



# INTERNATIONAL LAW OFFICES

## CORPORATE BULLETIN



In the early nineties of the XX century anticipating the needs of the new market we opened our practice. Then, step by step International Law Offices broadened its base by developing its corporate, commercial, financial and property practice.

In 1995 the firm was reorganized and set up an office in Odessa - the biggest port of Ukraine and modern business city. At the same time, as a result of redevelopment schemes and in keeping with its expansion program, the firm moved into its present office in Kiev.

International Law offices is one of the leading association of lawyers and attorneys at law of Ukraine.

We provide services in the following spheres:

**shipping,  
investment,  
contracts,  
real estate,  
corporate & business law,  
tax planning,  
arbitration and litigation.**

Our Firm has gathered a team of 22 highly qualified and trained professionals, who have practical experience in different fields of law and worked in public and private sectors.

The firm's strategy is based on the following principles:

- protecting clients' interests in a rather complicated legal environment of Ukraine;
- is possible only by combining the efforts of our lawyers, who act as a dedicated team of professionals;
- the firm can solve problems that cannot be solved by a lawyer alone;
- attention is always focused on the client's needs and interests;
- the modern business requires resolution of clients' legal problems at international level.

The Firm is a member of World Link for Law ([www.worldlink-law.com](http://www.worldlink-law.com)). World Link for Law is a leading network of international law firms, comprising teams of international lawyers. It was established as Euro-Link for Lawyers in the late 1980s and now comprises a network of 60 law firms in 50 countries worldwide.

It is one of the largest international law networks in the world. Legally, we are formed as an association in Zurich, Switzerland.

We established close relations with the foreign law firms from UK, Russia, Panama, Italy, Cyprus, Spain, Latvia etc.

Our international law network comprises dedicated Law Firms and lawyers who, with their many professional contacts, act as facilitators of international legal services for the international business community, in-house lawyers, lawyers in private practice, or individuals needing a lawyer in another country.

The firm has a rather flexible approach to alternative fee arrangements because we understand our clients' problems.

Languages of the firm - Russian, Ukrainian, English, Spanish, French. International Law Offices prides itself on being able to provide a prompt, efficient and personal service.



## EVENTS

### ANNUAL INTERNATIONAL CONFERENCE "PRACTICE OF MARITIME BUSINESS: SHARING EXPERIENCE".



Law firms "International Law Offices (Ukraine) and "Remedy" (Russia) cooperate their efforts and discuss questions of maritime business and law at the annual international conference "Practice of maritime business: sharing experience".

Our conference takes place every year at the beginning of June in Odessa under the chairmanship of Nikolay Melnykov, Partner of "International Law Offices", and usually gathers more than 100 delegates from shipping, insurance companies and banks, ports and other transport companies.

**LITIGATION IN UKRAINE**



Ukraine made attempts to reform its judicial system not once but only the enactment of the Law On Judicial System of 7 February 2002 became a substantial element of judicial reforms. The court is divided into the Constitutional Court with its first task to enforce and interpret the Constitution and the laws of Ukraine, and the Courts of General Jurisdiction.

The Courts of General Jurisdiction include: local courts, courts of appeal, The Court of Appeal of Ukraine, Court of Cassation, High specialized courts, The Supreme Court of Ukraine.

Local courts hear when at least one of the parties is a natural person. The party not satisfied with the judgment of the local court may file an appeal based on reason of fact or law with the corresponding territorial court of appeal.

The party not satisfied with the judgment of the court of appeal may file a cassation to the Supreme Court of Ukraine. A cassation may be filed only for reasons of law.

The specialized courts are commercial and administrative. The majority of commercial disputes are considered by commercial courts of Ukraine.

The system of commercial courts in Ukraine has a four level structure. These are: first instance courts, appellate instance court, the cassation instance court and the court of repeated cassation. First instance courts consider the dispute merits, oblige the litigant parties to perform certain actions necessary to find the case facts, demand necessary documents or information, appoint examinations, etc.

Revising the case, the appellate court reconsiders the case under available files and complementary evidence in accordance with the procedural law of the first instance court.

The resolution of the appeal instance court may be challenged in the cassation instance, that is, the High Commercial Court of Ukraine.

