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INTERNATIONAL LAW OFFICES



OUR PRACTICE:

- ARBITRATION AND LITIGATION
- SHIPPING AND TRANSPORTATION
- CORPORATE AND COMMERCIAL LAW
- INVESTMENT PROJECTS
- TRANSACTIONS AND DEALS
- REAL ESTATE AND CONSTRUCTION
- TAXATION
- INTELLECTUAL PROPERTY
- INTERNATIONAL PRIVATE LAW



Is PPP viable under Ukrainian Law?

Gaining WTO membership in February 2008 should help boost the country's GDP and hence demand for infrastructure. There are a host of opportunities for foreign investment in PPP initiatives in Ukraine.

Concession

The legal status of such concessions in Ukraine is regulated by the Law On Concessions which came into force on 16 July 1999. It provides for an extensive list of the spheres in which objects of state and municipal property may be constructed, renovated and/or operated under a concession.

Joint activity agreement (JAA)

Non-corporate joint activity is one of the possible options provided for by Ukrainian civil and tax legislation for conducting business. Joint activity is carried out via a contractual joint venture organised by a combination of funds or assets of participants or without combination of contributions. The joint activity does not have the status of a legal entity. The management of joint activity and conduct of joint business of the parties as a rule is assigned to an investor. Profits are divided between the parties proportionally to contributions.

Lease

The lease of integral property complex or individual item of movable (immovable) property is another way to PPP in Ukraine. The lessor is the State Property Fund of Ukraine or local councils. The terms of the lease are similar to concession terms and are defined by the lease agreement.

Management

There are some rather new legal institutions which have good prospects. Management is among them. Under the property management agreement a settler shall transfer to a manager the property for a specific period of time and the manager shall be obliged to manage this property for fees to the interests of the management settler or a person (beneficiary) determined by him.

Requirements for successful PPPs

PPP-based project finance can be successful in Ukraine, even on the basis of current laws and regulations. The existing provisions regulating the project agreement give relatively clear guidance on the main issues to be covered and they remain sufficiently flexible to enable the parties to negotiate freely its terms. There are a number of security tools, such as enterprise mortgages, pledges of movable and immovable property, stock and asset charges etc.



Opening business in Ukraine: things to remember

The main thing one should know, that there is neither the best nor the worst type of a legal entity. All company types are equal in conducting business and taxation in Ukraine. The circle of legal entities which can conduct some specific type of activities (for example, banking, securities activity and pawning) is strictly limited by the Ukrainian legislation. The difference between the types lies in management, responsibility of owners, and the share capital.

The most popular and practical company types in Ukraine are Private Limited Company (PLC) and Limited Liability Company (LLC). It is important to highlight the fact that both can be found with 100 per cent of foreign investments and can be owned either by the only one person or several persons. Following our practice these forms allow solving all typical assignments of the foreign owner such as conducting business in Ukraine through the company under control, repatriation of incomes, limitation of responsibility, etc. The Ukrainian legislation on foreign investment provides protection of foreign investment irrespective of the type of the legal entity.

Investment in Ports and Terminals

Speaking of this we would like to mention the fact of Mr. Nitsevych's appointment by the European Commission as the Expert of Legal and Institutional Questions in the framework of the project TRACECA (Transport Corridor Europe - Caucasus - Asia) on December 17, 2007. Within the bounds of the project Mr. Nitsevych is responsible for legal component of the investment attraction scheme to the ports of Ukraine, Romania, Turkey, Bulgaria and Georgia.

Shipping



Besides of daily work on registration of vessels (yachts) and shipping companies in appropriate jurisdictions, we continue to develop practice in the sphere of shipping. Thus, for the last months our clients had some collisions of vessels the sequences of which had to be worked on. As a result we recovered the amounts of damage from the guilty parties and the given incidents underlay Mr. Melnykov's presentation on the Third International Conference of Shipbrokers and Ship-owners "NOVO 2008" Novorossiysk.

Arthur Nitsevych and Nikolay Melnykov became members of the Nautical Institute. On April 9, 2008 within the bounds of the joint program of cooperation on the basis of the Russian Maritime Register of Shipping was held the first round table dedicated to Safety of Navigation and Environmental Protection: Maritime Accidents. The analysis of the Kerch Accident of 2007 was taken as the basis of the event.

