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UKRAINE: INVESTOR ROADMAP

STEPS REQUIRED TO START A BUSINESS IN UKRAINE

February 2005

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ADDITIONAL REFERENCES

For more information about the investment climate of Ukraine, please refer to BIZPRO's analysis entitled *Ukraine: Competing in the Global Economy – Strategies for Success*. In March 2005, BIZPRO will publish industry diagnostics on the textile and apparel industries, which should be of interest to potential investors. All BIZPRO reports and publications can be downloaded in PDF format from the "Electronic Library" section of the BIZPRO website (www.bizpro.org.ua).



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The views expressed in this publication do not necessarily reflect the views of the United States Agency for International Development or the United States Government.

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I. EXECUTIVE SUMMARY

A. INTRODUCTION AND BACKGROUND

BIZPRO is a USAID-funded enterprise development project operating in Ukraine and Moldova and implemented by Development Alternatives, Inc., a global international consulting firm with ten years of experience in both countries. BIZPRO's goal in Ukraine is to create a growing, dynamic pool of highly productive enterprises that compete successfully in domestic and international markets and to help all levels of government, in ongoing partnership with the private sector, adopt and implement policies, laws and regulations that create and sustain a favorable business environment. The foundation of BIZPRO's approach in Ukraine is presented in our unique analysis *Ukraine: Competing in the Global Economy – Strategies for Success* (January 2005). Based on this research, BIZPRO provides targeted assistance to develop the following high-potential sectors: furniture and home furnishings; textiles and apparel; processed fruits and vegetables; tourism; construction materials; and information and communication technology. On a cross-sector basis, BIZPRO also addresses issues related to science, technology, innovation, quality assurance, and market channels.

A recent World Bank analysis of more than 100 countries indicates that trade does not stimulate growth in economies with excessive regulation¹. The results imply that increasing the openness of an over-regulated economy can actually lead to a lower standard of living and that “the implication for policy sequencing is that the countries that place an excessive regulatory burden on the private sector must have a strategy in place to improve their business climate before (or at least contemporaneously with) undertaking trade reform.” BIZPRO advocates quick deregulation at the local and national level through internationally tested mechanisms, such as the guillotine mechanism, and has extensive experience in regulatory reform in Ukraine.

During 2002-2003, BIZPRO supported local authorities and private sector representatives in 32 municipalities of eight oblasts in their effort to improve their local regulatory environment. BIZPRO used this regional experience in regulatory reform to help the government draft and enact the Law of Ukraine “On the General Principles of State Regulatory Policy in the Sphere of Economic Activity,” which went into effect in January 2004. Effective implementation of this law is essential for Ukraine to create an environment that is attractive for investment. From 2004, BIZPRO has been working in all oblasts of Ukraine and at the national level to help effectively implement the law.

This Investor Roadmap is an extension of BIZPRO's work on regulatory reform and an important contribution to its efforts to

help Ukraine compete in the global economy. The Roadmap details the steps required for a foreign or domestic investor to complete the necessary legal processes to start and run a business in Ukraine.

The recently inaugurated President Yushchenko declared that Ukraine's strategic goal is to integrate into the global economy in order to achieve Ukraine's potential, spur economic growth, and create new jobs. If this is to occur, it is vital for the country to attract significant intellectual, material and financial resources.

While Ukraine's gross domestic product rose 12 per cent last year and foreign direct investment (FDI) doubled from US\$690 million in 2002 to US\$1.4bn in 2003, FDI remained flat in 2004. The Economist Intelligence Unit (EIU) forecasts FDI will reach US\$1.9bn in 2005. At the close of 2004, the EIU states that the FDI stock was US\$190 per capita. By comparison, the same figure for Poland is US\$1,565; Romania US\$781; and Russia US\$259.

Anatoliy Kinakh, First Deputy Prime Minister of Ukraine, said on Feb 16, 2005, that Ukraine has to attract at least US\$40bn during the next 5 years in order to update outdated equipment and move to modern technologies throughout the economy. A dramatic increase in domestic and foreign investment is essential if Ukraine is to integrate into and compete successfully in the global economy. Attracting FDI is especially vital in order to achieve the productivity gains necessary to compete. The World Economic Forum's Global Competitiveness Report 2004-2005 rated Ukraine 86 out of 104 countries in its Growth Competitiveness Index (GCI) ranking². It is evident that Ukraine must take bold steps to achieve sustainable growth and competitiveness in the long-term.

There are multiple factors contributing to Ukraine's low level of FDI, however, one of the primary reasons for Ukraine's low investment attractiveness is an unfavorable policy and regulatory environment. Unpredictable and inadequate legislation, overregulation of economic activity, poor and selective law enforcement, and corruption at all levels of the government permeate the system. If the new government of Ukraine wishes to improve the investment climate and compete successfully it should encourage fair competition, eliminate corruption, implement effective regulatory policy, protect rights of investors, and adhere to international agreements, rules, and standards.

¹ Caroline Freund (World Bank) and Bineswaree Bolaky (University of Maryland), March 2004. “Trade, Regulations, and Growth”, World Bank working Paper.

² The GCI's main goal is to analyze the potential for the economies to attain sustained economic growth over the medium and long term. The GCI compares countries on three sub indexes: quality of the macro economic environment, the soundness of public institutions, and technological progress. All three are interrelated and affect as well as are affected by foreign direct investment (FDI).

The publication of the Roadmap at this time is appropriate as Ukraine attempts to integrate into and compete in the global economy. At a recent international conference for foreign investors, President Yushchenko called on foreign businessmen to invest in Ukraine without offering bribes to Ukrainian civil servants. He stated that this was his first request to potential foreign investors. The president has an opportunity to help foreign and domestic investors honor his request by streamlining the steps required to make an investment in his country and by reducing the number of civil servants and potential rent seekers that investors encounter. Until that time, this Investor Roadmap may serve as a guide for the foreign and domestic investor and

an action plan for a government that desperately needs to increase investment, prepare the economy for entering the WTO, and improve the regulatory environment.

Patrick Rader, Director

BIZPRO

February 2005

B. METHODOLOGY

The Investor Roadmap, completed in over 50 countries around the world in various forms, is an investor's view of the steps required to start a business in a particular place. Usually the Roadmap is limited to several strategic industries in order to cover the particulars of establishing those types of businesses. The Roadmap attempts to analyze how processes work throughout an entire country. This is practical when a country is small and economic activity is concentrated in the capital.

The Investor Roadmap of Ukraine must contend with the fact that Ukraine is physically a large country with a fairly decentralized approach to local governance. As with many of the former Soviet republics, many of Ukraine's laws allow for interpretation on the part of local municipalities. As a result, BIZPRO chose to focus on a specific municipality. The city of Yaremche in the Ivano-Frankivsk Oblast was chosen, not because of any special characteristics or regional emphasis but because it would represent a typical scenario for foreign investment.

The process for conducting the research closely followed the path of a typical investor interested in building a small (25 room) hotel in Yaremche in Western Ukraine. While previous Investor Roadmaps were designed to represent the viewpoint of the investor, their general focus made it

difficult to get the level of detail an investor in a specific field would need to make an investment. Replicating the process of investing in the field of tourism in Western Ukraine is a more in-depth approach than the results that would have been achieved using previously applied techniques.

The team worked on a specific set of assumptions based on a plausible scenario:

- A 25 room hotel in Yaremche offering a restaurant and recreational activities such as horseback riding.
- A foreign investor in partnership with a Kyiv-based local investor.
- The investors will purchase land from the government with an existing structure on it that requires significant upgrades.
- The investors will import heating and cooling systems and kitchen equipment, but will purchase other equipment locally.
- The investors will attempt to finance locally.
- Will apply for optional certification of a hotel and restaurant (star rating).
- The foreign investor will occasionally work in-country, and the hotel will hire one foreign worker in management.

C. FINDINGS

Ukraine presents a daunting task for an investor evaluating whether or not to place an investment. Most of the Western press and international organizations rate Ukraine poorly on its investment climate, citing overregulation and corruption, and large Kyiv investors complain bitterly in off-the-record meetings. On the other hand, Ukraine has a large market and an educated workforce, borders the European Union without sharing many of the EU's stringent regulations, and borders Russia without any related political crises.

The study of Yaremche and Kyiv was a story of completely different places, and in some cases, polar opposites. Yaremche is a small, sleepy city of 21,500 nestled in the foothills of the Carpathian Mountains. Its primary industry is tourism.

An investor that ventures west to Ivano-Frankivsk is likely to find more business-friendly startup procedures, but the region lacks the vitality and vibrancy of Kyiv. Property is available, government officials are easy to reach, and businesses seem positive and supportive of further investment. The local administration understands the importance of foreign investment on the community, and government officials openly campaign for foreign investment. Investors in Kyiv complained that the government there was unfriendly towards businesses; they felt that the government officials knew that many businesses wanted to establish themselves in Kyiv, and was therefore not proactively trying to develop investment, but instead extracting what it could.

In all cases, the term most frequently heard was the importance of “relationships” with government officials. This may be as a result of several factors, including:

- government officials have too much authority over the way businesses operate;
- procedures are complex and undocumented enough that businesses must rely on government officials to complete procedures;
- there is little accountability within the government to ensure that decisions are taken in accordance with the law.

INVESTOR ENTRY

Work permits are not as vehemently complained about as in other countries around the world. Many of the biggest complaints come from procedures that are seemingly impossible to complete, such as the requirement for a new firm to demonstrate that it has paid its taxes before it can be issued a work permit. Relationships are typically needed to get past the legal barriers. Because large firms rely on facilitators such as consulting firms to obtain work permits, they don't normally complain about the process. The law is very unclear about the circumstances under which the

REGISTRATION

With the introduction of the new law on company registration, “On State Registration of Legal Entities and Sole Proprietors,” it is difficult to provide an analysis that is timely; this research was completed before the introduction of the law. It is clear that the new law will provide benefits to investors if it is implemented as envisaged.

