PROTECTION OF BUSINESS OF FOREIGN INVESTORS IN UKRAINE
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COMBATING CORRUPTION

- CREATION OF THE NATIONAL ANTI-CORRUPTION BUREAU OF UKRAINE (NABU)
- SUBMISSION OF ELECTRONIC DECLARATIONS
- REFORMING TENDER PROCEDURES BY INTRODUCING PROZORRO SYSTEM
- ENHANCING LIABILITY FOR CORRUPTION OFFENCES
- PREPARATION OF LEGAL BASE FOR THE CREATION OF ANTI-CORRUPTION COURT WITHIN FRAMEWORK OF JUDICIAL REFORM
- REDUCTION IN NUMBER OF STATE EMPLOYEES
- COMPETITION SELECTION OF STATE EMPLOYEES
- DELEGATING SOME OF THE GOVERNMENT’S POWERS TO LOCAL AUTHORITIES
- CREATION OF ANTI-CORRUPTION COURT
JUDICIAL REFORM: 8 KEY INNOVATIONS

1. "REBRANDING" OF SUPREME COURT
2. HIGHLY SPECIALIZED COURTS
3. UPDATED JUDICIAL MANPOWER
4. ATTORNEY'S MONOPOLY
5. PROCEDURAL ABUSIVE PRACTICE
6. CONSTITUTIONAL COMPLAINT
7. OBLIGATION OF PRE-TRIAL SETTLEMENTS
8. ELECTRONIC LITIGATION
REFORMS IN LAW-ENFORCEMENT AUTHORITIES

- REFORMS OF INTERNAL AFFAIRS BODIES OF POLICE: CREATION OF A NEW POLICE STRUCTURE, ITS DIMILITARIZATION, DEPOLITIZATION AND RESTRICTION OF FUNCTIONS
- REFORMS OF PROSECUTOR-GENERAL'S OFFICE: ITS TRANSFORMATION INTO A SERVICE OF ACCUSATION
- REFORMS OF BODIES OF PRE-TRIAL INVESTIGATION: CREATION OF STATE BUREAU OF INVESTIGATION, NARROWER SPECIALIZATION OF NATIONAL POLICE FORCE INVESTIGATORS
- REFORMS OF THE SECURITY SERVICE OF UKRAINE: ITS TRANSFORMATION INTO A STATE AGENCY FOR COUNTERINTELLIGENCE AND COUNTER-TERRORISM
- REFORMS OF CRIMINAL LEGISLATION: CREATION OF THE INSTITUTE OF CRIMINAL VIOLATIONS AND ADOPTION OF THE CODE OF ADMINISTRATIVE VIOLATIONS
- REFORM OF CRIMINAL EXECUTIVE SYSTEM: DEMILITRIZATION OF PENITENTIARY SERVICE (SENTENCE-IMPLEMENTATION SERVICE), CREATION OF PROBATION SERVICE
INVESTMENT PROJECTS
TOP-6 INDUSTRIES OF UKRAINE'S ECONOMY FOR FOREIGN INVESTMENTS

- agro-industrial complex
- medicine and pharmaceuticals
- infrastructure
- IT
- machine-building and arms production
- light industry
PROSPECTIVE INVESTMENT DIRECTIONS OF AGRICULTURAL SECTOR OF UKRAINE ACCORDING TO DATA OF MINISTRY OF AGRICULTURAL POLICY AND FOOD OF UKRAINE

- Modernization of irrigation systems in the South of Ukraine
- Development of river logistics, navigation on the river Dnipro and of river Pivdennyi (South) Buh
- Processing industry, production of products with a high share of value added
- Development of small and medium-sized farming
- Investment in leasing of agricultural machinery
- Development of seed production and breeding
- Biofuel (bioethanol) production
PRIORITY DIRECTIONS OF INVESTMENT IN THE BASIC SECTORS OF INFRASTRUCTURE OF UKRAINE ACCORDING TO THE DATA OF MINISTRY OF INFRASTRUCTURE OF UKRAINE

railway sector

- creation of network of interconnected logistics centers and multimodal terminals in major transport hubs, checkpoints on the state border of Ukraine and EU countries;
- designing, financing, restoration, exploitation during process of construction of new and reconstruction of existing railway tracks, railway stations, pedestrian bridges and tunnels, passenger platforms and other objects of railway transport related to servicing of passengers on terms of state-private partnership;
- construction of high-speed railway corridors to increase economic efficiency of passenger transportation;
- procurement of freight wagons and operation of freight rolling stock.

road sector

- construction of new automobile roads on the terms of concession and mechanism of state-private partnership;
- development, implementation and application of national transport model during planning and implementation of transport infrastructure development strategy;
- management of automobile roads on the basis of geoinformation technologies.

sea and river sectors

- construction of new and deepening of existing waterways and water areas of seaports for unhindered passage of great deadweight vessels;
- construction and use of river berths, gateways, dredging works;
- modernization and creation of port infrastructure objects on basis of long-term lease contracts, concessions, state-private partnership, contracts on joint activity, other investment contracts;
- creation and implementation of energy-saving technologies on sea transport, implementation of plants for the production of alternative types of fuels;
- navigational support for shipping traffic on inland waterways and operational process communication.

aviation sector

- development of existing airports, runways at airfields and their infrastructure;
- transfer of ownership and usage rights of airport property to concession;
- renewal of aircraft fleet.
For which sectors is such a mechanism effective?