Forwarding and Terminal Operations



In view of growing interest which international companies show in doing business in Ukraine, especially in spheres connected with cargo shipment through the Ukrainian ports, the share of international Terminal operators and Forwarders has considerably increased in Ukrainian market last years.

Having got big practice in this field, we offer our clients exclusive legal services such as drawing up of individual terminal operators and forwarding contracts, standard conditions of companies' activity, estimating their risks under the contracts concluded with ports, stevedoring companies, terminals, carriers, as well as provide them with legal advise in our traditional areas of practice: company's establishing, Ukrainian Labour Law (employment contract with director, personnel hire), tax issues and optimization of taxation - taking into account special character of their activity.

Recently special accent in our practice has been made on container shipments and multimodal carriage as transportation of cargoes in containers is significantly growing from year to year and promise to become the main sector of cargo shipment in Ukraine. We propose our clients development of door-to-door delivery legal conception including drawing up of necessary contracts and forms of specific documents.

Being competent in international practice as well as regards Ukrainian requirements in this field, we can offer our clients wide range of legal services to provide for their successful and profitable activity in Ukraine.

Land Purchasing



Today land purchasing in Ukraine causes investors' great interests. Since the Ukrainian Land Law contains a row of restrictions and peculiarities, so the primary legal analysis of land plot status as well as further detailed transaction planning becomes very important.

The great merit of our firm consists in creation of court practice as for landed servitude established through the court. Recently the landed servitude institution has become rather widespread among the land owners and land users, who now more frequently apply for legal advice and support as for its registration.

According to the Ukrainian Law the title to land plot is resulting from the title to a building located on the land plot. Such key principle gives the possibility to register the title to land by the way of buying a building situated on this land plot.

Unfortunately, in 2008 restrictions' enactment on the land transfer of the state and municipal property has practically blocked the development of new construction projects. Thereupon, especial urgency for investors gets superficies as according to the requirements of the land legislation superficies does not demand an auction to be carried out.

Inherently the superficiality corresponds more to the nature of relationships in construction sphere even than traditionally used leasing agreement.

The special field of our practice can be considered issues concerning land plots of agricultural use, special regime for which is provided by the Ukrainian Law. In such kind of projects we develop the optimum scheme for every case.

Real Estate and Construction

Opening or acquiring business in Ukraine is usually connected with purchasing or construction of real estate objects. Commercial realty in seaside places is still remaining the largest and the most significant projects in this sphere.

First of all there are handling terminals on the territory of Odessa, Ilyichevsk, Yuzhnyi, Nikolaev, Kherson ports. For more than 10 years we are involved in developing and supporting such projects. Separate segment of our practice is the construction of piers and yacht marinas, the projects demanding special procedure of construction and use of hydro-techny works. Our experience in this field is the unique one in Ukraine.

Within last two years share of legal consulting and support of construction projects have considerably grown in our practice. Thus, nowadays we are working on two projects of country real estate construction, a cottage village in Odessa suburbs and a trade moll in the district centre of Odessa region. Following our practice we provide our clients with the professional advice how to secure profitable investment in real estate construction choosing proper instruments and ways of funds attraction being the most important factors of such projects success.

Real Estate and Non-residents

The Ukrainian real estate market continues to grow rapidly and offers many exciting opportunities and high returns on investment. Foreign investors entering this risky but profitable real estate market first need a highly qualified professional legal help. We have lodged the special project "Real estate in Odessa and Nikolaev", the purpose of which is assisting our clients in all aspects of real estate.

It's important to note that the Odessa real estate market possesses many local peculiarities and practices that at first glance may seem very shady and risky for a foreigner. By this reason our aim is combining the existing traditions and customs of the Odessa real estate market with the foreign practices estimating the risks that may occur in every particular case.

Another important issue concerns the activity of the local real estate agencies that at the moment are mainly directed to the local clients and have no big practice of working with non-residents. That's why there are very few English speaking agents who may assist a non-resident in purchasing or selling property. In this respect, we are aimed for collaboration with the local real estate agencies in order to make the process more transparent and secure for our clients.