The value of Ukraine's requirement that investors demonstrate that the stated capital fund is available is questionable. The existence of these funds and/or assets does not ensure a company's ongoing solvency.

Businesspeople reported that despite the laws, different agencies in different rayons and oblasts seemingly had their own requirements for submission. While these inconsistencies are not necessarily a deterrent for investing and may add up to only a nuisance, they illustrate the uncertainty an investor faces when dealing with the Ukrainian government.

With regard to the registration of foreign investments, the laws are very clear on what satisfies the criteria for “investment,” the process for approval, the criteria for

IDENTIFYING A SITE

Ukraine has a lengthy and complicated process of selling its land. While there is logic to the concepts of tendering for any sale of open land and allowing leaseholders to purchase their land without tender, this has created a two-step process that is exceptionally lengthy. Because of each of the multiple City Council approvals that are necessary for this process, a town such as Yaremche (in which the City

From interviews, meetings, documentation, and an analysis of the law, it is likely that all three factors play a role.

Specifically, the findings were as follows:

- Investor entry;
- Registration;
- Identifying a site;
- Beginning construction;
- Starting operations.

committee - comprised only of members of militia, security service, immigration and labor offices - decides whether a foreign professional is “needed” or whether there is sufficient labor available locally to fill the position. If Ukraine chooses to begin limiting the number of foreign workers on a political basis (an approach that many developing nations have unwisely taken), it could have a disastrous effect on the existing base of foreign investment as well as future investment stream.

which a denial can be given, and the process that must take place in the event that a denial is given. However, the process still requires an “approval.” Worldwide best practices suggest that this is a detriment to attracting foreign investment and that this process should be automatic.

It is difficult to justify why foreign investment should receive preferential treatment over domestic investment, particularly in instances where the two might directly compete for either raw materials or market share. Hotels represent the latter – the participation of foreign investors in a hotel in Ukraine creates an unequal playing field.

The fact that “investment” is only considered to be that which makes up the initial capital investment ignores the fact that reinvestment from retained earnings and/or borrowed money contributes equally to the economy in terms of increased productivity, additional jobs created, and serving as a base for generating increased revenue streams for the government.

Council only meets once per quarter) may require a businessperson to wait longer than one year.

The requirement of first leasing land in order to purchase it is unnecessary. Because land is sold at market rate (or a near approximation), there isn't the same level of concern about the appropriateness of transfer. Most government officials seem to recognize this, but cite the political

processes taking place in land reform as a hindrance to change.

It should not be necessary to ensure that zoning requirements are met during the acquisition process. An owner that wishes to use a residential plot for industrial activity would not get past other zoning checks (pre and post-construction), and therefore would not likely consider purchasing the land. There appears to be an overlapping responsibility between the Oblast Land Resources Department of the State Committee on Land Resources

and the City Council Land Department. Both seemed to claim responsibility for conducting the land valuation during the process of leasing.

Meetings with officials in Kyiv suggest that there are changes on the way. One reform that currently is in conformity with current legislation is to develop technical passports for specific land sites before the investor ever arrives on the site. Other government officials stated that legislation is being processed which would eliminate the double city council approvals.

BEGINNING CONSTRUCTION

In most countries the process of obtaining a building permit is basically a single stage – once you obtain all of the approvals, you begin construction. Ukraine requires the investor to go through multiple stages of approvals before building can commence. As with the land acquisition process, permission is required for the investor to start their planning. There seem to be overlapping and conflicting approvals from the local Chief City Architect's office and the State Investment Expertise Service, and the necessity to get approvals to begin construction once the drawings are approved seems unnecessary given that the construction profession is licensed by the government.

Other comments include:

- The stage of gaining approval to begin the process seems wholly unnecessary.
- The process of obtaining technical requirements would be better used as a service offered by the government than as a mandatory stage of the process.

- There was considerable confusion as to the various roles between the State Investment Expertise Service and the Yaremche Chief City Architect.
- The necessity to have a lengthy permit process to begin construction only after all technical reviews have been completed with positive outcomes and the City Council has approved the project seems to add unnecessary length to the process.

One government official suggested that draft legislation is under discussion that would remove the two-tier city council approval rule that now exists. Given the fact that the Yaremche City Council meets only on a quarterly basis, this change by itself would shave substantial time off the process.

STARTING OPERATIONS

In Ukraine, preferential treatment is given to foreign investors over local investors. Foreign investors can import their capital goods duty-free, VAT-free, and, interestingly, without certification (as related by a customs broker). This raises several interesting points:

- If a foreign investor and local investor build competing hotels next to one another, the foreign investor starts with a clear cost advantage to his building.
- Why would certification not be necessary for a foreign investor? It is more than possible that the goods to be imported by both a foreign and local investor will come from the same source. While the author does not agree with the premise of certifying goods that have already received a safety or health certification in the country of origin, it is clear that if the role of the certification is to ensure the public's safety and health, no group should be exempted just by the nature of the source of their capital.
- Because of the fact that foreign investors are given preferential status on goods they directly import, local manufacturers and traders of capital equipment are put

at a significant competitive disadvantage. While it is recognized in government literature that a great deal of the goods for a business such as a hotel are available locally, an investor would likely choose to import goods directly if for no other reason than to avoid payments of VAT.

By implementing the promissory note and three-year rule of asset disposal, the government does a reasonably good job of ensuring that the goods imported will go towards production (as opposed to consumer resale). Therefore, it raises a question as to the benefit of restricting duty-free importation only to funds registered as foreign investments.

Ukraine is one of the few countries that do not require either a hotel or restaurant license; however, certification from one of the authorized bodies of the State Committee on Technical Regulation and Consumer Policy operates as a *de facto* license. This certificate is based on the successful completion of various inspections that ensure guests' safety and health. The use of a certificate from a regional standardization authority does not meet the needs of licensing for hotels.

D. KEY RECOMMENDATIONS

WORK PERMITS

- Eliminate the need to provide a tax clearance before obtaining a work permit. This part of the process is far from streamlined and causes the most angst for businesspeople. This process unnecessarily targets a small percentage of the population of businesses, and it is not clear that it significantly improves revenue collection.
- Streamline the documents required for the work permit approval process. Clearly establish the goals of the process (i.e., ensuring that only the correct jobs are filled by foreign labor, ensuring that foreign labor transfers skills or provides increased economic benefits, etc.) and ensure that the submission requirements are limited to those that satisfy those goals. All other submissions are unnecessary.
- Broaden the representation the evaluation committees to include government officials from economic ministries and from the private sector (possibly through business associations and chambers of commerce). This will improve the transparency of the process and ensure that the jobs being filled not only meet the legal requirements, but benefit the community as well.

REGISTRATION

- Eliminate the need for proof of a minimum deposit in a bank. This does very little towards ensuring the company's legitimacy and sometimes creates a logistical bottleneck for legitimate businesses.
- Implement the one-stop shop approach envisaged in the new law on company registration, and monitor the performance of the registries. This is not just to make the lives of businesspeople easier, but to ensure that each and every business completes all of the necessary registrations.
- Reform the process of registering foreign investment to:
 - Eliminate the approval process. Make these benefits automatic;
 - Disregard the amount of foreign investment and open all benefits to all investors, domestic and/or foreign;
 - Reconsider the limitation of allowing benefits only on investment which is in the capital account – allow benefits on all types of investment, regardless of the accounting vehicles used.

IDENTIFYING A SITE

- The documents required for approval of a survey and lease should be reviewed for necessity. It would be ideal if a list of documents that should be required be placed in legislation.
- This process would greatly benefit from a locally produced set of how-to guidelines. It is recommended that the city bring together each of its actors in this process with the intent of publishing a guide.
- The Government of Ukraine should explore the idea of entering relationships with property developers to identify, survey, and develop land for investment. Historically, government programs to exploit land have been much more successful when managed by private property developers.

BEGINNING CONSTRUCTION

- Have only a single approval by the city council after all of the assessments have been delivered by the various technical departments.
- Eliminate the legal requirement for technical conditions and architectural and planning statements and make them a service of the government instead.
- Clarify the roles of the State Investment Expertise Service and the Chief City Architect.
- Include the approvals by the state architecture and construction inspectorates among the technical approvals.
- To the degree possible, have all approvals be made in parallel and reduce the number of dependent approvals.

STARTING OPERATIONS

- It is recommended that Ukraine adopt a policy for all goods to be used for production, regardless of the origin or form of investment. It is suggested that this policy:
 - have a reduced duty;
 - not give preferential treatment for certification;
 - be available for local traders (through a process in which they can get rebates).

- The existing process should be simplified by examining such tools as a one-stop shop.
- Hotel licensing should replace the current certificate regime in Ukraine. Hotel licenses should be partially based on the capabilities of the employees in the hotel.
- Because the restaurant safety certification is largely based on the sanitary inspection, it is unnecessary to create a second process. A restaurant should be able to operate on the basis of a clean inspection from both the fire and sanitary inspectorates.

II. INTRODUCTION AND METHODOLOGY

A. INTRODUCTION

The Investor Roadmap, an in-depth study that details the steps required of an investor to become legally established in Ukraine, addresses the administrative and procedural barriers facing investment. This focus is particularly useful at the current time, because Ukraine - like many of the countries of the former Soviet Union - has made strides in recent years to reform its macroeconomic and financial environment and has begun to grapple with issues of public sector reform.

BIZPRO, as a part of its ongoing regulatory reform activities, has conducted an Investor Roadmap for Ukraine.

On a macroeconomic level, Ukraine’s liberalization and privatization strategies have allowed it to maintain a certain level of competition for foreign direct investment with neighboring states. However, foreign direct investment totals continue to be low – Ukraine has not yet had a single year in which FDI topped 1 billion USD.

