



# International Law Offices & Veritas Legal Advisers

No. 1, 2004 Corporate bulletin

## Dear clients and colleagues!

From the beginning of 2004 Ukraine has been working in a new way. Since January 1, 2004 new Civil and Commercial codes came into force. These new acts initiated immediate changes into a number of laws.

This determines the role of a lawyer as an essential element for successful activity of any businessman in Ukraine.

We are ready for this kind of work, as far as we were moving towards this through all the years of our activity.

We continue to be guided in our activity by principles of confidentiality, professionalism, independence, faith and personal decency. We aspire to render services on a high professional level and at the most wide spectrum of your interests.

Now we start to issue the Corporate Bulletin telling about activities of our firm, its development, some aspects of law and particular examples of resolution of problems in business, etc. for our mutual convenience.

We shall try to make it easy-to-use, accessible and efficient. We hope that information contained in our bulletins will help you to pay attention to problem resolution models and to prevent unfavorable conflicts and consequences.

We thank everyone for being with us during long years of our work. Please, send your remarks and offers to the e-mail address

[veritas@murs.com.ua](mailto:veritas@murs.com.ua)

Kind regards,  
Natalya Shpak,  
Arthur Nitsevych

## Our publications

19 articles in various business journals and Internet-portals were published by the experts of our firm in 2004. For the first time materials of our lawyers were published in the internationally known editions: Intertax - *International tax review* (publisher - Kluwer Law International, London), *The Banking law journal* (publisher - Thompson and Pratt, since 1889), *The maritime advocate* (publisher - Merlinco Publishing). The most interesting articles and publications may be viewed on our website:

[www.murs.com.ua/publish\\_e.html](http://www.murs.com.ua/publish_e.html)

## The main publications of our experts in the first half-year 2004:

1. **Potential for German investors: entering the Ukrainian market** by Arthur Nitsevych - *German law journal*, № 6, 2004, [www.germanlawjournal.com](http://www.germanlawjournal.com)
2. **Opportunities for U.S. banks in the Ukraine** by Arthur Nitsevych and Vadym Popelyuk - *The Banking law journal of America*, Arlington, February, 2004
3. **How Ukraine's bankruptcy law can save debt-laden concerns** by Arthur Nitsevych and Vyacheslav Lebedev - *Lloyds' List*, London, December 31, 2003, [www.lloydslist.com](http://www.lloydslist.com)
4. **Taxes for investors in Ukraine** by Arthur Nitsevych and Ivan Movlyak - *Intertax (International tax review)*, London, May 2004, [www.kluwerlaw.com](http://www.kluwerlaw.com)
5. **How to buy a motor vessel? (Precontractual process)** (in Russian) - Arthur Nitsevych, Nikolay Melnikov, *Ports of Ukraine*, № 2, 2004, [www.uports.odessa.ua](http://www.uports.odessa.ua)
6. **Trademarks in Ukraine** by Arthur Nitsevych - *Novience (Connecting intellect with Property)*, Paris, [www.novience.com/articles/index.html](http://www.novience.com/articles/index.html)
7. **Ship registration in Moldova** by Arthur Nitsevych and Nikolay Melnikov - *The maritime advocate*, July 2004 ([www.maritimeadvocate.com](http://www.maritimeadvocate.com))
8. **Legal status of offshore companies** (in Russian) - Arthur Nitsevych, Vyacheslav Lebedev, *General director*, №6, 2004, [www.mediapro.com.ua](http://www.mediapro.com.ua)
9. **Realization of the enterprise as integral property complex** (in Russian) - Arthur Nitsevych, Vyacheslav Lebedev, *Navigation*, № 1-2, 2004, [www.smc.odessa.ua](http://www.smc.odessa.ua)
10. **Registration of Vessels in International Legal Aspect** (in Russian) - Arthur Nitsevych, Nikolay Melnikov, *Ports of Ukraine*, № 3, 2004, [www.uports.odessa.ua](http://www.uports.odessa.ua)
11. **How to buy a motor vessel? (Contractual process)** (in Russian) - Arthur Nitsevych, Nikolay Melnikov, *Ports of Ukraine*, № 3, 2004, [www.uports.odessa.ua](http://www.uports.odessa.ua)
10. **Recognition and Enforcement of an award of International Commercial Arbitration in Ukraine** (in Russian) - Arthur Nitsevych, Vyacheslav Lebedev, *International Commercial Arbitration*, Moscow, № 2, 2004, [www.intarb.ru](http://www.intarb.ru)