Business M&A

This year business projects connected with business M&A (merger and acquisition) were of a big priority in our practice. As one of business M&A instruments we propose our clients purchasing the business by option.

The option provides for the possibility of purchasing company's corporate rights in future. For the Buyer of business it means that business acquiring will be carried out gradually. In this case the Buyer gets a very big advantage having the possibility to learn and take part in the internal mechanism of such business. The Buyer therefore has the opportunity to understand organization structure, relations with partners, clients, suppliers, counteragents prior to acquisition of such business as full complex. Only after having been fully involved in the company's activities the Buyer acquires 100% of company's corporate rights and becomes the actual owner.

In practice such instrument is applicable when the company gets main profit using non-material assets, i.e. the company rendering any kind of services, including trade, advertisement, consultation services, etc.



Transactions

The special place among standard transaction procedures occupies setting of structure and determination of payments consequence between the parties. Meanwhile, the best way-out of this problem is an escrow account (intermediary of banks during the payments).

The essence lies in the fact that the buyer can transfer as a part, as well as full amount of the contract, to an account specially opened by the bank for the specific transaction, and the bank shall pay the specified amount to the seller only after fulfillment of the certain condition stipulated by the parties. As a result, the seller can be assured that (a) the buyer is solvent, (b) the buyer has settled an invoice under the contract, (c) money acquisition depends only on the seller fulfillment of his obligations under the contract.

The confidence of the buyer is based on the fact in which the seller will not receive the money, until he carries out his obligations (formalize and transfer the object, re-register participation interests and so forth).

Cost of such a service on legal support of the escrow account is incomparably less, than the stress suffered by the parties from negotiations on procedure of payments, expectation of payments, and the main thing - on payment settlement.





Our Conferences

For several years "International Law Offices" together with the law firm "Remedy" (St.-Petersburg/Moscow) organize international events. Every year a two-day Conference "Practice of Maritime Business: Sharing Experience" takes place in Odessa at the end of May, and a one-day seminar "Protection of Ship-Owners" - at the end of September in St.-Petersburg. The abovementioned events are unique as there practical problems in the aspects of economy and law are discussed. There are more than 100 delegates from 15 countries of the world among the participants of our events who are the representatives of shipping, insurance, surveyor, agency,

law companies and sea ports.

In 2008 our conference "Practice of Maritime Business: Sharing Experience: Arbitration and Dispute Resolution" passed under the patronage of the Odessa City Council supported by London Maritime Arbitrators' Association and German Maritime Arbitration Association, BIMCO (Baltic and International Maritime Council) and NI (Nautical Institute, UK). The General partner of the conference were "Odessa Commercial Sea Port" and Russian National Insurance Company ROSGOSSTRAKH.

Our Publications

In the articles of our experts published in mass media and on our website You may read about individual cases from our practice and actual problems of business:

- **A. Nitsevych. Claims of Ukrainian Crew Members: View of a P&I Club.**
IBA Committee newsletter, June, 2008.
- **A. Nitsevych. Why to Invest in Ukraine through Cyprus.**
FiFoOst, March, 2008.
- **A.Losevskaya. Opening Business in Ukraine: Things to Remember.**
ICL Directory, 25 March, 2008.
- **A. Nitsevych. Private Container Terminals in Ukraine.**
Container Management, May, 2008.
- **A. Nitsevych. Real Estate in Ukraine: Frequently Asked Legal Questions.**
Hieros Gamos (HG.ORG), Worldwide Legal Directories, April, 2008.
- **K.Guretskaya. Choose Correctly the Name for Your Company and Get Success.**
Hieros Gamos (HG.ORG), March, 2008.
- **A. Nitsevych. Prospects for Container Terminals in Ukraine.**
World Cargo News, February, 2008.
- **A. Losevskaya. The Procedure and Peculiarities of Director's Dismissal in Ukraine.**
Ukrainian Journal of Business Law, July-August, 2008.
- **A. Nitsevych. Is PPP Viable under Ukrainian Law?**
ProjectFinance, June, 2008.

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