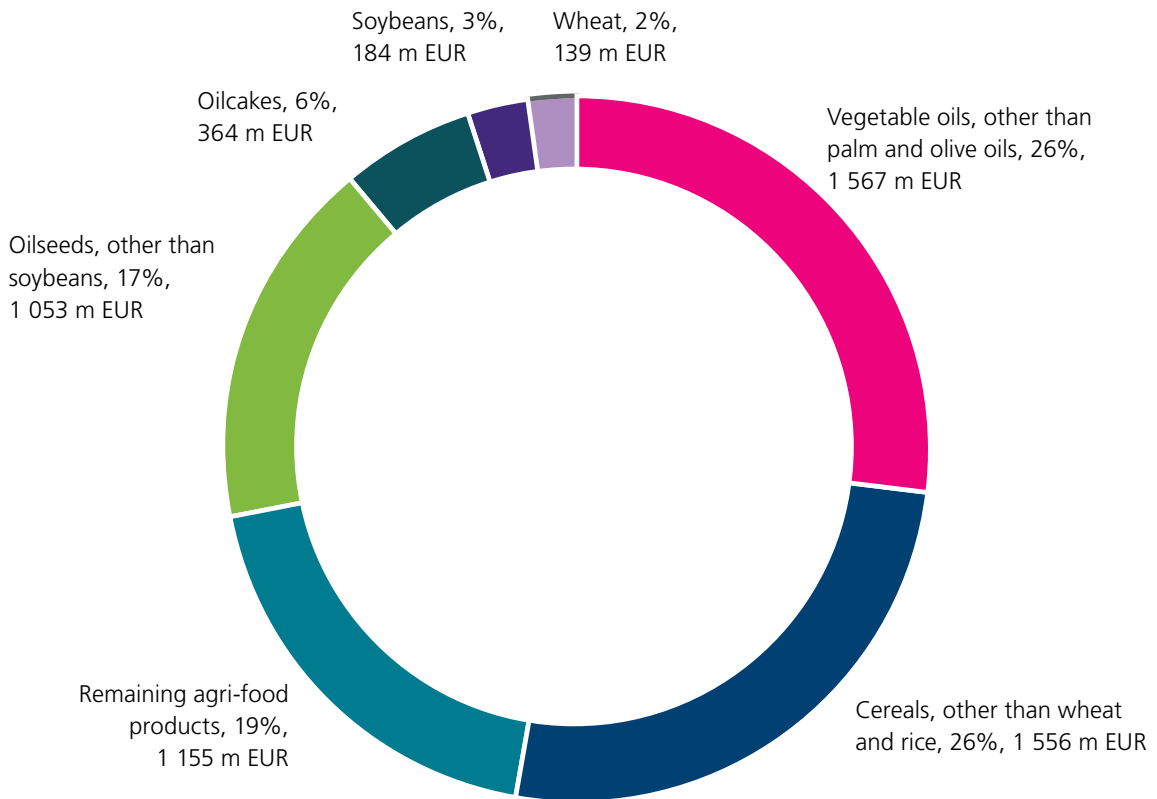


### Corn crop history<sup>11</sup>



### EU imports from Ukraine<sup>12</sup>

#### Top EU Agri-Food imports from Ukraine in 2020



<sup>11</sup> According to UkrStat data (<http://www.ukrstat.gov.ua/>)

<sup>12</sup> Agri-Food Trade Statistical Factsheet dated: 17 March 2021 ([https://ec.europa.eu/info/sites/default/files/food-farming-fisheries/farming/documents/agrifood-ukraine\\_en.pdf](https://ec.europa.eu/info/sites/default/files/food-farming-fisheries/farming/documents/agrifood-ukraine_en.pdf))

## Certain Regulatory Matters

### Deregulation

On 8 December 2015, Ukraine's Parliament adopted the Law of Ukraine "On Amendments to Certain Ukrainian Legislation Related to Deregulation in Agribusiness" (the "Deregulation Law"). The Deregulation Law sets forth the cancellation of 22 out of 110 state approvals in the fields of crop production, cattle farming, pesticides and agrochemicals, fisheries, food products and environmental management. Furthermore, the Deregulation Law limits the powers of certain authorities to perform state control in Ukraine's agricultural sector.

### Agricultural Development Programme

On 30 December 2015, the Ukrainian government approved the 'Concept of the State Target Programme for Development of the Agricultural Sector of Economy' policy until 2022. The implementation of the programme is based on strategic priorities, which include, among others: (i) the harmonisation of Ukrainian law in the agricultural sector with EU and international standards by implementing the EU-Ukraine Association Agreement; (ii) the improvement of the competitiveness of Ukraine's agricultural entities through trade liberalisation, reduced trade transaction costs and export promotion; (iii) establishing a policy system for food security; (iv) the rationalisation and elimination of existing drawbacks in the agricultural sector's taxation system; and (v) restructuring and reorganising the agrarian state agencies and state-owned enterprises.

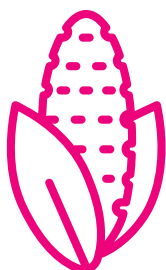
### GMO

The Law of Ukraine "On the state biosafety system for creating, testing, transport and use of GMOs" No. 1103-V dated 31 May 2007 provides for the obligatory registration of all types of GMOs before they can be used in Ukraine. However, there are no registered GMOs in Ukraine as of the date of this publication. While there is no single authority in Ukraine controlling the production and use of GMOs, oversight is performed by the Cabinet of Ministers (which regulates state registration of GMOs and GM products) and other executive bodies (the Ministry of Health, the Ministry of Education and Science, the Ministry of Ecology and Natural Resources, the Ministry of the Economy, etc.).

The Ministry of Health requires<sup>13</sup> that several agricultural products are subject to mandatory GMO testing. Those products include corn, tomatoes, melons, papaya, sugar beets, rapeseed, wheat, rice, and yeast.

The presence of GM material is monitored in food products produced in Ukraine and in imports of agricultural products. All products are required to have the appropriate certificates showing GMO test results, and the seller must label the product in accordance with the requirements set forth by Ukrainian law. In particular, if food products contain more than 0.9% of GMOs, the producer must specify this information on the label.

It is acknowledged that the existing GMO regulations are outdated and do not follow international standards. Currently, the Ukrainian government is developing a new set of rules aimed at overhauling redundant GMO laws.



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<sup>13</sup> Order of the Ministry of Health No. 971 dated 9 November 2010.

### **Pesticides: new regulations**

During 2020, a number of draft laws<sup>14</sup> that significantly change the legal regulation of the production and circulation of pesticides were registered in the Verkhovna Rada.

In particular, these draft laws provide for:

- the "double registration" procedure (the changes mostly relate to clarifying the authorities of state bodies on registration procedure);
- changes in the content and form of labelling of pesticides and agrochemicals (e.g. the Ministry of Ecology and Natural Resources is to approve requirements for packaging and labelling that will prevent them from being mistaken for food, drink or medicine);
- new requirements for advertising pesticides (which must contain the product name, state registration number and date, as well as encouragement to read the label and information about the pesticide before use; advertising pesticides in class I or II will be prohibited);
- prohibition on selling pesticides unless the distributor is included to the state register of professional users, distributors and consultants on plant protection;
- a ban on pesticide and agrochemical imports by individuals into Ukraine;
- introducing criminal liability for manufacture, acquisition, storage, transportation for the purpose of sale and sale of falsified plant protection products;
- increase in administrative liability measures on plant protection products offences.

The above-mentioned changes are not yet in force and can be subject to amendments.

### **State support**

The Law of Ukraine "On State Support of Agriculture of Ukraine" dated 24 June 2004 (the "State Support Law") sets out various state policies aimed at supporting the development of the agricultural market in Ukraine. The State Support Law empowers the Ukrainian government to specify which kinds of agricultural products in any given year will be subject to state pricing regulation. Once specified by the government, the relevant ministry sets the minimum and maximum interventional prices for the relevant agricultural products. The minimum and maximum prices are not mandatory trade prices but are used as benchmarks against which the state will determine whether intervention is necessary to stabilise prices for agricultural products in Ukraine. The stabilisation of prices for agricultural products is carried out by the Agrarian Fund of Ukraine, a state specialised institution which is authorised to implement a pricing policy in agrarian industry.

### **State Support of Agriculture**

For obvious reasons one of the major priorities of the Ukrainian government remains the support of the agricultural sector. Currently, state support to the agricultural sector is provided in two key forms:

- government grants, and
- special tax regimes.

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<sup>14</sup> Draft Law No. 4558 on Amendments to certain laws of Ukraine on improving the state regulation of the treatment of pesticides and agrochemicals; Draft Law 4600 on the Protection of plants; Draft Law No. 5237 on Amendments to the law of Ukraine on pesticides and agrochemicals for improving the requirements to the labelling of pesticides and agrochemicals; Draft Law No. 2289 on Amendments to Article 4 of the Law of Ukraine on Pesticides and agrochemicals related to the importation of pesticides into the customs territory of Ukraine (which was signed by the President in July 2021); Draft Law No. 5274-1 on the Development of beekeeping and protection of bees.

The current system of direct budget grants was introduced in 2017 and is expected to operate until 1 January 2022. In order to qualify for such grants, agricultural producers must ensure that either: (i) sales of their own-produced agricultural products represent more than 75% of their total sales during the preceding consecutive twelve months; or (ii) they are included in the Register of recipients of budget subsidies; or (iii) they are engaged in activities set out by the State Support Law.

Under Ukrainian law, qualifying producers of agricultural products are permitted to elect between general and special regimes of taxation with respect to certain taxes. Currently Ukrainian agricultural producers registered as payers of the unified tax (which was introduced in 2015) are not obliged to pay any corporate profit taxes. In turn, the unified tax is calculated as a percentage of the normative value of a taxpayer's land. An agricultural producer is eligible to apply for the unified tax payer status if it meets both of the following requirements: (i) the share of its income from agricultural production equals or exceeds 75% of the total share of its income; and (ii) these agricultural products were cultivated on land that is owned or leased by such agricultural producer and the relevant ownership title or lease has been duly registered.

### Access to Financing by SMEs

It is reported that Ukrainian farmers and other agricultural value chain players need better access to finance for working and investment capital and for managing risks. It is also challenging for small farmers to obtain bank finance because they often do not have collateral to secure bank loans. With that in mind, the IFC, a member of the World Bank Group, launched a project "Ukraine Crop Receipts" with the aim to develop an innovative financing instrument to assist small and medium agricultural producers. IFC reported that 2,000 farmers in Ukraine gain access to USD 1bn of financing through crop receipts.

The Law of Ukraine "On Crop Receipts" (the "Crop Receipts Law") has come into effect on 19 February 2013. It was drafted based on Brazil's experience where *Cedula de Produto Rural* has been successfully implemented around 20 years ago and has become one of the factors to stimulate the active growth of the agricultural industry. In Ukraine this instrument became widespread only after 2018 as not all regions participated in the IFC project.

Under the Crop Receipts Law, a crop receipt is a document issued by a farmer confirming the farmer's obligations secured by pledge to deliver a certain amount of farm produce or to pay the cash equivalent at a future date. A receipt can be issued to an input or equipment supplier, a bank, a trader or a financial investor that will be providing pre-harvest finance against such receipt. Whereas warehouse receipts can create collateral from grain stored in a warehouse, crop receipts allow farmers to obtain funding secured by agricultural products they will grow in their land plots.

The receipts exist in two forms: physical (or commodity) receipts (which is similar to a prepaid forward supply contract), and financial receipts (which is similar to a collateralised loan). There are certain formalities that should be complied in order to preserve creditors rights. The crop receipts should be certified by a local notary and registered in both crop receipts register and movable property encumbrance register.

A distinct advantage of crop receipts, as compared to other security instruments available under Ukrainian law, is that creditors are entitled to monitor crops pledged under the receipt and to harvest the crop in case of a farmer's default.



### Impact of COVID-19 on Ukrainian agriculture

The COVID-19 pandemic had drastic effects on almost all sectors of economic activity, while agriculture held up relatively well. The impact of the lockdown on retail sales was less than expected from the scale of store closures in mid-2020 and the second lockdown in 2021.

In April 2020 Ukraine, together with other WTO members, signed a Joint Statement<sup>15</sup> pledging to ensure transparent and consistent trade in agricultural and food products during the pandemic.

The signatories declared, among other things, their commitment to maintain transparent, non-discriminatory and open agri-food supply chains and avoid measures that could have a potential negative impact on food security, nutrition and health. Any emergency measures introduced by the countries will not distort international trade in these products or result in unjustified trade barriers.

*Information in this chapter is based on certain aspects  
of Ukrainian legislation as of July 2021*

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<sup>15</sup> Available at: [https://trade.ec.europa.eu/doclib/docs/2020/april/tradoc\\_158718.pdf](https://trade.ec.europa.eu/doclib/docs/2020/april/tradoc_158718.pdf)





# Data Protection

## Legal Framework

The key data protection laws in Ukraine are:

- the Law of Ukraine “On Personal Data Protection” (1 June 2010); and
- the Strasbourg Convention for the Protection of Individuals regarding the Automatic Processing of Personal Data 1981, ratified by the Ukrainian Parliament on 6 July 2010.

The law on personal data protection (“PDP”) essentially complies with EU Data Protection Directive (95/46/EC). So far, no changes have been made to the PDP law to reflect the GDPR approach. However, such changes are expected in light of Ukraine's commitments under the Ukraine - EU Association Agreement. Consequently, in June 2021 a new draft law on personal data protection was registered with the Ukrainian Parliament which aims, among other things, to bring Ukrainian data protection standards into line with those established under the GDPR.

## Scope of the PDP Law

The PDP law regulates the processing of personal data, which is broadly defined as any action or combination of actions with personal data, including collection, storage, and processing.

The PDP law also provides greater protection for data that comprises a special risk to the rights and freedoms of individuals (“special risk data”), including:

- racial or ethnic origin;
- political, religious, or philosophical beliefs;
- political party or trade union membership;
- health or sex life;
- biometric and genetic data;
- nationality;
- a person's location and routes of movement;
- information about a person's suffering from violence or other abuse.

## The Regulatory Authority

The Human Rights Ombudsman<sup>16</sup> (*Уповноважений Верховної Ради України з прав людини*) is the main authority for regulating the protection of data in Ukraine and for supervising compliance with the PDP law.

## Consent

A subject's consent is generally required to process his or her personal data. Consent should be:

- in writing; or
- in any other form, including electronic, that shows proof of consent.

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<sup>16</sup> <https://www.ombudsman.gov.ua/>

Consent is not required when:

- it is explicitly provided for by another law;
- the data is necessary in order to:
  - maintain national security;
  - maintain economic welfare; or
  - protect human rights.

For people under 18 years old, consent should be provided by a parent or guardian.

### **Other grounds for processing**

The PDP law provides a limited number of grounds for processing personal data without consent, including the following:

- when authorisation is granted to the data controller by law exclusively for authorities to use the data;
- when the processing is governed by an agreement to which the subject of the data is a party or which is concluded for the benefit of that person; or
- when the data is processed in order to conclude an agreement with the subject, at his or her request;
- when the processing is necessary to protect the relevant person's vital interests;
- when the processing is necessary to perform the data controller's legal obligations; and
- when the processing is necessary to protect the legitimate interests of the data controller or third parties to which the personal data has been transferred, except for cases when the necessity to protect the subject's basic rights and freedoms overrides these interests.

### **Compliance Records and Data Protection Officers**

In Ukraine, there are no specific requirements to maintain internal records or to establish internal processes or documentation regarding personal data. According to the PDP law, data controllers must comply with the following obligations:

- personal data must be processed openly and transparently;
- the method of processing personal data must correspond to the purpose of the processing;
- personal data must be protected from accidental loss, destruction, or unauthorised processing and access.

Organisations that process special risk data are legally required to create a separate department or to appoint a data protection officer ("DPO") who will be in charge of organising the protection of personal data. On the appointment of the DPO and/or the establishment of a relevant department, the Human Rights Ombudsman must be notified. Regarding other types of personal data, no such requirement exists. There are no requirements regarding the qualifications or skills of a data protection officer, and the PDP law lists only several functions which the officer should perform.

Data controllers and processors who process special risk data must notify the Human Rights Ombudsman within 30 days of starting to process the data. The notification is a formal procedure that includes completing an application, filing it with the Human Rights Ombudsman, and the Human Rights Ombudsman publishing the filed information on its official website.



### Notification Requirements

The PDP law requires data subjects to be informed of any amendment, deletion, or destruction of their personal data within 10 business days. However, there is no specific requirement to inform subjects about security breaches.

### Cross-Border Transfers

The PDP law requires that personal data be transferred only to countries which provide an adequate level of data protection. Specifically, the PDP law refers to the members of the European Economic Area as well as all other countries that have joined the Convention of the Council of Europe on Protection of Persons in Connection with Automated Personal Data Processing.

Alternatively, cross-border personal data transfers are possible only if one of the following conditions is satisfied:

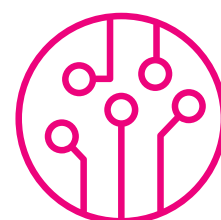
- express consent is provided by the data subject;
- it is necessary in order to conclude or fulfil an agreement between the data controller and the third party for the benefit of the data subject;
- it is necessary for protecting the key interests of the data subject;
- it is necessary for protecting the public interest or to pursue legal remedies; or
- the data controller provides guarantees that it will not interfere with the private and family life of the data subject.

### Enforcement

Ukrainian law sets out various levels of liability, both monetary sanctions and criminal liability, for a breach of data protection rules, including but not limited to the following:

- an administrative fine up to UAH 34,000 (approx. EUR 1,050) for a failure to comply with the PDP law that results in unauthorised access to personal data;
- criminal liability, including imprisonment for up to five years, for illegal collection of personal data or illegal storage or dissemination of personal data.
- A data subject may seek compensation in court for damages caused by a breach of personal data protection rules.

*Information in this chapter is based on certain aspects of Ukrainian legislation as of June 2021*





# Mergers and Acquisitions

## Background

In the past, the majority of M&A activity in Ukraine consisted of domestic deals driven by major Ukrainian players. However, interest from foreign investors has been growing rapidly in recent years; for example, 2019 was the busiest period for M&A activity in five years, indicating increasing confidence among the investment community.

As was expected, however, the COVID-19 pandemic also affected Ukraine's M&A market. During 2020, 91 deals were recorded, a 31.1% drop against a year earlier although still exceeding the analogous figures for 2016 and 2017. Deal value also dropped to EUR 0.79 bn, more than half compared to 2019.<sup>17</sup>

Despite the inevitable decrease in the Ukrainian M&A activity during the COVID-19 pandemic, there was a strong revival of investor confidence towards the end of 2020 and in Q1 2021. This is a good sign for 2021, which is expected to bring better M&A activity than 2020.

## Deal structure

Share acquisitions are far more common than asset deals in Ukraine, and joint venture transactions are frequently structured at the level of an off-shore holding company. Common jurisdictions are those which have a favourable tax and bilateral investment treaty in place with Ukraine, such as the Netherlands and Cyprus.

As part of the on-going tax reform in Ukraine, withholding tax at the rate of 15% has been introduced for certain transactions, involving a sale of shares/equity interests in Ukrainian 'real-estate rich' companies (directly or indirectly) by a non-resident company, unless relief is provided by applicable tax treaty. Introduction of such tax will necessitate a more thorough deal structuring going forward.

The transaction documents are also frequently governed by foreign (i.e. non-Ukrainian) law, typically the laws of England and Wales, which is intended to provide comfort to foreign investors seeking familiarity and increased certainty in an otherwise potentially unfamiliar market.

Ukraine is seeking to increase the attractiveness of structuring M&A deals at the Ukrainian level, thus likely increasing the use of Ukrainian law. Ukrainian law now makes it possible to implement shareholder agreements ("SHAs") at the level of Ukraine itself. SHAs are becoming a more popular instrument in Ukraine. Although the new court practice is only emerging, this instrument has already been tested and has proved to be an instrument that the courts treat seriously, even though there is no fully formed court practice available yet. At the same time, there are a number of risks, which are magnified further in the case of a minority shareholder, associated with implementing a joint venture onshore in Ukraine. In particular:

- the possibility of applying foreign law to onshore joint venture SHAs is still questionable; and

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<sup>17</sup> The figures contained in this section are taken from the "Emerging Europe: M&A Report 2020/2021" (<https://cms.law/en/int/publication/emerging-europe-m-a-report-2020-2021>)

- given the lack of fully formed court practice, there is no clarity whether Ukrainian law would recognise all the instruments and concepts which are commonly used in foreign jurisdictions. There remains a risk that certain provisions (particularly those in relation to minority rights) if embodied in a Ukrainian SHA could potentially be deemed unenforceable or may not operate in the same way as in foreign jurisdictions.

In view of the above, the use of English (or other foreign) law governed SHAs at the level of a holding company in a tried-and-tested jurisdiction has remained the prevailing market practice, particularly for larger, more high calibre deals, as the parties can avail themselves of all the customary instruments used in foreign-law SHAs and be comfortable about their enforceability, knowing that they have been tested (in the courts) many times before.

However, in those cases where the joint venture will be structured at the Ukrainian level and it is not commercially viable for the parties to carry out a corporate restructuring to achieve the necessary ownership structure for an SHA at the level of a foreign holding company, then the parties may opt to enter into a Ukrainian law-governed SHA to regulate their relationship, albeit potentially not to the same extent as would be permitted by a foreign law-governed SHA.

### Regulatory approvals

A change of control over a business, the establishment of a joint venture by two or more founders, or an acquisition of 25% or more of the shares in a Ukrainian company requires a merger clearance approval from the Anti-Monopoly Committee of Ukraine (“AMC”) if the parties to the transaction meet certain financial thresholds. In addition to merger clearance, some joint venture transactions will also require a separate “concerted actions” clearance from the AMC if they result in the coordination or limitation of competition between the parties. For example, concerted actions clearance, subject to certain exceptions, will likely be triggered by the incorporation of restrictive covenants in the transaction documents, such as non-compete or exclusivity clauses. Please refer to the Competition section of this guide for further information in relation to merger control in Ukraine.

Depending on the sector the target business operates in, certain other regulatory approvals or notifications may also be required. For instance, in many cases a prior notification must be submitted to the National Bank of Ukraine when undertaking M&A transactions in the banking sector, and transactions in the financial services or securities sectors may require consent from the relevant regulatory body.

### Key differences between European and US deals<sup>18</sup>

Deals in Ukraine tend to follow most of the legal and commercial trends seen in other European markets. M&A processes in Europe revolve around a backbone that is similar to any M&A process that might be carried out in the US. There are nevertheless differences between the European and US approaches, including as follows:

- **Purchase Price Adjustment Clauses** (“PPAs”): in 2020 95% of US deals included a PPA (usually with working capital as the adjusting factor), compared with just 44-45% of European deals;
- **Liability caps**: the US market has a more consistent and less varied range of liability caps in that the vast majority (95%) of deals in 2020 had a cap of 25% or less of the purchase price. In contrast, only 39% of European deals with a liability cap in 2020 had a cap of less than 25% of the purchase price;

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<sup>18</sup> The figures contained in this section are taken from the 2021 edition of CMS' European M&A Study (thirteenth edition) — <https://cms.law/en/deu/publication/cms-european-m-a-study>

- **MAC clauses:** in contrast to Europe, where only 15% of deals included MAC clauses in 2020, there were MAC clauses in 97% of US deals. The European approach is therefore largely to avoid MAC clauses, and address any specific transaction, asset and/or deal-related concerns as specific conditions precedent instead; and
- **Baskets:** a basket (e.g. a minimum amount of harm that needs to be reached before a buyer has the right to claim against a seller for breach of warranty under a share purchase agreement) is common both in Europe and in the US. However the key difference is that baskets tend to be 'excess only' in the US, whereas in Europe they tend to be on a first-dollar basis (i.e. once the basket threshold is reached then a buyer can claim everything in and above the basket - and not just the excess as is typical in the US).

*Information in this chapter is based on certain aspects  
of Ukrainian legislation as of June 2021*





# Privatisation in Ukraine

## General

In March 2018, the long-awaited Law of Ukraine “On Privatisation of State and Municipal Property” (the “Privatisation Law”) entered into force. The Privatisation Law established a conceptually new approach towards privatisation in Ukraine and was designed to become a game changer. Its declared objective was to foster the privatisation process by providing clear and transparent rules and procedures.

The State Property Fund of Ukraine (the “Fund”, and together with its local departments and representative offices, or municipal authorities – the “Privatisation Authorities”) and the Cabinet of Ministers of Ukraine (the “Government”) have repeatedly emphasised the strategic importance of privatisation for the Ukrainian economy and the need for success privatisation stories.

The Government’s serious intentions towards privatisation are evidenced, among other things, by the constant reforming process carried out by various governmental bodies (including the Fund). Although the Privatisation Law was a significant step towards enhancement of the privatisation process, it has not unfortunately resulted in the anticipated privatisation breakthrough just yet. At the end of 2020, the Fund therefore prepared another set of draft bills aimed at making the privatisation even more transparent, cost- and time-efficient. The proposed changes, which are currently awaiting parliamentary approval, are also designed to make privatisation more understandable and transparent for the business sector by minimising the Government’s dominance and bringing privatisation closer to ordinary private sector transactions.

Despite the COVID-19 pandemic and an almost total cut in budget financing allocated for privatisation purposes, the Fund managed to hold more than 1,500 small-scale auctions in 2020, which generated a total revenue of ca. UAH 1.4 billion, in addition to the remarkable privatisation of the Dnipro Hotel (sold at e-auction for an ultimate price of more than 13 times higher compared to the start bid price). In 2021, the Fund carries on the successful privatisation of ethanol-producing plants. This growing success is explained, according to the Fund, by the maintenance of more transparent procedures, outstanding informational campaigns, the creation of customary virtual data rooms (VDRs) for the disclosure of information about the privatisation targets, and flawless work by the e-auction platform Prozorro.Sales.

At the same time, the Privatisation Law has not yet been tested in the privatisation of large-scale assets, the Covid-19-related suspension of which was only lifted in May 2021. Still, during the suspension period, large-scale assets have been subject to on-going privatisation preparation and the first large-scale auctions are therefore scheduled starting in Q3 2021. The current list of large-scale privatisation assets includes a number of potentially attractive assets for those interested in investing in energy (Centrenergo (power generation) and a number of regional power distribution companies), mining (United Mining and Chemical Company (one of the top-ten producers of titanium and zircon ore) and Zaporizhzhya Titanium and Magnesium Plant), hotels & leisure (President Hotel), chemicals (Odesa Port Plant (fertiliser production) and Sumykhimprom), agriculture (Ukragroleasing (leasing of agricultural equipment)), machinery (Azovmash, Elektrovazhmash, and First Kyiv Machine-Building Plant) and others.

The Government set the privatisation of both small-scale and large-scale assets as one of its utmost priorities for the coming years and expects to generate a further total of ca. UAH 12bn (approximately EUR 377 mln.) from privatisation in the nearest future.

### Categories of privatisation assets

Assets, which can be privatised, are divided into two categories: large-scale assets and small-scale assets.

Large-scale assets are asset complexes of state and municipal enterprises and shares in companies, where Ukraine as a state owns at least 50% shares, and which total asset value exceeded UAH 250 mln. (approximately EUR 7.72 mln.) in the previous financial year. A list of large-scale assets available for privatisation is approved by the Government upon a motion of the Fund.

Small-scale assets include (for example) objects of unfinished construction, separate property of state and municipal enterprises and other assets that do not fall into category of large-scale assets.

### Privatisation methods

The Privatisation Law envisages only two methods of privatisation being as follows:

- **a privatisation auction** (which can be conditional (e.g. with certain privatisation conditions being imposed on investors), unconditional, on the basis of a step-by-step reduction of the starting purchase price and further submission of tender bids, on a reduced price basis, and on a price survey basis (e.g. when an auction is held in two stages, the first being to collect and analyse existing bids with a view to determining the starting purchase price)); and
- **a sell-out** (in the event that only one bidder participates in the auction, then the privatisation asset may be sold to such bidder at its proposed price, as long as it is not less than the starting purchase price (with certain exceptions)).

### Qualification requirements for bidders

Any person can qualify as a bidder, unless it is included into the list of persons banned from participating in Ukrainian privatisations.

The Privatisation Law sets out that (among others) the following entities are banned from participating in Ukrainian privatisations:

- state bodies and state enterprises owned by Ukraine;
- (A) a country recognised by the Verkhovna Rada of Ukraine as a state-aggressor (currently, the Russian Federation), (B) companies (and entities controlled by them) where the state-aggressor owns any interest, or (C) companies, where at least 10% of shares are beneficially owned by the state-aggressor (except for companies which shares are traded on foreign stock exchanges, other than those located in such state-aggressor);
- companies or individuals, which are subject to sanctions imposed by Ukraine, and their affiliates;
- (A) companies incorporated in offshore jurisdictions (as defined by the Government, which list currently includes the Isle of Man, BVI, Guernsey, Cayman Islands, Monaco, Marshall Islands, to name a few) with non-transparent ownership structure (i.e., which ultimate beneficial owners are not fully disclosed), or (B) companies incorporated in non-cooperative jurisdictions (as defined by the Financial Action Task Force (FATF) ("FATF Companies"), and companies, where at least 50% of shares are owned directly or indirectly by such FATF Companies,



- companies whose ultimate beneficial owners are not disclosed in accordance with the applicable Ukrainian law;
- external advisors that have been engaged in preparation of the asset for privatisation; and
  - persons (and their affiliates) that have been a party to a privatisation sale and purchase agreement, which has been terminated due to its breach by such person.

#### **Determination of the starting purchase price**

The starting purchase price for large-scale assets is determined by an advisor (if involved) or, if no advisor is involved, by an auction committee following the valuation methodology approved by the Government. In case of small-scale assets, an auction committee determines its starting purchase price on the basis of the asset's balance sheet value or, if the balance sheet value is not available, following the valuation methodology approved by the Government.

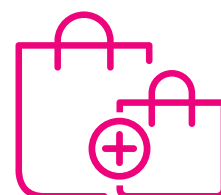
#### **No merger clearance exemption**

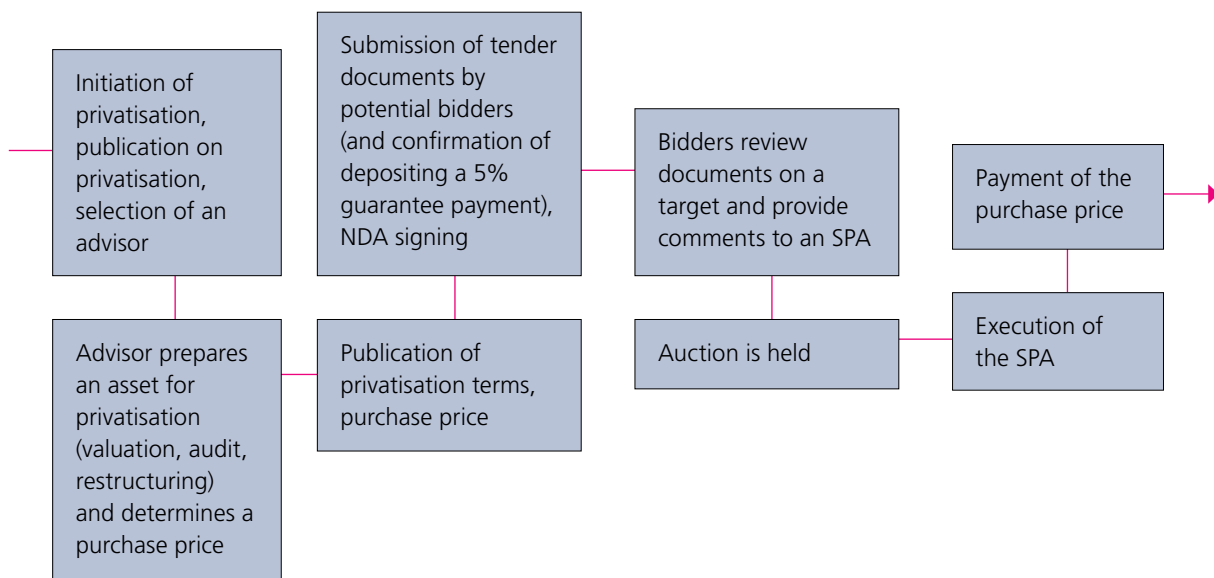
The Privatisation Law does not establish any exemption from the requirement to obtain clearance of the Anti-Monopoly Committee of Ukraine for privatisation, if such a clearance is required under applicable law, and potential investors are therefore required to obtain such clearance before the privatisation is completed (if applicable).

#### **Anti-leakage protection for investors**

The Privatisation Law envisages additional protection to investors (being potential owners) against any extraction of value from the company/property complex, which is subject to privatisation. In particular, none of the following transactions (among others) can be entered into by the target company without a prior approval of the Privatisation Authority during the period starting from the adoption by the Privatisation Authority of a decision on privatisation and ending upon the transfer of title to the target company/property complex to the winning bidder:

- any transactions which value exceeds 10% of value of the target company's assets for the preceding financial year;
- any loan or credit agreements, factoring agreements, debt assignment/set-off agreements;
- any suretyship/guarantee agreements;
- any agreements on the sale or purchase of land plots or real estate, or agreements leading to diminution of value of such property;
- any agreements on establishment of encumbrances over land plots, real estate or fixed assets of the target company;
- any agreements on the lease of land plots, real estate or fixed assets of the target company; and
- any transactions on the sale, purchase, disposal or acquisition in any other way of shares, participatory interests or any other securities.