## Digests and legal alerts

From the beginning of 2004 experts of our firm prepare not only digests of the legislation and reviews of the business press (first of all, useful articles and consultations) in Russian ([www.murs.com.ua/monitor.html](http://www.murs.com.ua/monitor.html)), but also select those statutory acts which can be interesting for you and your partners in English. This service is free-of-charge. You can subscribe to our Legal alerts on our web-page:

[www.murs.com.ua/legal\\_alerts.html](http://www.murs.com.ua/legal_alerts.html)

We signed an exclusive contract on preparation of the Ukrainian part of **Digest of commercial laws of the World**, issued by the famous publishing group *Oceana Publications* ([www.kinsellalaw.com/digest](http://www.kinsellalaw.com/digest)).

The edition, dedicated to **Ukraine**, will consist of 22 sections and contain information on business in Ukraine and its normative regulation.

## Rating of law firms of Ukraine

As a result of the annual rating carrying out by the Ukrainian newspaper «*Law Practice*» ([www.yurpraktika.com](http://www.yurpraktika.com)) in 2003 we were included again into the list of the leading law firms of Ukraine. We remind that we have been included into a number of leaders of this rating every year since 1998.

## New Office

Since January 1, 2004 we render services on a constant basis in the town of Ilyichevsk, one of the biggest ports of Ukraine. A new office was opened on the basis of a corporate client, Joint Stock company «*Ilyichevsk Fuel Terminal*». Vadym Popelyuk and Artem Skorobogatov lead the work there.

## Exhibitions

Our lawyers Arthur Nitsevych and Nikolay Melnikov took part in the exhibition **Transport and Logistics** in Moscow, Russia on April 20-23, 2004. Arrangements on cooperation, in particular, with **Russian P&I Pool** (in the person of its managing company **Zeller Associates**) were achieved as a result of the meetings. More detailed information may be found on our website.

## Seminars and Conferences

The practical seminar "Legal Regulation of Tourist Activity" was organized by us together with the *Travel company "Holiday Club"* ([www.holidayclub.com.ua](http://www.holidayclub.com.ua)) and took place in the conference hall of the hotel "October" in Odessa on April 24, 2004. The urgency of the seminar was caused by essential changes occurred in the legislation of Ukraine. Namely as of January 1, 2004 new Civil Code of Ukraine, Commercial Code of Ukraine and new edition of the Law of Ukraine "On Tourism" came into force simultaneously.

The following questions were considered during the seminar:

- 1 Legal-organizational forms of exercising the tourist activity;
- 2 The status of tour operators and travel agents;
- 3 The essential terms and conditions of a tourist service agreement;
- 4 Features of the relations "Tour operator - the Travel agent - the Tourist";
- 5 The responsibility of tour operators and travel agents etc.

Lawyers Ivan Movlyak, Vadym Popeljuk, Artem Skorobogatov were lecturers. You can find more details about the seminar on our site: [www.murs.com.ua/tourism/seminar\\_e.html](http://www.murs.com.ua/tourism/seminar_e.html)

On May, 19, 2004 the seminar "Regulation of land relations: land market, estimation, rent and sale. Existing practice" was held by Information-Resource Center of Land Relation Reforming in Ukraine. The representatives of State Land Committee and other state bodies and commercial companies took part in the seminar. Problems of land legislation development called special interest of audience. In particular, this concerned the draft Laws "On State and Municipal Land Demarcation" and "On Servitudes".

The appearance related to establishment of land servitudes was prepared by our leading lawyers Natalya Shpak and Taras Shepel'. Our specialists were invited to participate in the working team to revise the draft Law "On Servitudes".