To some extent, this can be explained by the fact that the policy and regulatory environment for private business establishment and expansion remains less than ideal. Most reforms to date have targeted highly visible matters such as taxes, tariffs, and monetary and exchange rate policies. The importance of these reforms should not be underestimated. However, the current hyper-competitive environment for foreign direct investment, particularly between the emerging economies of East and Central Europe, strongly

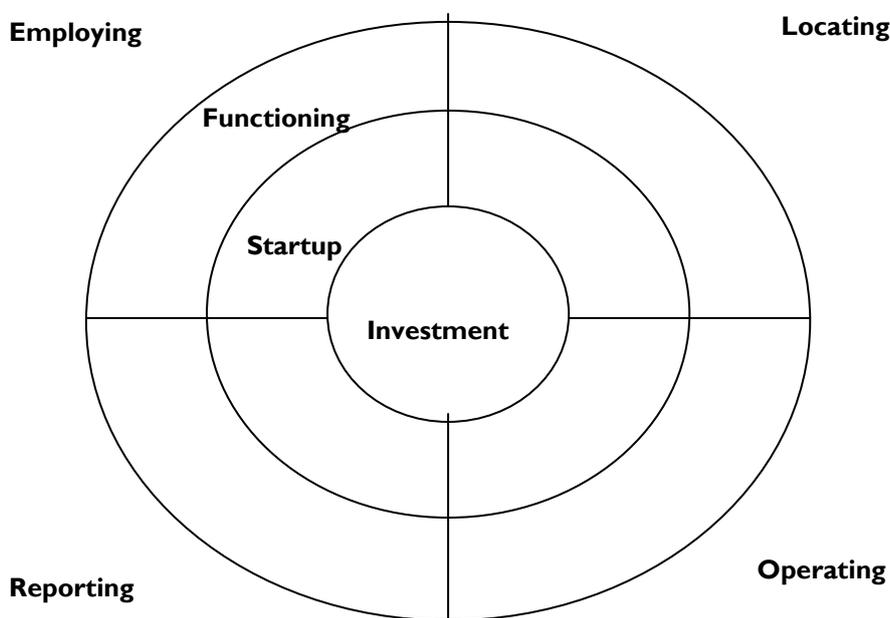
suggests a need for “second-tier” regulatory and policy reforms as well.

While the overall logistical and administrative environment for new businesses is on par with many the environments of other countries from the Commonwealth of Independent States (CIS), it still falls short of what many investors have come to expect and of what will facilitate high levels of foreign and local private investment. Some of the constraints – when looked at individually – may appear to be mere annoyances rather than binding constraints. However, when grouped together as a whole, these constraints can deter new investment, raise the cost of doing business, and stunt private sector development in the country.

The goal of the Investor Roadmap study, then, is three-fold:

1. To develop a comprehensive investment guide, giving step-by-step details of all licensing and regulatory requirements that an investor must fulfill to become fully operational.
2. To identify existing bottlenecks and inefficiencies and make recommendations on how best to streamline them.
3. To analyze other factors impacting the investor that result from the legislative environment.

FIGURE 2.I. ROADMAP PROCESS



The approach to the study has been developed and refined in similar projects conducted by USAID, the World Bank, and other organizations around the world. The Roadmap Model is composed of 13 core processes divided into four process groups over three phases of investment, start-up, and functioning. As shown in Figure 2.1., the four process groups include:

- **Employing** issues, including obtaining temporary and permanent residency permits for investors, securing employment permits for expatriates, and handling local labor relations
- **Locating** issues, including purchasing land, transferring deeds, developing land, and complying with environmental laws
- **Reporting** to the government, including registering a business, acquiring incentives, applying for specialized licenses, and registering for and paying taxes
- **Operating**, which includes importing, exporting, acquiring foreign exchange, and repatriating profits

Table 2.2. summarizes the 13 core processes within the four process groups described above.

Because foreign investors are required to undertake some steps not required of Ukrainian investors (e.g., immigration permits, certain registrations, etc.), this study is more comprehensive than if it were just to focus on the local investment perspective. Nonetheless, the Roadmap is still relevant to local investors who are subject to the vast majority of steps outlined. In addition, particular attention is given throughout the study to the small and medium-scale investors who may be disparately impacted by various regulatory procedures.

This report is divided into six chapters which cover the four groups of processes in order to present these procedures in their approximate chronological order (during the process of investment). In addition, a chapter on the process of gathering information is presented. The seven chapters and their associated process groups in parentheses are:

- Gathering Information
- Entry (Employing)
- Formation (first part of Reporting)
- Site Identification (first part of Locating)

- Site Development (second part of Locating)
- Startup (second part of Reporting)
- Operating (Operating)

Each chapter is structured in three parts: (1) the specific procedural Roadmap for starting a business in Ukraine (as will be further discussed in this chapter, these procedures will be highly specific to the opening a hotel in the City of Yaremche), (2) a discussion of the findings, and (3) recommendations for improvements.

The first step in building an Investor Roadmap is to document - in as much detail as possible - the various steps required of a new business to become established and begin operations in full compliance with existing laws and regulations. This includes the required licenses and/or approvals, their application procedures, and acceptance criteria. The fees for processing payments are noted, as are typical processing times for each step. In most cases, these are average processing times reported by the agencies for projects with no unusual characteristics or problems. Actual processing times encountered by firms may be significantly longer, and the analysis section of the Investor Roadmap reflects where the public and private sectors disagree on how long a given procedure takes.

Process descriptions are followed by an analysis in which regulatory and procedural issues are identified and discussed, with recommendations for streamlining made where appropriate. The analysis section highlights areas of concern, notes disagreements between the government's perspective and the business community, and adds a contextual dimension to the report's treatment of procedural issues. Recommendations are based on the twin objectives of simplifying application procedures for investors while enhancing the ability of the government to regulate and screen key information properly.

The report is intended to invite responses from the concerned agencies in order to identify means of streamlining the overall process. The recommendations made are not intended to be definitive but instead suggestive, and to encourage those professionals involved to work together to address the current problems and impediments to sustained economic growth.

Table 2.2 details the 13 core processes analyzed in the Ukraine Investor Roadmap and provides some general observations from previous Roadmap experiences.

B. METHODOLOGY

In a country the size of Ukraine in which autonomy is given to individual oblasts to establish procedures for many processes, it is impossible to research all of the procedural variations throughout the country. The best approach is to investigate a viable scenario for investment in a particular oblast, and pursue the investment as would a typical investor. Those processes that are not inherent to that particular investment are studied through laws and regulations (without interviews with government officials).

The scenario presented was that of a foreign investor intending to create a joint venture with a Kyiv-based local investor to open a hotel in the city of Yaremche in the Ivano-Frankivsk region. Yaremche is a city of approximately 15,000 full-time residents in the foothills of the Carpathian Mountains, and is actively seeking investment for its growing tourism industry.

The business was designed with two considerations: the first is that the business concept be feasible given the current environment in Yaremche. The second is that the choice of activities is comprehensive enough that there is a broad coverage of many of the procedures a typical businessperson would encounter in order to maximize this report's utility.

Based on the above, the team chose the following scenario:

- A 25 room hotel in Yaremche offering a restaurant and recreational activities such as horseback riding.
- A foreign investor in partnership with a Kyiv-based local investor.
- The company will purchase land from the government with an existing structure on it that requires significant upgrades.
- The company will import heating and cooling systems and kitchen equipment, but will purchase other equipment locally.

- The company will attempt to finance locally.
- The company will apply for the optional certification for a hotel and restaurant (star rating).
- The foreign investor will occasionally work in-country, and the hotel will hire one foreign worker in management.

Despite the focus on a Yaremche hotel, it is intended that the Investor Roadmap of Ukraine will address mainstream businesses. The process of following the development of a hotel includes most of the approvals that are needed for most business types. Where a license is applicable to other types of businesses but not hotels, the report will present the legal requirements of the process, but not the details that would result from interviews with government officials.

The following table illustrates all of the processes studied and indicates the level of applicability to each:

TABLE 2.1. THE PROCESSES STUDIED DURING THE RESEARCH

Process	Role in Tourism	Role in General Business
Research in Preparation for Investment	High	High
Investor Entry, Visas, Registration, and Work Permits	High when foreign investors are concerned	High when foreign investors are concerned
Work Permits for Foreign Workers	High	High
All Registrations Necessary for Company Formation	High	High
Customs Accreditation	High	High
Bank Financing	High	High
Acquisition of Land	High	High
National Parks Permits	High	Normally Unnecessary
Transfer of Title	High	High
Land Development	High	High
Occupancy Permits	High	High
Hotel/Restaurant Certification	High	Not necessary
Product Certification	Not necessary	High
Effluent and Pollutant Licenses	Not necessary	High where necessary
Other Licenses	Very few required	High where necessary
Inspections	High	High
License and Other Renewals	High	High
Importing Capital Goods	High	High
Importing Raw Materials	Not typically necessary	Typically High
Exporting Finished Goods	Not necessary	Typically High

C. RESEARCH

In order to compile this report, the team conducted the following interviews:

- Seven days in Kyiv interviewing ministry officials and foreign investors;
- Four days in Ivano-Frankivsk, interviewing government officials and businesspeople engaged in hotels and tourism;

- Four days in Yaremche, interviewing government officials and local businesspeople in a range of sectors.

In total, the team met with 41 government officials and 38 private businesspeople. Businesses were a mix of entrepreneurs and facilitators (accountants, attorneys, bankers, and architects).