*Schematic description of the key steps of large-scale privatisation (assuming advisors are involved).*

### Large-scale privatisation

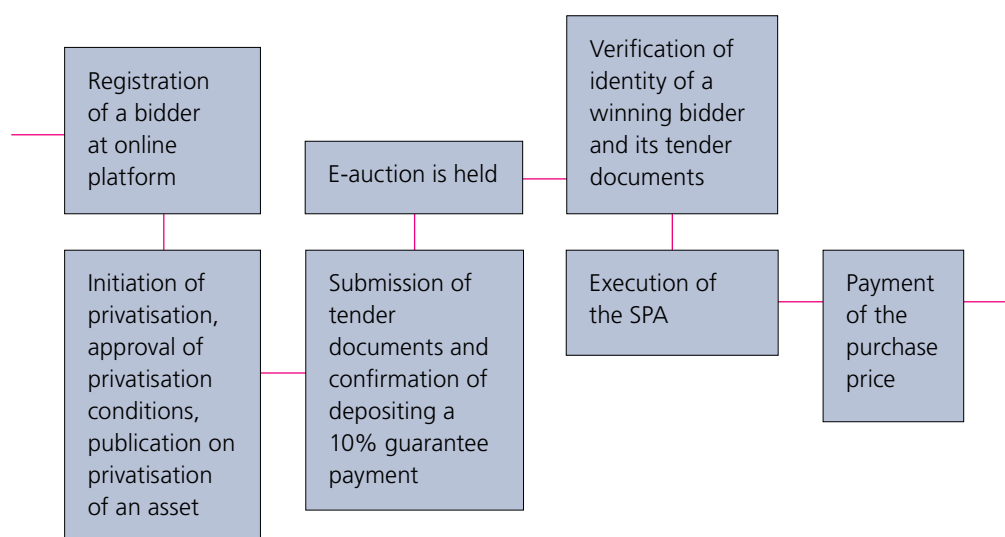
The general rule is for large-scale privatisations to be carried out via conditional privatisation auctions, which implies that certain privatisation conditions are imposed on investors.

A large-scale privatisation includes the following key steps and features:

- initiation of the privatisation, which may be done, among others, by an interested bidder;
- adoption and publication by a Privatisation Authority of a decision on privatisation of a particular asset (not later than 30 days after approval of the list of assets to be privatised);
- preparation of the target asset for its privatisation, which may include its valuation, audit, restructuring, etc. (including with involvement of advisors selected on a transparent and independent basis);
- creation by the Privatisation Authority of an auction committee to determine the privatisation terms, save that the starting purchase price is determined by an advisor (if engaged);
- preparation and publication by the Privatisation Authority of a privatisation information note setting out, in particular, information about the privatisation terms and conditions, as well as the starting purchase price;
- the privatisation auction should take place within 30 - 60 days following the publication date (the "Auction Date");
- the bidder submits a set of tender documents, and provides confirmation that it has deposited 5% of its proposed purchase price into a bank account of the Privatisation Authority (or submits an irrevocable bank guarantee in lieu of the deposit);
- following publication of the privatisation information note and execution of a non-disclosure agreement, the bidder receives a set of documents with detailed information on the target asset;
- the bidder may provide comments on the draft of a privatisation sale and purchase agreement (the "SPA"), and the Privatisation Authority should, not later than 10 days prior to the Auction Date, provide the final draft of the SPA to all the bidders;

- on the Auction Date, an auction will be deemed to have taken place if at least two bidders were present, and at least one bidding step (being not less than the starting purchase price) was made. In case there is a single bidder, the auction is deemed not to have occurred, however the Privatisation Authority may decide to sell-out the target asset to such bidder nevertheless (provided that its proposed purchase price is not lower than the starting purchase price);
- the winning bidder transfers the purchase price for the target asset to a designated account of the Privatisation Authority within 30 days from the date of signing the privatisation SPA; and
- in the event the target asset is not sold during the initial conditional auction or the sell-out stage, the Privatisation Authority may decide to sell such asset at an unconditional auction or an auction on a reduced-price basis (with a 25% or a 50% discount). Finally, an auction on a price survey basis may be held if none of the above results in the actual sale of the target asset.

### Small-scale privatisation



*Schematic description of the key steps of small-scale privatisation.*

Small-scale privatisations should be carried out via online platforms only (and currently, these are done via ProZorro.Prodazhi).

A small-scale privatisation includes the following key steps and features:

- initiation of the privatisation, which may (similarly to large-scale privatisation) be done by an interested bidder;
- adoption and publication by a Privatisation Authority of a decision on privatisation of a particular asset (not later than 30 days after approval of the list of assets to be privatised);
- creation by the Privatisation Authority of an auction committee to determine the privatisation terms (within 10 days after the date of a decision on privatisation of the asset), which should then be published within 10 days upon their approval by the Privatisation Authority;
- the privatisation auction should take place within 20 - 35 days following the publication date;
- all procedures relating to submission of the tender documents (including a confirmation of depositing a 10% guarantee payment), bidding and determination of a winning bidder are automated and processed through the relevant online platform;

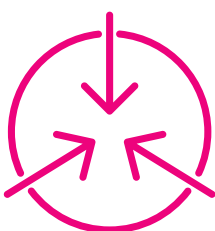
- an electronic auction will be deemed to have taken place if at least two bidders participated, and at least one bidding step (being not less than the starting purchase price) was made. If the electronic auction is deemed not to have occurred and there is a single bidder, the Privatisation Authority may decide to sell-out the target asset to such bidder nevertheless (provided that its proposed purchase price is not lower than the starting purchase price). If the sell-out is not carried out, then the auction gets re-launched automatically by the online platform on a reduced-price basis (with a 50% discount);
- after the electronic auction has been held, the Privatisation Authority verifies whether the winning bidder has complied with all applicable requirements of the Privatisation Law (including qualification requirements) and approves the minutes of the auction and execution of the SPA; and
- the winning bidder transfers the purchase price for the target asset to a designated account of the Privatisation Authority within 30 days from the date of signing the SPA.

### **Governing law and dispute resolution**

The Privatisation Law does not currently allow parties to apply the laws of England and Wales to govern a large-scale privatisation SPA as this possibility expired on 1 January 2021. However, parliament is working on a draft bill which will extend the term for using the laws of England and Wales for large-scale privatisation, although the actual share transfer mechanics will remain subject to the mandatory requirements of Ukrainian law. This option is not available for small-scale privatisation SPAs.

The parties may also agree to refer disputes arising from the SPA to international commercial arbitration, with the Arbitration Institute of the Stockholm Chamber of Commerce being a default forum (if the parties fail to reach an agreement on the arbitration forum).

*Information in this chapter is based on certain aspects of Ukrainian legislation as of June 2021*





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# Banking and financial services

## Banking reform

The Ukrainian banking sector has undergone significant reform since 2014. Measures were introduced to reduce the number of banks, down from 180 to 73 in 2021. The National Bank of Ukraine implemented a risk-oriented supervisory review, increased information disclosure requirements, and initiated the transition to Basel III standards. Most experts agree that the banking sector is now more transparent and competitive, and in 2018 Ukraine's banks started earning income for the first time since 2013, gradually becoming one of the most profitable markets in Central and Eastern Europe during 2019–2021, irrespective of the pandemic.

Despite these successes, more efforts are needed to maintain steady growth in the banking market, in particular measures to reduce the high number of non-performing loans. As of 1 June 2021, 37.9% of bank loans were non-performing, mostly legacy portfolios assumed before the banking reforms of 2014/2015. The Cabinet of Ministers took an important step in this direction by adopting a procedure for state-owned banks to sell non-performing loans, setting out clear requirements for investors.

In May 2020, the Parliament adopted comprehensive amendments to banking and other specialised legislation aimed at improving the procedure of removing insolvent banks from the market, dispute resolution and banking supervision matters. The implementation of new rules for insolvent banks should prevent insolvent banks from being brought back to the market and to avoid the restitution of such banks to their former shareholders.

Later, to mitigate the negative impact of COVID-19 on the Ukrainian banking sector, requirements for the minimum amount of charter capital for the banks were reduced from UAH 500 million to UAH 200 million (EUR 6.9 million). Softening the requirements for the minimum amount of the charter capital is substantial support for small banks with Ukrainian capital that are substantially affected by the financial crisis.

In recent years, and in particular in 2020–2021, the Ukrainian banking sector experienced significant improvements. Introduced reforms facilitate the stability of the Ukrainian economy, increase its attractiveness for investors, and gives an access to further financing from the IMF. Efficient development of banking sector will depend considerably on following reforms, including judiciary reform to strengthen the impartiality of Ukrainian courts.

## Legal framework

The following laws govern banking and financial services in Ukraine:

- the Civil Code of Ukraine dated 16 January 2003;
- the Commercial Code of Ukraine dated 16 January 2003;
- Law of Ukraine "On Banks and Banking Activity" No. 2121-III dated 7 December 2000;
- Law of Ukraine "On National Bank of Ukraine" No. 679-XIV dated 20 May 1999;
- Law of Ukraine "On Financial Services and State Regulation of Financial Services Markets" No. 2664-III dated 12 July 2001;
- Law of Ukraine "On Financial Leasing" No. 1201-IX dated 4 February 2021;
- Law of Ukraine "On Insurance" No. 85/96-BP dated 7 March 1993;
- Law of Ukraine "On Credit Unions" No. 2908-III dated 20 December 2001;
- Law of Ukraine "On Non-State Pension Provision" No. 1057-IV dated 9 July 2003; and
- Law of Ukraine "On Joint-Stock Companies" No. 514-VI dated 17 September 2008.

## Financial regulators

Ukraine has recently moved to the “two agencies” model of financial services regulation. On the one hand, there is the NBU, which oversees both banking and non-banking sectors, fund transfer activities and the financial services markets; on the other hand, there is the State Commission for Securities and Stock Market (Securities Commission), which oversees securities markets and derivatives. The following types of businesses are considered financial institutions:

- banks;
- credit unions;
- pawnbroker;
- leasing companies;
- trust companies;
- insurance companies;
- pension accumulation institutions;
- investment funds and companies; and
- other legal entities that offer only financial services.

Before 1 July 2020, the regulation functions of the non-banking sector in Ukraine were the responsibility of the National Commission Conducting State Regulation of the Financial Services Markets (Financial Services Commission). On 1 July 2020, the Financial Services Commission was abolished and its regulatory powers transferred to the NBU and the Securities Commission.

### Regulatory Roles starting from 1 July 2020

#### *National Bank of Ukraine*

- Credit unions
- Financial leasing companies
- Factoring companies
- Insurance companies
- Pawnshops

#### *Securities Commission*

- Non-state pension funds
- Construction financing funds

#### *National Bank of Ukraine*

Ukraine’s central bank has a broad regulatory and supervisory role that includes:

- determining and implementing monetary policy;
- regulating and overseeing the activities of banks and non-banking financial institutions;
- licensing banking and non-banking activities;
- acting as the creditor of last resort for banks;
- setting mandatory economic standards for banks and capital requirements for non-banking financial institutions; and
- registering financial institutions.

The NBU’s highest governing body is its Council, which develops the general principles of the country’s monetary policy and oversees its implementation. Of its nine councillors, four are appointed by the President of Ukraine, and four others by Parliament. The ninth member is the council’s chairman, who is nominated by the president and thereafter appointed by the Parliament.



## Regulated banking and financial services

Companies in Ukraine that offer financial services require a license. Under current regulation this includes but is not limited to:

- currency trading;
- financial leasing;
- lending funds;
- providing guarantees;
- the transfer of funds;
- insurance services and pension accumulation services;
- professional securities trading; and
- factoring.

Banking services are recognised as a subdivision of financial services and include:

- accepting funds and banking metals on deposit;
- opening and maintaining current (correspondent) client accounts; and
- placing funds and banking metals that have been accepted on deposit.

It is worth noting that the Parliament of Ukraine expects to pass a new law on financial services and financial companies in 2021. The relevant draft law has already passed its first parliamentary reading. In its current version, the draft law does not amend the existing list of financial services. Its main aim is to align the principles of the regulation of financial services at the levels of banking and non-banking institutions, and provide a unified approach to the protection of consumers' rights.

## Consumer debt collecting services

In March 2021, the Parliament adopted the Law of Ukraine "On Amendments to Certain Laws of Ukraine Concerning Consumer Protection in Settlement of Overdue Debts" No. 1349-IX, introducing state regulation to the consumer debt collecting sector in Ukraine. While debt collecting activities are not recognised as financial services, they can be provided by financial institutions (as well other legal entities) subject to compliance with the requirements set out in the law.

A key requirement for obtaining the status of a debt collecting company is registration in the collection companies register maintained by the NBU and compliance with a set of requirements on having a transparent ownership structure.

A financial institution (or other legal entity authorised to lend funds or provide factoring services) has a right to collect debt in its own interest without acquiring the status of a collection company.

All companies undertaking debt collecting activities must comply with a set of strict rules of conduct while interacting with debtors.

## Consumer protection for financial services

Ukrainians who use financial services can, unfortunately, encounter false advertising, unlawful personal data disclosure and other illegal practices. In January 2020, a law came into effect to address these problems, introducing uniform rules for disclosing information about financial services, new requirements for advertising, and penalties for violating the rights of consumers. "On Amendments to Certain Legislative Acts of Ukraine to Protect Rights of Consumers of Financial Services" No. 1085-1 sets out standards for the quality and transparency of financial services that banks and other financial institutions provide.



The aim of lawmakers appears to have been to create a legal framework based on the following EU instruments:

- Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts;
- Directive 2006/114/EC of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising;
- Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC; and
- Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes.

### **Rules for Disclosing Information**

Financial service providers must publish the following information on their websites:

- a list of the financial services they provide;
- procedures and conditions for receiving financial services;
- prices, tariffs, and interest rates for the financial services they provide; and
- the mechanisms in place to protect the rights of their customers.

### **Making Advertising More Reliable**

Financial service providers are prohibited from spreading incomplete, inaccurate or unreliable information about any of their services. Advertising is deemed “unfair” if:

- a financial service provider does not have status as a financial institution or lacks the required permits and licenses;
- the offered financial services are prohibited in Ukraine; or
- an advertisement fails to provide clear information about the financial services.

### **Fines for Violations**

Financial authorities can impose fines on any financial service provider for violating consumer rights in the following cases:

- failing to provide a customer with full information about financial services before entering into a contract, with fines from EUR 185 to EUR 370 per violation;
- failing to provide a customer with a draft financial services agreement, with fines from EUR 185 to EUR 370 per violation; and
- unilaterally increasing a fixed interest rate or failing to notify customers about changes in a variable interest rate, with fines from EUR 310 to EUR 495 per violation.

The authorities that can issue penalties include the NBU and the Securities Commission. Consumers can refer violations directly to any of these bodies instead of initiating court procedures, which makes the complaint process both time- and cost-effective.

### **Banks**

Any legal entity planning to conduct banking activities must obtain a licence from the NBU within a year of registering with the state. Banks must be established in the form of a public joint-stock company or a cooperative bank. Banks must have a minimum charter capital amounting to UAH 200 million (EUR 6.9 million).

The general meeting and the board are the management bodies of a bank. The former is entitled to elect the bank's council, whose responsibilities include:

- developing and approving a risk-management policy;
- approving a business strategy;
- approving the bank's budget.

### **Credit unions**

A credit union is a non-profit organisation established by individuals, trade unions, or their associations to provide joint lending to its members and to offer financial services using the monetary contributions of its members.

Members of a credit union must meet at least one of the following requirements:

- have a common place of work or study;
- belong to the same trade union or other public or religious organisation; or
- reside in the same village, settlement, city, district or region.

A credit union may be established at a constituent assembly with at least 50 participants. The capital of a credit union consists of its shares, reserve and additional capital, as well as of non-distributed income. A credit union may provide only financial services, and its capital must not be less than 10 per cent of the amount of its general obligations.

### **Guarantees and suretyships**

By a "guarantee" Ukrainian law understands any irrevocable undertaking to pay securing a primary obligation of a debtor. A guarantee is independent of the termination or invalidity of a principal obligation. A suretyship is a secondary obligation to fulfil the obligations of a principal debtor who defaults.

Only banks or other financial institutions may issue a guarantee. A suretyship is not recognised as a financial service that can be offered only by a bank or financial institution, and so may be issued by a non-financial institution if it complies with Ukrainian civil legislation and Ukrainian anti-money laundering requirements. As a result, suretyships are commonly issued by a non-financial institutions.

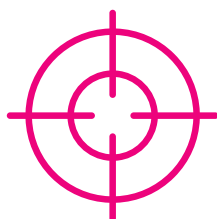
### **Non-state pensions**

Ukraine provides its citizens with a state pension, but pension funds, insurance companies, and banks can offer non-state pensions. There are three types: (i) an open pension fund can be established by one or several legal entities; (ii) a professional pension fund can be established by an association of legal entities for their employees, an association of individuals, including trade unions and associations of trade unions, or individuals related by their professional activity; and (iii) a corporate pension fund can be established by a legal entity or several legal entities for their employees. Other employers may also join a corporate pension fund.

Companies and employees participate in a non-state pension on voluntary basis, and contributions must be in addition to the obligatory state pension insurance. Participants of pension funds can be Ukrainian citizens, foreigners and stateless individuals, and payments can be made to a participant or his or her heirs.

A non-state pension fund must not make a profit for its founders and providing pensions must be its only activity.

*Information in this chapter is based on certain aspects of Ukrainian legislation as of July 2021.*



# Capital markets

## Overview

Ukraine's capital markets remain largely underdeveloped, and in general investment capital is insufficient to meet demand.

On 19 June 2020, the Ukrainian Parliament adopted the long-awaited Law No. 738-IX "On Amending Certain Legislative Acts of Ukraine in relation to Attracting Investment and Introducing New Financial Instruments" (the "New Capital Markets Law"). The New Capital Markets Law is revolutionary in changing the whole infrastructure of the financial market, and thus the hope is that it will pave the way for viable and liquid capital and commodities markets in Ukraine. It is based on broad provisions of key EU directives and regulations establishing rules for the operation of capital and financial markets, including the MiFID II, EMIR, and MiFIR.

The key legislation governing capital markets in Ukraine includes the following:

- Civil Code of Ukraine (16 January 2003);
- Law of Ukraine "On Capital Markets and Organised Commodity Markets" (23 February 2006 as reinstated by the New Capital Markets Law from 1 July 2021);
- Law of Ukraine "On the State Regulation of the Capital Markets and Organised Commodity Markets" (30 October 1996 as amended by the New Capital Markets Law from 1 July 2021); and
- Law of Ukraine "On the Depository System of Ukraine" (6 July 2012 as amended by the New Capital Markets Law from 1 July 2021).

## Securities commission

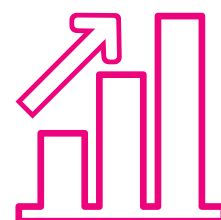
The National Securities and Stock Market Commission (the "Commission") is the main regulator of Ukraine's capital market and establishes its overall legislative framework.

The Commission is subordinate to the President of Ukraine and accountable to Parliament.

Its objectives are developing Ukraine's capital market and protecting investors. The Commission has powers to regulate operators of all organised markets (including commodity markets).

The Commission's responsibilities also include:

- preparing a development programme for the capital market;
- establishing rules for trading in financial instruments;
- enforcing procedures for issuing and registering shares;
- setting out licensing conditions for professional participants in the capital market;
- market access conditions for non-resident companies; and
- setting out the requirements for admitting foreign securities into the market.



## Types of and ownership over financial instruments

The New Capital Markets Law permits a wide range of financial instruments including:

- securities, including equity and debt instruments (shares, shares in corporate investment funds, corporate bonds, municipal bonds, governmental bonds, bonds of international financial institutions, bank deposit certificates, mortgage-related certificates, certificates of funds for operations with real estate, investment certificates, treasury bonds of Ukraine, credit notes, etc.);
- derivative contracts (options, forwards, futures, swaps, swaptions, contracts for differences, etc). The Commission has the power to designate other instruments not expressly listed in the New Capital Markets Law as derivative contracts.

The Commission shares the powers of determining the peculiarities of transactions with certain financial instruments (governmental bonds, treasury bonds, bank deposit certificates, etc.) with the National Bank of Ukraine.

According to the law, all securities are divided into documentary and non-documentary securities. The former are wet-ink or electronic documents prepared in compliance with statutory requirements, while the latter are accounting records in the securities depository accounting system.

Ownership of documentary securities is transferred the moment they are physically delivered to a new owner. The ownership of non-documentary securities passes to the new owner once transferred to the new owner's account at a depository institution. There are, however, certain peculiarities with securities held in the account of a nominee account holder and securities transferred to a clearing entity as collateral (such as margin, guarantee fund contribution, etc.).

## Foreign securities

To be traded in Ukraine, the securities of foreign issuers require access approval by the Commission, which can be obtained based on application of either a foreign issuer or a professional participant of Ukrainian capital markets (e.g., an investment firm).

The Commission will approve an issuer's access application if:

- the issuer is duly registered in a foreign country (unless registered or controlled by an aggressor state);
- the security's issue or prospectus is registered in the issuer's state of origin or in countries where it circulates;
- the security has been assigned an ISIN code;
- the security is already traded on one of the following stock markets: (a) stock markets of Nasdaq, Inc.; (b) New York Stock Exchange (NYSE); (c) stock markets of EU countries; (d) Hong Kong Exchanges and Clearing; (e) London Stock Exchange; or (f) Japan Exchange Group, Inc.



If an application is filed by a professional participant of the Ukrainian capital markets, the applicant will have to additionally demonstrate that National Depository and local custodian can service such securities (e.g., it has the necessary IT and securities accounts with foreign custodians).

### Market Infrastructure

Based on the New Capital Markets Law, the key actors in the capital markets trade and post-trade infrastructure include (all of which are licensed entities):

- **Organised trading venues**, which now include:
  - Regulated Market which is a venue for regular trading in securities, derivatives and currency valuables;
  - Multilateral Trading Facilities (MTF) as a trading venue for small- and medium-sized businesses for securities and derivatives;
  - Organised Trading Facilities (OTF) to deal with non-equity financial instruments (i.e. derivatives and bonds).
- **National Depository of Ukraine**, which acts as a central depository (CSD) for securities other than governmental bonds and municipal bonds.
- **National Bank of Ukraine** acting as a CSD for governmental bonds and municipal bonds.
- **Custodians** that open local securities accounts for the owners of the securities and nominee account holders, and effect day-to-day transactions with such securities.
- **Central counterparties (CCPs)**, which are to conduct clearing and guarantee settlements by interposing themselves as a counterparty to each party to the transaction (both entered into on organised market and, in some cases, OTC (e.g., for DvP OTC trades). No legal entity has received a CCP licence as of June 2021.
- **Clearing houses**, which conduct clearing and can organise settlements, which function can also be performed by operators of trading venues.
- **Trade repositories (TR)**, which collect information about deals entered into on the regulated markets and also some OTC transactions. No legal entity has received a TR licence as of June 2021.
- **Investment firms**, which act as traders in their own name or in the name of their clients, and can provide brokerage, sub-brokerage, dealer, underwriter, securities management, investment consultant and placement without guarantee services depending on their licence. The services of an investment firm will be required to enter into most transactions with financial instruments except for those expressly exempt (e.g., between qualified and unqualified investors).

In Ukraine, securities are traded on the following principal exchanges:

- the PFTS stock exchange;
- the Ukrainian exchange; and
- the Perspektiva stock exchange;

The listed exchanges belong to regulated markets in accordance with the New Capital Markets Law, while there are no MTFs and OTFs in place yet.

### Qualified and unqualified investors

The New Capital Markets Law distinguishes between qualified and unqualified investors. Within the meaning of the New Capital Markets Law, a qualified investor is an entity that possesses the necessary knowledge, experience, and skills in the field of capital markets sufficient to make investment decisions and assess the risks related to them.

The list of qualified investors is non-exhaustive and includes the following:

- international financial organisations;
- foreign states and their central banks;
- foreign financial institutions meeting the criteria established by the Regulator;
- legal entities (including non-residents) fulfilling at least two of the following criteria:
  - (i) a UAH 20m balance sheet; (ii) UAH 40m net turnover; and (iii) UAH 2m in own funds.It is envisaged that the values applicable to these criteria will gradually increase to UAH 600m, UAH 1,200m and UAH 60m by 2031.

The status of qualified investor allows an entity to trade securities and other financial instruments with other qualified investors OTC on the Ukrainian market without any intermediaries.

### **Peculiarities of trade**

#### **OTC and Organised Markets**

Financial instruments can be traded both over-the-counter and via organised markets. Financial instruments have to be listed on an organised market in order to be traded on it. The rules of different organised markets may set various requirements. In addition, the prospectus of the financial instrument may set additional limitations on the trade in the respective financial instrument (e.g., to trade securities only via a specific organised market).

#### **Master Agreements, Settlement Finality and Liquidation Netting**

The New Capital Markets Law has introduced many concepts not previously known to the Ukrainian legal system. In particular, parties are now expressly allowed to enter into master agreements for transactions with financial instruments, currency related instruments and commodities. Parties to a master agreement can, among other things, benefit from the possibility to agree on and use close-out netting, which was not previously possible. Although there are still some concerns regarding the bankruptcy remoteness of close-out netting, in combination with the settlement finality rules both instruments create better protection for investors in financial instruments.

*Information in this chapter is based on certain aspects of Ukrainian legislation as of July 2021*





# Sanctions regime in Ukraine

## Background

The sanctions legislation in Ukraine is relatively new. The Sanctions Law No. 1644-VII was introduced in 2014 against the backdrop of Russia's annexation of Crimea and the ensuing armed conflict in Eastern Ukraine. The initial sanctions (special economic and other restrictive measures) were introduced in September 2015. They mainly targeted companies, institutions and individuals believed by Ukraine's government to be associated with Russia's aggression.

## Grounds for imposing sanctions

According to Article 3 of the Sanctions Law, the grounds for Ukraine imposing sanctions include actions by foreign states, entities, individuals and other subjects that:



In addition, according to the Sanctions Law Ukraine can impose sanctions based on Resolutions of the United Nations General Assembly and the Security Council, as well as the decisions and regulations of the Council of the European Union.

In terms of the scope of the covered persons, the Sanctions Law provides that sanctions can be imposed: (i) either against an indefinite range of persons or foreign state as a whole ("Sectoral Sanctions"); or (ii) against particular individuals and entities ("Personal Sanctions").

Until 2021, Ukraine used to impose only personal sanctions against specific individuals and legal entities.

However, in February 2021 Ukraine imposed its first Sectoral Sanctions on the Republic of Nicaragua for five years.



## Procedure for imposing sanctions



Under the Sanctions Law, proposals for imposing sanctions can be submitted by the Parliament of Ukraine, the President of Ukraine, the Cabinet of Ministers of Ukraine, the National Bank of Ukraine and the Security Service of Ukraine.

## Types of Sanctions

The Sanctions Law explicitly lists 25 types of sanctions, although that list is not exhaustive. The Sanctions Law does not contain a precise description of the scope and the essence of the listed sanctions. So far, the practice of courts and state authorities on interpreting such sanctions is extremely scarce. Therefore, the risk is there that the state authorities of Ukraine can interpret the sanctions as broadly as possible.

The sanctions explicitly set out by the Sanctions Law include:

-  **Assets freezing**
-  **Restricting trade operations**
-  **Banning withdrawal of capital from Ukraine**
-  **Suspending performance of economic and financial obligations**
-  **Annulling licences and permits**
-  **Prohibiting usage of radio frequency resource of Ukraine**
-  **Barring from public procurement tenders**
-  **Restricting dealing in the issuer's securities**
-  **Prohibiting increase of charter capital in Ukrainian companies**

### Who has been targeted so far?

The sanctions imposed by Ukraine target a wide range of companies, institutions and individuals from a variety of sectors. The overwhelming majority of the sanctions target Russian business groups, individuals associated with them, as well as individuals and organisations (whether Russian or Ukrainian) that are allegedly associated with the armed aggression in Eastern Ukraine. The sanctions also target companies and individuals who are allegedly close to the Russian government or conduct business in Russia-occupied Crimea.

In recent years, sanctions have been regularly introduced in Ukraine against various legal entities and individuals.

In 2018, sanctions targeted 1,748 legal entities and 756 individuals in Ukraine. The following year, the sanction regime affected over 294 companies and 848 Russian citizens who were involved in the pseudo-elections in Donbas, the seizure of Ukrainian ships, the construction of the Kerch Bridge and more. In 2020–2021, Ukraine placed over 416 legal entities and 448 individuals on its sanctions lists.

As we stated earlier, the sanctions in force target a wide range of entities from different sectors, e.g. the plant “Spetsagregati”, LLC “Molot-Mekhanika plant”, the plant “Sevmormash-2M”, the plant “Sevastopol aggregate plant”, Russian Federal Agency for Cooperation “Volga-Dnipro Airlines”, the technical base “Zirochka”, LLC “Snabcom”, the shipbuilding enterprise “Dalzavod”, OJSC “514 aviation repair plant”, OJSC “322 aviation repair plant”, Yandex, Mail.ru, Russian TV channels “First Channel”, and “NTV-Plus”.

*Information in this chapter is based on certain aspects of Ukrainian legislation as of June 2021.*



# Ukraine–EU Association Agreement

## Background

The relationship between Ukraine and the EU started in December 1991 when the Netherlands, holding the presidency of the Council of the European Communities, officially recognised Ukraine as an independent state on behalf of the European Union (the “EU”), after which began a long period of negotiations that continues today.

The Ukraine - EU Association Agreement was initiated on 30 March 2012 in Brussels, but after a number of attempts to integrate with the EU over the next year, Ukraine failed to uphold a decision to sign the agreement. This failure triggered mass protests to protect the European aspirations of Ukrainians, which became known as “EuroMaidan”. The scope of the protests soon widened, resulting in calls for the resignation of President Viktor Yanukovich and his government and the 2014 Revolution of Dignity.

After the victory of the revolution and the overthrow of the Ukrainian government, the Parliament of Ukraine adopted a resolution on 13 March 2014 confirming the irreversibility of Ukraine's integration with the EU.

The Ukraine - EU Association Agreement was signed on 27 June 2014 and ratified by Parliament on 16 September 2014. At both occasions, President of Ukraine Petro Poroshenko and Parliament declared the agreement a step towards Ukraine's ultimate full membership in the EU.

The agreement, including its Deep and Comprehensive Free Trade Area (DCFTA), entered into force on 1 September 2017, although several of its provisions had been provisionally applied since 1 November 2014 and the DCFTA since 1 January 2016.

## Ukraine-EU Association Agreement in a nutshell

The Ukraine-EU Association Agreement is the main political and legislative tool for bringing Ukraine and the EU closer together. It promotes deeper political ties, stronger economic links, and respect for common values.

The Preamble sets out the agreement's purpose and underlying philosophy, and is followed by 7 sections concerning:

- general principles;
- political cooperation and foreign and security policy;
- justice, freedom, and security;
- trade and trade-related matters (DCFTA);
- economic and sectorial cooperation; and
- financial cooperation to combat fraud.

The Agreement also contains Institutional, General and Final Provisions; 43 annexes setting out EU legislation to be adopted by specific dates, and three Protocols.

The document is over 1,200 pages long, making it the longest and most comprehensive agreement the EU has signed with a third country.

## Progress on Ukraine-EU association agreement

### Stronger Society

Since visa-free entry became possible for Ukrainians on 11 June 2017, Ukrainians have made almost three million visa-free visits to the EU using biometric passports<sup>19</sup>.

Ukraine is one of the largest beneficiaries of the Erasmus+ programme. More than 7,250 Ukrainian students and academics have benefited from this academic exchange opportunity. Cooperation between Ukraine and EU in this, as well as in cultural and artistic spheres, is supported through the House of Europe programme, with supporting reaching EUR 18 million.

### The Rule of Law

Since the Revolution of Dignity, Ukraine has undergone a huge democratic transition with significant renewal of its key governmental institutions, and in 2019, the election of new political leaders. In this context, the association agreement remains an important reference for Ukrainian authorities, providing a starting point for reforms that bring Ukraine and the EU closer together. Moreover, the agreement also helps Ukraine provide stability and prosperity to all of its citizens and strengthen its resilience.

Ukraine's reforms have made expeditious progress in a great number of areas.

**Corruption.** Illicit enrichment has been re-criminalised, and legislation to relaunch the National Agency for Prevention of Corruption ("NAPC") and to protect whistle-blowers has been adopted. The work of the new High Anti-Corruption Court is particularly important, as none of the highest-level officials have been convicted for corruption so far.

**Transparency.** The resurrection of the NAPC changed its management structure from a collegiate body to a single head, and international experts participated in the selection of the new chief executive. Progress has also been made in the sphere of electronic asset declarations for public officials.

**Business.** Ukraine's trade with the EU has continued to increase and it remains Ukraine's top export market. The Ukrainian economy is growing, and its finances and banking sector have stabilised. However, the business climate still needs improving to encourage investment, in particular by enforcing the rule of law and supporting the fight against corruption.

**Banking and finance.** With respect to financial services legislation, Ukraine has made progress on current payments and the movement of capital, disclosure requirements for securities issuers, and capital requirements in the banking sector.

**Economic and sectoral reforms** have delivered notable achievements, such as introducing medium-term budget planning at central and local levels, and the reform program is improving customs, market deregulation, public procurement, and health, although the latter has advanced more slowly. Reforms in the sphere of intellectual property rights remained limited.

**Subsidies.** Rules for state aid in Ukraine are not fully in line with EU regulations. However, the current legal framework has enabled more effective control of state aid.

In June 2019, a strategy for the managing the state debt was approved, with a target of reducing Ukraine's debt-to-GDP ratio to 43% by the end of 2022. The strategy has four pillars: (1) increase the share of domestic currency debt, (2) lengthen the maturity of the state debt, (3) continue to attract concessional funding, and (4) enhance strong investor relationships<sup>20</sup>.

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<sup>19</sup> <https://www.kmu.gov.ua/en/news/majzhe-3-miljoni-gromadyan-ukrayini-skoristalisya-bezvizom-z-yes-protiyagom-dvoh-rokiv>

<sup>20</sup> [https://eeas.europa.eu/sites/default/files/swd\\_2019\\_433\\_f1\\_joint\\_staff\\_working\\_paper\\_en\\_v4\\_p1\\_1056243.pdf](https://eeas.europa.eu/sites/default/files/swd_2019_433_f1_joint_staff_working_paper_en_v4_p1_1056243.pdf)

### **Stronger Governance**

Since 2014, Ukraine's governmental reform has received extensive support through programmes for decentralisation (U-LEAD with Europe), anti-corruption (EUACI), the rule of law (PRAVO), public administration reform (EU4PAR), and public finance management (EU4PFM), totalling over EUR 300 million. These initiatives have enhanced the transparency and accountability of municipal authorities and improved their ability to offer services. EU humanitarian assistance for basic needs, like healthcare, food, and shelter has also been provided where these are needed<sup>21</sup>.

### **Stronger Trade**

The DCFTA is a landmark document in bilateral trade and offers new economic opportunities to both the EU and Ukraine, while providing a framework for the modernisation of Ukraine's economy and improving its trade relations.

The EU is now Ukraine's largest trading partner, accounting for 42% of total trade, with bilateral trade between Ukraine and the EU having grown 49% since the application of the DCFTA's provisions.

### **Going forward**

In February 2021, the EU and Ukraine held the 7th meeting of the Association Council, in Brussels.