The regular Congress of the World Jurist Association ([www.worldjurist.org](http://www.worldjurist.org)) was held from May 3 till May 10 in Rome (Italy). The director of our Kiev office Natalya Shpak, Honoured Lawyer of Ukraine, was a member of the Ukrainian delegation headed by Chairman of the Union of lawyers of Ukraine, Member of the Ukrainian Parliament Valery Yevdokimov.

The annual conference of law firms - partners of International legal network Lexlink ([www.lexlink.org](http://www.lexlink.org)) took place on May 21 and 22 in Poznan (Poland). Our firm is an exclusive Ukrainian member of Lexlink since 2003. Lexlink unites law firms of 16 countries.

### Partners and employees

Experts of our firm raise the level of their qualification and skills on a constant basis. After awarding the title «Honoured Lawyer of Ukraine» to Natalya Shpak the new certified attorneys-at-law appeared within the firm. Lawyers Artem Skorobogatov, Vadym Popelyuk, Olena Losevska passed their bar exams and received the status of the certified attorney-at-law. In 2004 Rostislav Buryak (graduated from the Odessa National University) joined our team.

### Consultations

On the section "Consultation" placed on our website [www.murs.com.ua/cons.html](http://www.murs.com.ua/cons.html), an opportunity to put a question by e-mail and to receive the qualified answer of our experts free-of-charge is given. The most interesting answers are published on our website: [www.murs.com.ua/adver/consult.html](http://www.murs.com.ua/adver/consult.html).

### Ukrainian legal market

The Ukrainian legal market started to take shape from 1990, when private enterprise was allowed within the borders of the former USSR. Up to the end of the 1980s legal advice for the population was provided by individual lawyers ("advocates"), predominantly regarding civil, family, residential real estate and criminal matters. State enterprises used in-house lawyers to resolve any legal issues.

*The Yuridicheskaya Practika Weekly* ("Law Practice"), which annually names the Top 50 Ukrainian law firms, chooses the leaders from more than 300 candidates although the total number of Ukrainian law firms exceeds this number by several times.

Though Kiev, being the capital of Ukraine, historically continues to be the centre and focus of the top legal services, other Ukrainian regions are now undergoing a "revival". Dnepetrovsk, Donetsk, Kharkov, Lvov and Odessa regions were named "strongest legally". The rates charged by regional law firms are much lower than those charged by firms in Kiev. On average, Kiev prices are 3-5 times higher than in the regions. This can be explained by the considerable difference in the economic situation between the capital and the regions. Nevertheless, provincial firms are doing quite well. Some of them are now expanding their spheres of influence by opening offices in other regions and in Kiev. Regional firms provide their clients with top quality services and implement a policy of "you-can-reach-us-everywhere".

The areas of specialization undertaken by law firms include almost every sphere of Ukrainian legislation and law, however lawyers operate mainly in the areas of litigation and commercial law and provide services connected with financial matters (tax, securities, investment, banking law) and are ready to deal with all possible corporate issues. IP-related legal services are becoming more and more important for Ukraine (including copyright, trademarks, etc.).

Almost all large law firms in Ukraine work in accordance with the Western style of billing, on an hourly basis. The size of the hourly fee often runs to USD 350-450 and largely depends on the complexity of the legal services provided by the law firm. As a rule, the services of partners of a law firm are much more expensive than those of associates. Thus, hourly fees charged by partners vary from USD 50 to USD 450 in Kiev and from USD 30 to USD 150 in regions. At the same time, the trend to charge a fixed amount is being maintained in Ukraine. Certain types of legal services, such as company registration, license acquisition and deals involving real estate are charged according to this system. Clients also usually pay 5%-15% of the size of the claim in various litigation procedures. Fixed monthly fee schemes are also widespread. In this case a client (usually an enterprise) pays the law firm a fixed fee per month irrespective of the volume of services provided.

Most international law firms operating in Ukraine say that they do not come across real competition in the legal market. Specialists predict that foreign law firms will not "settle" in Ukraine in the nearest future. The main practice areas of the "law foreigners" here are major investment projects, the oil and gas industry and intellectual property.

One of the main problems for lawyers is that national legislation has not yet been reformed to the extent needed. New Civil and Commercial Codes make the Ukrainian legal market becoming much more interesting. Lawyers got new laws, with which it will be possible to work, to interpret, and apply.