TABLE 2.2. INVESTOR ROADMAP – 13 CORE PROCESSES

	Process	Stage	Description	Notes From Previous Roadmap Experience
Employing	1. Investor work permit	Start-up	Applying for a permit	In many cases, the most time consuming and frustrating part of foreign investment.
		Functioning	Renewing a permit	Usually does not fall on critical path. However, the need for renewal creates risk for the investor.
	2. Expatriate work permit	Start-up	Applying for a permit	In many cases, this may be critical to the success or failure of the investment. Also very bureaucratic.
		Functioning	Renewing a permit	Becoming a problem as many countries are clamping down on repeated renewals.
Locating	3. Acquiring land	Start-up	Purchasing land	Can be the most difficult and confusing. Can make or break investment.
		Functioning	Expansion	Not usually a critical factor in investment decision-making.
	4. Transferring ownership	Start-up	Transferring deeds	Can be a problem in some countries lacking sophisticated systems.
		Functioning	- None -	
	5. Developing land	Start-up	Planning and construction	Problems can occur especially with utility connections. Usually a high variability between town planning offices.
		Functioning	Expanding facilities	See above

	Process	Stage	Description	Notes From Previous Roadmap Experience
Reporting	6. Registering	Start-up	Applications	Can be complicated, and potentially a source of corruption, but usually timely in most countries.
		Functioning	Renewals	Usually not an issue.
	7. Registering and paying taxes	Start-up	Registering as a taxpayer	Usually not an issue.
		Functioning	Paying taxes	Can be overly complex and inconsistent from year to year in some countries.
	8. Registering as a foreign investor	Start-up	Applying for incentives	Can be very complicated and lengthy. Causes frustration for investors.
		Functioning	Claiming incentives	Must be timely to avoid a bad reputation in the investment community.
	9. Licenses, Permits, Certifications, and Approvals	Start-up	Applying	Usually the quantity of various approvals is a problem. Often seen solely as revenue generators by investors.
		Functioning	Renewing	Usually require annual renewal. Often automatic, seen merely as a nuisance. However, the government can use this as a tool to shut down a business for political motivations.
	Operating	10. Importing / exporting goods	Start-up	Importing machinery and raw materials
Functioning			Importing and exporting goods	See above.
11. Repatriating profits / Foreign Exchange		Start-up	Registering with a bank	Not usually a problem in liberalized economies.
		Functioning	Repatriating profits	Can be very problematic in certain countries, and potentially a deterrent to investment.
12. Inspections		Functioning	Inspections from Tax, Fire, Health, and others	Usually a bigger problem for small businesses unfamiliar with their rights than large businesses with legal support.
13. Local labor		Start-up	Hiring workforce	Usually not very bureaucratic, if any government involvement at all.
		Functioning	Managing workforce	Many facets, including collective bargaining, dispute resolution, PAYE collection, etc.

III. RESEARCH AND INFORMATION

A. INTRODUCTION

This chapter describes what a typical investor might find during the decision making process before investing in Ukraine. This chapter covers a review of key documents that rank Ukraine competitively with neighboring investment destinations. It also describes what information is available publicly in English from the national and local governments, NGOs, and local service providers (such as law and accounting firms).

A very important part of the investor's decision making process is the vibrancy and attitude of the local private sector. During the course of assembling this document, the consulting team interviewed 40 members of the private

sector and several key private sector representatives that head up business associations, an approach that mirrors the typical steps that an investor might take. This section reflects the tone of those conversations and the potential impact on investment.

Finally, this chapter addresses what land may be available for investment. Because the investment is in a hotel, a critical success factor for the investor would be the hotel's location. Therefore, no decision can be taken unless the investor is confident that land is available either through the government or through the private property market.

B. RESEARCH AND RANKINGS

Generally, Ukraine does not fare well in the international rankings. Most international indices list Ukraine in the bottom 25% of the world's nations as an investment destination. Typically, these rankings cite the high level of government interference in the private sector, the strictness of the regulatory environment, the instability of laws and regulations, and weaknesses of the court system. Most publications and international organizations recognize Ukraine's efforts to stabilize its macroeconomics through monetary reform and passage of laws.

However, for the most part, these reforms are recognized as the bare minimum needed to establish Ukraine as the investment destination of choice in Eastern Europe. It is important to note that the Ukrainian private sector's legal

environment is "only" 13 years old – however, many of the countries to the immediate west of Ukraine have made much more substantial reforms in not much more time.

It is important to note that what might have been Ukraine's reform goals 10 years ago are no longer adequate. As virtually all Eastern European countries are aggressively campaigning for foreign investment, many have made drastic changes in their investment environments. The level of competition for investment is fierce, and the rankings and polls often reflect higher expectations on the part of investors and scholars.

The following is a representative sample of what an investor is likely to find before departing on an investigative mission to Ukraine:

THE ECONOMIST MAGAZINE

Several articles about Ukraine and its private sector environment have appeared in The Economist over the course of the past year. Most of the articles have been unflattering:

"Ukraine doesn't seem to care at all about how it's perceived," says Rob Edwards at Renaissance Capital, a Moscow investment bank. "For many people, Ukraine is still off the track as an investment destination." (The Economist; May 27, 2004).

Privatization and foreign investment have proceeded more slowly in Ukraine than in former Communist countries in Central Europe, such as Poland and Hungary...

A regulatory apparatus designed to protect existing enterprises from domestic competition and from foreign ownership and tax reform remains in place. Punitively high taxes, organized crime and the government's inability to ensure the rule of law have imposed further costs on business. Studies by the IMF and the World Bank indicate far higher levels of corruption in Ukraine than in almost any other country in the region. (The Economist Country Briefing – Economic Structure; April 7, 2004)

THE WORLD BANK "DOING BUSINESS"

The World Bank's "Doing Business" website (<http://rru.worldbank.org/DoingBusiness>) provides objective measures of business processes. Their methodology is to employ local attorneys to collect information on the procedures and costs associated with starting and operating a business. The narrative suggests that Ukraine is more

complicated and more expensive than the rest of the region:

Entrepreneurs can expect to go through 15 steps to launch a business over 34 days on average, at a cost equal to 17.6% of gross national income (GNI) per capita. They must deposit at

least 121.5% of GNI per capita in a bank to obtain a business registration number, compared with the regional average of 67.7% of GNI and the OECD average of 47.0% of GNI.

THE HERITAGE FOUNDATION

In the Heritage Foundation's Index of Economic Freedom, Ukraine ranks 117th in the world, with a summary score of "mostly unfree." The report notes "moderate progress" on economic reforms, including land reform, price liberalization, reduced barriers to trade, and expected tax reform. Its score improved by a small margin. Ukraine received the following scores in the report:

- Trade Policy – moderate level of protection
- Fiscal Burden – high cost of government

- Government Intervention in the Economy – moderate level
- Monetary Policy – moderate level of inflation
- Capital Flows and Foreign Investment – high barriers
- Banking and Finance – moderate level of restriction
- Wages and Prices – moderate level of intervention
- Property Rights – low level of protection
- Regulation – high level
- Informal Market – high level of activity

DEPARTMENT OF COMMERCE

The United States Department of Commerce reports are positive regarding trade opportunities in Ukraine. The following are excerpts from the 2004 DoC report:

"... Almost 14 years after separating from Russia, Ukraine is slowly transforming itself into an emerging market economy with 47 million people. As with its economy, Ukraine's political system is new and must weather another test later this year with Presidential elections that if done properly, will signal to the West that the government of Ukraine has accepted fair democratic principles.

"... Ukraine also benefits from high educational standards, 100% literacy, and a well-trained workforce willing to make the

transition from Soviet-style economics to market-driven management. Most recently, Ukraine adopted a flat personal income rate of 13% to encourage companies and employees to rely less on grey market economics. Improvements in infrastructure are materializing, especially in the major urban areas, and Kyiv, Ukraine's capital, is beginning to reveal itself as a beautiful and unknown tourist destination.

"Because of its diversified economy, ranging from a strong agricultural sector to manufacturing facilities for IT products, and because of its stable currency with no restrictions on repatriation of foreign profits, Ukraine is likely to sustain future improvements in FDI, GDP, wages, and overall population lifestyle and welfare."

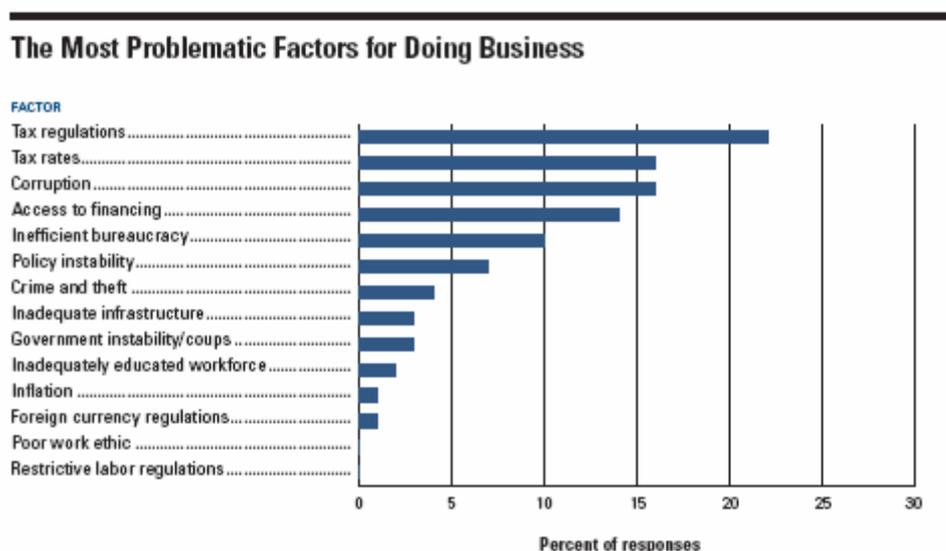
THE GLOBAL COMPETITIVENESS REPORT

The Global Competitiveness Report (GCR) is compiled by the World Economic Forum's Global Competitiveness Program. These results are compiled through the "Executive Opinion Survey," which is conducted annually.