The Association Council reaffirmed its commitment to strengthening the political and economic association of Ukraine with the EU on the basis of DCFTA, and to the common values enshrined in it. As a result of the meeting, the EU welcomed Ukraine's reform efforts. Both sides agreed on Ukraine's need to intensify its efforts to strengthen the rule of law and ensure broad public confidence and support in the anti-corruption fight. The EU reaffirmed that comprehensive judicial reform remains essential. The EU also drew attention to the need for reliable checks on the judges' integrity.

The EU also reaffirmed its unwavering support and commitment to Ukraine's sovereignty and territorial integrity. The Association Council stated its strong condemnation of the violation of Ukraine's sovereignty and territorial integrity by Russian armed forces and reaffirmed its support for a peaceful and lasting solution.

With reforms on decentralisation, public administration, banking, energy and education are yet to be effected, both sides reiterated their values of common democracy, the rule of law, respect for international law and human rights, as well as equality<sup>22</sup>.

*Information in this chapter is based on certain aspects of Ukrainian legislation as of July 2021*

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<sup>21</sup> #easternpartnership [https://eeas.europa.eu/headquarters/headquarters-Homepage/4081/eu-ukraine-relations-factsheet\\_en](https://eeas.europa.eu/headquarters/headquarters-Homepage/4081/eu-ukraine-relations-factsheet_en)

<sup>22</sup> <https://www.consilium.europa.eu/en/press/press-releases/2021/02/11/joint-press-statement-following-the-7th-association-council-meeting-between-the-eu-and-ukraine/>



# Litigation and dispute resolution

## Litigation

### Introduction

Litigation is the usual mechanism for resolving civil and commercial disputes, as well as conflicts with state and municipal bodies. In Ukraine, however, litigation has been criticised as unreliable and frequently unpredictable. The reasons are plentiful, but recent improvements have raised both the perception and quality of Ukraine's judicial process.

For example, in October 2017 Law No. 6232, the lengthiest in Ukrainian history at 800 pages, restated the Commercial Procedure Code of Ukraine, the Civil Procedure Code of Ukraine, and the Code of Administrative Procedure of Ukraine and amended more than 20 other legislative acts.

In early 2020, parliament also adopted Law No. 460-IX introducing amendments to the procedural codes aimed at the prevention of procedural abuses and improvement in the efficiency of civil, commercial and administrative proceedings.

Doing Business 2020 now ranks Ukraine 63rd among economies for its criteria on enforcing contracts, 35 positions higher than in 2016.

### Organisation of the Judiciary

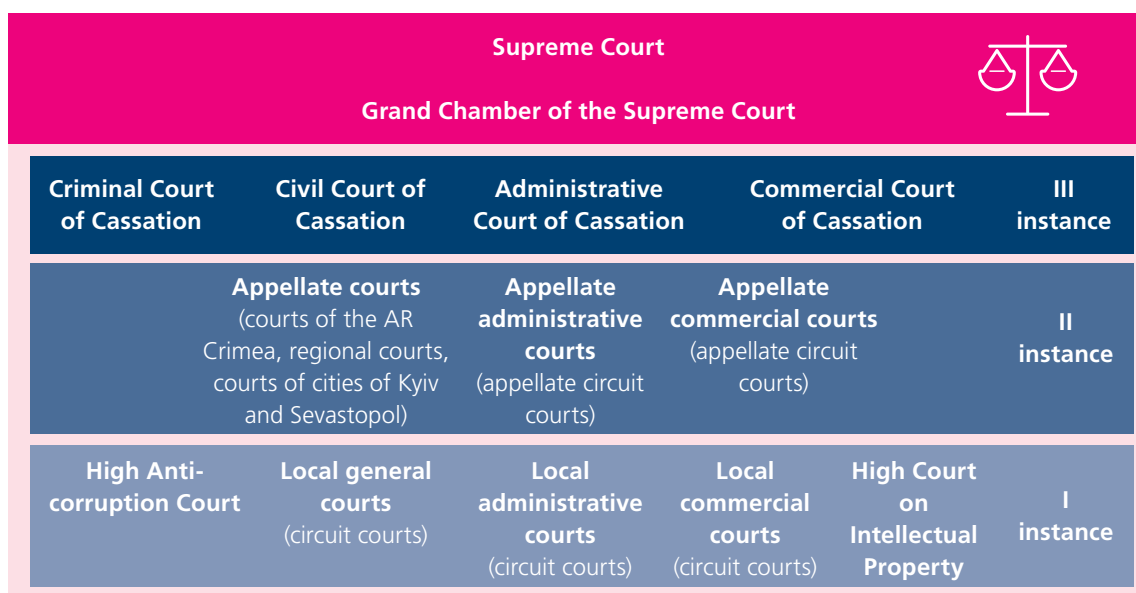
The judiciary in Ukraine is separate from the legislative and executive branches of power.

The country's general courts form a unified judicial system, while the constitutional court operates separately.

The general judicial system of Ukraine is comprised of:

- local (trial) courts;
- courts of appeal, including 27 appellate courts of general jurisdiction, eight appellate circuit courts for commercial matters and eight appellate circuit courts for administrative matters;
- two specialised courts, namely the High Court of Intellectual Property and the High Anti-Corruption Court;
- Ukraine's Supreme Court, the highest court in the judiciary, which includes four cassation courts each of which covers criminal, civil, administrative and commercial matters.





The ability to appeal against a judgement is part of the fundamental right of access to a court declared in Ukraine's constitution. Appellate courts review judgements by local courts, while Ukraine's Supreme Court acts as the court of appeal where an appellate court acted as the court of first instance. It also reviews the judgements of first instance courts and courts of appeals in cassation proceedings.

### Procedural Legislation

In many Common Law countries, the rules governing court procedures and practices are internal documents of the respective courts, but in Ukraine these rules are part of Ukraine's procedural law. The principal statutes are:

- the Commercial Procedure Code of Ukraine,
- the Civil Procedure Code of Ukraine,
- the Code of Administrative Procedure of Ukraine, and
- the Criminal Procedure Code of Ukraine.

While the first three codes adhere to the same structure and therefore generally resemble one another, the Criminal Procedure Code is very different.

Further, as a result of COVID-19 related restrictions, parliament also introduced a number of amendments to procedural codes in March and June 2020. Among others, these provisions allow parties to request courts to renew or extend procedural terms if the reasons are sufficient and attributed to the restrictions imposed by quarantine.

### Legal Representation

Until recently, any authorised individual might have represented another person or legal entity before a court, except in criminal proceedings which were reserved for advocates.

Since 2017, however, only licensed advocates have been allowed to represent clients before the cassation courts, and since 2018, before the appellate courts, and since 2019 before trial courts, except for a limited list of minor cases.

These changes were expected to ensure that citizens and corporations have access to high-quality legal services and representation, in part because advocates are governed by their professional bodies and must comply with the strict code of professional conduct.

Foreign-qualified advocates and their qualifying equivalents from recognised jurisdictions may conduct litigation before the Ukrainian courts in conjunction with Ukrainian advocates, if such foreign-qualified advocates successfully apply for registration with the Unified Register of Advocates in Ukraine.



## **Enforcing Court Judgements**

In Ukraine, except for limited exceptions that require a state enforcement officer, a creditor may take the judgement of a court to a private enforcement officer for enforcement. Enforcement proceedings, however, are not always straightforward and the prospects for recovery are often uncertain. While enforcement proceedings look perfectly acceptable as written, in practice a creditor who wins a favourable judgement in Ukraine has not reached the end of the matter, but rather the beginning of a long saga.

## **Alternative Dispute Resolution**

### **Introduction**

Arbitration and mediation are the main forms of alternative dispute resolution in Ukraine; other forms are either non-existent or rarely applied.

### **Arbitration**

Domestic and international commercial arbitration is governed by two separate legal regimes. The statute governing international commercial arbitration is the Law of Ukraine “On International Commercial Arbitration”, which is based on the UNCITRAL Model Law on International Commercial Arbitration, but with a few notable differences. Domestic arbitration, in turn, is governed by the Law of Ukraine “On Domestic Arbitration”.

Ukraine is a party to all major treaties governing international commercial arbitration (the United Nation Convention on the Recognition and Enforcement of Foreign Arbitral Awards and the European Convention on International Commercial Arbitration), and to numerous regional multilateral and bilateral treaties as well.

The International Commercial Arbitration Court at the Ukrainian Chamber of Commerce and Industry is the leading permanent arbitral institution in Ukraine. The following matters may be referred to it by the parties to an agreement:

- disputes of contractual or other civil law connected with foreign trade and other kinds of international business where one of the parties has its place of business outside Ukraine;
- disputes between enterprises with foreign investment, international associations and organisations established in Ukraine or between members thereof, or disputes between them and other subjects of Ukrainian law.

Remedies awarded by arbitrators outside Ukraine (and judgements of foreign courts) may be enforced by a competent court in Ukraine under the special procedure established by law.

More than 500 companies and organisations provide arbitration for domestic disputes in Ukraine, but they play a very limited role in the legal resolution process.

### **Mediation**

In Ukraine, mediation is rarely used as an alternative to court proceedings or arbitration but is gaining attention from both the government and market participants.

In fact, in August 2019 Ukraine signed the United Nations Convention on International Settlement Agreements Resulting from Mediation, establishing a harmonised legal framework for the right to invoke settlement agreements as well as for their enforcement.

To take steps toward implementing the United Nations Convention on International Settlement Agreements Resulting from Mediation, on 15 July 2020 the Ukrainian Parliament passed on its first reading draft law No. 3504 “On Mediation”, which introduces a new dispute settlement mechanism (mediation) at the legislative level. This draft law allows mediation to be conducted in the form of a voluntary out-of-court dispute settlement, in which the parties negotiate in the presence of a mediator.

As of the date of this publication, it is not clear whether a new law will be adopted. At the same time, the eventual adoption (when and if) of this draft law will increase the alternative ways of resolving disputes, allow parties to resolve a dispute out of court and, in particular reduce litigation costs and decrease the workload of Ukrainian courts.

*Information in this chapter is based on certain aspects  
of Ukrainian legislation as of June 2021*





# Fintech

## Overview

Fintech is a relatively new industry that provides businesses and consumers more accessible and user-friendly financial services using new technology. Fintech companies are disrupting both traditional banking and the non-banking financial services market in such areas as money transfers, payments, lending, finance management, mobile wallets, insurance, and others.

In Ukraine, more than 150 companies are currently operating in Fintech, and more than 70% of them started in the last few years. Some of the Ukrainian Fintech companies already work in the international market, whereas the majority of Ukrainian Fintech companies only intend to expand their businesses internationally. Fintech is a fast-growing industry, and one of the key drivers of digital transformation in Ukraine.<sup>23</sup>

## Legal framework

Even though Ukrainian Fintech legislation is not yet as developed as comparable EU legislative, the following laws and regulations should be considered the basis for Ukraine's Fintech legal framework:

- Civil Code of Ukraine (16 January 2003);
- Commercial Code of Ukraine (16 January 2003);
- Law No. 2664-III “On Financial Services and State Regulation of Financial Services Markets” (12 July 2001);
- Law No. 2346-III “On Payment Systems and Money Transfer” (5 April 2001);
- Law No. 2155-VIII “On Electronic Trust Services” (5 October 2017);
- Law No. 361-IX “On Preventing and Counteracting to Legalisation (laundering) of Proceeds of Crime, Terrorist Financing, and Financing Proliferation of Weapons of Mass Destruction” (6 December 2019) (the “AML Law”);
- Resolution No. 481 of the Board of the National Bank of Ukraine “On Amendments to Certain Regulatory Acts of the National Bank of Ukraine in relation to Issue and Circulation of Electronic Money” (4 November 2010); and
- Resolution No. 43 of the Board of the National Bank of Ukraine “On Approval of the Regulation Establishing the Procedure for Registration of Payment Systems, Participants of Payment Systems and Operators of Payment System Services” (4 February 2014).

## Regulators of Fintech in Ukraine

Depending on the type of company and area of operation, Fintech providers are governed by the following regulators:

- **National Bank of Ukraine**, regarding (i) banking institutions in Ukraine and various aspects of providing banking services; and (ii) non-banking financial institutions providing lending, payment, insurance, and other financial services;
- **National Securities and Stock Market Commission**, regarding investment funds and stock markets in Ukraine; and
- **State Financial Monitoring Department of Ukraine**, the executive authority implementing Ukraine's policy on anti-money laundering and combating the financing of terrorism.

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<sup>23</sup> Ukrainian Fintech market map – <https://fintechua.org/en/market-map>

Note that the above is not exhaustive; only regulators of financial services providers have been listed.

### **Additional operational requirements**

Certain types of activity performed by Fintech companies in Ukraine, such as payments, money transfers, lending, and others, are considered financial services and are subject to complicated legislative requirements. Companies offering these services must register as a financial institution with a charter capital of at least UAH 3,000,000 (approx. EUR 92,000) and obtain a licence from the NBU. To provide money transfer services, Fintech companies must also obtain a separate licence from the NBU.

### **Cryptocurrency**

The legal status of cryptocurrencies in Ukraine is not officially determined yet. Due to the complex legal nature of cryptocurrencies, the Ministry of Finance of Ukraine does not recognise them as funds, a currency, a foreign payment instrument, currency valuables, electronic money, or money surrogates. The NBU also emphasises that transactions with cryptocurrencies are not subject to Ukrainian currency laws or legislation governing money circulation, electronic money, securities, or payment instruments.

The first Ukrainian law to mention the term virtual asset is the AML Law.

Unlike the “Draft Law On Virtual Assets”, the AML law has a very broad definition of this term which does not explicitly cover cryptocurrency/crypto assets. Considering that the AML Law has been developed with NBU's support, it seems that the NBU has no objections considering cryptocurrencies as virtual assets.

As long as the status of cryptocurrencies and rules of their circulation remains undetermined officially, state consumer protection agencies, courts, and other public authorities are not able to adequately protect participants in cryptocurrency markets.

### **Remote Onboarding**

The entry into force of the Law of Ukraine “On the Prevention and Counteraction of the Legalisation (Laundering) of Proceeds from Crime, Terrorist Financing and Financing of the Proliferation of Weapons of Mass Destruction” in April 2020, made possible remote client onboarding for banks and non-bank financial institutions. Further, the NBU has issued regulations providing more detailed rules on how remote onboarding will be performed.

Among other instruments, financial institutions can apply the following: (i) qualified e-signature; (ii) bank ID; (iii) video verification; (iv) use of information from a credit bureau and others.

As of the date of this report, Financial Institutions actively use remote onboarding solutions to establish business relations with clients. We expect that during the next few years, the functionality and inclusion of the remote onboarding solutions will improve.

### **Regulatory Sandboxes**

As of today, there is no fully-fledged regulatory sandbox in Ukraine. In 2019, the NBU launched a pilot project, which serves primarily as a communication platform between the NBU and FinTech companies. The participants of the project have an opportunity to receive the NBU's feedback on their product and advice on the specifics of the applicable legal regulations. If necessary for the launch of an innovative product, the NBU may suggest amendments to the existing regulations. The platform has not become an effective facilitator due to numerous requirements to be met by the participants and regulatory limitations. During the whole period of the project's operation, only nine applications were reviewed in 2019 and 12 applications in 2020.



On a separate note, the NBU actively works on the creation of a fully-fledged sandbox in Ukraine and has already published the concept<sup>24</sup>. According to the concept, the first fully-fledged sandbox will include the following advantages:

- **Consultancy Services.** FinTech companies will be able to obtain clarifications from the NBU on the impact of certain regulatory rules on business cases.
- **Test Period.** Within the sandbox, FinTech companies will be able to operate in a simplified regulatory environment for a limited number of customers (up to 10,000) and time (up to one or two years). The participants will also enjoy: (a) simplified access to the market; (b) simplified exit from the market; and (c) the absence of sanctions from NBU.
- **Information Support.** The NBU will publish instructions and regulatory updates to avoid violation of rules by the FinTech companies.

According to preliminary estimations, the fully-fledged sandbox will be launched by the end of 2022. The start of its operation is also conditional on a revision of the existing legislation regulating payment services, the operation of the NBU and the financial services market.

We expect that the first regulatory updates will occur in the near future with the adoption of the “Draft Law On Payment Services”. Once adopted, the NBU will be allowed to create a regulatory platform to examine new technologies and instruments in the payment services market. Please note that the respective draft law introduces only the concept of a regulatory sandbox for the payment services market; more detailed rules will be provided in the Law of Ukraine “On Financial Services and State Regulation of Financial Services Markets” No. 2664-III dated 12 July 2001 and regulations of the NBU (neither regulate the operation of sandboxes yet). The adoption of the new payment services law will be a good start for further developments and the launch of a fully-fledged sandbox in Ukraine.

### Further regulatory transformation

#### Regulation of Cryptocurrency

In December 2020, the Parliament of Ukraine supported the first iteration of “Draft Law On Virtual Assets” developed by the Ministry of Digital Transformation of Ukraine, which stipulates that a crypto asset is a virtual asset. The draft law is aimed, among others, at determining the legal status of virtual assets, their use and circulation in the Ukrainian market, and regulating the issuance of virtual assets. If the law to be adopted, it will determine the official status of the cryptocurrencies in Ukraine.

#### Regulation of Payment Systems and Money Transfers

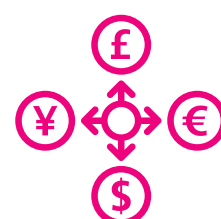
On 12 July 2021, the Parliament of Ukraine adopted the “Draft Law On Payment Services” (the “Payment Services Law”), which will replace the outdated Law of Ukraine “On Payment Systems and Funds Transfer in Ukraine”. When signed by the President of Ukraine, the Payment Services law will become effective 12 months after its publication, except for certain provisions related to open banking. The Payment Services Law is broadly based on the rules of PSD2 and was developed by a group of experts led by the National Bank of Ukraine, with international assistance and significant contributions from the existing market players. The Payment Services Law completely overhauls the regulation of the payments market in Ukraine.

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<sup>24</sup> NBU Innovative Finance Solutions (“Regulatory Sandbox”) concept – <https://bank.gov.ua/ua/files/LTnEzomkKEMsuLD>

Some of the key novelties introduced by the Payment Services Law include:

- **New players:** most payment services in Ukraine can currently be provided only by commercial banks (e.g., issuing payment cards and e-money, and opening current bank accounts). The new law contemplates that payment institutions other than banks will be entitled to provide these payment services, which will increase competition in the market. Certain services may be rendered by providers of “limited payment services”, i.e. by telecom and internet providers.
- **Scope of payment services:** there will be nine payment services, seven of which relate to financial payment services and the remaining two constitute non-financial payment services. In each case, the providers of these payment services will be specifically determined.
- **One regulator for payment services:** unlike previously, only one payment services regulator will authorise payment service providers for any stage of the payment process and related services. The National Bank of Ukraine will effectively become the only regulator of this market.
- **Easy authorisation for payment business:** the authorisation of payment service providers and the introduction of the concept of small payment institutions will simplify the process of operating a payments business in Ukraine.
- **No mandatory participation in a payment system:** under existing rules, only a financial institution that is a member of a payment system can run a payments business. The new law no longer has this requirement for rendering payment services.
- **More client accounts and open banking:** non-banking payment services providers will be entitled to open and manage payment accounts. Open banking principles are now set out in the Payment Services Law and will allow new participants to access client accounts. Additionally, account information service providers and payment initiation service providers will be authorised to operate in Ukraine.
- **Transparency:** the terms of payment services are expected to become more transparent as the Payment Services Law improves the requirements on the provision of payment services related information to customers.
- **Security of payment operations and counteraction to fraud:** for some types of transactions there will be additional security requirements towards, e.g., strong customer identification. The Payment Services Law envisages stricter liability for illegal actions with payment instruments and access to bank and payment accounts to minimise cyber fraud.



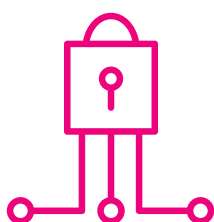
### **NBU's FinTech Development Strategy by 2025**

In July 2020, the NBU officially released its Fintech Development Strategy in Ukraine by 2025 (the "Strategy"). The Strategy serves as a step plan aimed at creating a fully-fledged fintech ecosystem in Ukraine with innovative financial and digital services.

According to the NBU, the key elements of the Strategy will be: (i) the development and implementation of the concept of a fully-fledged regulatory sandbox; (ii) increase in financial awareness and involvement (inclusion) of the population and business; and (iii) launch of an academic base with a focus on open banking. The successful implementation of the Strategy will also depend on the realisation of the NBU's digitalisation initiatives, including: (i) effective introduction and operation of remote identification and verification; (ii) implementation of PSD2 (i.e. adoption of the Payment Services Law); (iii) realisation of instant payments in the 24/7 format; and (iv) improvement in cybersecurity regulation.

It should be noted that the NBU takes consistent steps aimed at realising the Strategy and we hope that the regulatory improvements will continue at the same pace.

*Information in this chapter is based on certain aspects of Ukrainian legislation as of June 2021*







# Electricity

## General

### Introduction

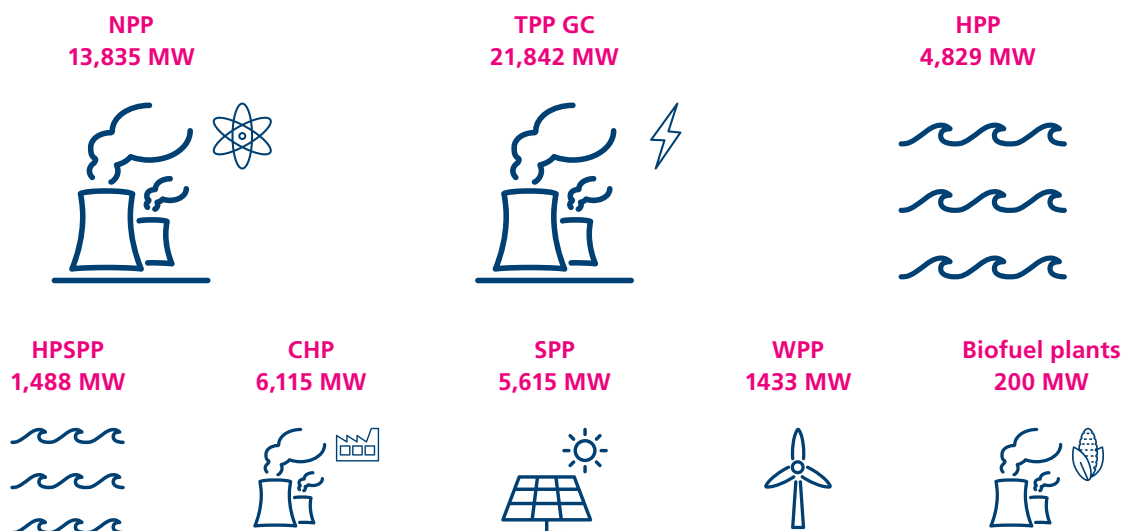
The electricity market in Ukraine has both grown and improved in recent years, with regulatory reforms a gradual transition to full liberalised market model.

Of particular note, reforms have moved Ukraine's electricity laws to conform with EU norms.

### Capacity

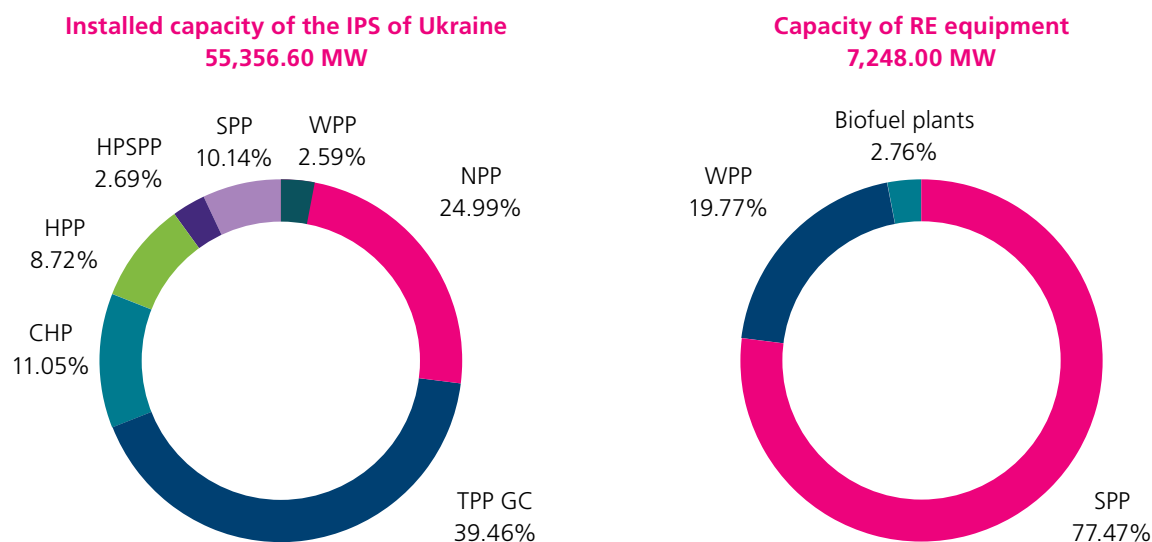
As of May 2021, the total installed capacity of Ukrainian power plants was 55,356.60 MW, with renewable capacity accounting for approximately 13.09% of Ukraine's total energy mix.

### Installed capacity of Ukrainian power plants by types as of May 2021<sup>25</sup>



<sup>25</sup> Source: official website of the National Power Company "Ukrenergo" – <https://ua.energy/vstanovlena-potuzhnist-energosityemy-ukrayiny/>

## Installed capacity of the integration power system (IPS) of Ukraine and capacity<sup>26</sup>



Ukraine's location allows it to import and export electricity through Hungary, Slovakia, Poland and Romania, as well as through Russia, Belarus and Moldova. In 2020, the total volume exported was 4,754.1 million kWh, of which 4,504.1 million kWh was to the European Union, while the total volume of electricity imported into Ukraine in 2020 was 2,284.9 million kWh<sup>27</sup>.

### Regulatory Framework and Authorities

The electricity sector is mainly governed by the following laws:

- Law of Ukraine "On the Electricity Market" (electricity market law);
- Law of Ukraine "On the National Commission for State Regulation of the Energy and Public Utilities Sector";
- Resolution of the National Commission for State Regulation of the Energy and Public Utilities Sector "On Approving Market Rules";
- Resolution of the National Commission for State Regulation of the Energy and Public Utilities Sector "On Approving Day-ahead and Intraday Markets Rules";
- Law of Ukraine "On Licensing of the Types of Commercial Activity" (licensing law);
- Resolution of the National Commission for State Regulation of the Energy and Public Utilities Sector "On Approving Licensing Conditions for the Performance of Power Generation" (generation licensing conditions);
- Resolution of the National Commission for State Regulation of the Energy and Public Utilities Sector "On Approving Licensing Conditions for the Performance of Commercial Activity on Electricity Supply to End Consumers" (supply licensing conditions);
- Resolution of the National Commission for State Regulation of the Energy and Public Utilities Sector "On Approving Licensing Conditions for the Performance of Commercial Activity on Electricity Re-sale (Trading)" (trading licensing conditions);
- Resolution of the National Commission for State Regulation of the Energy and Public Utilities Sector "On Approving the Electricity Commercial Metering Code";
- Resolution of the National Commission for State Regulation of the Energy and Public Utilities Sector "On Approving the Transmission System Code";
- Resolution of the National Commission for State Regulation of the Energy and Public Utilities Sector "On Approving the Distribution Systems Code".

<sup>26</sup> Source: official website of the National Power Company "Ukrenergo" — <https://ua.energy/installed-capacity-of-the-ips-of-ukraine/>

<sup>27</sup> <https://ua.energy/peredacha-i-dyspetcheryzatsiya/dyspetcherska-informatsiya/peretoky/#1612778864058-c3dd5558-ab11>

## Market Regulation

The electricity market of Ukraine is regulated by the National Commission on State Regulation of Energy and Public Utilities Sectors.

The regulatory commission is an independent public authority with the power to:

- issue mandatory resolutions, orders and regulatory acts;
- establish licensing conditions and grant licences for activities in the electricity and gas markets, as well as in the public utilities sector;
- establish tariffs;
- and supervise, monitor and control the behaviour of market players.

Other regulatory authorities of the industry are:

- Parliament of Ukraine, which passes primary legislation;
- the Cabinet of Ministers of Ukraine, which passes secondary legislation that implements primary legislation; and
- Ministry of Energy, which is responsible for state policy in the electricity sector<sup>28</sup>.

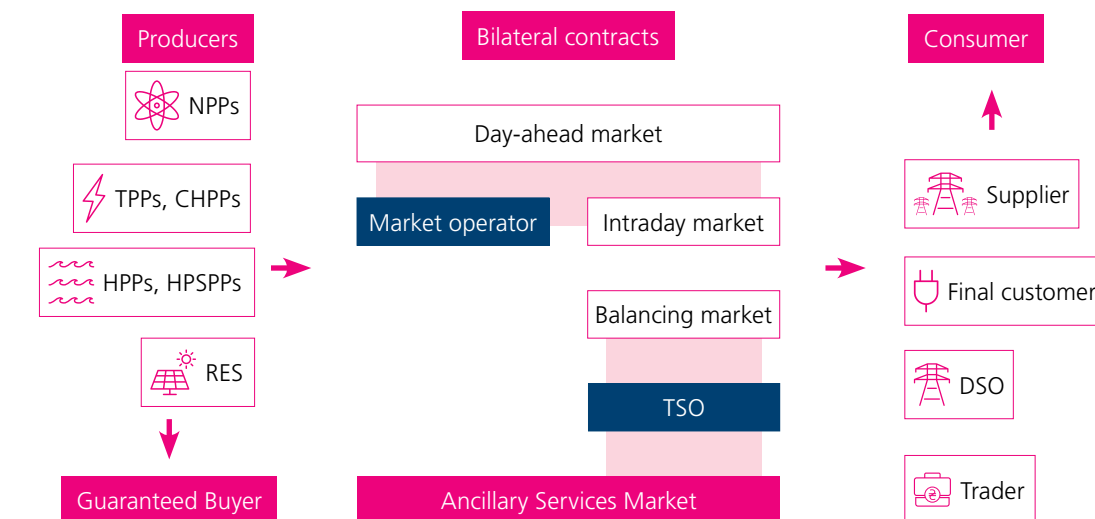
## New electricity market

On 1 July 2019, the Electricity Market Law launched a full-scale liberalised electricity market in Ukraine. The law enacted Ukraine's commitments to liberalise its electricity market to comply with the Energy Community Treaty and the "Third Energy Package"<sup>29</sup> of the European Union. Specifically, it complies with: (i) Directive 2009/72/EC concerning common rules for the internal market in electricity; (ii) Directive 2005/89/EC concerning measures to safeguard the security of the electricity supply and infrastructure investment; and (iii) Regulation (EC) No. 714/2009 on the conditions for access to the network for cross-border exchanges in electricity.

## Submarkets

Before July 2019, Ukraine's wholesale electricity market operated on the "single buyer" model, with the national regulatory commission implementing state pricing and tariffs for the industry. As a result of the Electricity Market Law, the wholesale market was reorganised into the following submarkets: (1) a bilateral contracts market; (2) a day-ahead market; (3) an intraday market; (4) a balancing market; (5) a market for ancillary services; and (6) the retail market.

## Submarkets of the Ukrainian electricity market



<sup>28</sup> According to the Cabinet of Ministers of Ukraine's Resolution No. 425 dated 27 May 2020, the Ministry of Energy and Environmental Protection of Ukraine was divided into two separate Ministries, in particular, the Ministry of Energy and the Ministry of Environmental Protection and Natural Resources of Ukraine.

<sup>29</sup> The European Union's Third Energy Package is a legislative package for an internal gas and electricity market in the European Union. Its purpose was to further open the gas and electricity markets in the European Union. The package was proposed by the European Commission in September 2007 and adopted by the European Parliament and the Council of the European Union in July 2009. It entered into force on 3 September 2009. More information: <https://ec.europa.eu/energy/en/topics/markets-and-consumers/market-legislation/third-energy-package>

### The Bilateral Contracts Market

In the bilateral market, companies buy and sell electricity directly with each other through contracts and are free to negotiate the contract price. The contracts must be valid for at least six months, and the maximum validity period may be set by the regulatory commission.

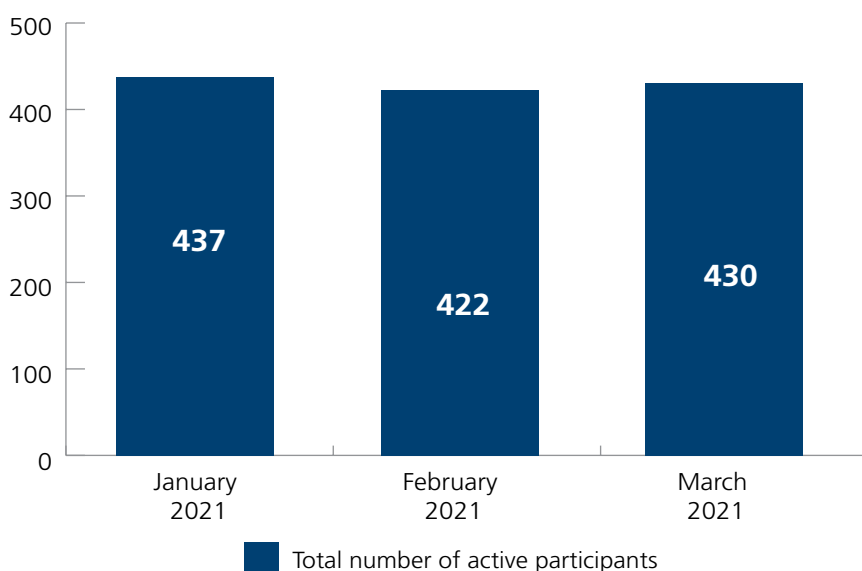
Companies participating in this submarket can freely choose their counterparties and are not required to publicly disclose their contractual arrangements; however, they must report on contractual volumes.