(Based on the materials of *The Yuridicheskaya Practika Weekly*).

### Due diligence on Ukrainian Companies

The important moment in foreign trade activities is the preliminary stage of concluding the contract and, first of all, choice of a reliable partner. Legislation for due diligence has not been adopted in Ukraine. Disclosure of company information is restricted, both for private and public companies.

Although public source information on Ukrainian companies is very limited. There are ways foreign companies can make background checks to confirm bona fide of potential Ukrainian partners.

Now we are capable to carry out inspections of your Ukrainian contractors in addition to services which we have rendered for a long time - examination of the property and financial situation of the contractor - non-resident of Ukraine.

The complete set of the information concerning your potential partner usually includes: the data on official state registration, structure of the company, financial parameters of the enterprise for the last accounting period, data on the connected persons, etc. But still the preferred way for foreign clients is legal due diligence based on analyzing legal and financial documents of the company being examined.

DUE DILIGENCE

Maritime law

Sea transport and related activities have always been and now remain one of the basic trends of our activity. We constantly expand a number of services in this area. For example, from now on we provide legal assistance for the whole process of the ships' purchase and sale, starting from the stage of preliminary negotiations, finishing the vessel registration for the new owner. For the first half of 2004 we supported transactions on sale and purchase of nine ships.

In the magazine «Ports of Ukraine» (№2 and №3, 2004) www.uports.odessa.ua you can find our own opinion and some recommendations related to this activity. In particular, we use a contract of documentation deposit to mediate the transactions between the parties. According to this contract the Seller prepares all the documents under the transaction and transfers them to us for the deposit. After the Purchaser gives the coordinated proofs of payment under the transaction, we transfer to him all the set of documents.

Registration of vessels, yachts, boats is an individual and very interesting service. We can help our clients to choose the convenient jurisdiction for registration and to carry out legal assistance of registration. It can be arranged through a flag of convenience (for instance, Panama, Belize, Mongolia, BVI, etc.) or national registration.

We started to implement the procedure of registration of vessels under the flag of Moldova. This jurisdiction is attractive by low tariffs and absence of age restrictions of registered vessels. Our article on this topic is published in the journal "Navigation", №4-6, 2004, www.smc.odessa.ua.

Working in the sphere of sea transport, our clients face different issues related to ship repair and shipbuilding. In the first half of 2004 we lead 3 contracts on ship repair.

Following the expanding of production, the quantity of commercial disputes, financial and legal problems, basically caused by conflicts between Executors of works (shipyards) and Customers (ship owners), increased. Generally these conflicts are caused by misunderstanding by the parties of many aspects of ship repair relations and conclusion of short contracts. On the other hand, the notion "repair" in the current legislation of Ukraine is not determined.

Our experts developed the form of the Contract on ship repair on the basis of international experience. The mentioned document includes all necessary conditions determining the relations between the Customer and the Executor of repair prior to the beginning of repair works, during their performance and after their end.

Enforcement of Commercial Arbitration Awards

Protecting interests of a Swiss company, lawyers of our Kiev office managed for the benefit of the client to enforce the decision of International Commercial Arbitration at the Chamber of Commerce and Industry of Ukraine having collected the debts of the Ukrainian resident on the amount of about 1'000'000 dollars.

Recovery of Losses

Judicial practice of recovery of losses in Ukraine is still insufficiently prevailing. Lawyers of our Kiev office won the dispute on recovery from the state holding company an amount of about 1 million hrn of profit loss. This sum appeared due to the delay in rendering of automobile and railway roads to the client.

Opening an office in Ukraine

Depending on the needs and plans, any one of the legal forms in Ukraine may be suitable. Generally, foreign investors engaged in business activity in Ukraine must be registered in Ukraine as either a resident company or a permanent representative office.

All business associations are independent in their activity and entitled to undertake any business activity permitted by law. Official registration is an obligatory condition to establishing a business association. Since the date of the official registration a business association acquires all rights pertaining to an independent legal entity.