The score consists of two components: the Global Competitiveness Index (GCI) and the Business Competitiveness Index (BCI). The GCI is made up of three sub-components, including the macroeconomic environment, the quality of public institutions, and

technology. Ukraine ranks 84th out of 102 countries studied in 2003. There now has been a small movement in a more positive direction. In 2002, the GCI covered 80 countries, and Ukraine ranked 74th. Of those 80 countries, Ukraine ranked 70th in 2003; the Index added 22 countries for 2003. Of note, Ukraine ranked 94th out of the 102 countries in the Public Institutions Index component. The following graph illustrates some of the difficulties that businesses have with Ukraine's government authorities:

FIGURE 3.1: THE MOST PROBLEMATIC FACTORS FOR DOING BUSINESS IN UKRAINE



Source: World Economic Forum, Executive Opinion Survey (2003)

The second component, the Business Competitiveness Index, ranks countries in two interrelated areas – the sophistication of domestic companies’ and foreign subsidiaries’ competitiveness, and the quality of the microeconomic business environment. The results are drawn from the Executive Opinion Study. Ukraine ranks

slightly better in its BCI ranking than its GCI ranking: Ukraine ranks 73rd out of 101 nations.

While looking through the GCI and BCI rankings, one can find some semblance of positive trends; however, the fact remains that a potential investor reading these highly respected reports will form a very negative impression of Ukraine as an investment destination.

SUMMARY

It is important that the Government of Ukraine consider – judging by the various literature in the public domain - that solely improving the investment environment at the same rate as the rest of the world will keep the country in the bottom half of the rankings. In order to make Ukraine an important destination for foreign direct investment, it must

continue to make reforms at a rate that exceeds that of other countries, particularly those in Eastern Europe. This is a significant challenge for Ukraine, as many countries in the region - having recognized the competitiveness for scarce foreign direct investment - are accelerating their efforts to reform.

C. INFORMATION

GOVERNMENT INFORMATION

There is little information in English available to the investor from the Ukrainian government. A few of the departments publish promotional brochures, and a few outline the opportunities that exist to partner with existing investors or to take over brownfield investments. However, there is little official information on how procedures work and what steps need to be taken.

Some offices have taken steps to publish required documents and post them on a nearby bulletin board. Some of the places in which the team identified government information on processes included:

- the information center of the State Department on Intellectual Property in Kyiv, with samples of completed applications posted on the walls;

- the Yaremche City branch of the State Committee on Land Resources, with a list of required documents posted on the wall;
- the one-stop shop in Ivano-Frankivsk, with the procedure for registration posted in a graphic format on the wall;
- the Department of Parks and Wildlife hands out information on investment opportunities and different national parks in Ukraine;
- the State Tourism Administration publishes brochures on investing in tourism projects in Ukraine;
- the State Employment Center in Ivano-Frankivsk provided the team with a list of required documents;

however, it is not clear whether this is distributed under normal circumstances.

There are other examples of the practice of providing information, but they are not as widespread as a typical investor would expect, and the information is not comprehensive as to the process to be completed. Many processes take place across multiple departments (as will be illustrated later in this report), but most documentation describes only the process that takes place within the department. It is also possible that information on the signboards is out of date – the consulting team came across examples of this during some of their visits to different departments.

Other than the most promotional of materials, almost none of the government's informational materials are available in English. Because the national language is Ukrainian and regulations require virtually all submissions to be in Ukrainian, this is not unusual. However, the government should consider the possibilities for enhancing the amount of official information it provides in multiple languages in order to grow the base of potential foreign investors.

Frequently, the consulting team was directed towards the laws to get the complete procedures for a process. However, many of the laws (with certain exceptions) in Ukraine do not describe the processes in detail that an [/DoingBusinUkraine.pdf](#).

D. UKRAINIAN INVESTOR INTERVIEWS

A very powerful influencing factor for a potential investor is the opinion and strength of the local business community. There are countries in which a foreign investor receives significantly better treatment than a local investor, countries that lack a vibrant private sector often set off warnings to the potential investor.

Interviews with businesses in Kyiv and interviews in the Ivano-Frankivsk Oblast produced disparate results. The businesses in Ivano-Frankivsk and Yaremche in particular were run by small-scale businesspeople; some of their businesses were growing, but most remained small. None had been businesspeople for long. Their attitudes towards the local authorities were reasonably benign. They frequently spoke of the importance of relationships, and stated that bureaucracy was not a major constraint.

Businesses reported processes to be lengthy and complicated, but not impossible to complete. Often, businesspeople engaged private facilitators or knowledgeable friends to help them complete processes. The most complicated processes were in the sphere of land acquisition and development. Businesspeople also had the following complaints:

- it was inconvenient for them to obtain some permissions in Yaremche, others in Ivano-Frankivsk, and yet others in Kyiv;

investor must have to understand the departmental requirements. This lack of information creates opportunities for government officials to seek rent from prospective investors. This becomes particularly evident as one moves between two oblasts in trying to learn the various procedures for starting a business. The laws appear to allow enough latitude for oblasts and cities to introduce their own procedures. As a result, it would be difficult, if not impossible, to have a comprehensive guide to investing in all cities of Ukraine.

Guides are provided by the usual large accounting firms and law firms. The consulting team came across "Doing Business in Ukraine" guides from the audit firms Ernst & Young (http://www.ey.com/global/content.nsf/Ukraine_E/Home), KPMG (<http://www.kpmg.com.ua/index.thtml/>), and BDO Balance-Audit (<http://www.bdo.com.ua>) through their local offices. These guides have been both updated in 2004 and are freely available in hard copy. Other accounting firms undoubtedly offer similar guides.

Other guides come from international law firms such as Baker & McKenzie (<http://www.bakernet.com/BakerNet/Resources/default.htm>) and MGI (www.mgiworld.com/doingbusiness)

- even though some processes should be executed in Ivano-Frankivsk, some businesspeople were forced to go to Kyiv to complete those processes;
- frequently, businesspeople spoke of the importance of their "relationship" with the government – some did not say it explicitly, but others mentioned the need to provide gifts and other incentives to government officials to complete procedures.

The laws for fire, sanitary and labor protection inspectors are lengthy and complicated, but business people did not report problems with inspectors. It was clear that inspectors were prepared to overlook violations in the nature of the "relationship." Inspections from the tax authorities were reported as problematic, so much so that some business people would prefer to pay whatever penalties are assessed (legally or otherwise) than appeal the results.

Businesses reported that the local authorities were supportive of business development in their communities; however the burden of excessive paperwork made it difficult for them to complete processes. Generally, interviews with the business community in the Ivano-Frankivsk Oblast would suggest a different picture than what is described by the Heritage Foundation, *The Economist*, and others. However, it is not clear whether this represents an objective assessment of the investment

environment, or a resignation that the way to do business is through a system of payments and gifts.

Interviews with Kyiv-based investors though suggested an entirely different investment climate. Many interviews with Kyiv-based businesses suggested that the environment is extremely difficult. Most companies maintain a legal staff in order to deal with the complexities of doing day-day business.

Kyiv-based investors suggested that the local government was not interested in small business development and understood that Kyiv was likely to be an investment destination for foreign investment. Therefore, foreign

investors owed something to the government for the privilege of investing. While land processes in Western Ukraine were reported as complicated and lengthy but not impossible, it was reported in Kyiv that this process is one to be avoided at all lengths (through the process of private leasing or a private purchase).

However, businesses in Kyiv were clearly more dynamic and growing at a much faster rate. There exists a much stronger service infrastructure in Kyiv as well. An investor is much more likely to recognize the findings from the international press in Kyiv than in Western Ukraine

E. AVAILABILITY OF LAND IN YAREMCHE

In the tour industry, a critical success factor is the quality of the location of the facilities. Land in Western Ukraine can be obtained from three different sources:

- the private property market;
- the local government administration;
- the Department of Parks and Wildlife (as administered by the local government administration).

PRIVATE PROPERTY

Land is quickly being privatized by local residents, many of whom have the intention to sell despite Yaremche city officials' efforts to limit this activity. It is far more desirable to acquire land in a private transaction, as this can shave months - and in some cases years - off of the acquisition process. As will be described later on in this report, not only is the process extremely lengthy, but there is no guarantee of a successful purchase at the conclusion. Private property sales are much faster.

As of June 20, 2004, there were approximately 15 plots of land on the private property market. The largest properties are a half-hectare plot within the city limits zoned for agricultural use, a 6000 m2 property zoned for agricultural

use in the mountain territory, and 1.5 hectare property also zoned for agricultural use. The other plots are all small, likely for residential use. These lots can not be sold or acquired until January 1, 2005.

The land can be rezoned, and a number of local residents were in the process of rezoning their land during the time of research. The rezoning process is also a lengthy one, and negates the value of a private property purchase since many of the same procedures take place in rezoning as in land acquisition.

In summary, at the time of the research, options on the private property market for a small hotel are limited.

GOVERNMENT LAND

The Mayor of Yaremche stated that they have reserved a large central piece of land with some buildings on it for an investor wishing to erect a hotel. As the investor in our scenario would like to offer horseback riding and other outdoor activities, the center of town may not be optimal. However, it is positive that the town has proactively

identified a potential site for an investor. Interviews with local residents suggest that not much land still exists that is available within the city of Yaremche. As will be shown later in the report, the process for identifying suitable plots for acquisition is not an easy process.

DEPARTMENT OF PARKS AND WILDLIFE LAND

The city of Yaremche sits adjacent to a large national park which is managed by the Department of Parks and Wildlife. Land is plentiful there, but investors may not own this land. This may be entirely suitable for an investor

depending on their business strategy, but there is some risk in investing in property improvements on land that they will never own.

SUMMARY ON AVAILABLE LAND

It's not likely that the investor will find a suitable piece of land in Yaremche on a short visit. Land has begun to fetch a premium in the Carpathian Mountains, and there are many Ukrainian citizens vying for some of the best locations. Much of the land is zoned for agricultural use, which

requires a lengthy process of conversion for use in recreational activities. Nonetheless, there was a feeling that an appropriate parcel of land could be identified, with the proper amount of time and knowledgeable individuals.