### The Day-ahead and Intraday Markets

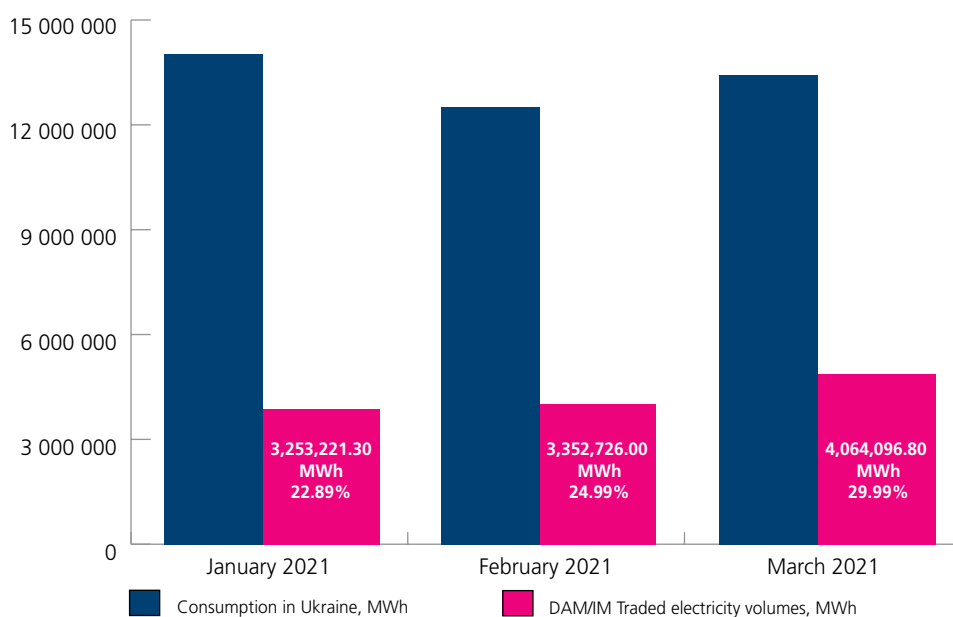
The day-ahead market is an auction market with pricing set by competitive bidding one day before the actual delivery of electricity. The intraday market allows participants to update or cancel their trading positions, particularly the price, in response to supply and demand and other system conditions as they approach real time.

Both the day-ahead and intraday markets are managed by the state market operator, formed under the Electricity Market Law, which accepts bids to sell or buy electricity and holds auctions.

### Information on Day-Ahead Market and Intraday Market Participants in January, February, March 2021

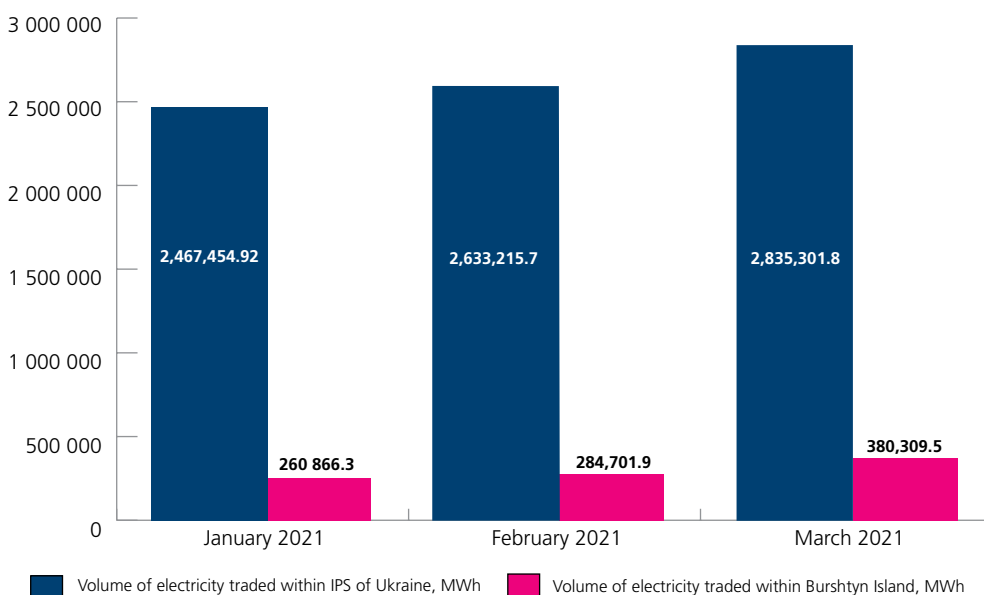


### Volumes of electricity traded on Day-Ahead and Intraday Markets ratio Power Consumption in Q1 of 2021

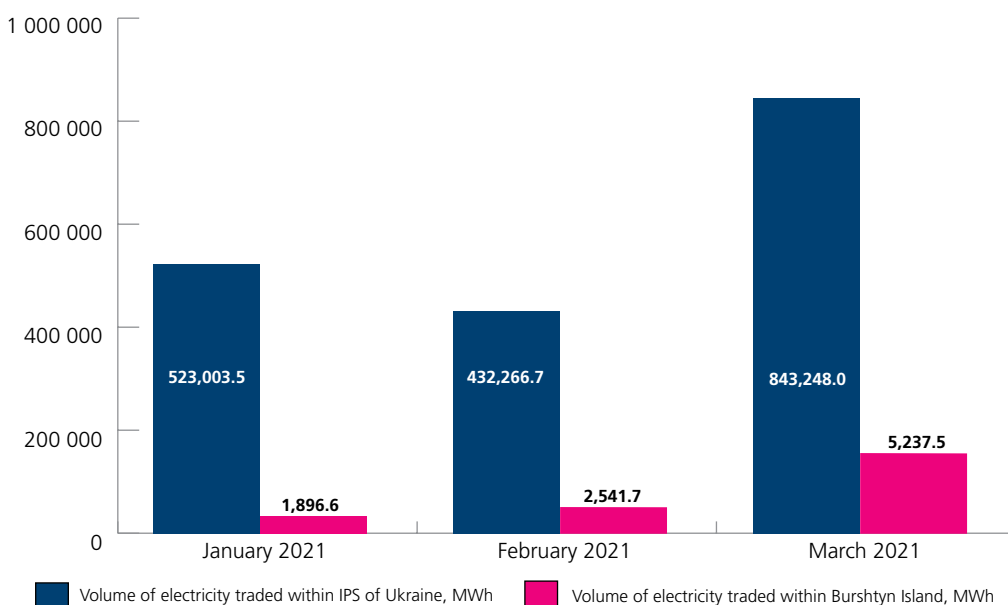


## Volumes of electricity traded in January - March 2021

### Volumes of electricity traded on Day Ahead Market January – March 2021

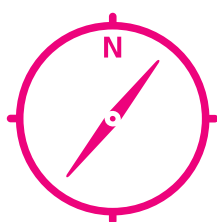


### Volumes of electricity traded on Intraday Market January 2021 – March 2021



## The Balancing Market

The balancing market was established (i) to balance supply and demand on a daily basis and (ii) to handle imbalances among market participants. It is operated by NPC Ukrenergo, the transmission system operator, which accepts bids for load increases or decreases. Participants responsible for balancing may join together to operate as a group.



### **The Retail Market**

In the retail market, power suppliers sell electricity to end consumers who buy electricity for their own use with no intention to re-sell. Retail prices are regulated only for (i) suppliers of universal services, such as electricity for private households and small industrial consumers; and for (ii) suppliers of last resort. These are local electricity suppliers that the Cabinet of Ministers of Ukraine requires to enter into supply agreements with consumers in certain circumstances and as determined by applicable law. In practice, this is the state-owned company "Ukrinteroenergo". For other categories of consumers, the price for electricity can be freely set.

### **The Ancillary Services Market**

The ancillary services market includes various types of energy and capacity products to meet the market players' reliability requirements. In this market, power generators bid for the right to deliver such services to the transmission system operator.

### **Licensing requirements**

The generation, transmission, distribution, supply to end consumers and re-sale (trading) of electricity are subject to licensing in Ukraine. Licences are issued by the regulatory commission in line with the licensing law and are issued to Ukrainian entities only and may not be transferred to third parties.

Consumers, of course, who purchase electricity for their own consumption do not need a licence or other regulatory authorisation.

### **Licensing Requirements for Electricity Generation**

Electricity generation is subject to licensing if a producer's installed capacity is equal to or more than 5 MW. Renewable power producers who intend to sell the electricity to the guaranteed buyer under the green tariff must also be licensed. (Please see more about renewable energy generation in the next chapter, Renewables.)

Ukraine's generation licensing conditions contain numerous organisational, technological, professional and some specialised requirements.

### **Licensing Requirements for Supplying Electricity to End Consumers**

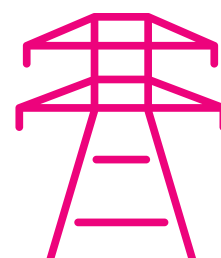
Suppliers may buy and sell electricity intended for end consumers under bilateral contracts and/or in the day-ahead, intraday, balancing and import markets. Delivering electricity to end consumers requires an agreement with the distribution system operator for transmission.

### **Licensing Requirements for Trading Electricity**

The electricity market law defines trading as buying or selling electricity with an intent to re-sell it under bilateral contracts and in other submarkets, including import and export markets. A trading license does not authorise a company to supply electricity to end consumers.

### **Electricity Exports and Imports**

Companies intending to import or export electricity must bid for access via an online auction platform. The transmission system operator, which operates Ukraine's high-voltage transmission grid, auctions access to its cross-border capacity through an electronic document management system and electronic signatures.



Electricity can be transmitted via cross-border power lines in the directions described below<sup>30</sup>

Cross-border power line	Cross-border power line
<b>From Burshtynska TPP Island to Hungary, Slovakia and Romania</b>	Maximum export capacity: 650 MW
<b>“Directional transmission” via 220 kV Dobrotvirska TPP-Zamosc (Poland) power line</b>	Maximum export capacity: 235 MW
<b>Moldova’s power system</b>	Maximum flow capacity between the IPS of Ukraine and the IPS of Moldova: 700 MW, but may be limited to zero
<b>Republic of Belarus<sup>31</sup></b>	Maximum flow capacity between the IPS of Ukraine and the IPS of Belarus: 900 MW
<b>Russian Federation<sup>32</sup></b>	Maximum flow capacity between the IPS of Ukraine and the IPS of Russia: 2,200 MW

Auctions are held for yearly, monthly and daily capacity.

The transmission system operator offers 35% of the available cross-border capacity for annual and monthly auctions, and 30% for daily auctions. The time schedule for yearly and monthly auctions publishes by the transmission system operator on its official website.

Capacity is allocated to the highest bidders until the relevant available cross-border capacity is fully allocated. The minimum that an auction winner must pay, the “marginal price for access”, is set by the transmission system operator.

The allocated capacity (except for daily capacity) may be transferred fully or partially from one participant to another subject to the performance of the financial obligations regarding the capacity of the original holder.

*Information in this chapter is based on certain aspects of Ukrainian legislation as of June 2021*

<sup>30</sup> <https://ua.energy/peredacha-i-dyspetcheryzatsiya/dyspetcherska-informatsiya/peretoky/#1547799203785-86e2a4ca-17eb>

<sup>31</sup> Imports of electricity from Russia and Belarus were restricted from 26 May 2021 until 1 October 2021.

<sup>32</sup> Imports of electricity from Russia and Belarus were restricted from 26 May 2021 until 1 October 2021.



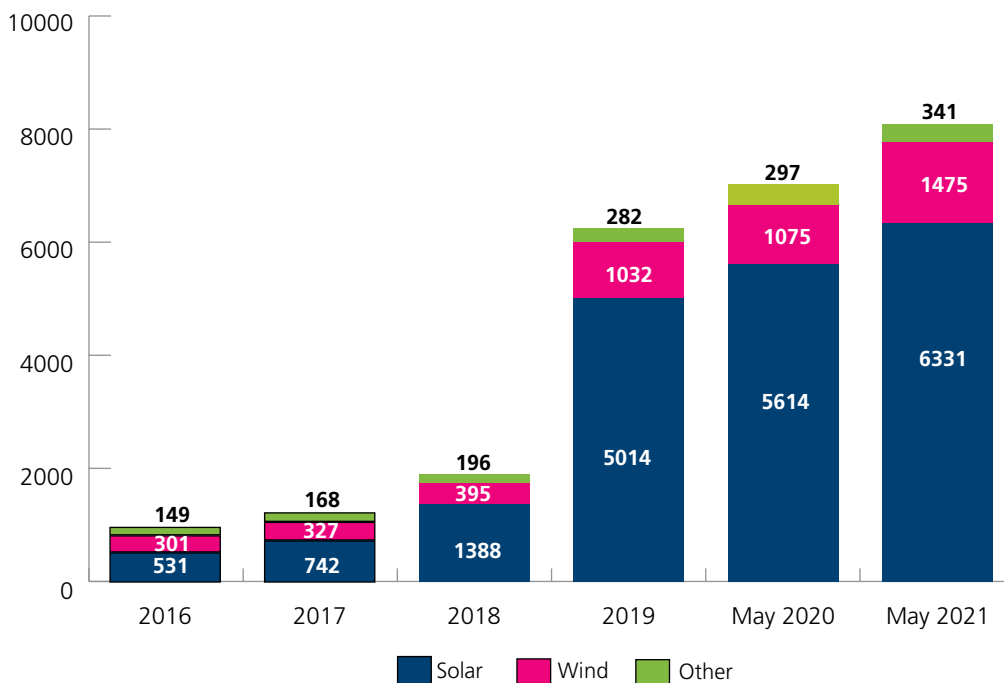
# Renewables

## General

### Statistics

Renewable energy generation is a key priority for both Ukraine's energy sector and the national economy. In the last few years, the renewables sector has shown huge growth in installed generation capacity. However, the market will not be able to keep up this momentum, as the government is delaying a transition to renewable capacity auctions.

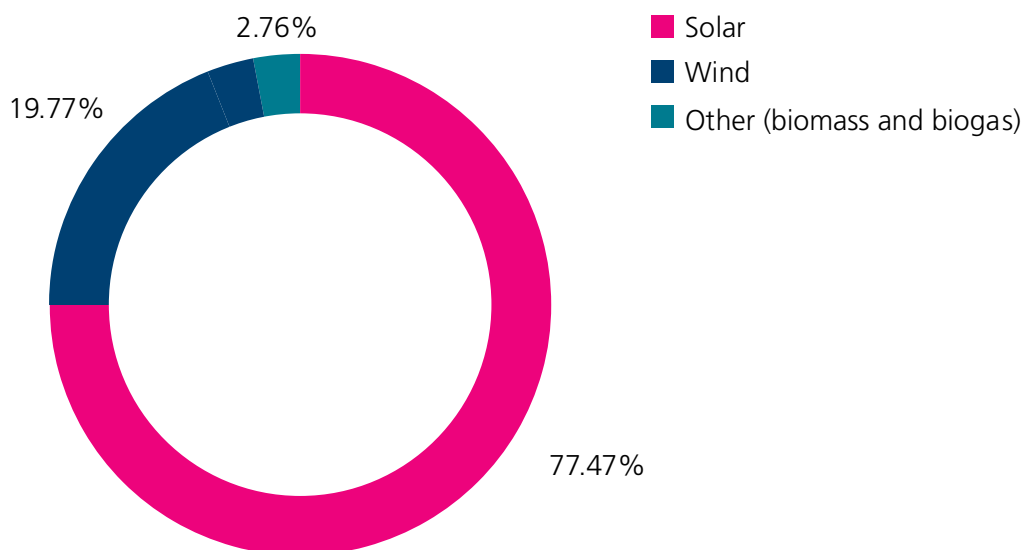
### Growth of RES projects installed capacity as of 1 May 2021 (MW)<sup>33</sup>



By May 2021 the total installed capacity of operating renewable energy projects reached 8,148 MW. That is about 13% of Ukraine's total energy mix. Almost three-quarters (77.47%) comes from solar power plants, 19.77% from wind power plants and the rest (approximately 3%) from biomass and biogas power plants. According to the "Energy Strategy of Ukraine until 2035" (Cabinet Resolution No. 605-p, 18 August 2017), the government expects the share of renewable energy to reach 25% by 2035.

<sup>33</sup> [http://www.nerc.gov.ua/data/filearch/elektro/energo\\_pidpryemstva/stat\\_info\\_zelenyi\\_taryf/2021/stat\\_zelenyi-taryf.4-2021.xlsx](http://www.nerc.gov.ua/data/filearch/elektro/energo_pidpryemstva/stat_info_zelenyi_taryf/2021/stat_zelenyi-taryf.4-2021.xlsx)

### Commissioned renewable energy projects as of May 2021<sup>34</sup>



More than 60% of all renewable generation is concentrated in five regions: Dnipro, Zaporizhia, Mykolaiv, Kherson and Odesa, which, apart from the Crimea, have the best wind resources and the highest insolation.

#### Regulatory Framework and Authorities

The renewable energy sector operates within the legal framework governing Ukraine's electricity sector, with the notable addition of the Law of Ukraine "On Alternative Energy Sources" (the alternative energy law).

Likewise, the main regulatory authorities for the renewables sector are the same as for the electricity industry, including the national regulatory authority – National Commission on State Regulation of Energy and Public Utilities Sectors.

#### Support schemes

The alternative energy law was enacted to support production and consumption of energy from alternative sources. The law enables economic incentives envisaged by energy efficiency and environmental legislation, and it seeks to create favourable conditions for the construction of alternative energy plants. As a result, a variety of benefits are available to renewable power producers, including a green (feed-in) tariff.

#### Green Tariff

On 1 April 2009, the Parliament of Ukraine introduced a green tariff to promote power generation from renewable energy sources. The tariff is a special price paid to producers of electricity from renewable sources (except for blast furnace and coke gas). It is awarded separately for each renewable producer, for each renewable source, and each energy generating facility, such as an individual power plant. Once awarded to a renewable energy producer, the green tariff support stays in effect until 2030.

<sup>34</sup> <https://ua.energy/vstanovlena-potuzhnist-energosystemy-ukrayiny/>

## Green Tariff Rates

The rate of the green tariff equals the established retail tariff for households (known as “Class 2” consumers) as of January 2009 multiplied by an index that varies depending on the energy source. It also decreases over time, but the decrease applies only to new projects only, and each renewable energy project (RPP) enjoys a constant rate until 2030.

Due to the rapid growth of installed renewable capacities, the green tariff support scheme became less sustainable. In autumn 2019, the Ukrainian Government initiated a discussion regarding further restructuring of green tariff support. This led to the signing on 10 June 2020 of a memorandum between the Cabinet and two major renewable energy associations in Ukraine, and the enactment on 21 July 2020 of the Law of Ukraine No. 810-IX “On amending certain legislative acts of Ukraine regarding improvement of terms of support of renewable energy producers”, restructuring the green tariff support scheme from 1 August 2020.

### Green Tariff rates for certain RPPs

Green tariff rates after decrease (Eurocents/KWh)							
Type of generation	Mechanical commissioning						
	Before 31 October 2020	Before 31 December 2020	Before 31 March 2021	Before 31 December 2021	Before 31 December 2022	Before 31 December 2024	Before 31 December 2029
Solar (ground based) ≥ 1MW	10.98	4.50 (For RPPs ≥ 75 MW)	4.35 (For RPPs ≥ 75 MW)		n/a*		
		7.88 (For RPPs < 75 MW)	7.62 (For RPPs < 75 MW)	4.35 (For RPPs < 75 MW)			
Solar (roof based) < 1 MW	12.28		11.85		11.47	11.04	10.66
Wind with turbine capacity >2MW	8.82					n/a**	
Wind with turbine capacity >2MW and total capacity <5MW	9.05						7.92
Biomass/biogas	12.39					n/a***	
Mini Hydro (0.2-1 MW)	12.55						11.15
Small Hydro (1-10 MW)	9.42						8.35

\* Must be commissioned within two years after execution of the Pre-PPA - the latest by the end of 2021.

\*\* Must be commissioned within three years after execution of the Pre-PPA - the latest by the end of 2022.

\*\*\* Must be commissioned before 1 January 2023.

### Adjustments for Currency Fluctuations

The green tariff is paid in UAH; however, it is adjusted each quarter based on the EUR exchange rate so that currency fluctuations do not adversely affect pay outs to renewable producers. In addition, it cannot fall below the minimum green tariff, which is fixed in EUR at the exchange rate on 1 January 2009.

### Preliminary Power-Purchase Agreements

By 31 December 2019, RPP developers must have executed a preliminary power-purchase agreement (“PPA”) with the state off-taker (the “guaranteed buyer”) to be eligible for the green tariff support on the commissioning of their projects by the established deadlines (except those which are exempted from mandatory auctions as explained below).

### Stabilisation clause

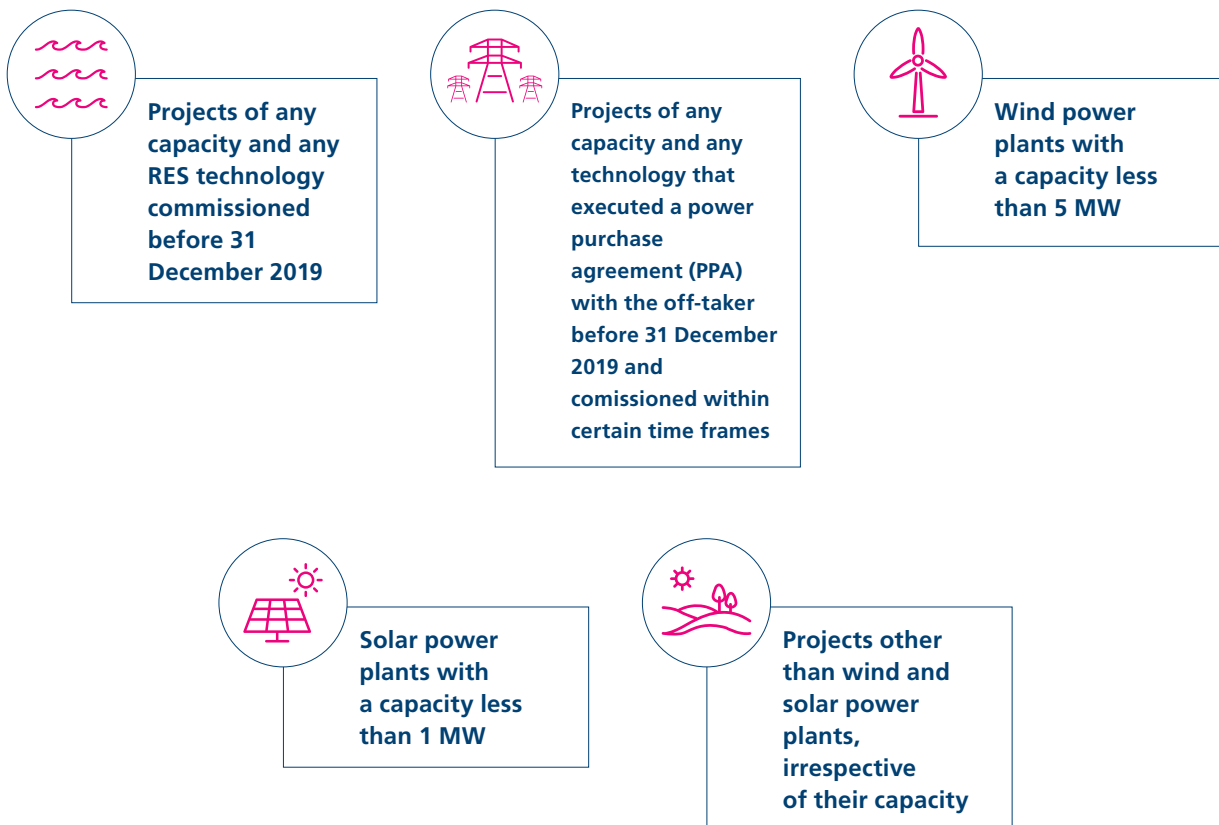
The operating RPPs under the green tariff are regulated by the legislation effective from 1 August 2020, except for those instances when newly enacted legislation decreases taxation, simplifies the regulation of business operations or softens legal responsibility. This stabilisation clause does not cover changes to legislation on defence, national security, taxation, public order and environmental protection.

The government also guarantees that until 31 December 2029, the green tariff will not be decreased or in other way changed to lower RPPs' lawfully expected income.

### Green Tariff Auctions

To create a competitive market for renewable energy sources (RES), Ukraine has implemented an auction scheme for green tariffs. On 25 April 2019, Law No. 2712-VIII “On the Introduction of Certain Changes to the Laws of Ukraine regarding Ensuring Competitive Conditions for the Generation of Electricity from Alternative Energy Sources” established a green tariff auction system to start in 2020.

Despite these legislative changes, the following renewable projects can still benefit from green tariff:



## Quota Auction System

Any renewable energy project can bid for a quota. Auctions are held twice a year, before 1 April and before 1 October. The main provisions of the Auctions Law are as follows.

- **Model of Support.** The off taker guarantees to purchase all electricity produced by the project at the established fixed tariff, within the limits of the quota purchased at auction.
- **Duration.** The project is entitled to the fixed tariff for 20 years after commissioning.
- **Quota Sizes.** The yearly quota for green tariffs is prepared by the Ministry of Energy of Ukraine based on proposals from the transmission system operator and the State Agency on Energy Efficiency and Energy Saving. It is then adopted by a Cabinet decision. The quotas are established yearly by 1 December for the following year with indicative forecasts of the annual quotas for the four years following the year for which the quota was established.
- **Quota Allocation.** The yearly quota is allocated among wind, solar, and other renewable energy sources, with each category receiving at least 10% of the total quota. A category whose share is not allocated during an auction can, by Cabinet decision, be allocated to another category in the next auction. The Cabinet may also decide to have a technology neutral quota or a quota for all technologies except for the solar and wind. The Cabinet can also propose land plots or roof/facades of buildings with specified technical characteristics and grid connection conditions within the yearly quota for certain renewable energy technologies
- **Auction Model.** Bidders submit sealed bids that include a technical proposal (the size of the capacity sought for certain power facilities) and a price proposal (the price the bidder is ready to accept per 1 kWh of generated electricity). The sealed bids are opened simultaneously with the award going to the lowest bidder. The platform for auctions is Ukraine's public procurement platform, Prozorro.
- **Mandatory Auctions.** Auctions are mandatory for:
  - wind generation above 5 MW without Pre-PPA executed before 31 December 2019 and later than 31 December 2022;
  - solar above 1 MW without Pre-PPA executed before 31 December 2019 and commissioned later than 31 December 2021; and
  - biomass/biogas commissioned after 1 January 2023 irrespective of the installed capacity.

For all other renewable technologies, participation in the auctions is voluntary.

- **Auction Price.** The auction price is fixed in EUR at the official exchange rate of the national bank of Ukraine as of the date of the power-purchase agreement.
- **Ensuring Competition at the Auction.** Competition is a mandatory requirement for the auction. The total capacity to be awarded to the winners cannot exceed 80% of the total capacity that all bidders request for each renewable energy technology.
- **Restrictions on Monopolisation.** The maximum share of the yearly quota awarded to a single bidder, including related parties, cannot exceed 25% of the yearly quota, i.e. in total for two auctions in one year.
- **Ceiling Prices.** For wind and solar, the maximum price is EUR 0.09 per kWh for auctions held until 31 December 2024 and EUR 0.08 for auctions held after 1 January 2025. For other renewable technologies, the ceiling price is EUR 0.12 per kWh.

- **Bank Guarantees.** To participate in an auction, a bidder must obtain a bank guarantee of EUR 20 per 1 kWh of capacity, which comprises: EUR 5 per 1 kWh as a bid bond to participate in the auction; and EUR 15 per 1 kWh to be provided in addition as a performance bond to ensure construction of the project, if the bidder wins the auction.
- **Pre-qualification requirements.** Bidders must demonstrate proof of land ownership or use rights, as well as a grid connection agreement.

### Local content premium

Renewable producers may also receive a premium on top of the green tariff or auction tariff if they use Ukrainian equipment, such as PV modules, trackers, rotor blades, nacelles, metal frames, boilers, anaerobic digestion reactors, pumps, etc.

RPPs that use more than 30% of local equipment receive a 5% premium; projects that use more than 50% receive a 10% premium, and if the share of local equipment exceeds 70%, such RPPs are eligible for a 20% premium, decreasing to 10% after six years of operation.

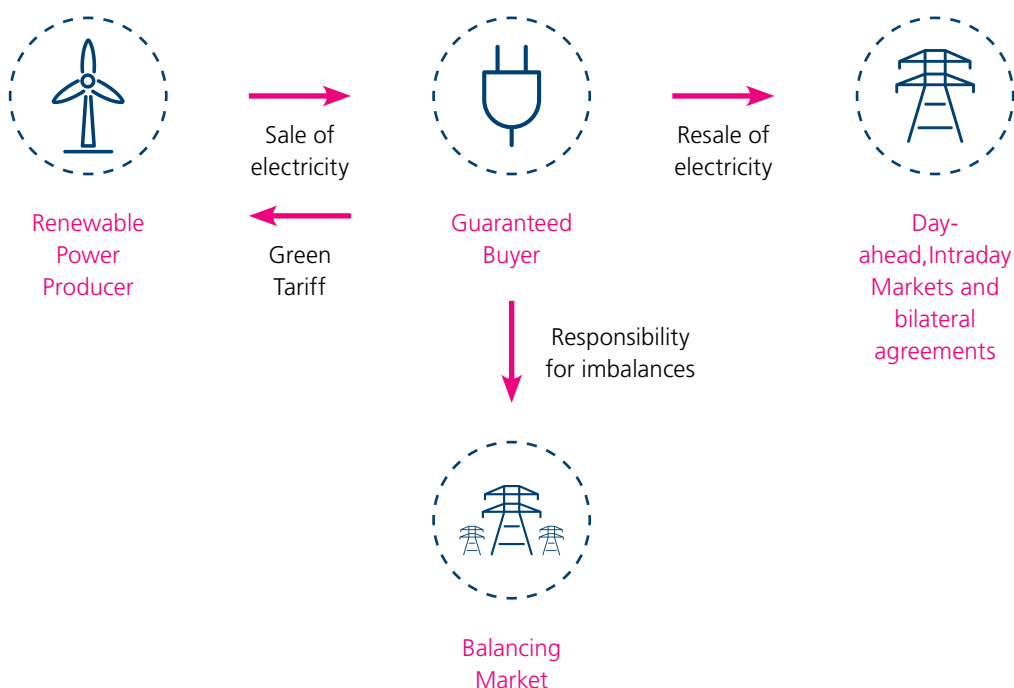
### Corporate PPAs

The Ministry of Energy of Ukraine is working towards adjusting the legislation in order to allow the implementation of corporate PPAs.

### The guaranteed buyer

Renewable energy producers sell electricity at the established green tariff under the power purchase agreement with the guaranteed buyer. The latter then resells the electricity on the day-ahead and intraday markets.

### General structure of the sale of electricity to the Guaranteed Buyer under the Green Tariff



Renewable producers who sell electricity at the green tariff as well as renewable auction winners must also join a special balancing group among whose members the guaranteed buyer settles imbalances. The producers must reimburse the guaranteed buyer a share of the costs associated with settling imbalances, with their share increasing to 100% in 2022.

## The share of imbalances that renewable power producers must reimburse to the guaranteed buyer

Period	Share (%)
between 1 July 2019 and 31 December 2020	0
from 1 January 2021	50
from 1 January 2022	100

Until 31 December 2029, tolerance for imbalances will be 5% for solar RPPs and 10% for wind RPPs.

Market participants are also discussing new legislation that would allow renewable power producers to leave the balancing group of the guaranteed buyer and freely sell electricity on the market, with the possibility to receive compensation amounting to the difference between the green tariff rate or auction price established for such RPP and market price (at least the price on the day-ahead market) from the guaranteed buyer.

### Connection to the grid

The Electricity Market Law sets out the basic legal framework for connecting RPPs to the grid. Depending on who owns the grid, either the transmission system operator or a local distribution system operators (known as an "Oblenergo"), is responsible for connecting a power plant.

### Legal Framework for Connecting to the Power Network

Ukraine's distribution systems code of 14 March 2018 sets out the general rules for connection to Oblenergo's network. However, RPPs must follow requirements of the transmission system code in the following cases:

- power plants with an installed capacity above 20 MW;
- power plants with an installed capacity of 20 MW or less according to the feasibility study;
- electrical installations of distribution systems;
- high-voltage direct current systems (PSVN systems); and
- electrical installations with a voltage level 220 kV and above (objects of power consumption) according to the feasibility study.

### Connection Procedure

To establish a grid connection, the transmission system operator or the distribution system operator must first identify a customer's connection point and the operator's "ensuring" point.

- The connection point is a location on a customer's power lines (existing or designed). This point sets the boundary of the customer's "balance responsibility", i.e. the customer's responsibility to maintain the power infrastructure, such as transmission towers, power lines and other objects, and to keep them on its balance sheet.
- The ensuring point is a location on the power lines of the transmission system operator or the distribution system operator where the relevant operator starts development (construction or modernisation) of the lines needed to connect the customer.

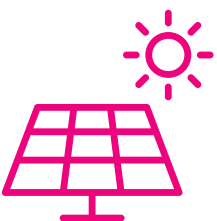
### Types of Connection

There are both standard and non-standard connections. A standard connection occurs when the distance between the connection and ensuring points is equal to or less than 300 meters and the voltage at both points is the same or less than 50 kV. A non-standard connection occurs if the voltage at the connection and ensuring points differs, or if the voltage exceeds 50 kV.

### **Connection Fee**

The connection fee is based on the cost of construction (or reconstruction) of the grid infrastructure (power lines, equipment at the switch yard, etc.) between the connection and ensuring points and is calculated under a methodology approved by Resolution No 1965 (18 December 2018) of the regulator.

*Information in this chapter is based on certain aspects of Ukrainian legislation as of June 2021*







# Natural resources, mining, oil and gas

## General

### Introduction

Ukraine is rich in mineral resources, and 48% of Ukrainian industrial potential is related to their production and use. Note that Ukrainian legislation includes oil and gas in “mineral reserves”. Energy independence is one of Ukraine’s main strategic aims, and as a result Ukrainian gas extraction has been increasing steadily for the last five years.