Preferred forms of foreign company operations in Ukraine are: a joint stock company (JSC), limited liability company (LLC) or a representative office. For taxation purposes usually representative offices are treated similarly to independent legal entities. A representative office can 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. In choosing between an LLC and JSC, generally a LLC is chosen since it is easier to manage than a JSC. For example, shares issued by JSCs must be registered with the State Commission of Securities and Stock Market.

Sea ports

Establishment and functioning of non-governmental ports (private terminals) in Ukraine is one of the pressing problems in the transport sector. On behalf of our clients (in particular, "Ilyichevsk Fuel Terminal", "Nibulon") we made some steps to solve this problem. In particular, we:

- developed and submitted for consideration to the Ministry of Transport of Ukraine our Concept of Division of State Ports Functions;
- analyzed and summarized the practice on establishment of the land tenure and water use procedure.

So, we developed the procedure of establishment of private ports (terminals), the main thesis of which will be introduced at the Conference Odessa - 210 in September 2004 and in our professional article.

Tariffs for trans-shipment of cargoes

Our lawyers found that companies carrying out trans-shipment of cargoes in Ukrainian ports establish their own tariffs. Meanwhile the Collection of tariffs for the complex of works related to cargo operations in the ports of Ukraine (approved by the Ministry of Transport in 1995) fixed the rates obligatory for all the enterprises carrying out cargo operations.

In fact many companies in Ukraine carrying out cargo operations establish tariffs at their own discretion, ignoring the provisions of the mentioned act and risking to be forfeited. The position of the Ministry of Economics of Ukraine and the Ministry of Transport of Ukraine lies in that tariffs stipulated by the specified Collection must be applied by all subjects of economic activities in Ukraine.

Problems of Consolidation of Enterprises

Establishment of non-commercial associations of enterprises is not regulated by legislation in force. Since the special act envisaged by the Civil Code of Ukraine is not adopted yet, then, the Commercial Code should be used. However, according to article 121 of the Commercial Code the decision to establish an association of enterprises (the founding agreement) and its Statute (Articles of incorporation) are coordinated with the Antimonopoly committee of Ukraine in the order established by the legislation.

The specified regulations create serious obstacles for establishment of non-commercial associations of enterprises, for example, associations of enterprises of the certain sector pursuing the purposes of coordination of activity in the market and protection of mutual interests. Those who do not wish to pass "pandemonium" coordination with the Antimonopoly committee have to search for alternative ways (so-called «coordinated actions», for example).

Partnership

As a result of several meetings with Totalserve (Cyprus), www.totalservecy.com, Memorandum of partnership was achieved. Now we are capable to render services on tax planning to clients on more favourable conditions. Though we are not an "offshore trading company" we set them up while business-scheme construction in foreign trade activities for our clients.

Totalserve has an extensive network of offices in various jurisdictions, however the greatest interest of Ukrainian clients is caused by the companies established in the USA and Cyprus. More details may be found in Arthur Nitsevych's and Vyacheslav Lebedev's article «Legal Status of Offshore Companies» («General Director», № 6, 2004).

The agreement on cooperation with the company Shirley and Associates (Panama) is achieved in May 2004. We chose this company as a partner in the field of Panama shipping and corporate law.

In May 2004 the arrangement on cooperation of our firm with the General consulate of Greece in Odessa was achieved. The trend of cooperation is legal assistance to foreign investment of the Greek origin and establishment of the Greek-Ukrainian Chamber of Commerce.

### Trademarks in Ukraine

A number of major legislative acts regulating the trademark field have been enacted in Ukraine, including the Trademark Law. Ukraine has become a signatory to international treaties in the trademark protection field, including Paris Convention for the Protection of Industrial Property, Madrid Agreement Concerning the International Registration of Marks, Trademark Law Treaty, Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks. The system of trademark registration is governed by the Department on Intellectual Property of the Ministry of Education and Science of Ukraine. Its functions are limited to those of a registrar.

The Ukrainian legislation in force recognizes two types of trademark protection: national registration and protection provided by international treaties. Any physical person or legal entity may file a trademark registration. Usually trademark registration is made through patent attorneys. The first, who files a trademark registration, receives the rights to the trademark.