F. CONCLUSIONS

For investments that aren't location-specific such as manufacture for export, the current published rankings of Ukraine, the lack of available public information, and the views of Kyiv-based investors would likely scare off all but the most determined investors. Even those investors intending to exploit either the Ukrainian marketplace or natural resources would have to take pause from the information they collect.

This project relies on the information collected from members of the private sector that chose to invest and remain invested in Ukraine. No interviews were conducted with individuals that considered Ukraine and chose not to visit, or chose to visit and not to invest. We did not interview any businesses that had been operating

in Ukraine and subsequently disinvested. Therefore, we can statistically count the amount of FDI in Ukraine, but it is not easy to count the amount of FDI Ukraine would have had if investors had received more information and positive reviews of the country.

An investor that ventures west to Ivano-Frankivsk is likely to find a more investment-friendly environment, but the region lacks the vitality and vibrancy of Kyiv. Property is available, government officials are easy to reach, and businesses seem positive and supportive of further investment. The local administration understands the importance of foreign investment to the community, and government officials openly campaign for foreign investment.

IV. ENTRY

This chapter covers the processes of obtaining medium and long-term entry for investors and foreign workers into Ukraine. This chapter is not only intended to cover foreign

investments, as it is not uncommon for large local investors to use foreign labor.

A. PROCESSES

ENTRY FOR PURPOSES OF RESEARCH

To enter Ukraine for research, a businessperson must obtain either a single-entry or multiple-entry business visa. This visa can be obtained from the local consulate. Visas are not available at border crossings. Generally, required documentation includes:

- Passport (or other travel document)
- Application Form
- Color Photograph
- Application Fee

In the example of the hotel, the scenario is that the foreign owner of the hotel will visit Ukraine at least once to obtain the necessary information to make an investment decision. Upon investing, he will not be present in Ukraine on a full time basis but will spend a substantial amount of time in country overseeing his investment. In addition, there is envisaged one foreign

manager to be teamed with the local staff. Finally, there will need for foreign short-term employees to train the local staff on providing adequate levels of service.

A letter of invitation is not necessary for a business visa.

No visa is required for persons who hold:

- Passports of Armenia, Azerbaijan, Belarus, Georgia, Hungary, Kazakhstan, Kyrgyzstan, Moldova, Mongolia, Poland, Romania, Russia, Tajikistan, or Uzbekistan;
- a diplomatic, service/official or special passport of Argentina, Bosnia and Herzegovina, Brazil, Bulgaria, Chile, China, Croatia, Cuba, Guinea, Iran, the Democratic People's Republic of Korea, Laos, Lithuania, Slovakia, Turkey, Turkmenistan, Vietnam, or Serbia and Montenegro; Latvia (in certain circumstances), or diplomatic passports of Estonia, Israel, or Mexico.

REGISTRATION OF THE INVESTOR

Once an investor has decided to invest in Ukraine, it is required that he register first with the tax authorities and obtain a tax number (so-called "identification number in the General State Registry of physical persons - taxpayers"). This is a short process; in some cases, the tax authorities allow someone to complete the registration on behalf of the investor, while other districts require the investor to appear personally. The result of this process is that the investor is given a tax registration number. Some of the company registration processes require this information to complete the company registration process. Also, foreigners cannot open personal bank accounts without this document.

In order to register with the tax authorities, the investor completes the registration form in Ukrainian. Officials at the tax office in Ivano-Frankivsk suggested that Russian investors could submit this form in the Russian language. For Yaremche, the investor must complete this process in Ivano-Frankivsk.

This process is completed in 15 business days, at which time the businessperson may pick up the registration number. There is no fee for this process, and it need not be renewed.

ENTRY FOR PURPOSES OF FOREIGN DIRECT INVESTMENT

Work permits are necessary for investors who will hold employment contracts with their companies. There is no special class of permit for a foreign investor. If the investor does not intend to enter into a contract with his company, then it is only necessary to acquire a business visa and no work permit is necessary.

The work permit process for an investor is identical in all ways to the process for a worker with the exception of the required documentation. The process is to submit the documents (listed below) to the Employment Center

located within the respective oblast and obtain the work permit upon approval.

Government officials report that applications are reviewed for accuracy of the required documentation, adequacy of the individual for the listed position, and the availability of local employees to act in that capacity (it is not entirely clear what would occur should the position that the founder assumes be considered one for which local talent is available).

INITIAL PERMIT

If the founder intends to enter into a working contract with his company, the company must obtain a work permit from the regional Employment Center. Experience suggests that procedures are not identical from center to center, and that the company should check with its regional Employment Center for the exact application requirements. The first step is for the company to make an application. The following documents are required based on the resolution of the Cabinet of Ministers:

- A letter of application. This letter must be written in Ukrainian and should contain:
 - the last name and first name of the founder;
 - his/her citizenship;
 - the position he/she will assume;
 - his/her address in Ukraine;
 - the period of invitation (no more than one year);
 - the company's main activities;
 - the founders;
 - the number of foreign employees and citizens of Ukraine;
- A statement of motivation. This should essentially answer the questions of why there is a need for the founder to assume his position, and what his qualifications are;
- The contract between the foreign and Ukrainian business entities concerning certain works or services (if any exist);
- Copies of the statute and state registration certificate of the company, certified by a notary;
- a list of the foreigners (assuming multiple positions are being simultaneously applied for), specifying the names in full, dates of birth, numbers of passports, qualifications (professional skills), and sex;

- a copy of the draft employment contract;
- notarized documentation authorizing the company's representative to act in his/their behalf at the Employment Center;
- copies of documents attesting to education/training or qualifications;
- a statement of a body of the State Tax Service, attesting to the company's payment of taxes and duties provided by the law;
- the application fee receipt.

Some offices will demand the notarized minutes of the company's shareholders appointing the founder as a contracted employee of the firm. This is not specified in the resolution.

The fees for this process are 10 untaxed minimum wages (currently 170 UAH).

Upon submission, the applications are reviewed by a committee primarily comprised of officials from the Employment Center, OVIR, and the police. This committee meets monthly to review applications.

Once the application is approved, a letter is sent to the company. Letters are sent out with the approval or giving grounds for the denial within 30 days of the submission of the application.

Within three days from the date of the beginning and end of the contract, the company must write to the Employment Center and have the foreigner's passport registered with the OVIR.

EXPATRIATE LABOR

The work permit process for foreign workers is a two-step process that is very similar to the process for a company founder. Unlike several other CIS countries, there are no national or local quotas for foreign workers.

An expatriate worker can be hired who has entered the country for the purposes of seeking employment. In this case, the process is to submit the documents (listed below) to the local Employment Center, obtain the work permit upon approval, and register the employee with the OVIR.

Expatriate workers recruited out of their home country must apply for a visa with their local consulate. The application process is the same for the work permit and registration.

Government officials report that applications are reviewed for accuracy of the required documentation, the adequacy of the individual for the listed position, and, most importantly, the availability of local unemployed to act in that capacity.

VISA

The process begins with the employee making an application for a visa "for the purposes of seeking employment." This visa can be obtained from the local consulate. Visas are not available at the border crossings. Generally, required documentation includes:

- Passport (or other travel document)
- Application Form
- Color Photograph
- Application Fee

No visa is required for persons who hold:

- Passports of Armenia, Azerbaijan, Belarus, Georgia, Hungary, Kazakhstan, Kyrgyzstan, Moldova, Mongolia, Poland, Romania, Russia, Tajikistan, or Uzbekistan;
- a diplomatic, service/official or special passport of Argentina, Bosnia and Herzegovina, Brazil, Bulgaria,

Chile, China, Croatia, Cuba, Guinea, Iran, the Democratic People's Republic of Korea, Laos, Lithuania, Slovakia, Turkey, Turkmenistan, Vietnam or Serbia and Montenegro; Latvia (under certain circumstances), or diplomatic passports of Estonia, Israel, or Mexico.

INITIAL PERMIT

The prospective employer must obtain a work permit from the regional Employment Center. Experience suggests that procedures are not identical from center to center and that the company should check with its local Employment Center for the exact application requirements. The process for employees is essentially the same as that for a founder, with the exception of a few different documents.

The first step is for the company to make an application. The following documents are required by law:

- A letter of application. This letter must be written in Ukrainian, is signed by the director of the enterprise and should contain:
 - the last name and first name of the foreign citizen(s);
 - his/her citizenship;
 - the position he/she is invited for;
 - his/her address in Ukraine;
 - the period of invitation (no more than one year);
 - the company's main activities;
 - the company's founders;
 - the number of employees who are of Ukrainian citizenship;
 - the number of foreign citizens employed.
- A statement of motivation. This should essentially answer the questions of why there is a need for an expatriate worker and what his qualifications are;
- The contract between the foreign and Ukrainian business entities, concerning certain works or services (if any);
- Copies of the statute and state registration certificate of a given business entity, certified in keeping with established procedures;
- A list of foreigners, specifying their names in full, dates of birth, numbers of passports, qualifications (professional skills), and sex;
- A copy of a draft contract with the foreign employee(s);
- Notarized documents (directive, excerpt from a protocol, power of attorney, etc.), authorizing the employer's representative to act in his/their behalf at the Employment Center;
- Copies of documents attesting to education/training or qualifications of the proposed employees;

- The statement of a body of the State Tax Service attesting to the company's payment of taxes and duties provided by the law;

- The application fee receipt.

The fees for this process are 10 untaxed minimum wages (currently 170 UAH).

Upon submission, the applications are reviewed by a committee primarily comprised of officials from the Employment Center and the OVIR. This committee meets monthly to review applications. Applications can be rejected for the following reasons:

- the current labor market is such that the skills required are available in the community;
- the prospective employee's background makes them an inadequate candidate for the position;
- the application is found to contradict the laws of Ukraine and international treaties;
- the contract stipulates that the foreigner's working conditions are worse than those prescribed for Ukrainian citizens engaged in similar occupations;
- the foreigner or employer is found to have submitted consciously distorted information or forged documents;
- the foreigner intends to occupy a post/position or engage in an occupation that is reserved for with Ukrainian citizens;
- the foreigner has a criminal past in Ukraine.