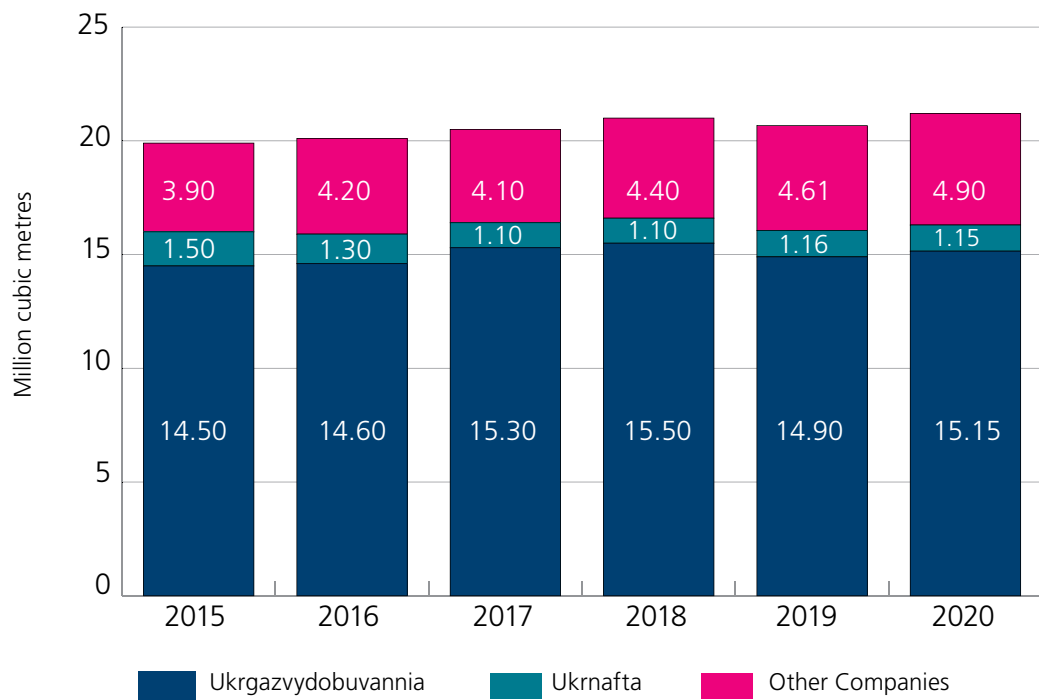
### Statistics

The state balance of reserves has a record of 8,761 oil, gas and mineral deposits of 95 different types, and of these, 3,055 are being developed. Ukraine’s gas transmission system is one of the largest in the world, consisting of 37,600 kilometres of pipeline, 73 compressor stations with a capacity of 5,496 MW, and 13 underground gas storage facilities with a volume of 31,950 billion cubic meters.

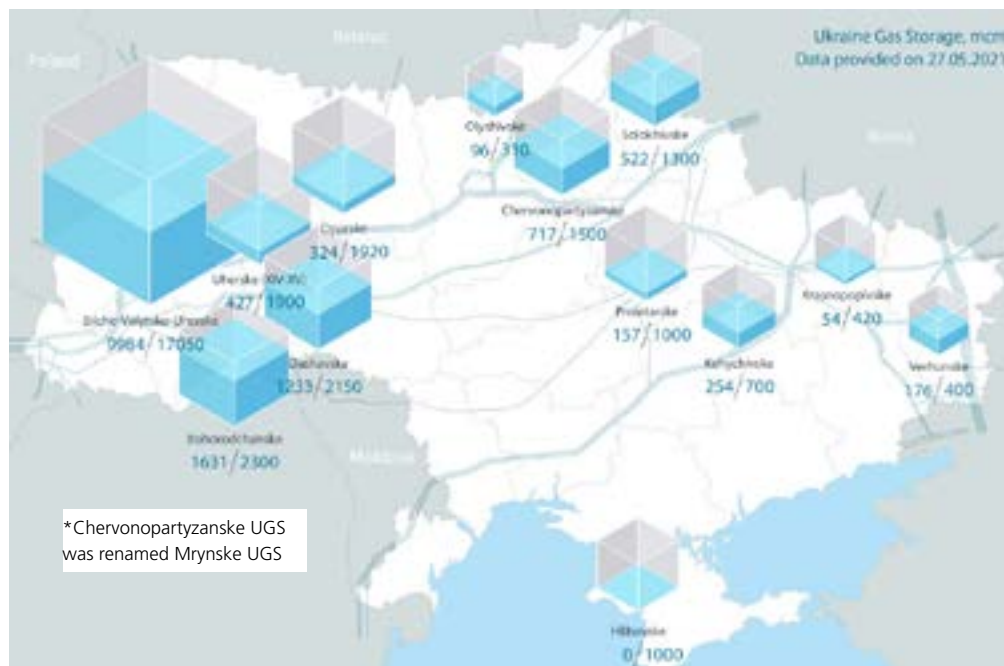
Estimation of Ukrainian mineral reserves in 2020	
Natural Gas	1,458,938 million cubic meters
Oil	173,291,000 tons
Coal	61,682,782,000 tons
Iron ore	37,230,226,900 tons
Manganese ore	3,297,117,800 tons
Aluminium ore	18,885,000 tons
Copper ore	20,561,000 tons
Sulphur	605,393,000 tons



**Gas extraction (on the basis of data provided by Naftogaz on 6 January 2021)**



**Ukrainian GTS and natural gas reserves in underground gas storage facilities as of 27 May 2021**



Copyright: Naftogaz Europe (<https://naftogaz-europe.com/article/en/englstorage>)

## Regulatory Framework and Authorities

The exploration and extraction of mineral resources in Ukraine is governed mainly by the following laws:

- Code of Ukraine on the Subsoil No. 132/94-BP dated 27 July 1994;
- Law of Ukraine No. 1039-XIV “On Production Sharing Agreements” dated 14 September 1999;
- Law of Ukraine No. 2665-III “On Oil and Gas” dated 12 July 2001;
- Mining Law of Ukraine No. 1127-XIV dated 6 October 1999;
- Law of Ukraine No. 1216-XIV “On the State Geological Service of Ukraine” dated 4 November 1999;
- Resolution of the Cabinet of Ministers of Ukraine No. 615 “On Approval of the Procedure for Issuance of the Special Permits for Subsoil Use” dated 30 May 2011;
- CMU Resolution No 594 “On Approval of the Procedure for Holding Auctions for the Sale of the Special Permits for Subsoil Use” dated 30 May 2011; and
- CMU Resolution No 939 “On Certain Questions on the Disposal of Geological Data” dated 7 November 2018.

Ukraine is currently undergoing legislative and regulatory reform to maximise the extraction of its mineral resources and reduce its dependency on imports. This program is described in Law of Ukraine No 3268-VI “State Programme for the Development of Mineral Resources in Ukraine until 2030” dated 21 April 2011.

The reform program follows Ukraine’s national energy strategy, which envisions the further alignment of legislation with EU and Energy Community directives, and prioritises an increase in domestic extraction of natural gas to levels that will allow exports.

Other notable legislation applicable to the mineral resources sector includes:

- Tax Code No. 2755-VI dated 2 December 2010 (taxation of subsoil use activities);
- Land Code No. 2768-III dated 25 October 2001 (allocation of land plots for subsoil use);
- Health and safety laws, including the Law of Ukraine No. 1264-XII “On Environmental Protection” dated 25 June 1991, Water Code of Ukraine No. 213/95-BP dated 6 June 1995, Forest Code of Ukraine No. 3852-XII dated 21 January 1994, the Law of Ukraine No. 2059-VIII “On Environmental Impact Assessment” dated 23 May 2017 (EIA Law) and the Law of Ukraine No. 2245-III “On Objects of High Hazard” dated 18 January 2001; and
- Commercial Code No. 436-IV dated 16 January 2003 and Civil Code No. 435-IV dated 16 January 2003.

The main regulatory authorities of Ukraine’s extractive industries are:

- Parliament of Ukraine, which passes primary legislation;
- Cabinet of Ministers of Ukraine, which passes secondary legislation that implements primary legislation;
- Ministry of Environmental Protection and Natural Resources<sup>35</sup>, which is responsible for state policy in the mineral resources and the state environmental policy, as well as for supervising the rational use of the mineral resources;
- Ministry of Energy, which is responsible for state policy in the oil and gas sector;
- State Labour Service of Ukraine, which is responsible for state policy regarding industrial safety and labour protection; and
- State Service for Geology and Subsoil of Ukraine, which issues subsoil licences, monitors users’ compliance with legislation, and imposes penalties for its violation.

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<sup>35</sup> Please note that Ministry of Energy and Environmental Protection was split on 27 May 2020 into Ministry of Energy and Ministry of Environmental Protection.

### Classification of Mineral Resources

Cabinet Resolution No 827 “On Approval of Lists of Mineral Resources of State and Local Importance” (12 December 1994) classifies mineral resources into two groups:

- mineral resources of state importance (for example oil, gas, coal, metallic ores and so on); and
- mineral resources of local importance (for example gypsum, chalk stone, sand and on).

Reserves are also classified by quantity. Cabinet Resolution No. 1257 “On Approval of the Criteria for Identification of Non-Significant Reserves of Mineral Resources” dated 11 August 2000 identifies deposits (except for oil and gas deposits) as either “significant” or “insignificant”, as well as the thresholds needed for particular minerals to be considered significant (five million tons for coal, ten million tons for ore, etc.).

### Rights to Mineral Resources

#### Subsoil Use Permits

According to Ukraine’s constitution, mineral resources belong to the Ukrainian people. Although the people retain ownership, state authorities may dispose of subsoil rights to those minerals on behalf of the people.

The right to use the subsoil is granted via special permits for subsoil use (“Special Permits”) from the Ukrainian Geological Survey. A subsoil user becomes the owner of the mineral resources once the resource reaches the surface. In certain cases, a Special Permit is the basis for obtaining other permits and authorisations needed to develop the resource. Special Permits differ by type of activity, as follows:

Activity	Duration
<b>Exploration</b>	Up to 3 years for mineral resources of local importance, and up to 5 years for mineral resources of state importance
<b>Exploration, including pilot commercial extraction of deposits of state importance (including hydrocarbons)</b>	Up to 5 years for onshore operations and up to 10 years for offshore hydrocarbons
<b>Extraction</b>	Up to 20 years for onshore operations, and up to 30 years for offshore hydrocarbons
<b>Combined exploration and extraction of hydrocarbons</b>	Up to 20 years for onshore operations, and up to 30 years for offshore operations
<b>Performance of activities under a product sharing agreement</b>	Up to 50 years

#### Types of Special Permits for subsoil use in Ukraine

In addition to obtaining subsoil rights, a subsoil user is generally required to obtain land-use rights from the respective land owners to explore or produce resources from a particular part of the licenced area.

Special Permits are non-disposable. This means that their holders cannot sell, lease or pledge the Special Permit, contribute it to the charter capital of other entities or otherwise dispose of it. A minor exemption exists for a corporate reorganisation by way of a spin-off, in which case a Special Permit may be transferred to a subsidiary that will continue the subsoil activities of the parent company. It should be noted that the question of the transferability of the Special Permits has been under discussion in Ukraine for many years. Currently, the Parliament of Ukraine is considering draft law No. 4187 dated 5 October 2020, which should provide for such mechanism.

Each Special Permit is supplemented by a subsoil use agreement which establishes the basic rights and obligations of the subsoil user, including:

- minimum investment commitments;
- the scope and timeframes of the work; and
- the environmental protection requirements.

If a permit holder does not comply with the subsoil use agreement, including the work program, Ukrainian Geological Survey may suspend the permit, and if the holder fails to remedy breaches within the prescribed period – cancel it.

A subsoil user is also liable for the compliance of its contractors with the terms of the Special Permit and subsoil use agreement, including in relation to damage to the subsoil, environment and human health.

### Special Permit Auctions

Special Permits may be purchased at subsoil auctions held by Ukrainian Geological Survey. In some cases, they may be awarded without an auction, for example under a production sharing agreement entered into with the state. Alternatively, subsoil rights can be acquired through a regular merger or acquisition with an existing Special Permit holder.

The starting price for a subsoil auction is determined by a special methodology established by the Cabinet. Since December 2019, Special Permit auctions have been held online via the auction platform Prozorro. Fees also apply to renew a Special Permit and for its re-issuance in connection with the extension of the licenced area’s acreage.

### Procedure for obtaining Special Permit through an auction



Source: Ukrainian Geological Survey

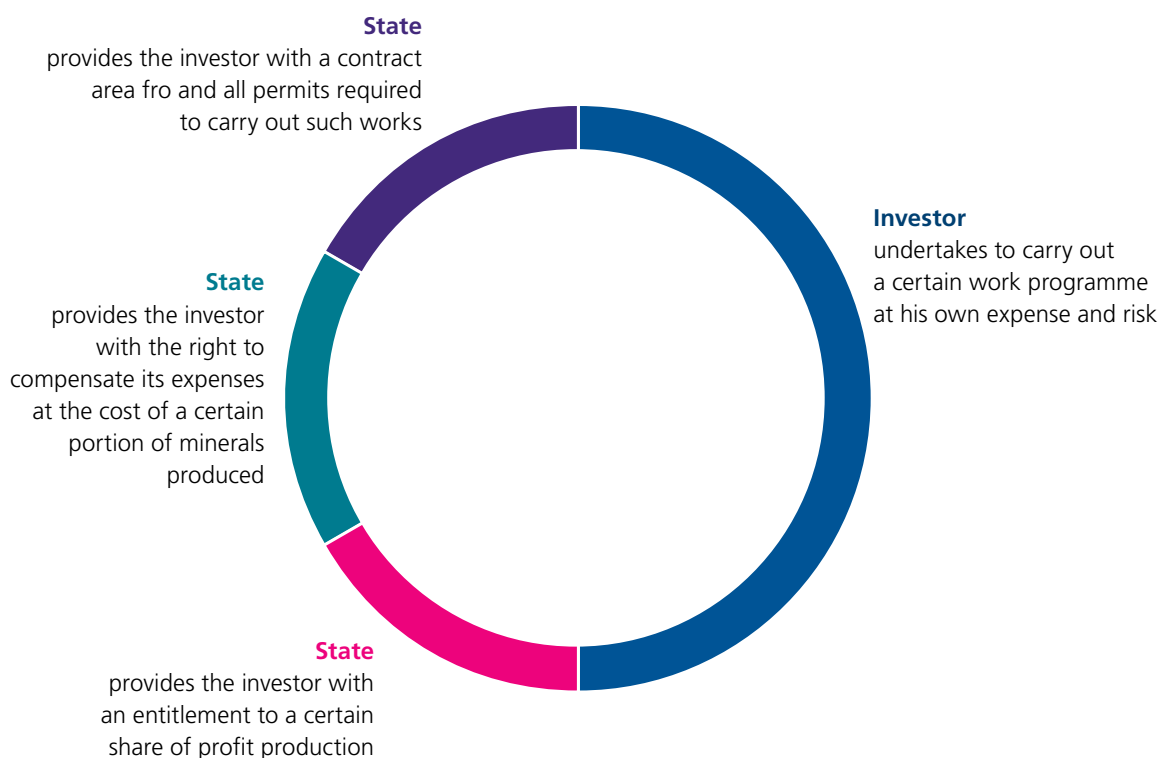
**The winner:**

- (1) Signs the protocol of auction.
- (2) Pays a fee to the exchange operator.
- (3) Concludes a contract of purchase and sale of a special license.
- (4) An agreement on compensation of state expenses for exploration works is concluded.
- (5) Pays the fee to the state budget.
- (6) Concludes an agreement on terms and conditions of subsoil use.
- (7) Receives a license.

**Production Sharing Agreements**

A production sharing agreement (“PSA”) is entered into between an investor and the Cabinet representing the state. Under the PSA, the state is obliged to issue a Special Permit and other permits required by law to an investor to carry out activities under the PSA for its duration. In turn, the investor commits to carry out the agreed exploration and production activities at its own expense. It is entitled to receive part of the produced minerals (its share in profit production) and to compensate its expenses at the cost of the produced minerals before sharing them with the state (from the production costs).

**Responsibilities of the parties to PSA**



A PSA is signed with the winner of a competitive tender. However, an existing Special Permit holder may apply to the state for the conversion of a Special Permit (regular licencing regime) into a PSA without a tender.

Tender participants must pay an application fee defined by the Cabinet in the tender conditions. The Cabinet may also set a PSA signing bonus and the winner of the tender is also generally required to pay a fee for the issuance of the Special Permit and to compensate the state for the cost of geological information developed by the state regarding the PSA area, if any such is available.

Generally, the PSA regime is more attractive than the licensing regime, as an investor receives significant benefits, including:

- a “stability” clause that protects the investor from any adverse changes in legislation (environmental regulations and legislation on national security and defence and public order are exempt);
- assistance from the state in obtaining the necessary permits and authorisations, including the Special Permit for the relevant subsoil area;
- dispute resolution through international arbitration;
- special terms and exemptions for foreign currency transfers and customs operations, including the export of production;
- the investor’s profit for tax purposes is determined as the value of a profitable share of resources allocated to the investor under the PSA. All other types of income received by the investor while implementing the PSA are not subject to corporate income tax;
- 
- services received by a foreign investor from non-residents within the territory of Ukraine are not subject to VAT;
- reduced royalty tax rates; and
- the term of the agreement can be up to 50 years (a Special Permit only for 20 years onshore, and up to 30 years on the shelf).

#### **M&A with Existing Subsoil Users or Joint Activity Arrangements**

Any investor can either: (a) buy a share in a company that already holds a Special Permit, concluded a PSA or which conducts joint activities with a Special Permit holder; or (b) create a joint venture with its partner by incorporating a new company under the laws of Ukraine with a shared charter capital.

Alternatively, an investor can be engaged in an unincorporated joint activity with a Special Permit holder under a Joint Activity Agreement (“JAA”). Under a JAA, the partners share commitments, profits and expenses under the terms and conditions of JAA they conclude. However, at present a JAA is a less favourable option for production, as it lacks stability and proper regulation under Ukrainian law, and is subject to very high royalty fees of 70%.

#### **Other Options**

In a few limited cases, the Ukrainian Geological Survey may grant Special Permits without an auction, PSA or concession, including:

- where an investor holding a Special Permit for exploration activities has performed:
  - (i) a geological survey of the licenced area; and (ii) a calculation of the mineral reserves which was approved with the state, provided that it applied for a Special Permit for the extraction of minerals within three years after such approval;
- where the holder of the Special Permit applies for an extension of the acreage of a subsoil area by up to 50% for exploration purposes; however, the extension can be made only once and it must not result in an increase in the estimated reserves under the Special Permit by 50% or more; and
- where the permit is for the exploration and extraction of minerals of local importance.



## Royalties and Payments for Subsoil Use

### Royalty Rates

Subsoil users must pay a royalty per volume of extracted minerals. The amount payable is based on the value of the mineral resources extracted during the reporting period and are established by the tax code for each separate mineral resource.

### Royalty rates<sup>36</sup>

Mineral Resource	Rate
<b>Coal</b>	0.75% to 1.5%, depending on the type of coal
<b>Ores</b>	5% to 12%, depending on the type of ore
<b>Amber</b>	10%
<b>Oil</b>	31% for oil extracted from deposits at a depth of up to 5 km 16% for oil extracted from deposits at a depth of more than 5 km
<b>Natural gas</b>	11% for offshore gas 14% for gas extracted from deposits at a depth of more than 5 km 29% for gas extracted from deposits at a depth of up to 5 km 70% for gas extracted under a product sharing agreement
<b>Natural gas from wells drilled after 1 January 2018</b>	6% for wells with a depth more than 5 km; 12% for wells with a depth less than 5 km. A stabilisation clause guarantees that these rates for new wells will remain fixed until 2023.
<b>Other minerals</b>	5%

In certain cases set out in the tax code, such as the extraction of mineral resources exceeding permitted volumes or from certain types of deposits such as a continental shelf, royalty rates may also be adjusted, with indexes varying from 0.01 up to 2.00.

### Royalty Payments under PSAs

For PSAs, the investor pays a royalty based on the rate envisaged in the PSA, which cannot be lower than those established in the Tax code. For hydrocarbons, the applicable royalty rates are 2% on oil and condensate and 1.25% on natural gas, including associated, shale, tight gas, coalbed methane, etc.

<sup>36</sup> At the moment Ukrainian Parliament is considering draft law No. 5600 dated 2 June 2021 which, if adopted, will change the basis for calculating royalties and increase royalties for iron ore.



## Exports and Imports of Mineral Resources

### Exports

Certain mineral resources are subject to export duties, namely natural gas and scrap metals. Natural gas exported to countries that are not members of the EU or the Energy Community is charged an export duty of 35% on its customs value, with a minimum duty of UAH 400 (approx. EUR 13.37). Gas exported to countries that are members of the Energy Community is not subject to export duty.

Exports of scrap metals (both precious and non-precious) are subject to an export duty of EUR 58 per tonne.

There are also specific regulations and restrictions on the export of precious metals and anthracite, and on the re-export of certain minerals:

- Exports of precious metals (silver and gold, waste or scraps of precious metals or containing precious metals, save for banking metals) are subject to mandatory licensing and quotas; in 2021, the relevant quotas were zero, which indicates that the export of these metals is currently not allowed.
- Licences to export anthracite are issued by the Ministry for the Development of Economy, Trade and Agriculture (MEDT) and are also subject to approval by the Ministry of Energy, although no quotas apply.
- A permit from MEDT must be obtained to re-export oil, liquefied natural gas, aluminium, scrap non-precious metals, copper and nickel.

### Imports

A variety of customs duties apply on imports of mineral resources.

- Most mineral resources are subject to a 2% duty on their customs value, including:
  - salt, sand, quartz, calcium phosphate, pumice, marble, gravel, limestone, asbestos and mica;
  - iron ore, manganese ore, copper ore and uranium ore; and
  - unsorted diamonds, unprocessed precious stones (except for diamonds), silver, gold and platinum.
- Sulphur is subject to a 1% import duty on its customs value.
- Calcined magnesia is subject to a 0.1% import duty on its customs value.
- Unprocessed diamonds are subject to a 5% import duty on their customs value.
- Kaolin, chalk, granite, lime flux, lime carbonate, concrete, and bitumen are subject to a 10% import duty on their customs value.
- Bentonite is subject to 20% import duty on its customs value.
- Majority of types of coal (with certain exception in relation to anthracite and certain other types of coals used in metallurgy) originating from Russian Federation are subject to 65% import duty.

Although oil is currently not subject to import duties, gasoils originating from the Russian Federation are subject to import duty of 4% on their customs value and to excise tax in Ukraine.

Imports of mineral resources, including oil and gas, are subject to VAT at the general rate of 20%.

## Extraction Permits

### Environmental Permits

Most extractive operations (including of oil and gas) require an environmental impact assessment (EIA), which must be performed as a pre-requisite for commencing activities and obtaining the respective permits, including Special Permits, construction permits and various environmental permits. The EIA process is complex and takes at the very minimum three, but usually up to six months.

In addition, the following environmental permits are generally needed for exploration and extraction operations, depending on the type of mineral resource, its location and the characteristics of the site:

- permit for waste disposal, obtained from a local state administrative body;
- an air pollution permit, issued by the Ministry of Environmental Protection or its local body; and
- a permit for special water usage, obtained from local bodies of the State Agency of Water Resources of Ukraine.

### Health and Safety Permits

Ukrainian primary and secondary legislation, as well as standards and regulations, provide for numerous health and safety requirements in relation to extracting activities, including minimum qualifications for manpower, protective measures, equipment, and so on.

Extraction activities usually involve hazardous work, such as operating hazardous machinery and high-pressure equipment, work conducted underground or at height, or welding or demolition. As a result, a subsoil user or its contractors must obtain permits from the State Labour Service of Ukraine to perform such hazardous work and operate the respective hazardous equipment.

In order to use explosives for any operations on the subsoil, the subsoil user must further obtain the necessary permits for the acquisition and storage of explosive materials.

## Gas and Oil Markets

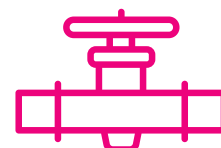
### The Regulator

The natural gas market of Ukraine is regulated by the National Commission on State Regulation of Energy and Public Utilities Sectors, an independent public authority that monitors and controls the energy and public utilities sectors. The commission has the right to:

- issue mandatory resolutions, orders and regulatory acts;
- establish licensing conditions and grant licences activities in the electricity and gas markets, as well as in the public utilities sector;
- establish tariffs; and
- supervise, monitor and control the behaviour of market players in these sectors.

### Natural Gas Market

The principal law governing the natural gas market is the Law of Ukraine “On Gas Market” which came into effect on 1 October 2015. Transmission, distribution and storage codes, gas supply rules, and emergency and national action plans also contribute to the legal framework for the natural gas market.



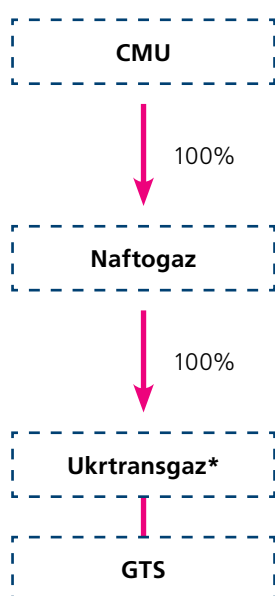
Ukraine's natural gas market is undergoing reform as it moves towards the uniform rules envisaged by the EU's Third Energy Package<sup>37</sup>. Among various other changes, Ukraine's gas transmission system (GTS) has been unbundled in line with the EU rules and Ukraine has adopted a coding system recommended by the European Network of Transmission System Operators for Gas (ENTSOG).

### Unbundling

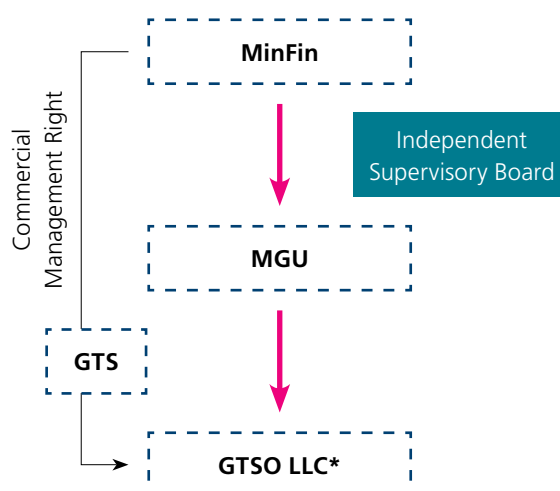
On 1 January 2020, an unbundling plan that implements an independent transmission system model came into effect (Cabinet Resolution No. 840, 18 September 2019). Under this resolution a new entity, LLC Gas Transmission System Operator, has replaced JSC Ukrtransgaz as Ukraine's transmission system operator (TSO). JSC Ukrtransgaz continued functioning as a SSO.

### Structure of Ukraine's gas transmission system before and after unbundling

#### Current GTS Management Structure



#### Post-Unbundling ISO Model (Starting from 1 January 2020)



Please note that Ukrtransgaz refers to JSC "Ukrtransgaz", GTSO LLC refers to the LLC "Gas Transmission System Operator", MGU refers to JSC "Main Gas Pipelines of Ukraine", Naftogaz refers to JSC "National Joint Stock Company "Naftogaz of Ukraine" and Minfin refers to Ministry of Finance of Ukraine.

### The Market Model, Transportation and Storage Systems

The natural gas market of Ukraine works on the entry-exit tariff model. Network users pay for the transportation of natural gas through the Ukrainian GTS through fees for allocated capacities at entry and exit points on the system, such as interconnection points with neighbouring gas markets, extraction sites, storage facilities, distribution networks, large consumers directly connected to the high-pressure pipeline, and LNG terminals.

<sup>37</sup> The European Union's Third Energy Package is a legislative package for the internal gas and electricity market in the European Union. Its purpose is to further open the gas and electricity markets in the European Union. The package was proposed by the European Commission in September 2007 and adopted by the European Parliament and the Council of the European Union in July 2009. It entered into force on 3 September 2009. For more information, please follow this link: <https://ec.europa.eu/energy/en/topics/markets-and-consumers/market-legislation/third-energy-package>.

The following fees apply:

- **Entry and exit fees.** To transport gas to or from Ukraine, a company must reserve capacity at the entry and exit points on the Ukrainian GTS and pay the respective fees. The TSO allocates capacity for periods of a year, quarter, and month, as well as on a day-ahead basis, taking into account the technical capabilities of the transmission system. The entry fees are paid upfront for the amount due each month.
- **Domestic transmission fees.** GTS customers pay the TSO a transmission fee per 1,000 cubic meters, which varies depending on the exit point to which the gas is transported. Currently, the fee for transporting natural gas to exit points from GTS underground storage facilities is zero.
- **Storage fees.** To store natural gas in Ukrainian underground facilities, the customer pays fees to the storage system operator (SSO). The SSO charges separate fees for injection, withdrawal and storage of natural gas in its underground facilities, and each user is required to make a 100% prepayment for these services under the natural gas storage agreement.

To have natural gas transported from the entry point to the exit point, a customer must sign a transportation agreement with LLC Gas Transmission System Operator, which performs the functions of Ukraine's TSO, obtain a capacity allocation and submit nominations to the TSO. Customers are also responsible for ensuring the balance between the gas it delivers to and withdraws from the GTS, including for imports and exports and injection into and withdrawal from underground storage, as well as during transportation.

According to the Transmission System Code, when natural gas is sold or traded, the transfer and acceptance of the gas occurs either at physical entry/exit points that are equipped with meters or at virtual entry/exit points in the GTS. The transfer of natural gas at virtual points is executed on the basis of trade notifications submitted to the TSO via an electronic platform by both parties to the transaction.

Customers storing gas in underground storage may also trade or transfer their gas in the storage system. SSO currently operates 11 underground storage facilities with a total capacity of almost 31 bcm. One additional storage unit is located on the temporarily occupied and uncontrolled territory of Ukraine. All storage facilities are operated as a single unit, which means that the SSO solely decides which specific storage will be used for the injection or withdrawal of gas to optimise the efficiency of the entire system.

Distribution to end consumers is done by the distribution system operators directly on the basis of distribution agreements with customers. Thus, a gas supplier is not responsible under law for the proper distribution of gas to its consumers.

### **Short-haul**

Capacity with limitations (short-haul) is a new product of TSO which became operational after 1 January 2020 and which provides the possibility to book capacities of certain entry/exit points of Ukrainian GTS with cheaper fees as an alternative to booking of the capacities of Ukrainian GTS under the general procedure.

Short-haul capacities can be used on monthly or day ahead interruptible basis for (1) transit of natural gas through the territory of Ukraine (currently applicable only on the Western border of Ukraine – short-haul); and (2) transportation of natural gas in and out of the country for its storage in the CWR (please see item 6.2.4 for more information). In table below we provide schematics of how short-haul may be used.

## Entry/exit points of Ukrainian GTS with capacities with limitations



Copyright: Gas Transmission System Operator of Ukraine (<https://tsoua.com/>)

### Natural Gas Stored in Customs Warehouse

Generally, natural gas brought into Ukraine must clear customs either under the free circulation regime or the customs warehouse regime (CWR). Gas imported for free circulation is subject to a 20% import VAT on the customs value of the gas.

The CWR offers certain benefits for importers. Customs Code No. 4495-VI (13 March 2012) includes CWR as one of the regimes, under which goods may be stored on Ukrainian customs territory and under the control of Ukrainian customs authorities. Placing natural gas under the CWR is exempt from duties and taxes, including the 20% import VAT, and is exempt from non-tariff regulations as well.

Natural gas imported under the CWR is stored in Ukrainian underground facilities and exempt from the import VAT for 1,095 days after it crosses the Ukrainian border. After 1,095 days, it must be either re-exported outside of Ukraine or declared under a different customs regime.

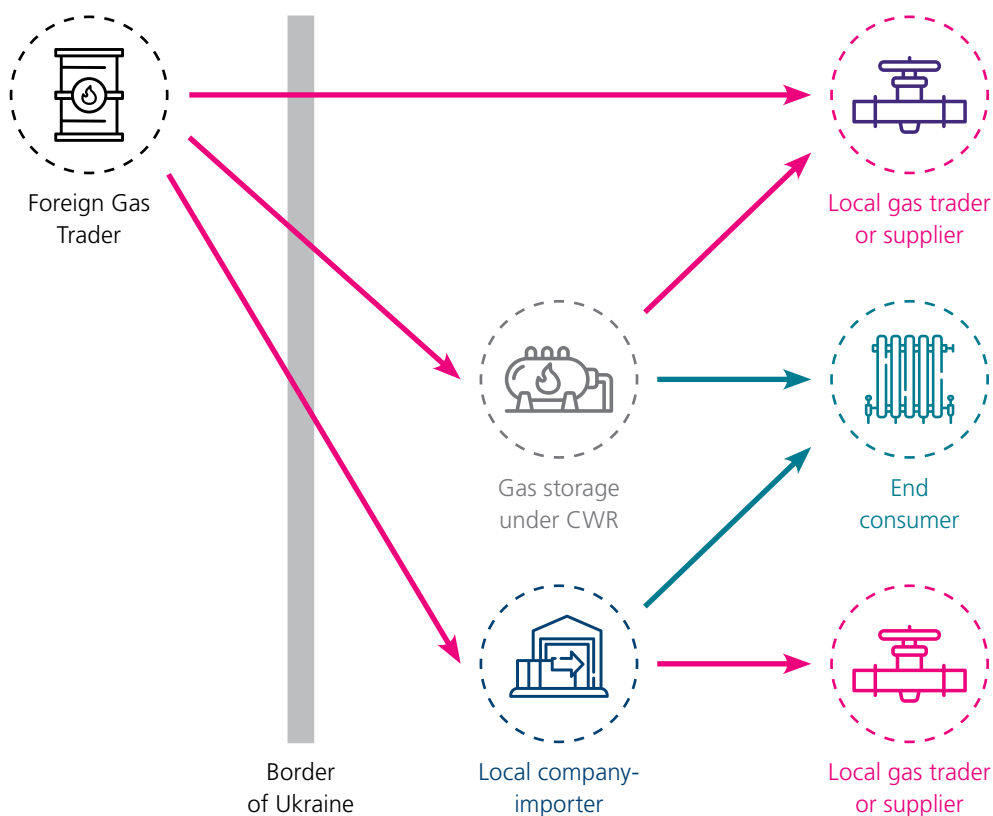
In addition, as mentioned in item 6.2.3 above, TSO customers may use short-haul to bring natural gas in Ukraine under CWR.

### Licensing Requirements

A gas supply licence is needed only to supply natural gas to end consumers, that is households, industrial consumers, state enterprises and others who acquire natural gas for their own needs or to use as raw material and not for resale.

As a result, a gas supply licence is not required for gas trading at Ukrainian border points or for gas trading within Ukraine if the natural gas is not delivered to end consumers.