The final level in the system of specialized courts is the Court Chamber for Commercial Disputes of the Supreme Court of Ukraine. At this instance the resolutions and decisions of the High Commercial Court of Ukraine are challenged. In accordance with the results of reconsideration of the case, the Supreme Court passes a resolution which is final and cannot be challenged.

On 11 May 2004 the Parliament adopted the new Law On Arbitration tribunals which are established ad hoc or on a constant basis. These tribunals consider cases where the parties are residents of Ukraine. So, they do not rule international arbitration cases.

The well-known arbitration tribunals in Ukraine are the International Commercial Arbitration Court and the Maritime Arbitration Commission at the Ukrainian Chamber of Commerce and Industry which operate in accordance with the International Commercial Arbitration Law of Ukraine of 24 February 1994.

Ukraine is a party to the 1958 New York Convention On Recognition and Enforcement of Foreign Arbitration Judgments as well as to other multilateral agreements in this field. Judgments of these arbitration courts may be set aside by Appellate Courts of general jurisdiction if these courts find the subject of the dispute is not abatable under the Ukrainian legislation, or that the arbitration judgment contradicts public policy, etc.

Natalya Shpak

**INVESTMENTS CLIMATE IN UKRAINE**



Each businessman considering starting a business, first, is thinking about investment issues. The Law On Investment Activity adopted in 1991 still serves to be a sort of investment "constitution".

This Law defined the investments as any types of values being contributed to a business and generating profit. The subsequent Law On Regime of Foreign Investments of 1996 (effective up today) introduced the national regime of currency regulation and taxation for all business entities with foreign investments.

The effective Commercial Code and Law On Regime of Foreign Investments define a company with foreign investments as any enterprise established under the Ukrainian laws where the foreign investment constitutes at least 10% in the share capital. The only available tax benefit applicable to companies with foreign investments relates to the in-kind contributions of foreign investments to the share capital of such companies (such contributions can be imported into the Ukraine customs duty free). Apart from the benefits specified above, the foreign investments are eligible to the state guarantees which include (a) ban on nationalization, compensation of losses resulting from improper execution by the state

bodies or officials of their functions as to a foreign investment or a company with its participation; (b) a return of foreign investment in case of termination of the investment activity and transfer of incomes resulting from the investment. The companies with foreign investments as well as foreign companies can buy the non-agricultural land.

The international treaties to which Ukraine is a signatory represent a part of the Ukrainian legislation.

So, the Ukrainian legislation together with the applicable international treaties creates a profound legal basis for the development of business which always starts from investments.

Arthur Nitsevych

**REAL ESTATE IN UKRAINE**



On October 25, 2001 the Parliament of Ukraine adopted a new Land Code which came into effect on January 1, 2002. In keeping with the new Land Code land is finally deemed as an object of private ownership rights. So,

landowners have the right to sell, exchange, donate or pledge their plots.

Investors can feel more secure. First, they can deal with actual owners of land. Second, land is extremely difficult to hide. Foreign investors are also able to receive something of real value if their Ukrainian counterparts fail to fulfill their contractual obligations.

Foreigners may acquire non-agricultural land plots by way of:

- (i) sale-purchase, gift, barter and other civil agreements;
- (ii) buyout of land plots on which real estate under their private ownership is located;
- (iii) inheritance.

However, foreign citizens may only acquire ownership rights to a non-agricultural land plot outside the limits of populated areas if they have privately-owned real estate already located on such a land plot.

Foreign legal entities may acquire ownership rights to land plots of non-agricultural designation: (a) within populated areas, when the property acquisition of real estate will be improved by buildings or other objects related to the companies business activities in Ukraine; or (b) outside the limits of populated areas in the case of the acquisition of real estate.

The Land Code permits two basic rights to land use: (i) the right to permanent use; and (ii) lease rights. The right to permanent use

gives the right holder the right to possess and use a land plot under state or communal ownership without an expiration term. Unfortunately, this right may only be acquired by enterprises, institutions and organizations, which are related to state or communal ownership.

Fortunately, the right to lease plots of land is a viable alternative for foreign investors, international organizations and foreign governments. Under the Land Code, leases may be other short-term (no more than five years) or long-term (no more than 50 years). The Land Code also allows the lessee to sublet the land plot upon consent from the lesser.