If an application is approved, a letter is sent to the employer, containing either an approval or grounds for the denial, within 30 days of the submission of the application. If the application is submitted within a week of the upcoming review committee's meeting, an answer can be provided within 10 days of submission.

Employment permits are issued for a term of up to one year. Within three days of the beginning and end of the employee's contract, the company serves written notice to the Employment Center and has the employee's passport registered with the OVIR. At the end of each quarter of the contract, the company submits Form 8-DR to report revenues received and taxes paid on behalf of the employee.

Appeals for denied applications can be made either through the State Employment Center or through the court system.

RENEWAL

Employers renew work permits with the Employment Center at least a month prior to the expiration of the original employment permit. The procedure for renewal is identical to the original application process. All of the same

documents must be submitted for approval. The process requires committee approval, and the committee may choose to deny the application for the same reasons as during the original approval.

B. ANALYSIS

Work permits and founder entry are, with a few distinct exceptions around the world, one of the most complained-about processes representing a barrier to foreign direct investment. The importance for a company to get key people into position quickly is a critical factor in success of a new operation.

Countries' governments are often faced with political pressures to ensure that local personnel have equal access to these highly desirable positions. Frequently these positions are at senior levels in the companies, and expatriate workers are rewarded handsomely as an incentive for working abroad. Foreign companies estimate that the cost of importing a foreign worker can often represent 500% to 1000% of staffing the same position with a local employee.

Those charged with evaluating work permits are typically vigilant to ensure that jobs are not being filled with citizens of neighboring countries in which the wage rates are considerably lower than the local rates of pay. Considerable debate exists in economics as to whether it is best to keep out foreign workers that are prepared to work for lower wages than citizens (and sometimes in lesser work conditions); regardless of the debate, governments often face intense political pressure to maintain the policies of only allowing workers into the country for which there are no available local employees.

In Ukraine, the processes in place are designed to ensure that jobs filled by foreign workers are indeed jobs that cannot be filled locally. Businesses did not report significant complaints with the process. Businesses and attorneys suggested that denials were most frequently given for an inability to fulfill bureaucratic requirements (often proof of tax payments) more than the fundamental issues of available local labor. "Relationships" with government officials were considered to be very valuable, as the Employment Centers have full authority over the process.

It was reported by the office in Ivano-Frankivsk that work permits are rarely turned down, and only then for reasons of past histories of illegal behavior on the part of the proposed employee. However, firms in Kyiv frequently speak of rejections due to the availability of local employees.

The list of documents to be submitted seems to be unnecessarily lengthy. From looking at the list of required

submissions, there appears to be a need to achieve several goals:

- That the position is not readily filled by a local employee: this can be accepted, as it's a fairly common practice around the world. However, enough evidence has shown over the past 20 years that by bringing senior level and technical personnel into the country, more jobs are created than lost.

Because of the cost of importing an expatriate, there is a very strong incentive for a firm to first make all efforts to identify local personnel that are capable of fulfilling the functions of the job. It is possible that a foreign national will cost 10 times what his/her local counterpart would cost to employ. This is a very powerful motivator for firms to localize their staffs as soon as possible.

Often the laws are established not to keep senior staff and technical specialists out of the country, but to keep unskilled labor seeking better economic conditions from entering the country to work under conditions unacceptable to local labor. Again, this is a typical practice worldwide - despite evidence that even this form of labor leads to economic growth. However, the pressures to keep out unskilled labor, particularly as unemployment runs high, makes it difficult to change this policy.

Practice shows, however, that firms wishing to import unskilled labor against the policies and laws of a country are also prepared to use illegal means to obtain work permits, including falsifying work permit documents and paying bribes. As a result, the laws wind up hurting the companies wishing to bring in legitimate candidates more frequently than they do companies looking to skirt the law.

- That the proposed candidate is capable of filling the position: this process appears to be designed to ensure that a company doesn't deliberately create a position in which no local employee could possibly exist and then bring in someone that does not meet the qualifications in the application.

One of the effects of this aspect of the process is that it could potential hamper an adequate application. Different countries and companies value different aspects of an employee's past, and use these different aspects in different manners. One company may choose to use education as the primary barometer of readiness, while another may use recent performance. The government of Ukraine is not

possibly capable of making the same assessments as a private company. It is the private company that puts its capital at risk by importing foreign labor, so the burden should be left with the company to choose its own staff.

- That the company is in existence according to the laws of Ukraine: the supply of various charters, registration documents, and minutes adds very little value to this process. It would seem that the only necessary document should be proof that the company is registered to operate in Ukraine. Because the remaining documents are on file with the company registrar, if the government truly needed to know something about the form of the company it could easily visit the company registry.

The extra submissions are probably not a “barrier” to investment. However, they epitomize a bureaucracy that requires considerable documentation for virtually every process, most of which is superfluous. Interviews with the Employment Center did not turn up the reason for such documents. If all the documents are read from cover to cover, they probably waste considerable government time and resources. If they are just submitted as a formality and never reviewed, then their submission is unnecessary.

That the hiring of the new employee is sanctioned by management: during the process of submitting documents, there seems to be an inordinate number of stamps, signatures of directors, notarizations, and minutes of meetings. It is possible that the government intends to dissuade fraud by ensuring that directors can be held personally liable. However, the degree to which this takes place seems to be unnecessary.

- Taxes are fully paid and up to date: this was reported by businesses and attorneys representing businesses to be the most vexing problem in obtaining a work permit. While the law makes provisions for new companies, it appears that the tax authorities do not issue any type of clearance for a company that has just initiated its operations. For a company unwilling to pay a small bribe (and United States investors are subject to the Foreign Corrupt Practices Act and therefore particularly careful), this aspect can bring the whole work permit process to a halt.

The relationship between the tax authorities and employing foreign labor is not clear. It would appear that this is simply a check-off point to ensure that taxes are being paid in a timely manner – that is, that government services are

withheld in the event that a company is delinquent in paying its tax bill. It is doubtful that this submission requirement truly enhances tax collection; a company that wishes to avoid paying the taxes it owes could circumvent this problem through the use of illegal means such as bribes or falsified documents, while there are reports of glitches with legitimate and timely taxpayers who cannot acquire the necessary documentation.

The process for obtaining these clearances has also been described by the business community as being very lengthy.

It seems that in order for the process to ensure that only those positions for which local labor is unavailable are filled by foreigners, the process needs to focus only on the job requirements.

The Employment Center approves work permits through a committee that meets regularly to discuss applications. This is a good approach as it increases the transparency of the process and reduces the opportunities for corruption. However, the committee is only comprised of employees of the Employment Center, the OVIR, and the police. In best practices around the world, committees are used to evaluate foreign labor applications, but the committees are made up of a diverse group of members including government officials that represent “economic” ministries (either finance, trade and industry, or the like) and even the private sector. By having a wide range of representatives, there is an assurance that a wide variety of perspectives are included, particularly the impact of the foreign employee on the local economy.

There is a legal contradiction that facilitators in Kyiv mentioned as causing problems for foreign investors. The founders of a company are required to appoint a director when registering a company. If a director is not appointed, the State Registrar will not accept the documents; this will also cause a problem with tax registration.

However, for any foreigner to be a director of a company, the company should get a work permit. If the company is not registered, the company cannot submit documents to the Employment Center to get a work permit. Officials in the Employment Center agree that in this situation, there is no legal solution. Interviewees suggested that they register companies with foreigners as directors and obtain a work permit for the director after the company is registered. There is a potential for fines for appointing directors without work permits.

C. RECOMMENDATIONS

Compared with other countries - including neighboring countries - this process is not bad. The fact that there is a single submission of documents, that the documents are reviewed by a committee within 30 days, that the government is required to provide written notice of a

declined application, and that an appeal process exists are indicators of a good process. With the exceptions noted in the previous section, investors did not complain about this process significantly. However, opportunities do exist for making this process better.

Recommendations include:

- Eliminate the need to provide tax clearance. This part of the process is far from streamlined and causes the most angst for businesspeople. This process unnecessarily targets a small percentage of the population of businesses, and it is not clear that it significantly improves revenue collection.
- Streamline the documents required for the process. Clearly establish the goals of the process (i.e., ensuring that only the correct jobs are filled by foreign labor, ensuring that foreign labor transfers skills or provides increased economic benefits, etc.) and ensure that the submission requirements are limited to those that satisfy those goals. All other submissions are unnecessary.
- Broaden the representation on the evaluation committees to include government officials from economic ministries and from the private sector (possibly through business associations and chambers of commerce). This will improve the transparency of the process and ensure that the jobs being filled not only meet the legal requirements but provide a benefit to the community.
- Allow work permits to be two years in length. This is the common length of a work permit worldwide, as there is often a lengthy cultural adjustment period for a foreign worker and the second year of a two-year contract can be the most productive. In lieu of lengthening the maximum work permit, significantly reduce the paperwork submissions for renewals to only reflect new information.
- Eliminate the contradiction that requires a foreign director to have a work permit in order to be appointed in company registration documents.

V. COMPANY FORMATION

This chapter describes those procedures which a businessperson must complete in anticipation of investing and transacting in Ukraine. Formation includes registration with each of the authorities as prescribed by law. There are several optional procedures - including those related to obtaining incentives and certification with Customs - that are also covered. These activities depend on the type of business and the origin of its founders.

As this report is presented in the chronological order of the investment process (to the extent that this type of presentation is feasible), these are the steps necessary at a minimum to begin the process of acquiring and developing land. Only the first step, registration, is necessary to purchase land; however, in order to get final permission to operate, all equipment and furnishings must be physically in

place. Therefore, it would not be possible to complete the final step of developing land unless this group of processes is complete.