## Transactions that require a licence



■ Gas (operations that do not require a licence)

■ Gas supply (operations that require a licence)

## Other Requirements Related to the Ukrainian Gas Market

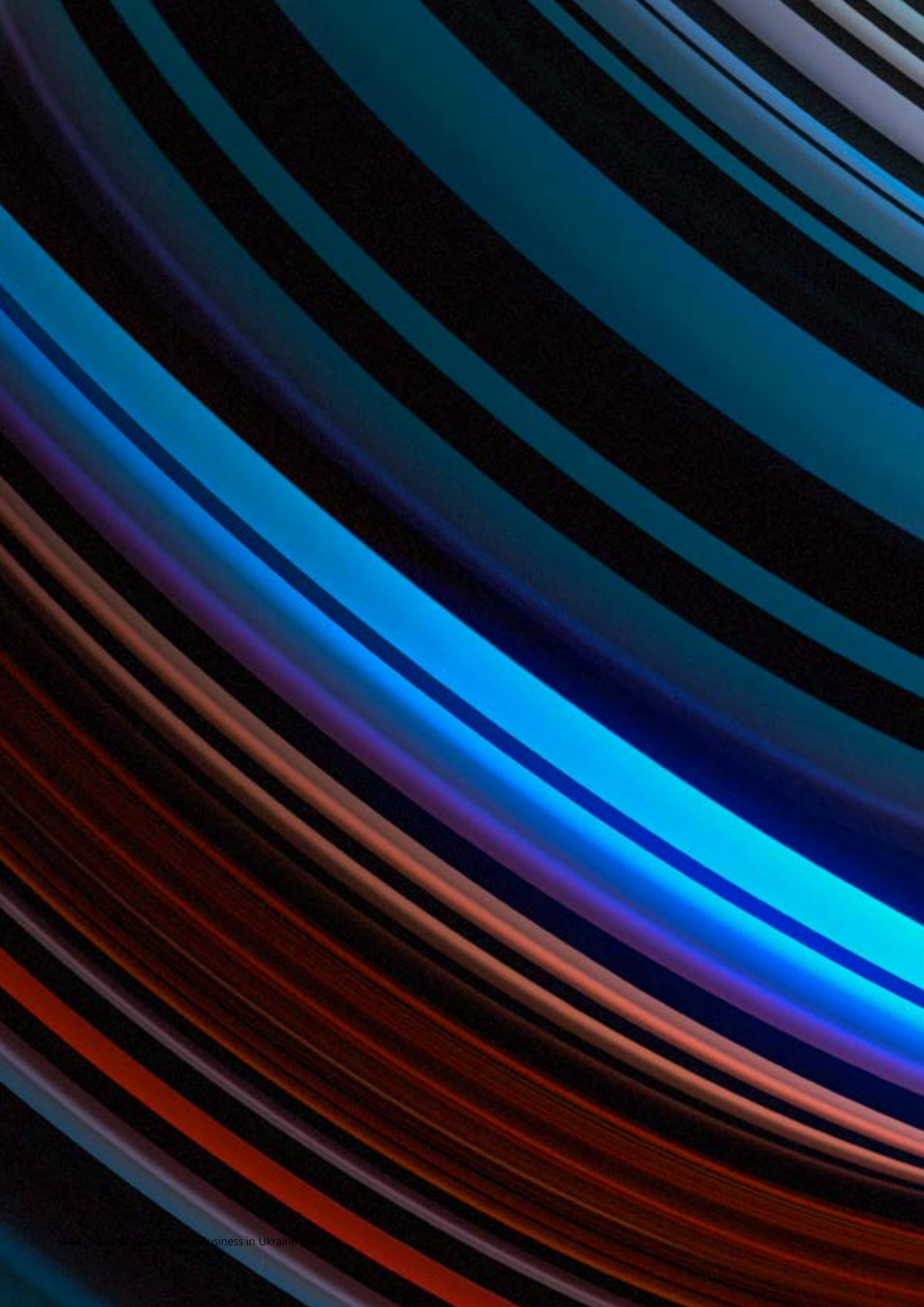
When trading on the Ukrainian gas market, various other requirements must be taken into consideration, including but not limited to balancing requirements, payments for neutrality, mandatory gas reserve stocks, financial guarantees, and others.

## The Oil and Oil Products Market

The wholesale trade of oil is not subject to regulatory restrictions. The prices for oil and oil products are market-driven and the law establishes no limitations such as price caps. At the same time, specific requirements pertain to the transportation, storage, measurement, and approbation of oil and oil products, but these correspond to normal business practice in the downstream sector.

Producing, storing, and selling oil products, liquefied gas and other fuels (both retail and wholesale) is subject to licensing. Law No. 481/95-BP "On State Regulation of Production of ethanol, cognac and fruit spirits, alcoholic beverages, tobacco products and fuels" (19 December 1995) regulates the issuing of these licences.

*Information in this chapter is based on certain aspects of Ukrainian legislation as of June 2021*





# Public-private partnerships

## Introduction

### General Regulatory Framework

The legal framework for public-private partnerships ("PPPs") in Ukraine is set out in the Law of Ukraine "On Public-Private Partnership". Other specialised laws also regulate certain types of PPP (such as concessions as described below), and secondary legislation provides more detailed rules for how PPPs function.

According to the PPP law, a PPP is cooperation between, on one side, the state of Ukraine, local communities, local self-government authorities or the National Academy of Science of Ukraine (public partners), and, on the other side, one or more legal entities (i.e. private partners). Note that state and communal owned enterprises, institutions and organisations cannot act as a private partner. Both public and private partners can form consortiums to participate in a PPP, with the procedure set out in the PPP Law.

A PPP can be created through a concession, a property management agreement, a joint-venture agreement or another agreement, but must have the following features:

- new construction, reconstruction, restoration, repair or technical retrofitting of a property or asset and/or its management (i.e. usage, operation and technical maintenance);
- substantial duration of the partnership (from five to 50 years);
- investment by the private partner in the relevant property or asset; and
- the partial transfer of risks that may arise during the PPP to the private partner.

### Areas for PPP

Ukraine allows PPPs in the following areas:

- the production, transportation and supply of heating oil or the distribution and supply of natural gas;
- the construction and/or operation of highways, roads, railways, landing strips within airports, bridges, tunnels, subways, sea and river ports and their infrastructure;
- machine manufacturing;
- gathering, cleaning and distributing water;
- healthcare;
- tourism, recreation, culture and sport;
- the maintenance of irrigation and watering systems;
- waste treatment (except its collection and transportation);
- the generation, distribution and supply of electricity;
- providing social services and managing social institutions;
- the manufacture and implementation of energy-saving technologies;
- the construction and repair of housing that was partially or fully destroyed by military action in regions affected by antiterrorist operation;
- the installation and construction of temporary housing for internally displaced people;
- educational services; and
- managing architectural monuments and objects of architectural heritage.

The above list is not exhaustive. In order to provide socially important services, public partners are free to enter into PPPs in other areas, except in respect to commercial activities that can be performed only by state enterprises, institutions and organisations.

A PPP can be formed in relation to properties and assets owned by the state, local communities or the Autonomous Republic of Crimea, or by enterprises that they fully own. It may also be formed to build a new property or asset.

### PPP Tender

The private partner for a PPP is selected through a tender process, as follows:

- **Initiation of a PPP tender:** Prospective private or public partners can initiate a PPP by submitting a proposal to the responsible state or local authority, which must decide on the feasibility of the proposal within three months.
- **Commencement of the tender:** Within six months of the decision on the proposal, the responsible state and local authorities establish a tender commission with at least seven members. The tender commission approves the tender conditions and documentation, and the PPP tender is announced.
- **Pre-selection of candidates and submission of qualified proposals:** After the tender is announced, prospective partners have at least one month to submit their applications. The tender commission verifies that applicants meet the qualifications and invites those that qualify to submit proposals on the terms established by the tender conditions.
- **Assessment of the proposals:** The tender commission assesses the proposals against (a) technical and engineering, (b) financing and commercial, and (c) ecological and social requirements and determines a winner. They record their decision. The responsible state or local authority must approve it within one month.
- **Execution of the PPP agreement:** The PPP agreement with the winner of the tender is executed within the timeframe established by the tender conditions.

### Other Aspects of PPPs

A number of other aspects of PPPs in Ukraine are worth considering:

- **State support:** Tender conditions can allow for aid to the private partner in the form of: (1) state and local guarantees; (2) financing through state and local budgets; (3) payment of fees to the private partner; (4) the acquisition or sale of goods and services; and (5) the construction of neighbouring infrastructure necessary for the PPP project.
- **Ownership:** Property and assets transferred to the private partner remain in state or communal property, and private partner and state or local communities jointly own assets created under the PPP in accordance with a PPP agreement. The private partner, however, remains the owner of all movable property that was acquired for the project (unless otherwise provided for in the PPP agreement). If allowed under the PPP agreement, the private partner may also lease part of the property that is the object of the PPP.
- **Disputes resolution:** The parties to a PPP agreement may choose international commercial arbitration for resolving their disputes. Furthermore, the state can waive its immunity under the PPP agreement.
- **Guarantees of private partner rights:** PPP law envisages a stabilisation clause that, if included in the PPP agreement, ensures that the laws in effect on the date of the agreement will stay in force for its duration (with certain exceptions). Furthermore, if a PPP agreement is terminated due to a breach by the public partner, it must reimburse the private partner for all its investments not yet recuperated during the project and for damages caused by its early termination.
- **Direct agreement and pledge of proprietary rights** under the PPP agreement.

The PPP law specifically protects the rights of the creditors of PPP projects by allowing: (1) the execution of a direct agreement with creditors that enables the replacement of a failed private partner; and (2) a pledge by the private partner of its proprietary rights under the PPP agreement, which may be enforced only through the replacement of the private partner.

## Concessions law

### Regulatory Framework

On 20 October 2019, the long-awaited Law of Ukraine “On Concession” entered into force introducing important improvements on operating concessions and encouraging their use. Although the overall regulation of concessions remains conceptually the same, the new law on concessions brings them into line with the latest changes to the PPP regulatory framework. These include, among others, improving the concession tender procedure, lifting restrictions on property and assets that can be transferred into a concession, enabling investors to initiate a concession, allowing leases of state property to be transferred into a concession, a stabilisation clause, the introduction of mechanisms for protection of creditors' rights, and more.

The new concessions law replaced all previous legislation governing concessions and applies in all areas and sectors and to all types of property and assets, both state and municipal. It also introduced a common approach to concessions that will, it is hoped, ensure consistent application and implementation.

The Law of Ukraine “On Concession” is a key part of Ukraine's national transportation strategy, which foresees UAH 10.1 billion (approx. EUR 374 million) invested in transportation by 2030 and new foreign investment in Ukraine.

One month before the new law came into force, the Ministry of Infrastructure of Ukraine announced two pilot concession tenders: one in the port of “Olvia” and in the port of “Kherson”. The respective concession tenders were performed in accordance with the old legislation in January 2020 and the respective concession agreements have been successfully executed in June 2020 (port “Kherson”) and in August 2020 (port “Olvia”).

It is intended that the main area for concessions in Ukraine will be infrastructure. The Ministry of Infrastructure of Ukraine has ambitious plans for implementation of concessions in this area, namely:

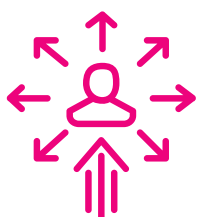
 <b>Ports</b>	 <b>Roads</b>	 <b>Passenger hubs</b>
<ul style="list-style-type: none"> <li>• Chornomorsk Ferry Terminal</li> <li>• Chornomorsk Container Terminal</li> <li>• Odessa Port Passenger Terminal</li> <li>• Bilhorod-Dnistrovskyi Port</li> <li>• Ust-Dunaisk Port</li> <li>• Skadovsk Port</li> </ul>	<ul style="list-style-type: none"> <li>• Boryspil – Poltava</li> <li>• Kyiv – Rivno</li> <li>• Dnipro – Mykolaiv</li> <li>• Kherson – Mykolaiv</li> <li>• Yahotyn – Lutsk</li> <li>• Kharkiv – Zaporizhzhia</li> </ul>	<ul style="list-style-type: none"> <li>• Airports (Lviv, Kherson)</li> <li>• Railway stations (Kyiv, Dnipro, Kharkiv, Mykolaiv)</li> <li>• Bus stations (Kyiv, Vinnitsia)</li> </ul>

## Concessions vs. PPPs

Although concessions are a type of public-private partnership, there are differences.

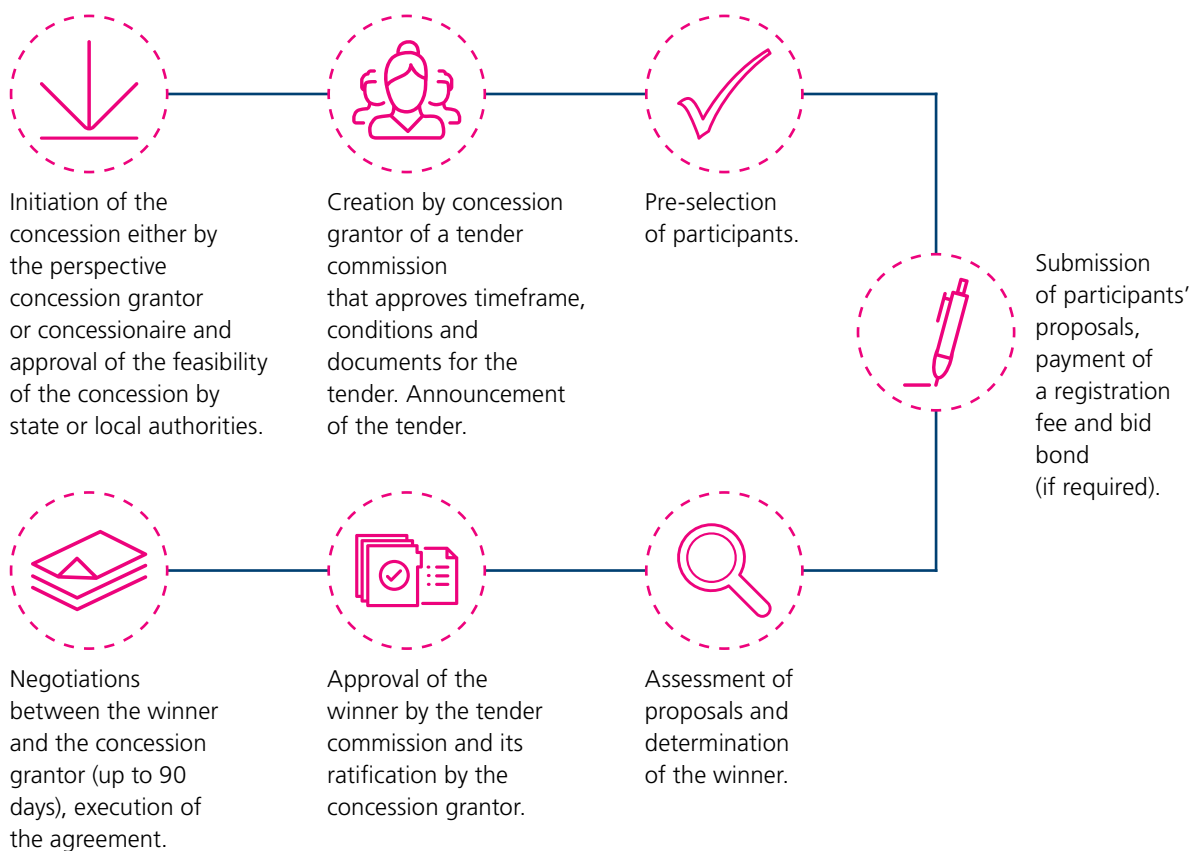
The main differences are as follows:

- **Almost no limitations on objects that can be transferred in the concession:** The new concessions law removes most restrictions on assets that can be subject to a concession. All objects of state, communal property, and the property of enterprises fully owned by the state or that are fully owned by another fully owned state entity can be provided in a concession. Only already leased assets, except those whose lessees wish to transfer into a concession while complying with certain requirements described below, and assets or property used by the Ukrainian army for the production or repair of armaments, cannot be subject to a concession.
- **Alternatives to the tender process:** The concessions law also envisages two alternatives to awarding concessions by tender. One is through a competitive dialogue, which may be used to implement innovative or complex infrastructure projects. The other is by direct negotiations with the lessee of state property, which is allowed under the following conditions: (1) a lease agreement was executed before the new concessions law came into force; (2) the lessee intends to use the property with additional investments for the project; (3) the lessee meets the lease agreement; (4) the lessee complies with the pre-selection requirements in the concession tender; (5) the concession agreement will not decrease the investment obligations of the lessee under the lease agreement; and (6) the duration of the concession agreement is no longer than the remaining duration of the lease agreement.
- **Mandatory land leases:** The concessions law allows the concession grantor (i.e. public partner) to allocate the land necessary for the concession project, and state and local authorities are obliged to lease the necessary land. Moreover, if the required land is not leased to the concessionaire (i.e. private partner) within one year due to the fault of the concession grantor, the concessionaire can unilaterally terminate the concession agreement.
- **Term of concessions for roads:** The minimum term of a concession for automobile roads is ten years instead of five years.
- **Different types of state support:** State support for concessions can be provided in the form of: (1) payments for operational readiness; (2) the acquisition or sale of goods and services; and (3) the construction of neighbouring infrastructure necessary for the project.
- **Counsels:** For assets worth more than UAH 250 million (approx. EUR 8 million), the concession tender must be prepared with the involvement of outside counsels.



## Concession Tender Procedure

The new concessions law clarifies the procedure for tendering a concession by precisely defining its main stages.



By aligning concession tenders with other PPPs, the concessions law also provides some important improvements to how concessions are awarded:

- The involvement of independent experts to advise a tender commission, financed from the registration fees paid by the tender participants.
- Tender commissions of varying size, from seven to 25.
- Publication of tender announcements in English and Ukrainian.
- The ability to hold concession tenders through an electronic trading system, usually Prozorro, an e-platform used for all public procurement.
- Clear and concise criteria for pre-selecting participants. Compliance with the following is checked:
  - (1) facilities and equipment;
  - (2) the professional and technical qualifications of employees;
  - (3) experience performing similar projects and agreements;
  - (4) financial resources; and
  - (5) other criterion the tender commission considers relevant. Applicants must be allowed at least 60 days to submit their proposal after receiving notice of passing pre-selection.

- Limits on who may participate. The following, among others, will not pass pre-selection:
  - (1) entities whose beneficiaries or whose main investors (holding 10% or more shares) include a resident of an aggressor country (as established by the Ukrainian parliament) or entities related to them;
  - (2) entities registered in an offshore zone, as established by cabinet, or whose direct or indirect owners of 50% or more shares are registered in such zones; and
  - (3) entities registered in countries that are recognised by the FATF as non-cooperative jurisdictions.
- **Payment of registration fees and the execution of NDAs.** In order to qualify for the tender, an applicant must pay a non-refundable registration fee of up to UAH 417,300 (approx. EUR 13,100) and execute an NDA within five business days of receiving notice that it passed pre-selection.
- **Bid bonds.** At its discretion, the concession grantor may require applicants to pay a bid bond. The bid bond cannot exceed 1% of the total amount of capital investment in the prospective project.
- **Two-stage assessment.** Tender proposals must include a technical part and a financial-economic part. The technical part is evaluated according to the tender conditions (including against performance indicators), and only those proposals that pass the technical evaluation are evaluated on their financial-economic part. The financial evaluation considers: (1) the project's internal rate of return; (2) the net present value of all cashflow; (3) the net present value of capital investments; (4) the net present value of concession payments; (5) the duration of the concession; (6) the reliability of the project's financing mechanism; and/or (7) the amount of possible state support.
- **Time limits for awarding the concession.** The concession grantor has 90 days, which may be extended to a maximum of 180 days, to execute the concession agreement with the winner of the tender. If an agreement is not executed, the applicant with the next best proposal will be invited to execute the concession agreement.

### **Budgeting aspects**

Ukraine announced ambitious plans to launch infrastructure projects and is demonstrating a willingness and readiness to put them into action. One of the crucial issues to be addressed for the implementation of these projects is ensuring proper budgeting on the part of the public partner. While PPP and concession projects have a long duration (from five to 50 years), the Ukrainian Budgetary Code currently allows budgetary planning for only three years.

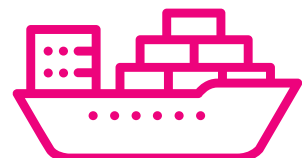
For this purpose, on 20 May 2021, the parliament of Ukraine has adopted in the first reading the draft law On Amendment to the Budgetary Code of Ukraine regarding Regulation of Budgetary Relations during Implementation of Agreements, executed within Public Private Partnership, including Concession Agreements No. 5090 (the "Draft Law"). Under the Draft Law, the concept of long-term obligations within performance of PPP (the "Long-term PPP Obligations") is being introduced into budget legislation to ensure performance of the long-term monetary obligations of the public partners in PPP projects. The new rules will allow for the establishment of the expenses of state and local budgets in relation to the monetary obligations of the public partner under the PPP and concession agreements for the duration of the respective agreements and in the amount necessary for their performance.

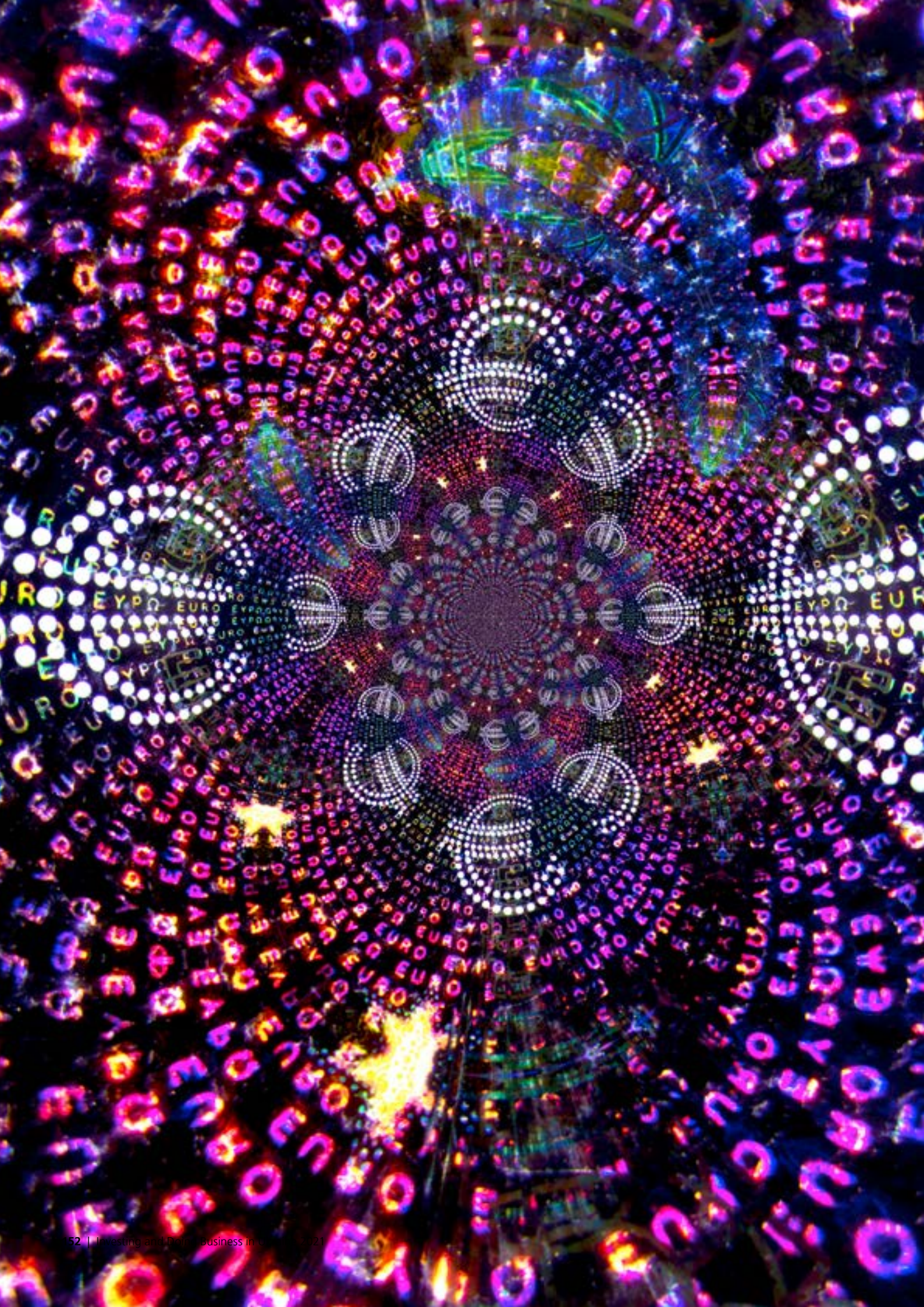
The Draft Law establishes the procedure for inclusion of the Long-term PPP Obligations in the state budget of Ukraine and requires the Ministry of Economics of Ukraine to maintain a publicly available registry of Long-term PPP Obligations. It also provides for the following limits to annual financing of Long-term PPP Obligations:

- annual payments for the Long-term PPP Obligations cannot exceed the amount of budgetary expenses established for this purpose;
- annual payments for readiness of automobile roads under the PPP and concession agreements cannot be larger than 50% of the receivables of the State Road Fund of Ukraine and are split between automobile roads of the state importance (63% of the annual payments) and roads of local importance (37% of annual payments); and
- annual payments of the local budget for Long-term PPP Obligations cannot exceed receivables from taxes and duties received by a local budget.

If adopted in the second reading, the Draft Law will enter into force after its signature by the President of Ukraine and its official publication. Enactment of this law will provide additional assurance to investors regarding performance of monetary obligations by public partners under the PPP and concession agreements.

*Information in this chapter is based on certain aspects  
of Ukrainian legislation as of July 2021*







# Insolvency & bankruptcy rules

## General

On 21 October 2019 the Code of Bankruptcy Proceedings, adopted by the Parliament of Ukraine on 18 October 2018, came into force. The code introduced a set of changes to strengthen the transparency and efficiency of insolvency proceedings. It limits the scope for appeals during bankruptcy proceedings and establishes specific deadlines for these procedures.

Moreover, it improves the legal status of secured creditors, making them parties to the bankruptcy proceedings and allowing them to challenge rulings, request the invalidation of a debtor's transactions, and more, including initiate the proceedings themselves.

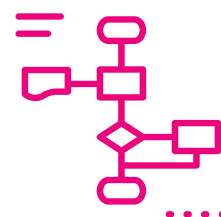
One of the most significant changes is the introduction of consumer insolvency; that is the insolvency of individuals who are not registered as private entrepreneurs.

The bankruptcy code also simplifies the grounds for bankruptcy proceedings since corporate bankruptcy no longer requires a minimum amount of outstanding claims. The commercial court may now start insolvency proceedings based on documents and/or evidence submitted by either the debtor or creditors, and courts can refuse to start bankruptcy proceedings only if a creditor's claims are disputable and must be resolved in court, or if a debtor has already satisfied the creditors' claims before the preliminary hearing.

## Consumer insolvency procedures

The Code of Bankruptcy Proceedings allows insolvency proceedings for an individual to be initiated only by the debtor. He or she may apply to a commercial court to start insolvency proceedings if at least one of the following conditions is in place:

- the value of the debtor's overdue obligations is greater than the minimum statutory wage for 30 months;
- during enforcement proceedings, it was declared that the debtor has no property against which creditors can enforce their claims;
- within the last two months, the debtor failed to make loan or other scheduled payments of at least 50% of the monthly amount due; or
- the risk of insolvency exists.



The moment that insolvency proceedings begin, it is declared that:

- the creditors' claims can be satisfied only within the framework of the insolvency proceedings;
- the debtor's property can be seized only by the commercial court and previously existing seizures may be cancelled by the court;
- penalties, fines, and interest being charged on the debts are terminated;
- a moratorium is imposed on the satisfaction of the creditors' claims;
- all monetary obligations of the debtor are considered due immediately; and
- any alienation and disposal of the debtor's property can be carried out solely in accordance with the bankruptcy code.

No later than 60 days from the start of insolvency proceedings, a preliminary hearing should be conducted. The commercial court requires the restructuring manager to arrange a meeting of the creditors to consider a restructuring plan. As a rule, the restructuring plan will identify which outstanding claims of the creditors will be forgiven.

At the meeting, the creditors must decide:

- to approve the restructuring plan;
- to reject the restructuring plan and request the court to launch the debt repayment procedure; or
- to ask the court to close the insolvency proceedings.

If the restructuring plan is approved, the restructuring manager asks the commercial court to confirm it within three days. The court, however, will not confirm the plan if the debtor has outstanding debts that are non-dischargeable, such as alimony payments or compensation due for causing an injury. On the plan's confirmation, the debtor then proceeds to satisfy the creditors' claims in accordance with the plan. Upon the successful completion of the plan, the insolvency proceedings are closed, and the claims that were agreed to be forgiven cease to exist.

If the restructuring plan is not completed, the debtor is declared insolvent and the debt repayment procedure begins. In this case, creditors file their claims against the debtor, including those that were supposed to be forgiven. All of the debtor's property is realised. The claims of secured creditors are satisfied from the proceeds of property used to secure those debts, and the claims of unsecured creditors are satisfied from the remaining proceeds in the order of priority set out in the bankruptcy code (see section "Creditors' Priority"). Remaining claims that cannot be satisfied due to a lack of assets are discharged.

The following types of debt are non-dischargeable:

- alimony payments;
- compensation due for causing injury to the health or the death of an individual;
- lump-sum payments owed to the compulsory state social insurance; and
- other obligatory payments for the compulsory state social insurance.

At the end of the debt repayment procedure, the commercial court closes the insolvency proceedings and makes a decision to release the debtor from his or her debts, except for non-dischargeable debts.

### **Moratorium on mortgage enforcement**

The bankruptcy code ends a moratorium on enforcing mortgages against residential property used to secure foreign currency loans. Starting from 21 October 2020, foreign creditors are able to enforce the collection of debts secured by residential property.

Moreover, until 18 October 2023 (five years from the adoption of the bankruptcy code), an individual debtor may restructure any of his or her foreign currency loans that were granted by Ukrainian banks. The terms for a restructuring plan are as follows.

For an apartment whose area is less than 60 sq. meters or less than 13.65 sq. meters per family member and for a house whose area is less than 120 sq. meters:

- the amount of the secured creditor's claims must be additionally reduced by 10%, except in cases of excess of mortgage value over the amount of debt under the loan agreement;
- the repayment term is 15 years unless the creditor and the debtor agree otherwise; and
- the interest rate is the Ukrainian index of rates for twelve-month deposits, plus 1 percentage point;

For larger apartments and houses:

- the repayment term is ten years; and
- the interest rate is the Ukrainian index of rates for twelve-month deposits, plus 3 percentage points.

An individual debtor may also restructure his loans with the bank by another mutually agreed method.

The moratorium does not compensate foreign creditors for removing their ability to enforce their rights against mortgaged property. A mortgagee can still obtain a court decision or notarial writ, but these cannot be enforced by enforcement officers, and while out-of-court enforcement is still an option, court practice has been to view agreements on enforcement between a creditor and debtor as voluntary. Which means that the mortgagee cannot exercise its right to enforcement if the debtor disputes its voluntary nature.

### **Corporate insolvency**

A company is insolvent when it is unable:

- to meet its pecuniary obligations to its creditors when they fall due (including unpaid salaries), or
- to pay its compulsory contributions to the state pension insurance or other types of compulsory state social insurance, taxes, and dues.

Bankruptcy is dealt with by the commercial court, which will declare a company bankrupt if it is unable to recover its solvency and satisfy creditor's claims other than by liquidation.

Proceedings are initiated within 5 days of the court receiving a petition from:

- the debtor, or
- creditors, including banks and tax authorities.

Creditors must register their claims with the insolvency officer within 30 days of the notice of proceedings being published on the website of Ukrainian Judiciary<sup>38</sup>. Creditors should monitor the website for such notices to protect their full set of rights during all stages of insolvency proceedings.

Three types of bankruptcy procedures may be commenced, depending on the company's circumstances:

- asset management;
- sanation (e.g., rehabilitation); or
- liquidation.

Asset management is broadly analogous to receivership in other jurisdictions. To secure the creditors' property interests, the commercial court introduces asset management over the debtor's property. An asset manager is appointed and conducts an analysis of the debtor's financial state and all claims filed against it. The asset manager then implements measures to supervise and control the debtor's property by restricting the debtor's right to dispose of its assets. During asset management, the commercial court approves a list of creditors and their demands as well as the composition of the committee of creditors.

Asset management lasts up to 170 days from the date the commercial court starts insolvency proceedings. Depending on its results, the asset management period may be followed by:

- sanation (rehabilitation);
- liquidation; or
- a return to solvency, payment of debts by the debtor, and termination of the insolvency proceedings.

Sanation is broadly analogous to a rehabilitation procedure in other jurisdictions and includes a system of measures aimed at restoring the debtor's solvency and discharging its outstanding debts. The commercial court starts the sanation procedure at the request of the committee of creditors. It may include measures such as borrowing, rescheduled debt payments, restructuring of the debtor or its business, closure of unprofitable manufacturing facilities, sale of the debtor's property, employee layoffs, etc.

During sanation, the debtor's directors are suspended and its governing bodies are terminated. All powers are transferred to a certified sanation manager. The bankruptcy code does not limit the term of the sanation period, enabling the parties to implement long-term restructuring programs and restore the debtor's solvency.

Sanation is followed by:

- liquidation; or
- a return to solvency, payment of debts by the debtor, and termination of the insolvency proceedings.

Liquidation begins when the commercial court declares the debtor insolvent. Insolvency occurs if:

- no settlements have been made with creditors within the timeframe envisaged by the sanation plan and the committee of creditors has not filed a petition to extend it; or
- funds from the sale of the debtor's property during the sanation period do not satisfy all the demands of the creditors.

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<sup>38</sup> [https://supreme.court.gov.ua/supreme/pro\\_sud/og\\_pov/](https://supreme.court.gov.ua/supreme/pro_sud/og_pov/)

The liquidation procedure focuses on realising and distributing the debtor's assets. A standard liquidation procedure may not exceed 12 months. Overall, the winding-up of the debtor is organised and carried out by a liquidator (or a liquidation commission) appointed by the court.

The commercial court may terminate bankruptcy proceedings, in particular, when:

- the debtor has completely discharged all its liabilities to its creditors;
- the court approves the sanation manager's report certifying that all the demands of registered creditors have been satisfied and the debtor has returned to solvency; or
- the court approves the liquidator's report certifying that the claims of registered creditors have been discharged.