First of all, for port, road and energy infrastructure

Already today, there is great interest, including international port operators such as Hutchison, DP World in implementing projects in Ukraine.

Who can initiate a concession?

Local self-governing authorities, legal entities of private law, subjects of commercial law in the state sector will be to initiate a concession.

How does the concessionaire selection take place?

The selection of the concessionaire will take place on a competitive basis.

What is the term of the lease of land for which projects will be implemented?

It is proposed to conclude them for a term of 3 to 50 years, except for sites for the construction of roads.
NEW LAW ON ELECTRICITY MARKET - 5 KEY PROVISIONS

Destruction of "artificial" monopolies in electricity generation and supply market. All the companies that are players on the market are divided into electric generation, distribution and transmission.

The electric power market is divided into several segments from the Wholesale Market to civilized trading: bilateral contracts market, day-ahead market, intraday market that balances the market and the market of ancillary services.

In the energy market, there will be a new independent entity, "trader", which may be any entity that carries out the purchase of electricity, solely for the purpose of resale, except for sale to the final consumer.

A system of special duties is implemented to ensure public interest in the process of the electricity market's functioning. In particular, purchase of electric energy at the "green" tariff is a priority on the market. In addition, the refundment of compensation payments plays an important role, as does the cheapening of electricity for socially important consumers: schools, hospitals, and so on.

Stimulating the development of alternative energy sources use through continuation of one of the world largest "green" tariffs in Ukraine, that is, the purchase of electricity generated from alternative energy sources at an increased price. This is an economic lever for Ukraine to fulfill its obligations to the EU, including renewable energy sources in the energy balance of the country until 2020 by at least 7% (for reference, 1.47% today).
LACK OF FUNDING
BANKING CRISIS 2014-2016

- The banking crisis of 2014-2016 cost Ukraine 38% of GDP
- The interest on loans by Ukrainian banks during 2014-2016 was from 8.18% to 7.14% (in euros); 17.1% to 16.18% (in UAH), from 9 to 7.72 (in USD).

NECESSITY IN FOREIGN INVESTMENTS

LACK OF FOREIGN INVESTMENTS, EXCEPT FOR SOME LARGE INSTITUTIONS:

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FOREIGN INVESTMENTS IN UKRAINE

- Amounts and revenues in 2014-2017
- Amounts of foreign direct investment (USD)

As of the end of the first quarter

2014
52.2 billion
2015
45.9 billion
2016
41.1 billion
2017
42.8 billion

As at the end of the year

STATE INVESTMENT PROGRAMS
EBRD, IFC AND OTHER INTERNATIONAL INSTITUTIONS
PRIVATE INVESTMENT FUNDS

* - excluding the temporarily occupied territory of the Autonomous Republic of Crimea and ATO zone

Infographics created according to Ukrstat (Ukrainian Statistics Office) as of June 12, 2017

* - excluding the temporarily occupied territory of the Autonomous Republic of Crimea and ATO zone
Corporate income tax

The base corporate income tax rate is 18%

VAT

- VAT: main rate is 20%, for medicines, the rate is 7%, when exporting - 0
- From January 1, 2013 to January 1, 2023 software shipments are not subject to VAT
- VAT registration for a payer is obligatory for enterprises subject to VAT transactions exceeding UAH 1 million for any previous 12 months of work

Personal income tax

- From January 1, 2016, resident individuals and non-resident individuals are subject to personal income tax at the same fixed rate of 18%
- The personal income tax of tax residents of Ukraine is charged for all income regardless of its source of origin. The personal income tax of tax non-residents of Ukraine is charged for income and source of origin in Ukraine only

VAT registration for a payer is obligatory for enterprises subject to VAT transactions exceeding UAH 1 million for any previous 12 months of work.

Withholding tax

- Any income from a source of origin in Ukraine, which is paid to a non-resident company in the form of dividends, is subject to a repatriation tax at the rate of 15%

TAXES

Agreement of avoidance of double taxation between Government of Ukraine and the Government of French Republic.

