



Magisters

Legal Challenges in Ukraine: 2008

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Introduction to Magisters

- **Founded in 1997, two attorneys**
- **In 2008 over 120 practicing lawyers in Kyiv and Moscow offices**
- **The largest firm in Ukraine by revenue and size in 2007**
- **Blue chip clients**
- **Full-service, including “white-collar” crime and investigatory services**
- **Strategic goal – the leading law firm in the CIS**

- **Agriculture & Food Processing**
- **Banking and Finance**
- **Energy**
- **Oil & Gas**
- **Metals & Chemicals**
- **Pharmaceuticals & Health**
- **Project Finance/Private Public Partnerships**
- **Real Estate Development/Hotels & Leisure**
- **Telecommunications and Media**
- **Transportation**

Investing in Ukraine

- **2000-2006, real GDP grew 7.5% annually**
- **2007 real GDP rose close to 8% year-on-year**
- **Double digits growth rates in manufacturing, wholesale and retail and construction**
- **FDI reached USD 29.5 billion as of January 2008 (USD 8.7 billion in 2007 - 67% growth)**
- **EURO 2012**
- **WTO accession**
- **Stable financial sector**
- **Other European markets have matured and are no longer interesting**
- **Opportunity of large reward for early entry**
- **50-300% return on investment**

- **High level of inflation due to populist government policies since Jan'08**
- **Political fighting between the President and the Government with Opposition on the watch**
- **High level of graft**
- **Slim availability of talent leads to high salaries**
- **High cost in doing business due to demand/supply factors**

Key Legal Issues to Keep in Mind When Doing Business in Ukraine

- **The market for deals is strong – 10 banking M&A deals in 2007 continue with sale of Pravex to Intesa Sanpaolo in 2008; PepsiCo; Shell, Advent, DANONE, Morgan Stanley, Goldman Sachs, and many others**
- **Corporate law requires considerable overhaul – minority rights, corporate governance, raider attacks**
- **The Draft Law on Joint Stock Companies is pending in the Parliament**

- **The Government and courts addressed the increasing wave of illegal raider attacks and dampened such practices – but still happening**
- **The Supreme Economic Court in December 2007 issued Recommendations that effect corporate governance: most important of which is that shareholder agreements cannot be governed by foreign law**
- **Low benchmarks require antimonopoly clearance in the majority of all M&A deals happening on the market – unnecessary delaying and adding costs to the transactions in the small/middle market**
- **Confusion between the Civil Code and the Economic Code**

- **Key interests are in property development: offices, warehouses, shopping malls, hotels and suburban villas**
- **Moratorium on the sale of agricultural land**
- **Auctions when selling state and municipal land plots – but no regulation to support it – no licensing procedure for auction houses, valuation of land is contradictory**

- **Legal barriers are often circumvented – grey land market proliferates putting at risk investments**
- **Timoshenko Government made it a priority to fight the grey land market**
- **Land Cadastre and Land Market laws are expected to allow free turnover of agricultural land**
- **Lucrative returns on investment excite major international developers**
- **Entry through well packaged deals, or savvy local partners in need of investment**

- **WTO related legislation on IP rights – providing rights to the courts to confiscate and destroy pirated goods**
- **Improvement of customs controls over import/export activities involving pirated goods**
- **Record number of applications for protection of intellectual property rights in 2007 – USA the largest in terms of the number of applications**
- **Business Software Alliance launched its operations in Ukraine (84% of software is pirated)**
- **Franchising is becoming very popular**

- **Volume of trade on Ukrainian stock exchanges increases, but majority of trading still takes place outside the regulated market (93%)**
- **Open joint investment funds show average return of 52-96%, or more than 20% of real profits for investors**
- **The credit crunch is expected to have little effect on Ukrainian finance sector**
- **Interest rates on retail loans in US dollars of 12-17% make the market very attractive for foreign financial institutions**

- **WTO accession – May 16, 2008**
- **Trade liberalization**
- **Simplification and streamlining of customs procedures**
- **Abandoning non-tariff barriers to trade in violation of the WTO rules**

- **Generally the tax legislation is stable**
- **Major challenge is VAT refund**
- **The Government pledged to take care of VAT refunds and certain steps have been made: customs regulations, simplified reporting, quicker turnaround**
- **Kick-backs and favoritism of “politically friendly” companies is still a major concern**



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Thank you!

Questions?

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