The Code may be considered a revolutionary legal enactment that leads to the real estate development.

Ivan Movlyak

### TAXES IN UKRAINE



There are several types of business activities a non-resident could arrange in Ukraine, namely:

1. Commercial contracts with residents of Ukraine (export/import, leasing etc.);

2. Business activity through a permanent representative office;

3. Business activity through an incorporated joint venture or subsidiary.

Any revenues received by non-residents from business activities in Ukraine shall be taxed in the order and at rates set in the Law on Profit Tax. A resident or a non-resident's permanent establishment making any payments to the non-resident, resulting from business activities in Ukraine, shall be obliged to deduct and pay a so-called "withholding tax" at the rate of 15%. It is paid to the state budget at the time of such payment, unless otherwise provided by provisions of effective international treaties.

For taxation purposes revenues received by non-residents from sources in Ukraine shall be interest, dividends, royalties, freight, leasing payment, revenues from the sale of the real estate, securities or other corporate rights, i.e. revenues from business on the territory of Ukraine, except for revenues in the form of compensation of the cost of goods (works, services).

A uniform withholding tax rate is 15%. But there are certain exceptions. For instance, non-residents' incomes paid by residents as compensation for transport freight shall be taxable at the rate of 6%. The special order and rates are also provided for taxation of insurance and reinsurance premiums, fees for advertising activity, etc.

As of January 1, 2004 the basic rate for profit tax in Ukraine is decreased and makes 25%. The profit is determined as difference between gross income and gross expenses related to the economic activities.

Use of advantages provided by treaties on avoiding of double taxation is the most essential, efficient and legal method of tax planning.

The list of countries that have signed agreements on avoiding of double taxation with Ukraine (or with the former USSR) includes more than 50 countries.

Olena Losevskaya

### CORPORATE FORMS OF BUSINESS IN UKRAINE FOR FOREIGN INVESTORS



Generally, Ukrainian companies are most frequently established in the form of an LLC or a JSC (Limited Liability Company and Joint Stock Company). Given equal tax treatment of LLCs and JSCs under the

Ukrainian law, the LLC form is recommended where a foreign company intends to establish a subsidiary without Ukrainian partners. In this case, a foreign founder will not be exposed to the risk of forcible expulsion from the LLC, which is allowed under the Ukrainian law in certain situations. Establishment of an LLC can be completed in less time, because it does not require the registration of share issuance and corresponding procedures. Opening of a LLC requires a smaller budget because the minimum charter capital required for an LLC is lower. The minimum capital is required, at least 50% of which must be paid up before the company is registered. The liability of the members in respect of the company's debts is limited to the value of their individual contributions (so-called "portions"). LLC is managed by board of directors or individual manager appointed by general meeting of members.

If an owner is a foreign legal entity, an extract from the registrar, bank or court register must be produced to certify the investor's registration in the country of origin (translated into Ukrainian and legalized). For a foreign company investing into a Ukrainian company it's reasonable to provide its bylaws, certificate of incorporation and power of attorney beforehand. Previously, these documents had to be translated into the Ukrainian language and legalized. However, Ukraine has ratified the Convention de La Haye du Octobre 5 1961 Abolishing the Requirement of Legalization for Foreign Public Documents, which came into force in Ukraine on 22 December 2003.

The convention will not affect relations between Ukraine and Belgium and Germany who objected to Ukraine's accession to the convention. Now there is no need to legalize public documents. Instead they should be certified by the competent authority of the state from which the document originates with the title "Apostille" and translated into Ukrainian.

One more preferred form of doing business in Ukraine for a foreign company is a representative office. There is no prohibition for a foreign legal entity to have both a representative office and to establish a wholly owned company at the same time. Registration of representative offices of foreign companies is handled by the Ministry of Economy and European Integration matters of Ukraine, and is provided within 60 days of submission. The official payment fee is US\$2,500. For regulatory and taxation purposes representative offices are treated like independent legal entities. A representative office can either carry out marketing, promotional and other auxiliary and preparatory functions on behalf of the company, or it can conduct commercial activities like any other legal entity. The representative office does not constitute a legal entity and operates in Ukraine on behalf of the foreign company it represents. A non-resident company running a representative office is deemed conducting business activity in Ukraine through a permanent establishment and may be subject to corporate profit tax unless protected by a double taxation treaty.