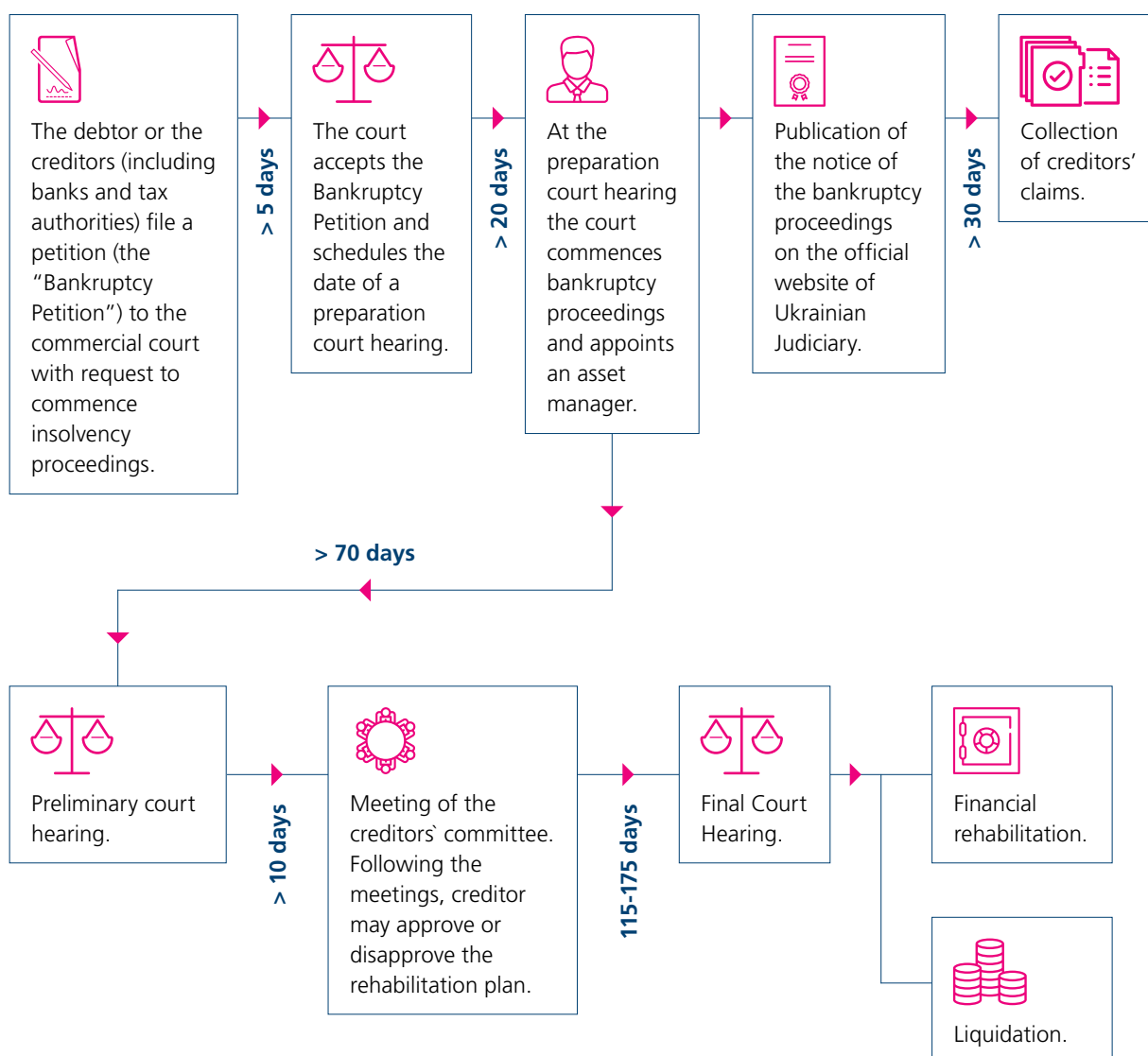
Note that the bankruptcy code does not contain provisions for amicable settlements.

These provisions were intentionally deleted in order to emphasize the sanation procedure.

Moreover, state-owned enterprises with special status ("*kazenni pidpriemstva*") are absolutely immune to bankruptcy procedures. Certain other categories of debtors also have a limited immunity, such as state companies and companies, like Naftogas or Ukrenergo, that are at least 50% owned by the state. There is also a moratorium on the mandatory disposal of assets during bankruptcy proceedings of companies that are 50% state owned.

### The Insolvency Process in Ukraine

The insolvency process in Ukraine is summarised in the chart below:



### Temporary Changes (COVID-19)

It should be noted that bankruptcy proceedings in Ukraine were temporarily amended in response to Covid-19. During the quarantine period (most recently extended to 30 June 2021) and for 90 days afterwards, the following new rules apply:

- the commencement of bankruptcy proceedings under creditors' applications for claims (matured after 12 March 2020) on the bankruptcy of legal entities and individual entrepreneurs is forbidden;
- the mandatory one-month period for a defaulting debtor to report its bankruptcy can be extended if the debtor can prove that the failure to file on time was caused by the outbreak of COVID-19 or by measures enacted to combat its spread;
- creditors can decide to suspend electronic auctions for the sale of a debtor's assets. In these cases, the creditors will bear all associated expenses and risks related to the loss or deterioration of these assets;
- debtors are relieved from penalties for non-performance of obligations under their debt restructuring plans. Moreover, debtors now have an opportunity to fulfil these obligations in instalments by the end of the plans.

Parliament has also introduced the following rules to facilitate the bankruptcy procedure during the quarantine:

- meetings of creditors or creditor committees can be held remotely either by video conferencing or questionnaires, subject to due identification of all creditors and verification of attorney authorisations to represent creditors. In such cases, the video recording or the creditors' replies to the questionnaires must be attached to the minutes of meetings of creditors or creditor committees;
- a court-appointed trustee who fails to perform his/her obligations can be exempted from liability if this failure was caused by COVID-19 or measures enacted to combat its spread.

Even if the quarantine is further extended, it is possible that this temporary bankruptcy regime will be modified by parliament soon. On 15 October 2020, the President of Ukraine lodged with the Parliament a draft law amending or lifting most new rules.

Specifically, it suggests cancelling:

- the prohibition on opening court proceedings on the bankruptcy of legal entities and individual entrepreneurs based on creditors' claims that matured after 12 March 2020;
- the extension of the mandatory one-month period for a defaulting debtor to report its bankruptcy;
- the capacity of the creditor committee to suspend electronic auctions to sell the debtor's assets following the creditors' decision.

On 1 June 2021, the Ukrainian Parliament passed the draft law at its first reading.



### **Creditors' priority**

Once a debtor enters liquidation, the claims of creditors are satisfied according to the order of priority defined in the bankruptcy code. The sequence is as follows:

- first priority:
  - salary arrears owed to current and dismissed employees of the bankrupt;
  - pecuniary compensation owed to employees for unused vacation days, including additional vacation days to employees with children;
  - guarantees for the time of performance of public or social obligations, guarantees and compensations for business trips, guarantees for employees sent to develop their vocational competence, guarantees for donors, guarantees for employees sent for examination at medical facility;
  - compensation for dismissal owed to employees in connection with termination of labour relations including the reimbursement of loan received for these purposes;
  - payments due under insurance agreements;
  - expenses relating to insolvency proceedings in the commercial court;
- second priority: compensation due for causing death or injury to individuals;
- third priority: tax payments;
- fourth priority: unsecured claims of creditors;
- fifth priority: reimbursement of employees' contributions to the authorised fund of an enterprise;
- sixth priority: all other creditors' claims.

The claims of secured creditors are satisfied outside the priority sequence from the proceeds of the property used to secure those debts.

### **Clawback and "cherry-picking"**

The bankruptcy code allows the trustee to claim that certain contracts and actions of the debtor, going back three years before the proceedings started, are invalid.

The grounds for claiming invalidity are:

- the early performance of an obligation;
- the undertaking of an obligation that led to bankruptcy or full or partial insolvency;
- the purchase or sale of assets at a non-market price, provided that when the sale or purchase occurred, the debtor did not have, or ceased to have, enough assets to satisfy its creditors' claims;
- the purchase of assets from a creditor (or the acceptance of assets from a creditor in exchange for discharging the debtor's claims against that creditor) on a day when the total sum of the creditors' claims against the debtor exceeded the value of those assets; and/or
- the granting of a pledge to secure monetary claims.

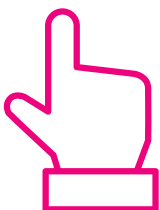
If the trustee successfully invalidates a contract or action of the debtor, the relevant creditor must return the debtor's assets or compensate their value at a fair market price.

In addition, within three months of the commercial court deciding to start sanation, the trustee has a so-called “cherry-picking” right. That is, the trustee can refuse to fulfil agreements of the debtor that were undertaken before insolvency proceedings started, provided that:

- the obligations under the agreement damages the debtor;
- the obligations (agreements) are long-term (more than 1 year) or envisage benefits for the debtor only in a long-term perspective; or
- fulfilling the agreement prevents the rehabilitation of the debtor.

If the trustee enforces its “cherry-picking” rights, the affected creditor can claim damages in court, which will be reimbursed when the debtor is declared bankrupt, but only according to the established priority for claims.

*Information in this chapter is based on certain aspects of Ukrainian legislation as of June 2021*







# Big data, AI, Blockchain, Fake news, IT revolution and other new words

## Big data

The world has become a vast digital space. Today we manage, share and store all aspects of our lives online.

An interesting fact: if we collected all the information that humanity has accumulated since the beginning of time to the year 2000, it would be less than what we produce now in just one minute. This phenomenon completely changes how we understand the world and our place in it. It is the world of big data.

Although the term “big data” is relatively new, the act of gathering and storing vast amounts of information for analysis is not. The concept gained momentum at the beginning of this century when industry analyst Doug Laney formulated the widely used notion of the three Vs of big data: volume, velocity, and variety.

In the past, storing all the information from business transactions, social media and sensors or machine-to-machine data would have been a problem, but new technologies have eased the burden and made it practical (“Volume”). Data streams pass at unprecedented speeds and need to be dealt with on time (“Velocity”). Information can be encrypted in all possible file formats, from structured numeric data to text documents, emails, video- and audio-files, stock-ticker data and financial transactions (“Variety”).

Now, as the technology develops, the list of Vs is expanding, with veracity, viability, value, visualisation, and more.

## AI

Because the vast majority of data is unstructured, state-of-the-art technologies are used to transform it into human-readable form. These technologies include artificial intelligence (“AI”) and machine learning.

But AI does not refer to robots or creatures from science fiction. These systems are simpler than that. You probably interact with AI much more than you know — for example whenever you've clicked on a YouTube “Home” button or ordered a taxi via a mobile app. And that is the point. The AI interface is designed so that you do not realise that computers are behind the process.



## **Blockchain**

A blockchain is a system of storing transactions on a computer network so that all participants in the network share a complete record of the “chain” of transactions.

First, a transaction like a purchase, is made. Then that purchase must be verified. With other public information records, like a local library, someone is in charge of creating and verifying new data entries. With blockchains, however, that job is left to a network of computers around the world. For example, when you make a purchase using a blockchain like Bitcoin, the computer network of five million Bitcoin users rushes to verify that your transaction happened the way you said it did; they confirm the transaction's exact time, the currency amount, and the participants. Then, after your transaction gets the green light, its data is stored in a block where it will most likely join hundreds or even thousands of others like it. Finally, once a block's transactions have all been verified, it is given a unique ID code called a hash. When hashed, the block is added to the blockchain.

Since all computers in the network have the full blockchain, fraudulent transactions are easily prevented, all without the need for a central authority.

## **Fake news**

In our digital age, “yellow journalism” and propaganda rarely appear in papers; today they come in a different form. Much of what you read on the internet, especially on social media, may appear to be true, but sadly it often is not. This is fake news—news stories and hoaxes created to deliberately mislead readers. These stories are usually fabricated to influence people's views, push a political agenda or cause confusion, and can often be profitable for online publishers.

Fake-news stories can deceive people by appearing to come from trustworthy websites or by using names and web addresses similar to reputable news organisations.

Another tactic of fake news is called clickbait. These are headlines designed to grab readers' attention and drive click-throughs to the publisher's website, normally at the expense of truth or accuracy. Clickbait headlines are often misleading, distorting generally truthful stories with ambiguous or sensationalist titles. These types of news stories can spread quickly on social media where only headlines and small snippets of the full article are displayed in a feed. In addition, many people are drawn to news stories that confirm their own beliefs, and fake news preys on these biases. Search engines tend to display news and articles that they expect us to like based on our previous searches.

## **IT Revolution**

No one can doubt that we have access to incomparably more information than we did 50 or even ten years ago. But when did it all begin? One possible starting point was the 1970s with the invention of microprocessor technology and the personal computer. And the emergence of a worldwide network—the internet—was the icing on the cake.

The IT revolution has consequently served as a catalyst for electronic connectivity. It has given rise to new production methods, enhanced productivity, facilitated the collection of data, spearheaded the transmission of ideas, and extended the reach of economic and social interactions.

A simple measure for the impact of the IT revolution on society is the new words that we use without even noticing: self-driving cars, renewable energy, cloud storage, and virtual reality. The list is growing.

*Information in this chapter is based on certain aspects  
of Ukrainian legislation as of July 2021*



# Telecommunications, media, technologies

## Telecommunications

### Regulatory Framework and Authorities

The Law of Ukraine “On Telecommunications” is the key legal instrument in the sphere of telecommunications. It covers most issues related to accessing the telecommunications market, licensing certain types of services, interconnection rules, numbering capacity allocation, and more.<sup>39</sup>

Another key telecommunications law is the Law of Ukraine “On Radio Frequency Resource of Ukraine”, which provides rules for the allocation and use of radio-frequency resources, licensing of users of radio frequencies, and other relevant issues.

On 25 December 2019, significant amendments to the telecommunications law came into force. The key changes end the licensing of telecommunications services.

Several authorities are responsible for enforcing telecommunication laws and regulations in Ukraine:

- the Cabinet of Ministers of Ukraine, which is responsible for the state policy for telecommunications and its implementation;
- the National Commission for the State Regulation of Communications and Informatisation (“NCCR”), which is the main regulatory authority responsible for, among others, allocating radio frequencies and numbering resources, regulating telecommunications charges and establishing settlement procedures between telecommunications operators.
- the Administration of the State Service of Special Communication and Information Protection of Ukraine, which is mainly responsible for developing draft laws, national standards and other requirements in the telecommunication sphere.

### Telecommunication Services

Telecommunications operators and providers may offer telecommunication services subject to being included into the Register of Operators and Providers of Telecommunications. While a company does not need a license to provide telecommunication services, it must submit a notification to the NCCR on its commencement of services. In addition, certain permits may be required in order to use a limited radio frequency or a numbering resource.

### Foreign Ownership in Telecommunications

There are no restrictions on foreign ownership of telecommunication companies in Ukraine. Except for the restrictions of international sanctions, foreign entities of any country may establish and own a telecommunications company.

Under the telecommunications law, however, title to telecommunications networks can only be held by Ukrainian residents.

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<sup>39</sup> On 1 January 2022, a new Law of Ukraine “On Electronic Communications” (the “Electronic Communications Law”) will enter into force and replace the mentioned piece of legislation.

### **Interconnection Rules**

Connecting networks among operators is carried out through interconnection agreements, which must conform to rules adopted by the NCCR. Some additional interconnection rules apply to operators that hold a dominant position or have a significant market advantage.

### **State-regulated Charges**

Telecommunication operators and providers are free to establish the prices and tariffs they charge to their customers.

However, certain tariffs are subject to state regulations that establish a maximum or fixed rate. These include, for example, maximum tariffs for public (universal) telecommunications services, and tariffs for leasing communication circuits from operators that hold a dominant market position.

### **Network Technologies**

In the past several years, Ukraine has auctioned spectrum licences to mobile operators: in 2014 for launching 3G, and in 2015 for 4G. In May 2019, the president signed a decree to launch 5G technology in Ukraine. Under this decree, the government and the NCCR must adopt a step-by-step plan for rolling out 5G technology in 2020.

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On 1 January 2022, a new Law of Ukraine “On Electronic Communications” (the “Electronic Communications Law”) will enter into force and replace the two abovementioned pieces of legislation. The key novelties to be implemented are described below.

### **Technologic neutrality principle**

This principle provides operators with the right to use, within an allocated radio-frequency band, any radio technology (i.e. 3G or 4G) that satisfies the minimum technical requirements of that radio-frequency band.

### **Network sharing**

Operators will have a right for joint installing and use of the network and infrastructure elements. Furthermore, an operator can be obliged to do so in certain cases, e.g. to secure public safety or protect the environment.

In addition, an operator will be obliged to satisfy the reasonable request of another operator to grant access to its infrastructure with a view to setting up elements of high-speed networks.

### **Transfer of right to use radio spectrum**

The licenced users of the radio spectrum will be able to transfer or provide for use their individual rights to use the radio spectrum under contractual arrangements. They will also be able to conclude agreements on the joint use of the radio spectrum.

### **Updated ownership requirements**

From 1 January 2022, the ownership structure of providers of electronic communication networks and/or services must not include:

- legal entities and individual entrepreneurs registered in certain offshore jurisdictions, as well as stateless persons;
- individuals and legal entities that are residents of a country recognised by the Ukrainian Parliament as an aggressor occupier state or legal entities in which such individuals and legal entities are shareholders;
- political parties, trade unions and religious organisations and their subsidiaries;
- imprisoned or legally incapable persons.

In addition, the Electronic Communications Law sets that only citizen(s) of Ukraine can be the ultimate beneficial owner(s) of providers of electronic communication networks and/or services conducting activities of technical maintenance and the operation of multichannel digital networks of television and radio broadcasting with the nation-wide coverage.

## **Media**

### **TV and Radio Broadcasting**

The Law of Ukraine “On Television and Radio Broadcasting” is the fundamental legislative act regulating the radio and TV market in Ukraine. The radio and TV law sets out the procedure of the establishment of Ukraine’s radio and TV broadcasting companies, licensing for radio and TV broadcasting, and the procedure of broadcasting.

The national regulatory authority for radio and TV broadcasting is the National Council of Ukraine for Television and Broadcasting (“NTRBC”), which acts pursuant to separate legislation.

The Law of Ukraine “On NTRBC” establishes the legal grounds for the activity of the regulator.

Radio and TV broadcasting in Ukraine are subject to licensing. Under the radio and TV law, broadcasting is licensed on a competitive basis (for on-air and multi-programme broadcasting) or, where the law permits, on a non-competitive basis (for satellite, wired and cable broadcasting).

The minimum term of a broadcasting license is 7 years in the case of on-air and multi-programme broadcasting via multi-channel networks; and 10 years for satellite, wired and cable broadcasting. Regarding foreign ownership, only legal entities or citizens of Ukraine may establish broadcasting organisations, whether radio or TV, in Ukraine. Further, the radio and TV law limits the involvement of foreign citizens and entities from aggressor states and offshore zones in Ukrainian broadcasting organisations.

Service providers in Ukraine may transmit only foreign TV channels and programmes that comply with the laws of Ukraine and the European Convention on Transfrontier Television. The NTRBC maintains a list of foreign programmes whose content complies (available on its website).

### **Printed Mass Media and Information Agencies**

Printed mass media is regulated by both the Law of Ukraine “On Information” and the Law of Ukraine “On Printed Mass Media (the “Press”) in Ukraine”, while information agencies fall under the Law of Ukraine “On Information Agencies” and some other legal acts.

State registration is required for all printed media published in Ukraine, irrespective of its sphere of distribution, circulation or method of manufacture.

Any legal entity, national or foreign, and any capable person, including foreigners, may establish a printed mass media company or organisation in Ukraine. Thus, there are no foreign ownership limitations. However, monopolisation of national and regional public, political news is forbidden. Any single person or legal entity may not control more than 5% of such media.

With respect to Ukrainian information agencies, a foreign legal entity or foreign national may be a co-founder only, and their share in the charter capital of the agency may not exceed 35%.

## **Technologies**

The information technology industry in Ukraine is continually growing, with the largest and fastest-growing number of IT professionals in Europe.

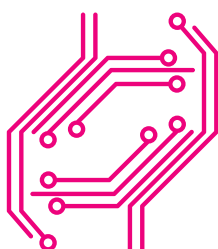
No law specifically regulates the IT industry in Ukraine. A variety of laws and regulations, however, are relevant to conducting an IT business depending on the kind of business and technology.

Over the past several years, Ukraine has taken significant steps to simplify running a business in Ukraine, including in the IT sphere. With the adoption of the Law of Ukraine “On Amending Certain Laws of Ukraine regarding Elimination of Administrative Barriers to Export of Services” and the Law of Ukraine “On Currency and Currency Operations” many administrative barriers and regulatory restrictions, including certain currency controls, were removed. As a result, it is now easier for Ukrainian businesses and IT specialists to render services to foreign clients.

An e-commerce law adopted several years ago introduced rules for online marketplaces and for conducting electronic commerce transactions. The recent law “On Electronic Trusted Services” also harmonises Ukrainian legislation with European standards in the sphere of electronic signatures.

In addition, in 2017 the Ukrainian Parliament passed a law on cybersecurity which mostly affects state and private “critical infrastructure” companies, and creates a legal framework for managing security in cyberspace. In turn, over recent years the sectoral cybersecurity legislation has also been subject to significant developments. For example, in January 2021 the National Bank of Ukraine (the “NBU”) adopted the Resolution On Controlling of Banks’ Compliance with the Requirements of Legislation on information Security, Cybersecurity and Electronic Trust Services (the “Cybersecurity Resolution”). The Cybersecurity Resolution deals with the measures of control by the NBU over Ukrainian banks in terms of security compliance, as well as sets a requirement for an annual self-assessment of the cybersecurity conditions in a bank. Each annual self-assessment should be recorded in a report (which form has been also approved by the Cybersecurity Resolution), and then such report should be submitted to the NBU.

*Information in this chapter is based on certain aspects of Ukrainian legislation as of June 2021*





# Intellectual property rights

## General

Ukraine is one of many countries that has problems with protecting and enforcing intellectual property rights, but in the Ukraine-European Union Association Agreement, the country undertook to harmonise its national intellectual property regulations with EU standards.

The government is especially focused today on the scale of trade in counterfeit goods in Ukraine and on strengthening measures to fight piracy.

The functions of the national authority for intellectual property have been transferred from the State Intellectual Property Service of Ukraine to the Ministry of the Economy of Ukraine. Further, they are expected to be transferred to a new national agency for intellectual property, which is expected to be established in the future. In addition, the ongoing judicial reform that started in 2015 anticipates the establishment of a high court for intellectual property.

## Regulator

The Ministry for Development of Economy, Trade and Agriculture of Ukraine ("MEU") is the current authority that regulates intellectual property. Its main responsibilities are enforcing the state policy on intellectual property rights issues and providing services for registering copyright, trademarks, patents, and other intellectual property.

## Copyright

Any work of authorship, including musical, literary and audio-visual works, as well as and database or software, is protected by copyright. Copyright protection does not apply to ideas, theories, principles, methods, procedures, processes, systems, conceptions and discoveries.

A person who creates a work is considered its author and enjoys all rights that belong to the author. These consist of proprietary rights, like the right to use or sell the work, and to prohibit use of the work, and of moral rights, which include the right to be named as the work's author and to protect the integrity of the work.

Copyright protection arises automatically from the moment the work is created in a fixed form, and protection lasts for the life of the author plus an additional 70 years. No registration, filing or other formalities are necessary in Ukraine. However, a rights holder may at his or her discretion file a registration of copyright or register a copyright transfer agreement.

This, however, gives no essential benefits to the rights holder.

A rights holder may optionally include a copyright notice on the work to inform the public that the work is protected by copyright. The notice should contain the following elements:

- the symbol © (letter C in a circle);
- the name of the copyright owner, and
- the year of first publication.

While moral rights are not transferable, an author's proprietary rights may be licensed, assigned or transferred in other ways to third parties, like employers or other companies and individuals, by way of an agreement with the author or as per applicable laws.

The licence agreement should contain the type of a licence, the specific rights granted under the agreement, conditions on the use of the work, payments, applicable territories and terms for which the rights are granted, etc. Proprietary rights may be licenced under an exclusive or non-exclusive licence. The term of the licence must not exceed the term of copyright in the work.

Any unauthorised use of a copyrighted work is considered an infringement. Civil, administrative, and criminal actions may be brought against the infringer. Note that an out-of-court procedure exists for settling online copyright infringements.

### **Trademarks**

A trademark enjoys legal protection in Ukraine if it is registered with the MEU or falls under an international treaty to which Ukraine is a party. Ukraine is a signatory to the Paris Convention for Protection of Industrial Property ("Paris Convention") and the Madrid Agreement Concerning the International Registration of Marks, as well as other agreements.

Well-known trademarks are protected in Ukraine under the Paris Convention and by national legislation in the same way as if the mark were registered in Ukraine. A trademark may be recognised as well-known by the Chamber of Appeal of MEU or by a court.

A trademark registration certificate is valid for 10 years from the day the application is filed, and may be renewed every 10 years by the trademark owner. When an application for a trademark is filed, any third party may oppose it by claiming that it does not conform with registrability requirements.

Trademark rights may be licenced or assigned. While registering a trademark licence agreement with the MEU is optional, a trademark assignment agreement is subject to mandatory registration.

### **Patents**

Inventions or utility models can be legally protected in Ukraine if they do not contradict the public order, the principles of humanity and morality, and are patentable. The following inventions or utility models are patentable:

- products (such as devices, substances, strains and cell cultures of a plant or an animal);
- processes (methods), as well as new applications of known products or processes.

The following categories are excluded from patent protection: (i) plants cultures and breeds of animals; (ii) processes that are biological in nature and that relate to plant and animal reproduction, other than non-biological or microbiological processes, (iii) topologies of integrated circuits, and (iv) industrial designs.

To be granted patent protection, an invention must meet the requirements of (i) novelty, (ii) industrial applicability, and (iii) non-obviousness. A utility model must meet only the first two requirements.

Patent protection begins on the day the grant of the patent is published, and it lasts for 20 years from the application filing date.

Ukraine is a party to many international agreements in the field of patents such as the Paris Convention, the Patent Cooperation Treaty ("PCT"), the Patent Law Treaty ("PLT"), the Agreement on Trade-Related Aspects of Intellectual Property Rights ("TRIPS"), and others.

*Information in this chapter is based on certain aspects of Ukrainian legislation as of June 2021*

# Competition

## Introduction

The main law regulating competition in Ukraine is the Law of Ukraine “On the Protection of Economic Competition” (2001). Special laws and regulations also cover unfair competition, mergers, dominance and monopoly abuse, concerted practices, etc.

In recent years, Ukraine's antitrust regulator, the Anti-Monopoly Committee of Ukraine (“AMC”), has been actively bringing local competition regimes into line with EU directives in many areas. Among others, the AMC has produced guidelines on vertical agreements (“Vertical Block Exemptions Guidelines”), joint ventures that incorporate the EU concept of a full-functional joint venture, control and joint control matters, calculation of penalties for breaches of the competition law, etc.

The AMC is quite active in detecting and investigating cases related to abuse of dominance<sup>40</sup>, cartel agreements, and other types of anticompetitive concerted actions, both among competitors (horizontally) and in supply-like relations (vertically). Both are considered to be hard-core breaches of Ukrainian competition law and can trigger fines of up to 10% of the infringing group's annual global turnover.

## Merger control

A change of control over a business, e.g., through an acquisition of 50% or more of its shares, the establishment of a joint venture by two or more founders, or an acquisition of 25% or more shares in a company requires approval from the AMC if the parties to the transaction meet the financial thresholds described in the chart below.

Foreign-to-foreign transactions are subject to prior clearance from the AMC if the filing thresholds are met and the transaction has or may have an impact on competition in Ukraine. The AMC rarely takes the latter criterion into account as it primarily looks at the filing thresholds when deciding on whether a transaction requires merger control clearance. The above rule applies irrespective of whether the parties have any subsidiaries in Ukraine.

From the merger control perspective, most joint ventures are treated the same way as other business entities in Ukraine, unless they are non-incorporated (contractual) ones.

The establishment of a non-incorporated (contractual) joint venture and, in some cases a joint venture in the form of a legal entity, may require “concerted actions” clearance from the AMC if it results in the coordination of competition between its founders, including in particular, the incorporation of non-compete clauses. A failure to obtain the required approval from the AMC triggers a fine of up to 5% of the parties' worldwide group turnover for the fiscal year preceding the year in which the fine is imposed. In practice, however, if the transaction had no adverse effect on the market, the actual fines for a failure to notify are considerably lower. The payment of the fine does not release parties from the obligation to get the necessary clearance.

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<sup>40</sup> The general dominance market share threshold in Ukraine is 35%. In some cases, a company may be considered to hold a dominant position in the market even if it has less than 35% but does not experience significant competition on the market.

If a non-filed transaction results in the monopolisation of a market or a significant restriction on competition, the AMC may apply to the court with a request to invalidate the transaction.

The following chart gives an overview of the filing thresholds and merger review procedure.

<b>Financial Thresholds</b>	<p><b>Test 1:</b></p> <ul style="list-style-type: none"> <li>(i) the aggregate worldwide value of assets or turnover<sup>41</sup> of all the participants<sup>42</sup> global groups exceeds EUR 30m; and</li> <li>(ii) the aggregate Ukrainian value of assets or turnover of each of at least two of the participants' global groups exceeds EUR 4m<sup>43</sup>; or</li> </ul> <p><b>Test 2:</b></p> <ul style="list-style-type: none"> <li>(i) the aggregate value of assets or turnover of the target<sup>44</sup> or founding entity's global group in Ukraine exceeds EUR 8m; and</li> <li>(ii) the worldwide turnover<sup>45</sup> of at least one other<sup>46</sup> participant's global group exceeds EUR 150m.</li> </ul> <p>The asset and turnover indicators are taken for the financial year immediately preceding the transaction.</p>
<b>Deadline Phase I.</b>	<p>Forty-five calendar days following the submission of the notification, provided there are no rejections due to a lack of formal compliance.</p> <p>Phase I consists of two stages:</p> <ul style="list-style-type: none"> <li>(i) 15 calendar days for a formal review of the notification – the period during which the notification can be rejected due to a lack of formal compliance; and</li> <li>(ii) 30 calendar days, starting on the expiration of the initial 15-calendar-day period of review, for substantive evaluation.</li> </ul>
<b>Deadline Phase II.</b>	<p>Up to 135 calendar days, starting on the day that the Phase II notice is sent to the parties.</p>
<b>When to notify</b>	<p>Before the transaction is completed or control is otherwise acquired.</p> <p>Filing based on the final/pre-final draft transaction document is allowed.</p>
<b>Simplified procedure</b>	<p>Available if:</p> <ul style="list-style-type: none"> <li>(i) only one party to a transaction is active in Ukraine; or</li> <li>(ii) the aggregate market share of all parties to a transaction in one and the same market does not exceed 15%; or</li> <li>(iii) the market shares or aggregate market shares of parties to a transaction active in a market that is downstream or upstream to the market in which any other party to a transaction is active, do not exceed 20%.</li> </ul> <p>Duration: 25 calendar days from the day of submission.</p>
<b>Notes</b>	<p>The method for calculating the value of assets and turnover for commercial banks and insurance companies is different.</p>

*Information in this chapter is based on certain aspects of Ukrainian legislation as of June 2021*

<sup>41</sup> The value of the assets and turnover may not be totalled for the purposes of this threshold. For example, if a participant's asset value is below EUR 30m and so is the turnover, then this threshold is not met.

<sup>42</sup> The identity of each participant to a concentration should be verified on a case-to-case basis. For example, purchasers and managers of shares/assets and the founders of a legal entity could be seen as participants.

<sup>43</sup> Ukrainian turnover in calculating this threshold includes both direct and indirect sales in and into Ukraine made by the participant's local and other group entities, including via distributors.

<sup>44</sup> The target entity's global group here includes controlling seller(s) and all other companies controlled by, or exercising control over, the controlling seller(s).

<sup>45</sup> Please note that the value of assets is not taken into account in this particular threshold; only the turnover should be assessed.

<sup>46</sup> Such other participant excludes the target's group, as defined in footnote 44 above.



# Life Sciences & Healthcare

## Healthcare system

### Background

As a former part of the USSR, Ukraine inherited the “Semashko system”, which promised universal healthcare coverage for all citizens. But in reality, no such coverage was ever introduced. Since the country gained independence, the Ukrainian healthcare system had remained stagnant. This has led to a constant downgrading of healthcare infrastructure, the unfair allocation of funds among healthcare providers, and the additional need to finance the system with illegal payments from patients’ pockets.

The key features of the Ukrainian healthcare system were:

- budget-dependant institutions;
- funding of infrastructure, not individual services;
- outdated clinical standards (guidelines) and medical education.

### Reform

Following the development and approval of the healthcare funding reform strategy, in 2017 the Ukrainian parliament passed the new health financing law “On Government Financial Guarantees of Healthcare Services” (the “Law”). The Law was aimed at changing healthcare financing principles to ensure the delivery of health services of appropriate quality and to secure financial protection for patients from out-of-pocket underhand expenses. The Law also initiated gradual reforms in other sectors of the healthcare system.

The key elements of the reform were:

#### — Healthcare funding

A set of important developments in the sphere of financing were initiated that can be divided into the following streams:

##### • Transformation of institutions

Since the start of the reform, the Ukrainian government has gradually stopped allocating funds to maintain state- or municipality-owned healthcare institutions based on the number of hospital beds. Instead, healthcare institutions were transformed from old, ineffective budgeted dependant entities into business-like enterprises, although still owned by the state or municipality.

##### • Establishment of the NHSU

The reformed healthcare institutions are almost entirely financed by the newly created single payer agency, the National Health Service of Ukraine (the “NHSU”). The NHSU contracts reformed state- or municipality-owned healthcare institutions as well as private institutions and individual healthcare professionals. Under contracts with the NHSU, these institutions receive payments for medical services actually provided to patients.

At the primary healthcare level, the service providers (or individual family doctors) contracted by the NHSU are paid based on an annually approved capitation tariff multiplied by the number of patients who agreed to be supervised by a particular family doctor,

and employed by a particular primary healthcare service provider. The NHSU is responsible for proposing tariffs for medical services provided by the reformed healthcare institutions, based on which they will be further remunerated.

All publicly funded services and tariffs are included in the state guaranteed benefit package of healthcare services and medicines (the “Guaranteed Package”). The Guaranteed package is approved annually by parliament and is intended to cover all registered patients.