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<tr>
<th>Dividends</th>
<th>Interest</th>
<th>Royalty</th>
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<tr>
<td>5% (own more than 20% of the company, which pays dividends in case if the company is a resident of Ukraine; own more than 10% of the company, which pays dividends in case if the company is a resident of France))</td>
<td>10% (in some cases - 5%)</td>
<td>10% (in some cases - 2%)</td>
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<tr>
<td>15% - in other cases</td>
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IMPLEMENTATION OF IFRS

- IFRS is being actively implemented in Ukraine. IFRS is mandatory for banks from January 1, 2018.
- At the end of 2017, the Verkhovna Rada adopted the new Law "On Audit of Financial Reporting and Auditing", which came into force, but introduced in its main part (except for sanctions) from October 1, 2018. Sanctions - from January 1, 2019.

FIGHT AGAINST "ENVELOPE PAY"

- Liberalization of state supervision vs strengthening of labor inspections.
- Penalties for employers:
  - for obstructing the controller is EUR 9,950.
  - for each unofficial employee is less than a third of this - EUR 2,990.

LAW ON AUDIT OF FINANCIAL REPORTING AND AUDITING

- The principle of obligatory audit skepticism is established.
- Obligatory nature of international auditing standards.
- Obligatory nature of mechanism of auditors rotation.
- The concept of enterprise, which has public interest, establishes requirements for auditing of such enterprises is implemented.
- Restrictions on the provision of non-audit services to such clients (to provide valuation services, tax advice, accounting and financial reporting, staffing of accounting, etc.) are established.
- Requirements for the good reputation of the audit firm (lost if, for two consecutive years, foreclosure was applied to the audit firm more than three times in the form of a warning or suspension of the right to provide services for compulsory audit of financial statements or mandatory audit of financial statements of enterprises, which are the subject of public interest).
PROTECTION AND APPEAL

- Objections to the verification act (submitted within 5 days from the date of receipt of verification act, in respect of transfer price formation – 30 days)

- As a general rule, an administrative appeal against a tax notice-decision is 10 days after receipt of tax notice-decision, the appeal halts the action of the notice-decision. The effectiveness of administrative appeals is low

- Court appeal. Legal disputes arise quite often
  Main categories:
  - disputes regarding "non-commodity" operations and additional payments for such operations
  - overstatement of expenses / understatement of income
  - VAT payer status
  - disputes over transfer price formation (mainly "technical" - regarding the application of one method or another, definition of low tax jurisdiction, etc., there are few substantive disputes)
DEREGULATION OF LICENSE ACTIVITY

- Cancellation of obligatory licensing for 23 out of 66 activities
  - As an example, the licensing of sales of herbicides and agrochemicals, sale of veterinary drugs, processing of donor blood, etc. have disappeared

- E-document to the licensing authority
  - A system of submission of electronic documents to the licensing authorities was introduced

- The subject of licensing is narrowed
  - Previously, any construction activity was subject to licensing, but now only the construction of large and complex objects
RAIDING
<table>
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<tr>
<th>Ways of Carrying Out Raiding</th>
<th>Causes of Raiding's Development in Ukraine</th>
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<tr>
<td>Buying of Shares</td>
<td>Unstable Political Situation in Ukraine</td>
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<tr>
<td>Additional Issues of Shares</td>
<td>Frequent Change of High-Paying Officials, Leaders of Law-Enforcement Authorities</td>
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<tr>
<td>Bankruptcy (Extrusion Method of Acquisition)</td>
<td>Corruption at all levels, including in law-enforcement authorities and courts</td>
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<tr>
<td>Reprivatization (Legal Method of Acquisition)</td>
<td>Carrying out of Raider Attacks involving state and law-enforcement agencies</td>
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<tr>
<td>Greenmail</td>
<td>Lack of Real Mechanism and Practice of bringing raiders to criminal responsibility</td>
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<tr>
<td>Additional Issue</td>
<td>Absence of Good Business Management</td>
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<tr>
<td>Forcible Takeover</td>
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<tr>
<td>Implementation of Control by the Management</td>
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<tr>
<td>Fraudulent Bankruptcy</td>
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<tr>
<td>Corruption (Representative Conditions of Raiding)</td>
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PREVENTION OF RAIDING

- involvement of qualified legal advisers
- proper business structure
- publicity
- proactivity in protecting one's own interests
- checking not only assets, but also partners
- introduction of institution of corporate contracts allows a large number of deadlock situations to be resolved

STRATEGY OF PROTECTION

- appeal to courts, law-enforcement agencies, both on the merits of disputes, and on "technical" issues (prohibition to commit certain actions, arrests for raiders)
- appeals to embassies, business ombudsman, investment attraction office
- in the case of significant investments, investment arbitration may be effective
LOUD EXAMPLES OF RAIDING

- **Victoria Gardens** (attempts to capture one of the largest shopping and recreation center in Western Ukraine)

- **Interlisinvest** – conflict over one of the largest carriers in Ukraine

- **Sky Mall** – conflict over the well-known shopping and recreation center in Kyiv

- **Biir** – conflict over the building, which was acquired by the well-known Danish engineering company in Odessa