Taras Shepel

### DUE DILIGENCE SERVICES IN UKRAINE

The necessity for due diligence services came about in the early nineties when international trade became common in Ukraine. However, the legislation for due diligence has still not been adopted in Ukraine. Disclosure of company information is restricted, both for private and public companies. Although information sources are limited, there are ways foreign companies can confirm bona fide of potential Ukrainian partners.

Our law firm in Ukraine offers due diligence services which include:

- Providing full legal support in process of the acquisition of a Ukrainian company,
- Negotiations,
- Preliminary due diligence report,
- Preparation of purchase agreement,
- Legal support with regard to tax and labour issues,
- Corporate governance, increase and decrease of share capital, changes in shareholders' structure, land lease and purchase issues, obtaining permits and licenses from state authorities, etc.

## SHIPPING IN UKRAINE

### PORT DEVELOPMENT

Four main ports in Ukraine (Odessa, Ilyichevsk, Yuzhny, Mariupol) provide about 70% of all sea port cargo operations in Ukraine. Looking at the map and analyzing the prospects of the cargo base, there are two main development trends. The first is the reconstruction of available port berths together with the increase of depths and loading capacities. The second is to create new handling terminals. To create a new non-public property seaport or terminal is possible right now and there is a sufficient legal framework to complete these deals. Our firm, consulted international investors, main Ukrainian ports, and European Bank of reconstruction and Development on a number of investment projects in this field.

### SHIP ARREST

There are two basic legal acts which regulate the arrest of a ship - the Merchant Shipping Code of Ukraine and the Civil Procedural Code of Ukraine.

Since there is no special procedure of ship arrest the above Acts create prospects for different tricks and traps. For instance, a claim can be brought against a resident of Ukraine who is the agent of a shipowner, and that will be considered as a ground for the ship arrest. There are also a number of provisions in the Civil Procedural Code in which a claim may be brought in the place the damage occurred or in the place the damage occurred or in the location, if the location of the shipowner is unknown.

### SHIP BUILDING AND REPAIR



The main trends of shipbuilding development are: the creation of normal conditions to finance the shipbuilding; and creation in the local basin of Black Sea and Azov Sea of main-line feeder systems to transport containers and oil products.

In the meantime, the ship repair industry is also being developed. To begin with it has been connected with the lease of former state-owned ship repair yards in Ilyichevsk and Mariupol. Investors began to implement their investment programs with immediate effect.

The firm handles all kinds of maritime disputes acting for owners and P&I clubs, providing charter parties, cargo claims, ship sale and purchase, arrest and release of vessels, mortgage, insurance, manning agreements, project finance etc.

Nikolay Melnikov

## OUR PUBLICATIONS

For the years of our practice more than 100 articles, information materials and commentaries in mass media including Lloyd's List, World Cargo news, Maritime Law Brief, Maritime Advocate, etc. were published. The materials could be found at our web-site: [www.murs.com.ua](http://www.murs.com.ua)

The collection of analytical materials "Yachts and yacht clubs: practical recommendations" was published by the publishing house "Fenix" at 2006. The materials prepared in the course of years of time by the specialists of International Law Offices were appeared in the collection. The attempt to grasp in complex the theory and practice of the yachting as a specific sphere of the social relations and legal standards regulating the above said sphere is for the first time in Ukraine. It's a practical guide in the sphere of International yachting.

International law offices contributed the Ukrainian part into Digest of Commercial Laws of the World published by Oceana Publications (USA). Oceana is a specialist legal publisher with particular strengths in the field of international law and transnational commercial law. Digest of Commercial Laws of the World is an indispensable tool for professionals involved in cross-border commercial transactions. It's continuously revised and updated and is a practitioner-oriented compilation of expert commentary, sample forms and original articles on commercial law for over 43 countries. Lawyers and scholars in each jurisdiction provide expert commentary. Every country chapter follows a consistent structure of 22 topics for easy comparison, starting from General System of Law to Writs of Execution and Attachments. Partner of International law offices Arthur Nitsevych and Consultant Vyacheslav Lebedev became the main contributors of the Ukrainian part.



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