After the full implementation of the reform, it will cover emergency, primary, secondary, tertiary, and palliative care, including the costs of services, medicines and other therapies.

#### — e-Health system

The e-Health system infrastructure is based on the personal identification of all users (patients) and providers (hospitals, pharmacies, labs, hospices, individual doctors), and is aimed at making the system more efficient, transparent and user-friendly, as well as enabling the collection of analytical data using various tools and elements.

The e-Health system includes specific modules that allow:

- the NHSU to contract service providers;
- keeping a register of patients in the e-Health system;
- the reimbursement of medicines in outpatient reimbursement programs (e-prescription);
- e-referrals;
- e-medical records (which is currently a work in progress).

#### — Implementation of international clinical guidelines

In April 2017, the Ministry of Health allowed doctors to use international clinical guidelines in their everyday practice, which was intended to promote evidence-based medicine and eliminate the possible corruption elements of outdated local guidelines.

## Pharmaceuticals

### Market

The Ukrainian pharmaceutical market is primarily driven by local manufacturers, such as Farmak, Arterium and Darnitsya: 8 out of 15 leading pharmaceutical companies by value of sales on the local market for 2020 FY were of Ukrainian origin. In the meantime, a few key international players, such as Sanofi, Bayer, Teva, Berlin-Chemie, Abbott, and Sandoz also have a strong presence on the Ukrainian pharmaceutical market.

In Ukraine, the state covers only 12% of all costs of medicines. The major part of this limited coverage is spent on generic medicines (48%) and medicines with no or low proven efficacy (35%). The public funding of innovative therapies is very limited (only 17% of the coverage) and they are mostly procured by patients out-of-pocket<sup>47</sup>.

### Governance

In recent years, the Ukrainian pharmaceutical regulatory framework has been brought in general conformity with EU law in many aspects, but there is still room for improvement and further harmonisation, which could potentially spur growth in pharma companies’ production and sales, as well as attract new investment to the sector.

The Ukrainian pharmaceutical regulatory system is structured around the Ministry of Health (the “MoH”), which acts as policy maker in the pharmaceutical sector and de-facto also has regulatory powers in the registration (marketing authorisation) of medicines and clinical-trial approval.

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<sup>47</sup> According to the study “Spending on Healthcare and Access to Treatment”, conducted by the Kyiv School of Economics and IQVIA – [http://publications.chamber.ua/2020/HCC/ACC\\_APRaD\\_Presentation\\_UPD\\_12.12\\_final.pdf](http://publications.chamber.ua/2020/HCC/ACC_APRaD_Presentation_UPD_12.12_final.pdf)



The regulatory policy in the pharmaceutical sector is implemented by two agencies:

- the State Service of Ukraine on Medicinal Products and Narcotics (the “Quality Inspectorate”); and
- the State Expert Centre of the MoH (the “SEC”).

The Quality Inspectorate’s key functions in the sector are:

- state control over imports of medicines and biologics;
- quality control of medicines and biologics on the market;
- licensing medicines’ manufacturing, import, wholesale and retail trade, as well as inspecting compliance with licensing conditions;
- GxP (GMP, GDP, GPP and GSP) inspections and certification.

The SEC acts as an expert institution in clinical trials and state registration (market authorisation) of medicines and biologics. It also acts as a central authority in the fields of pharmacovigilance and healthcare standardisation.

In 2019, a separate HTA division was created in the SEC, which currently deals with HTA-related activities. In 2021, the Ukrainian government adopted a bylaw aimed at establishing an independent HTA agency on the basis of the HTA division. It is expected that independent HTA agency will become operational in 2022.

### **Clinical trials of medicines**

The Ukrainian regulatory framework in the sphere of clinical trials is favourable for the clinical trials’ industry and is generally in line with the EU directive, as well as ICH GCP guidelines. It is updated from time to time to reflect the world’s best practices.

In addition, Ukraine has a large pool of GCP-trained healthcare professionals, and a significant number of potential trial subjects and healthcare facilities.

These factors single out Ukraine as an attractive destination for conducting clinical trials with vast potential for sustained growth. According to official data, clinical trials for over 500 protocols of medicines, biologics and vaccines are currently conducted in Ukraine<sup>48</sup>.

All leading international CROs (Covance, IQVIA, Syneos, PPD, and PRA) operate in Ukraine, along with many other global, regional and local players. Additionally, the SMO format, as well as other hybrid site models, are gaining greater attention in Ukraine.

In the meantime, improvements in a number of areas are still expected, e.g. the implementation of electronic regulatory procedures, shortening timelines for trial approvals, and further alignment with EU legislation, especially in the areas of ATMPs, ethical approvals, etc.

## **Market Access**

### **Overview**

Historically, in Ukraine most medicines and medical devices were procured centrally by the MoH or local healthcare authorities and later distributed to hospitals, but this approach proved to be ineffective due to a high level of corruption at the stage of defining demand, approving the nomenclature and procurement procedures per se.

In 2016, a positive list of medicines eligible for public procurement, the National Essential Medicines List (the “NEML”), was adopted. Following the NEML’s implementation, both outpatient and inpatient reimbursement has been possible, with a few exceptions, only for medicines listed on the NEML.

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<sup>48</sup> According to the State Expert Centre of the MoH data (<https://clinicaltrials.dec.gov.ua/>)



## Inpatient reimbursement

### — *Centralised public procurement*

For years, the centralised public procurement of medicines was a very corrupt, inefficient and opaque field in Ukraine. The first important development, which eventually led to shifting the paradigm and moving towards more efficient and transparent public procurement mechanisms, was the introduction of a new centralised electronic open-source platform for public procurement called “ProZorro” in February 2015. The introduction of the ProZorro platform made the public procurement of various goods (including medicines) more transparent, efficient, professional and accountable.

Since 2016, as part of the transformation of the healthcare system in Ukraine, the MoH has launched the reform of the healthcare public procurement system: specialised international organisations with successful experience in providing such services to governments in different countries (such as Crown Agents, UNICEF, and UNDP) were contracted to procure medicines and medical devices under centralised programmes on behalf of the government. This decision was a temporary solution, aimed at tackling large-scale corruption in procurement and the complete inability to ensure the effective and timely centralised procurement and supply of medicines and medical devices, demonstrated by the MoH throughout its history.

In 2018, the Ukrainian government adopted the Concept of Reforming the Procurement of Medicines and Medical Devices which, among others, highlighted the need to create a state procurement agency in the medical field. Following the approval of this concept, the state enterprise “Medical Procurement of Ukraine” (the “MPU”) was established in October 2018. With constant support from international donors, the MPU demonstrated very significant growth in terms of institutional capacity as a professional and highly skilled procurement agency.

Currently, public procurement under centralised programmes is divided between a few contracted specialist international organisations and the MPU. It is expected that in the near future (most probably by the end of 2022), this function will gradually be transferred fully to the MPU.

### — *Regional and local public procurement*

Public procurement at the regional level is carried out by the regional healthcare authorities for the local budget funds.

In November 2020, the MPU was assigned the status of a centralised procurement agency, and is now able to procure medical goods on behalf of the regional healthcare authorities, including procurement under framework agreements. This will allow the procurement of medical goods at the local level in a cost-effective manner, as the MPU is able to combine orders from different regional healthcare authorities, use significant bargaining power, and apply direct contacts with the pharma/meddev market representatives.

Local public procurement is carried out by state or community-owned healthcare institutions. These institutions are obliged to primarily allocate budget funds for the procurement of NEML-listed medicines. When the full demand in NEML-listed medicines is met, and a healthcare institution has sufficient funds, it can procure medicines outside the NEML.



## Outpatient reimbursement

### — *Reimbursement of certain medicines under the “Affordable Medicines” Program (AMP)*

In 2017, the Ukrainian government launched the AMP, which provides for full or partial reimbursement of essential medicines for the treatment of cardiovascular diseases, asthma and type 2 diabetes. The AMP is administered and funded by the NHSU, which reimburses the contracted pharmacies the medicines included on the reimbursement list adopted by the MoH.

Under the AMP, a patient will receive an e-prescription for a reimbursable medicine, visit a pharmacy contracted by the NHSU and collect the prescribed medicine either free of charge or with a co-payment (depending on the brand). Following the submission of monthly reports to the NHSU, the NHSU reimburses the contracted pharmacies.

### — *Reimbursement of insulins*

For patients with insulin-treated diabetes, a special programme of insulin reimbursement was introduced in 2016. The reimbursement procedures enable patients to access all registered (authorised for marketing) insulins either free-of-charge or with a co-payment, depending on the brand and category of patient. The insulin reimbursement programme was for several years administered by local authorities, funded from state and local budgets. Starting from October 2021, the NHSU will receive insulin reimbursement under its administration. The programme will be aligned with the AMP.

### — *Reimbursement under Government Resolution #1303*

Government Resolution #1303, initially adopted in 1998, provides for full or partial reimbursement of medical goods on the account of the local budgets for certain categories of patients, e.g. rare disease patients, patients from low-income households, and patients with certain disabilities.

## Managed entry agreements (MEAs)

The concept of MEAs was introduced into Ukrainian legislation in March 2020. According to the adopted changes, MEAs can be concluded between the MoH (or the MPU authorised by the MoH) and the applicant (the marketing authorisation holder for innovative medicine or its representative), and can only concern innovative medicines authorised for the first time in the world based on full registration, without registered generics on the Ukrainian market.

MEAs will be concluded based on the results of the HTA and following negotiations with the marketing authorisation holder for the respective innovative medicine or its affiliate. Both finance- and outcome-based MEAs are possible.

MEAs have not yet been implemented in Ukraine, but their implementation is expected soon. The necessary legislative framework is fully in place, so the first MEA is anticipated by the end of 2021.

## Medical devices

### Market

The Ukrainian medical devices market consists of local players, with a few leading international companies, e.g. Medtronic, Roche Diagnostics, GE Healthcare, Philips, and Johnson & Johnson present through local affiliates. Many other international players supply their products to Ukraine through local distributors.

## Governance

As Ukraine continues to move towards harmonisation with European standards in the field of medical devices, in 2015 the procedure of the state registration of medical devices was replaced with a national conformity assessment to technical regulations and marking with a national conformity sign.

Under the procedure, new medical devices can be introduced to the Ukrainian market if they conform with the Ukrainian technical regulations, which are based on EU Directives on medical devices.

The Quality Inspectorate acts as a market surveillance authority and is responsible for state control over imports of medical devices, quality control of medical devices, and overseeing compliance with Ukrainian technical regulations.

Documentary expertise, on-site manufacturing inspections and testing samples of medical devices is performed by local notified bodies, which are included on a special register maintained by the Quality Inspectorate. The type of conformity assessment procedure depends on the class of the device, ranging from self-declaration to inspections and batch certifications.

Ukrainian legislation allows the results of conformity assessments conducted in other jurisdictions to be recognised. This requires the existence of a recognition agreement between the Ukrainian national authorised body and the foreign notified body that conducted the initial assessment. This recognition procedure is often used for CE-marked medical devices. It avoids the necessity to conduct audits of manufacturers and significantly accelerates and simplifies the process of conformity assessment.

## Clinical trials of medical devices

The procedure for regulatory submission and approval of local clinical trials of medical devices is generally in line with EU law. The Quality Inspectorate has regulatory powers in the clinical trials of medical devices.

## Health Tech

The Ukrainian health tech sector has been growing rapidly in recent years and has gained a good reputation on the international market.

Ukraine is an attractive destination both for local and international big tech and outsourcing companies, as well as for local health tech product companies and start-ups that are developing products and technical solutions mainly with a focus on the EU and US markets.

*Information in this chapter is based on certain aspects of Ukrainian legislation as of June 2021*





# COVID-19

Having the largest geographical coverage in Europe – a unique local presence of over 50 offices across 26 key European countries, including the CEE/SEE regions, we can service even the most complex multijurisdictional projects in a seamless manner. Below we present only a very selective experience demonstrating the kind of work we do from our office in Kyiv.

The coronavirus SARS-CoV-2 (COVID-19) is, as in many other countries, having a significant impact on every aspect of our lives in Ukraine. Declared as a pandemic by the World Health Organisation in March 2020, everyone's primary concern is to minimise the spread of the virus in order to mitigate its effects.

Businesses and organisations have a role to play in the fight against COVID-19 and a responsibility to their own people. At the same, they find themselves confronted by a wide range of practical, commercial and legal challenges associated with the spread of the virus.

CMS is here to help you stay up to date with all the latest legal developments in relation to COVID-19 so that you can make informed decisions in relation to your business and investments during this challenging time. As the situation continues to evolve within and outside of Ukraine, please visit Law-Now to sign up for the latest real-time updates from our Law-Now service (<https://www.cms-lawnow.com/subscription>).

## **Our specialised CMS teams have published a number of publications on burning issues 2021**

How can businesses protect their trade secrets in a hybrid working world? – [https://www.cms-lawnow.com/ealerts/2021/06/how-can-businesses-protect-their-trade-secrets-in-a-hybrid-working-world?cc\\_lang=en](https://www.cms-lawnow.com/ealerts/2021/06/how-can-businesses-protect-their-trade-secrets-in-a-hybrid-working-world?cc_lang=en)

**Corporate/ M&A** – CMS European M&A Study 2021 ([https://www.cms-lawnow.com/publications/2021/03/cms-european-ma-study-2021?cc\\_lang=en](https://www.cms-lawnow.com/publications/2021/03/cms-european-ma-study-2021?cc_lang=en))

**Competition, Life Sciences, Dispute Resolution** – CMS Expert Guide to Competition Law Enforcement in the Pharmaceutical Sector in CEE ([https://www.cms-lawnow.com/publications/2021/05/cms-expert-guide-to-competition-law-enforcement-in-the-pharmaceutical-sector-in-cee?cc\\_lang=en](https://www.cms-lawnow.com/publications/2021/05/cms-expert-guide-to-competition-law-enforcement-in-the-pharmaceutical-sector-in-cee?cc_lang=en))



**Corporate/ M&A** – The Ukrainian Parliament unblocks large-scale privatisation  
([https://www.cms-lawnow.com/ealerts/2021/04/the-ukrainian-parliament-unblocks-large-scale-privatisation?cc\\_lang=en](https://www.cms-lawnow.com/ealerts/2021/04/the-ukrainian-parliament-unblocks-large-scale-privatisation?cc_lang=en))

**Corporate/ M&A** – Ukraine updates requirements for information disclosure on UBOs and ownership structure  
([https://www.cms-lawnow.com/ealerts/2021/07/ukraine-updates-requirements-for-information-disclosure-on-ubos-and-ownership-structure?cc\\_lang=en](https://www.cms-lawnow.com/ealerts/2021/07/ukraine-updates-requirements-for-information-disclosure-on-ubos-and-ownership-structure?cc_lang=en))

**Employment** – The Future is Now: The New World of Work in Ukraine  
([https://www.cms-lawnow.com/ealerts/2021/05/the-future-is-now-the-new-world-of-work-in-ukraine?cc\\_lang=en](https://www.cms-lawnow.com/ealerts/2021/05/the-future-is-now-the-new-world-of-work-in-ukraine?cc_lang=en))

**Dispute Resolution, Litigation** – Ukraine enacts law on electronic court  
([https://www.cms-lawnow.com/ealerts/2021/06/ukraine-enacts-law-on-electronic-court?cc\\_lang=en](https://www.cms-lawnow.com/ealerts/2021/06/ukraine-enacts-law-on-electronic-court?cc_lang=en))

**Compliance, Dispute Resolution, Litigation** – CMS Expert Guide to Whistleblower Protection and Reporting Channels  
([https://www.cms-lawnow.com/publications/2021/07/cms-expert-guide-to-whistleblower-protection-and-reporting-channels?cc\\_lang=en](https://www.cms-lawnow.com/publications/2021/07/cms-expert-guide-to-whistleblower-protection-and-reporting-channels?cc_lang=en))

**Life Sciences, Healthcare** – Ukraine releases COVID-19 vaccine and biopharmaceutical manufacturers from liability  
([https://www.cms-lawnow.com/ealerts/2021/03/ukraine-releases-covid-19-vaccine-and-biopharmaceutical-manufacturers-from-liability?cc\\_lang=en](https://www.cms-lawnow.com/ealerts/2021/03/ukraine-releases-covid-19-vaccine-and-biopharmaceutical-manufacturers-from-liability?cc_lang=en))

**Life Sciences, Healthcare** – Ukraine changes quality control rules for imported medicines  
([https://www.cms-lawnow.com/ealerts/2021/08/ukraine-changes-quality-control-rules-for-imported-medicines?cc\\_lang=en](https://www.cms-lawnow.com/ealerts/2021/08/ukraine-changes-quality-control-rules-for-imported-medicines?cc_lang=en))

**Gambling, Technology** – Regulation of gambling taxation is underway in Ukraine  
([https://www.cms-lawnow.com/ealerts/2021/08/regulation-of-gambling-taxation-is-underway-in-ukraine?cc\\_lang=en](https://www.cms-lawnow.com/ealerts/2021/08/regulation-of-gambling-taxation-is-underway-in-ukraine?cc_lang=en))

**Gambling, Technology** – Ukraine adopts licensing conditions for gambling  
([https://www.cms-lawnow.com/ealerts/2021/01/ukraine-adopts-licensing-conditions-for-gambling?cc\\_lang=en](https://www.cms-lawnow.com/ealerts/2021/01/ukraine-adopts-licensing-conditions-for-gambling?cc_lang=en))

**IT, Tax** – Diia City digital economy law passed in Ukraine  
([https://www.cms-lawnow.com/ealerts/2021/07/diia-city-digital-economy-law-passed-in-ukraine?cc\\_lang=en](https://www.cms-lawnow.com/ealerts/2021/07/diia-city-digital-economy-law-passed-in-ukraine?cc_lang=en))

## 2020

**Corporate, Tax, Banking & Finance** – Ukraine passes a range of measures in response to the coronavirus crisis  
([https://www.cms-lawnow.com/ealerts/2020/04/ukraine-passes--a-range-of- measures-in-response-to-the-coronavirus-crisis?cc\\_lang=en](https://www.cms-lawnow.com/ealerts/2020/04/ukraine-passes--a-range-of- measures-in-response-to-the-coronavirus-crisis?cc_lang=en))

**Corporate/M&A** – Ukraine amends requirements for general shareholder meetings and disclosures due to COVID-19  
([https://www.cms-lawnow.com/ealerts/2020/04/ukraine-amends- requirements-for-general-shareholder-meetings-and-disclosures-due-to-covid19?cc\\_lang=en](https://www.cms-lawnow.com/ealerts/2020/04/ukraine-amends- requirements-for-general-shareholder-meetings-and-disclosures-due-to-covid19?cc_lang=en))

**Dispute Resolution, Legislation, Corporate** – Ukrainian judiciary continues flexible operations during quarantine  
([https://www.cms-lawnow.com/ealerts/2020/04/ukrainian-judiciary- continues-flexible-operations-during-quarantine?cc\\_lang=en](https://www.cms-lawnow.com/ealerts/2020/04/ukrainian-judiciary- continues-flexible-operations-during-quarantine?cc_lang=en))

**In addition, you can access another useful data prepared by CMS in relation to COVID-19:**

- **CMS Expert guide to travel restrictions for non-EU citizens** – [https://www.cms-lawnow.com/publications/2021/07/cms-expert-guide-to-travel-restrictions-for-non-eu-citizens?cc\\_lang=en](https://www.cms-lawnow.com/publications/2021/07/cms-expert-guide-to-travel-restrictions-for-non-eu-citizens?cc_lang=en)
- **CMS Expert Guide to vaccination and testing for employers** – [https://www.cms-lawnow.com/publications/2021/04/cms-expert-guide-to-vaccination-and-testing-for-employers?cc\\_lang=en](https://www.cms-lawnow.com/publications/2021/04/cms-expert-guide-to-vaccination-and-testing-for-employers?cc_lang=en)
- **CMS Expert Guide to vaccine compensation regimes** – <https://cms.law/en/int/expert-guides/cms-expert-guide-to-vaccine-compensation-regimes>
- **CMS Expert Guide to the legal aspect for company directors & CEOs** (<https://cms.law/en/int/expert-guides/cms-expert-guide-for-directors-of-companies>)
- **CMS Expert Guide to COVID-19 corporate crime & regulatory issues** (<https://cms.law/en/int/expert-guides/cms-expert-guide-to-covid-19-corporate-crime-regulatory-issues>)
- **CMS Expert Guide to Government Support for employers and workers** (<https://cms.law/en/int/expert-guides/cms-expert-guide-to-government-support-for-employers-and-workers>)
- **CMS Expert Guide to Coronavirus related loan moratoriums** (<https://cms.law/en/int/expert-guides/cms-expert-guide-to-coronavirus-related-loan-moratoriums>)
- **CMS Expert Guide to antitrust law and legislation during Covid-19** (<https://cms.law/en/int/expert-guides/cms-expert-guide-to-antitrust-law-and-legislation-during-covid-19>)
- **CMS Expert Guide to COVID-19 impact on lease agreements** (<https://cms.law/en/int/expert-guides/cms-expert-guide-to-covid-19-impact-on-lease-agreements>)
- **CMS Expert Guide to the COVID-19 procedural deadlines for IP law** (<https://cms.law/en/int/expert-guides/cms-expert-guide-to-covid-19-s-impact-on-ip-legal-timings>)
- **CMS Expert Guide to building law and regulation during Covid-19** (<https://cms.law/en/int/expert-guides/cms-expert-guide-to-covid-19-impact-on-construction-industry>)
- **CMS Expert Guide to stabilisation and restructuring initiative** (<https://cms.law/en/int/expert-guides/cms-expert-guide-to-stabilisation-and-restructuring-initiative>)
- **CMS Expert Guide to the law and regulation of force majeure** (<https://cms.law/en/int/expert-guides/cms-expert-guide-to-force-majeure>)
- **CMS Expert Guide to the law and regulation of Covid-19 tax relief** (<https://cms.law/en/int/expert-guides/cms-expert-guide-to-covid-19-tax-relief-measures>)
- **Joint activities with other FMCG suppliers during Coronavirus** (<https://cms.law/en/int/publication/joint-activities-with-other-fmcg-suppliers-during-coronavirus>)
- **Cross border response for global clients (CMS's assessment of the COVID-19 situation)** (<https://cms.law/en/int/insight/covid-19-the-new-normal/covid-19-crisis>)







# Top 20 inventions and start-ups by Ukrainians

From the Cossacks of the sixteenth century to the young wunderkinds of modern Ukraine who continue to advance technology, a surprising number of inventions and new business were launched by Ukrainians. Here are the top 20.

## The first submarine<sup>49</sup>

The undecked, flat-bottomed boat called Chaika<sup>50</sup> was built by Zaporizhian Cossacks at the turn of the seventeenth century. The boat could be deliberately capsized, trapping air inside so that the crew could walk along the river bed holding it above their heads. Reed belts were fixed to the gunwales to submerge the boat and operate it underwater. Chaika could maintain a speed of about 15 knots, which allowed the Cossacks to easily bypass the Turkish fleet.

## The gas lamp

Probably one of the best-known Ukrainian inventions is the gas lamp, whose manufacture became possible thanks to Ignatius Lukasevich and Jan Zeh, assistants at a Lviv pharmacy, who developed a method for purifying and distilling oil. The first oil lamps were made by famous Lviv lamp artisan Adam Bratkovsky.

On 31 July 1853, the first surgical operation performed at night was lit with the newly made lamp. Thereafter gas lamps were used for lighting the whole world<sup>51</sup>.

## The first tram

In 1880, the world's first electric tram line, designed by engineer Fedir Pirotsky (born in Lokhvitsa in the Poltava region), went into operation in Sestroretsk near St. Petersburg. The Siemens electric tram line in the city of Lichterfeld near Berlin began one year later, while Pirotsky's invention was abolished and did not return to use until 1892, when an electric tram line was built in Kyiv, the first city in the Russian Empire (at the time) to switch to electric trams<sup>52</sup>.

## X-ray

In 1881, 14 years before Wilhelm Röntgen's work on X-rays<sup>53</sup>, Ukrainian Ivan Puluj constructed a tube that became the world's first X-ray emitting lamp. Puluj analysed the nature and behaviour of the origin of the rays much more thoroughly than the German Röntgen and demonstrated their usefulness<sup>54</sup>.

## The kinescope

Together with physicist Nikolai Lyubimov, Yosep Timchenko developed the "snail" jumping mechanism two years before the Lumiere brothers came up with their invention. The principle action of the mechanism served as the basis for the creation of a kinescope. Two films made with the first kinescope were shown in Odesa in 1893. Despite Yosep Timchenko being ahead of Western inventors of the cinematograph, his device was not patented<sup>55</sup>.

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<sup>49</sup> <https://bit.ly/3zWMDGL>

<sup>50</sup> [https://en.wikipedia.org/wiki/Chaika\\_\(boat\)](https://en.wikipedia.org/wiki/Chaika_(boat))

<sup>51</sup> [http://www.fgl-energy.com/en/fgl\\_history.html](http://www.fgl-energy.com/en/fgl_history.html)

<sup>52</sup> [https://en.wikipedia.org/wiki/Fyodor\\_Pirotsky](https://en.wikipedia.org/wiki/Fyodor_Pirotsky)

<sup>53</sup> [https://en.wikipedia.org/wiki/Wilhelm\\_R%C3%B6ntgen](https://en.wikipedia.org/wiki/Wilhelm_R%C3%B6ntgen)

<sup>54</sup> [https://en.wikipedia.org/wiki/Ivan\\_Puluj](https://en.wikipedia.org/wiki/Ivan_Puluj)

<sup>55</sup> <https://medium.com/@m.a.kostuk/joseph-yosep-timchenko-1895-1924-odessa-ukraine-a128a5e6d795>

### **The helicopter**

The first design of a “miracle flying machine”, now known as the helicopter, was developed by Ukrainian-born Igor Sikorsky. The Kyiv aircraft designer, an alumni of Kyiv Polytechnic Institute (1907 – 1911), patented his invention in 1931. Sikorsky emigrated to the United States, and the U.S. army was the first to order one of his machines. Sikorsky soon became the owner of a large business. In total, Sikorsky Aircraft manufactured 17 different aircraft models and 18 helicopters<sup>56</sup>.

### **Postal codes**

A unique system of marking letters, modern postal codes, was created in Kharkiv in 1932. Initially, it used numbers from 1 to 10, and later the format was changed to number-letter-number. With the onset of World War II, this indexation system was abolished, but versions of it continue to be used in many countries around the world<sup>57</sup>.

### **The first kidney transplant**

Yuri Voronyi conducted the world's first kidney transplant in 1933. He proved in clinical conditions that “the kidneys of fresh corpses are able to revive and function when transplanted to another person”, and that such organs transplanted into live bodies did not lead to any specific complications<sup>58</sup>.

### **Astronautics**

Zhytomyr-born Serhiy Korolyov<sup>59</sup> is regarded by many as the father of practical astronautics. It was under his leadership that the first intercontinental ballistic missile was developed in 1953, the first artificial satellite launched, and the first human space flight took place. It all began when Korolyov and Friedrich Zander formed a public body to study the effects of jet engines, which later became a research and development laboratory to develop airborne missiles.

### **The light emitting diode**

Nicholas Holonyak is credited for the design of a light emitting diode in 1962. The son of Ukrainian immigrants from the Transcarpathian region, Holonyak was an employee at General Electric in the 1960s. Now LEDs are used as controlled sources of light in CD and DVD players, Blu-Ray devices and cell phones, as well as in printers and during surgeries. One of their most common uses today is scanning product ID numbers in the supermarket.

### **Antithrombotic prosthetic heart valves**

In 1965, the world's first antithrombotic artificial heart valves were created and implanted into patients by Mykola Amosov<sup>60</sup>. Amosov was one of the world's best-known heart surgeons, a talented scientist, and founder of biocybernetics in Ukraine. The Cardiac Surgery Centre was founded under his leadership and became a global centre of innovation in the field. In 2008 Mykola Amosov was ranked second after Yaroslav I the Wise in a poll on “Great Ukrainians”.

### **The compact disk (CD)**

At the end of the 1960s, a postgraduate of the Kyiv Institute of Cybernetics named Viacheslav Petrov invented the first prototype CD. Incredibly, at that time the innovation had exclusively scientific implications and had nothing to do with the music industry. The first CD only had storage space of 2500 Mbit<sup>61</sup>.

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<sup>56</sup> <https://bit.ly/3naYDAV>

<sup>57</sup> [https://en.wikipedia.org/wiki/Postal\\_code#History](https://en.wikipedia.org/wiki/Postal_code#History)

<sup>58</sup> [www.welcometoukraine.info/15-ukrainian-inventions-that-changed-the-world/](http://www.welcometoukraine.info/15-ukrainian-inventions-that-changed-the-world/)

<sup>59</sup> <https://bit.ly/38OrSRE>

<sup>60</sup> <https://bit.ly/2YI5c3P>

<sup>61</sup> <https://destinations.com.ua/events/festivals-holidays/949-ukrainian-scientists-who-changed-the-world>

### The world's largest aircraft

The Antonov-225 "Mriya"<sup>62</sup> is the world's largest commercial airplane. Not only the heaviest aircraft in the world, it is the heaviest aircraft ever built. It runs on six turbofan engines and has a maximum take-off weight of 640 tonnes. In March 1989, a flight with a take-off weight of more than 500,000 kg set 106 world records, as well as records for aircraft of its class. The Antonov-225 was built between 1985 and 1988 by Oleh Antonov Aircraft Design Bureau in Kyiv. Since 2002, it has been used for commercial transportation.

### Paypal

PayPal is the most common internet payment service in the world. It is used by more than 230 million people in 190 countries. It was founded in 1998 by American programmers Peter Thiel, Luc Nosekom, and Luke Nosek, and Kyiv-born Max Levchin. In 2004, the service was purchased by eBay for USD 1.5 billion. Afterwards, Max Levchyn created a start-up called Slide, a service for displaying a large number of photos, which paired with the MySpace social network. Later, Slide switched to creating social services for MySpace and Facebook, and in 2010 it was acquired by Google for USD 182 million<sup>63 64</sup>.

### A life-saving capsule

Volodymyr Taranenko developed a capsule that separates the passenger section from the rest of the plane in seconds, allowing passengers to be saved. The capsule system is simple: a small parachute is ejected from the aircraft, which pulls out a large parachute, which then pulls out the capsule. This whole process takes just 2 to 3 seconds. The cost of this invention is currently prohibitively high, although Taranenko has patented it and continues to improve the capsule while trying to have it introduced to mass production<sup>65</sup>.

### WhatsApp

Everyone knows WhatsApp – but if you don't, it's an instant messenger for smartphones. It was founded by Brian Acton and Jan Koum, the latter being born in 1976 in Kyiv. In January 2009, Koum bought an iPhone and realised that Apple's then seven-month-old app store was about to spawn a whole new industry of apps. He visited his friend and the two talked for hours about Koum's idea of an app. Jan chose the title "WhatsApp" instantly because it sounded like "what's up?", and then, a week later on his birthday, 24 February 2009, Koum incorporated WhatsApp Inc. in California<sup>66</sup>. In 2018, the audience of active WhatsApp users reached 1.5 billion.

### A wrist glucose meter

The lives of people suffering from diabetes are difficult, but Transcarpathian scientist Petro Bobonich found a way to help them. In the 2010s he invented a device for measuring blood sugar levels that can be worn like a wristwatch and that does not require taking blood samples. With this glucose meter diabetics can know their blood sugar level at any time. In addition, the device can be used to insert insulin with a pump programmed through the meter<sup>67</sup>.

### Grammarly

Grammarly is a writing assistant that was originally launched by Alex Shevchenko, Max Lytvyn, Dmytro Lider—three software developers based in Kyiv. The platform is designed as a cloud-based algorithmic English-language proof-reader. The software uses AI to locate mistakes and to customise users' writing style, tone, and context-specific wording. Today, the company has offices in San Francisco, New York, Vancouver and Kyiv. Grammarly is used daily by about 30 million people, and this figure is constantly growing. Over the last two years, USD 200 million has been invested in an online service that helps write texts in English<sup>68</sup>.

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<sup>62</sup> [https://en.wikipedia.org/wiki/Antonov\\_An-225\\_Mriya](https://en.wikipedia.org/wiki/Antonov_An-225_Mriya)

<sup>63</sup> [https://en.wikipedia.org/wiki/Max\\_Levchin](https://en.wikipedia.org/wiki/Max_Levchin)

<sup>64</sup> <http://secondfloor.gallery/en/works/paypal/>

<sup>65</sup> <http://www.welcometoukraine.info/15-ukrainian-inventions-that-changed-the-world/>

<sup>66</sup> <https://www.forbes.com/sites/parmyolson/2019/12/23/exclusive-the-rags-to-riches-tale-of-how-jan-koum-built-whatsapp-into-facebooks-new-19-billion-baby/?sh=5fda72981047>

<sup>67</sup> <https://bit.ly/3BRcobP>

<sup>68</sup> <https://www.epravda.com.ua/publications/2020/01/13/655674/>

### **The no-blood blood test**

This invention is by a Ukrainian scientist named Anatoly Malikhin. In the middle of the 2000s, Malikhin created a unique device called "BioPromin" which can check more than 100 blood parameters at once. To conduct a test, five sensors are attached to the body: two on the neck near the carotid artery, two under the armpits, and one on the abdomen. Data accuracy is up to 98%. This Ukrainian invention is now actively used in China, Saudi Arabia, Germany, Egypt and Mexico<sup>69</sup>.

### **Vaccines against plague and cholera**

Volodymyr Havkin (originally Waldemar Haffkine) was the first person in history to create vaccines against both plague and cholera. Born in Zaporizhzhia Oblast in 1860, he studied and worked first in Odesa, but Havkin was a political opponent of the former Moscow empire and the tsarist government refused to use his invention. When a number of European countries also refused to use his anti-cholera vaccine, Havkin moved to India where he continued to work, conducting most of the tests on his own body. Later more than 4 million people in India were vaccinated<sup>70</sup>. This outstanding scientist was appointed chief bacteriologist of the country and director of the Bombay Anti-Plague Laboratory (later renamed the Haffkine Institute)<sup>71</sup>.

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<sup>69</sup> <https://un-sci.com/ru/2019/06/03/unikalnoe-izobretenie-harkovchanina/>

<sup>70</sup> <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2763662/>

<sup>71</sup> <http://www.whonamedit.com/doctor.cfm/3306.html>

## **Disclaimer**

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