A trademark is a sign that distinguishes the goods or services of one person from the same type of goods or services of another person. A trademark may be a verbal, figurative, three-dimensional or other sign, or a combination thereof, executed in any color or combination of colors. Ukraine shows stable development of its trademark protection law that has resulted in growing interest in trademark assets as an important means of commercial success.

### Mortgage relations in Ukraine

Mortgage issues are regulated by Civil and Commercial Codes (both effective as of January 1, 2004), Law "On Mortgage" of 1992, Law "On Hypothec" of 2003 and corresponding normative acts.

Generally, tangible or intangible assets may be mortgaged in Ukraine. But certain objects such as state-owned "national and historical valuables" may not be mortgaged. There are several specific types of mortgage. A hypothec denotes a mortgage in land and immovable property. A zaklad denotes a mortgage on movables, passed into possession of a mortgagee.

Whatever the object of the mortgage, any mortgage agreement must be concluded in writing. Notarization is required for mortgages of immovable property. The parties also may agree to notarize other mortgage agreements. A mortgage over movable and immovable assets is registered in the State Registry. Upon performance of the secured obligations, the mortgagee is required to cancel the registration.

If a secured party wishes to enforce its security interest over mortgaged assets, then the secured party has to seek for a court order or judgment, unless there is a "notary endorsement" (a separate notary procedure from the notarization of a mortgage agreement). A secured party can apply directly to an execution officer (similar to a marshal) to enforce a mortgage. Other security arrangements may also be used, but care must be taken to comply in each case with provisions of the applicable legislation.

### New basic acts

The majority of Acts defining basic principles of corporate law in Ukraine goes back to 1991, when Ukraine became an independent state. Application of these Acts over the years has shown numerous gaps. Now Ukraine is actively developing a new legislative framework in the area of corporate law.

As of 1 January 2004 two fundamental laws addressing corporate issues, the *Civil Code* and the *Commercial Code*, became effective. On 1 July 2004 the new *State Registration of Legal Entities and Private Entrepreneurs Act* came into force. The last one guides a simplified procedure for the state registration of all business entities. The act regulates the terms of state registration for all types of legal entities, although special registration regimes may be specified (for instance, for banks, financial institutions, political parties, trade unions, etc.).

### Rent of Land Shares

The land share is a conventional part of agricultural land, the size of which is established as average for the enterprise in conventional cadastre hectares. Unlike the land plot, that has its definite location and size in physical hectares, the location and the boundaries of the land share are unknown. The citizen, that received a land share, does not know its exact location in the fields of the agricultural enterprise.

Our lawyers carried on a lawsuit under the claims of landlords of land shares to the tenant on termination of land shares rent contracts. The claim reason is allocation of the land areas in kind and reception of the state acts on the property right to the land by landlords. The contract of tenancy of a land share for the period of 10 years between landlords and the tenant were concluded in 2000. The interests of the tenant, an agricultural company, were represented by our lawyers Olena Losevska and Ivan Movlyak.

Landlords insisted that after allocation of the land area in kind there is no subject of the contract of tenancy. The position of landlords was based on the State Land Committee's letters, explaining, that in case of allocation of the land area in kind, contracts of tenancy of land shares are subject to the termination or renegotiation. We proved that the subject of contracts of tenancy of land shares are not land certificates, but the relations on rent of the land within the limits of the land area allocated by tract of land. According to the p. 2 issue IX of the Law of Ukraine «On land rent» (in a new wording) after allocation in kind of the land areas to proprietors of land shares the contract of tenancy is subject to renegotiation on the same conditions.

### Land Servitude

Contracts on the establishment of the right of **land servitude** on traveling by automobile roads and railway branch lines are declared valid by the court decision. Corresponding records are registered in the book of Land Servitude Registration. It is implemented in Ukraine **for the first time**.

We got a similar dispute won establishing the land servitude on the part of **water area**. Up to the moment of the dispute the specified water area has not been allocated by the Cabinet of Ministers of Ukraine to the nearby sea port which called a special interest.

Both decisions are considered valid by courts of appeal and cassation instances.

Land affairs

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