For the hotel investor, the processes relevant to this chapter include:

- *Company registration as a limited liability company*
- *Registration with the Three Social Funds, the Pension Fund, the State Statistics Committee, and the Tax Inspection Authority*
- *Certification with the Customs Department as an importer*
- *Registration of the foreign investment (in order to claim the benefit of duty-free importation of capital goods)*

The business must be registered in Yaremche, as this will be the place of business; however some of the registrations are only available in Ivano-Frankivsk.

A. PROCESSES

FORMS OF BUSINESSES

A foreign investor is likely to choose between a joint-stock company (closed or open) and a limited liability company. A businessperson may also form a private enterprise. Branch

offices and representative offices are also available to the investor as a form of start-up assistance.

Joint-stock Companies

A joint-stock company is a company in which the ownership percentage is demarcated by shares that must be distributed to shareholders. The investors have the right to receive dividends, participate in management, and receive a share of residual assets upon liquidation or dissolution of the company.

There are two types of joint-stock companies: "closed" joint-stock companies (the equivalent of a private company) and "open" joint-stock companies (the equivalent of a public company). Shares of an open joint-stock company can be sold through public offerings at stock exchanges. Shares of a

closed joint-stock company are held privately and cannot be sold on the stock exchange.

The minimal capital required for establishing a joint stock company is UAH 327,500 (approximately 61,444 USD). The statutory bodies are the general meeting of shareholders and a board of directors, which is responsible for the day-to-day management of the company. For companies with more than 50 shareholders, a supervisory board is required; for companies with less than 50 shareholders, it is optional.

Limited Liability Companies

The difference between a limited liability company and a joint-stock company is that the former distributes ownership as percentage of the company's capital. The minimum capital requirement is UAH 26,200 (approximately 4,915 USD), half of which must be paid in

advance of registration. Limited liability companies are managed by an individual director or a board of directors. As with joint-stock companies, investors' liabilities are limited to the initial share capital.

GENERAL INFORMATION ABOUT REGISTRATION

There are seven bodies that an investor must register with:

- The Unified State Registrar
- The State Statistics Committee
- The State Tax Administration
- The Pension Fund

- The Fund for Social Protection of the Disabled
- The Unemployment Insurance Fund
- Fund for Insurance for Workplace Accidents and Illnesses

Depending on which municipality the investor begins his business in, he may or may not have the benefit of having a one-stop shop for the registration process. The Ivano-Frankivsk One-Stop Shop allows the investor to essentially work with two registrars – one representing the State Registrar, the State Statistics Committee, the Pension Fund and the Three Social Funds, and the other representing the Tax Inspection Authority.

Both representatives are in the same office, and each have the same process for applicants: dropping off documents and returning a week later to claim the registered documents. The city of Kyiv does not have such a process; the businessperson should expect to complete each of the seven processes to become fully registered.

For those cities that do not have a one-stop shop, the procedure requires the businessperson to first register with the State Registrar. Once that process has been completed, he then registers his company with the State Statistics Committee. At the conclusion of this process, the other five registrations can then be done in parallel.

The new law on registration (effective July 1, 2004) requires the State Registrar to take the burden of informing the other six registration authorities of the newly registered company (and changes made to the company's records). This was not implemented during the consultants' visit.

Bodies of local self-government or executive authorities keeping the Unified State Registrar

This report is written following a visit to two company registrars and multiple investors during the month of June 2004. Effective July 1, 2004, the Law of Ukraine "On State Registration of Legal Entities and Sole Proprietors" will come into effect. From reading the new law, it appears there will be changes to the processes that were seen during the time of the visit. Therefore, this report will describe the procedures identified during the visit and note

how we anticipate that they will change as a result of the new laws.

Company registration is a mandatory process and is largely similar to registration in other countries around the world. Several options are available to businesspeople, each having a range of benefits and drawbacks from the perspectives of taxation, liability, and administration.

TEMPORARY BANK ACCOUNT

Before registering a company, an investor must first establish a temporary bank account. In order to open a temporary bank account, the following documentation is necessary (for any bank – each bank may have its own time frame and additional documents beyond those prescribed by law):

- an application form for opening a current bank account signed by a person authorized by the founders. Often the signatory must be present for the signature;

- a copy of the foundation agreement certified by a notary;
- a decision of the founders on entitling a person with the right to make an administrative signature for money transactions on this account;
- a card with samples of signatures by the founders.

REGISTRATION PROCEDURES

Foreign investors should be individually registered with the tax authorities before registering their company, although not all registries say that this is a requirement. Investors are advised to check with their regional registry to determine the precise documentary requirements. This process is described in Chapter 4: Entry.

In order to register, an investor must bring the following documents to the **Body of local self-government or executive authorities keeping the Unified State Registrar**:

To register a joint-stock company or a limited liability company, the following documents must be filed with the company registration department of the district authority (the list changes with the new law):

- a completed registration form;

- a notarized Power of Attorney if the investor chooses not to register the company himself;
- the minutes of the founders' meeting regarding the company's establishment;
- the company statute (signatures of all founders in the statute are to be notarized);
- registration documents of the foreign shareholder, translated (if a foreign entity);
- evidence that the required minimum percentage of the statutory capital has been either deposited (cash) or transferred (assets) to the company;
- a receipt for fees paid:
 - registration – 170 UAH;
 - reservation of a name – 34 UAH;

- the issue of an excerpt from Universal State Register – 17 UAH.

- Evidence of the legal address of the company (lease agreement, purchase agreement, etc.).

In some cases, approval from the Antimonopoly Committee of Ukraine is required.

Upon receiving the application and above defined documents, the registrar reviews the documents to ensure completeness. If all of the documents are completed in accordance with the law, a Registration Certificate is issued. This certificate will be important to the investor, because many of the government processes that the consulting team encountered required a notarized copy. Theoretically, this process should take less than 2 weeks, but some investors reported a much longer time without personal connections inside the different registries.

The State Statistics Committee

After registering with the State Registrar, the investor must then register with the State Statistics Committee. The following documents are required to be submitted:

- registration card
- a copy of the registration certificate obtained from the Unified State Registrar;
- a receipt for fees paid

TAX REGISTRATION

The next step in the process is to register with the tax authorities. The following documents are to be submitted to the Tax Inspection authorities of the district where the company is registered within 20 days after the state registration of the company:

- a completed registration form (it has four pages, and requires information about the company and its founders);
- a copy of the decision of the co-founders or their authorized body on the establishment of a legal entity;
- notarized copies of the founding agreement and company statute;
- a notarized copy of the registration certificate obtained after the state registration of the company with the State Registrar;
- a photocopy of the statistics certificate.

Depending on the oblast, the documents are typically submitted with personal identification (passport or national ID) and identification codes (tax numbers) of the founders,

Each investor (if the company is jointly held) must be able to demonstrate that he/she has either deposited a minimum of half of their initial capital into a temporary bank account (a permanent account may not be established until the company is registered) or can demonstrate through the certification of an independent auditor that capital equipment with a minimum value of half of the value of their individual contribution is owned by the company and will be deployed towards the new investment.

At this point, the new law refers to a process that requires the State Registrar to research whether a particular name is available for usage by the company before the company can be registered. This step requires that the local registry be tied into a national registry database which stores this information. As this part of the process was not available during the interviews, it will be addressed only in the analysis section below.

Registration is typically done on the same day. Registration itself is free of charge, but there is a charge for issuing the certificate of registration at the State Statistics Committee office (the fee is 25.94 UAH, or 4.86 USD) that is required for the business to register with the Tax Inspection Authorities and Social Funds.

Usually, it takes from one hour to three hours to get the certificate if one has all the necessary documents.

director, and chief accountant. If one of the shareholders is a Ukrainian company, a copy of that company's tax registration certificate is required. In addition, the Tax Inspection authorities in some oblasts require additional information, including:

- evidence of the legal address of the company;
- personal interviews with the founders, financial officer, and accountant of the company.

If the company has a foreign company as a shareholder, a document is required that confirms the registration of the foreign company in its home country (in particular, an excerpt from the trade, banking, or judicial registry).

The Tax Inspection authority is required to issue the document certifying tax registration to the company within two working days after the application and necessary documentation are submitted.

THE PENSION FUND, THE FUND FOR SOCIAL PROTECTION OF THE DISABLED, THE UNEMPLOYMENT INSURANCE FUND, THE FUND FOR INSURANCE FOR WORKPLACE ACCIDENTS AND ILLNESSES

At the same time that the investor registers with the Tax Inspection authorities, he must register with the Pension Fund and the Three Social Funds. For each of the four registrations, the investor submits registration forms, copies of the statistics certificate and copies of the

certificate obtained from the State Registrar (some of them ask for notarized copies, some of them ask for photocopies). Registration of the company is usually done on the same day as when the documents are submitted. Each of the funds issues its own certificate of registration.

MAKING THE COMPANY SEAL

In order to make a company stamp or seal, a company must get permission from the Ministry of Internal Affairs. The following documents must be submitted by the director of the company, or by a person who has the Power of Attorney:

1. The application.
2. Examples of the seal (2 copies) approved by the signature of the company's director.
3. A notarized copy of the registration certificate obtained from the State Registrar.

There is a fee for permission to make a seal.

- 59,50 UAH - and permission will be issued within 5 working days.
- 119 UAH - and permission will be issued within 3 working days.

After getting permission to make a seal, a company can order a seal from a specially authorized company. It typically costs about 60-80 UAH to make a seal, depending on the level of protection of the seal (to reduce the likelihood of forgery).

OPENING THE BANK ACCOUNT

Once the company has a seal, it can open a bank account.

The temporary bank account that was opened before registration can be used only to deposit money for purposes of registration of a company. A company cannot transact from this account – it is required to open a current account. The company is not required to open the current account in the same bank as the temporary account. A company can open any quantity of bank accounts in any one of the Ukrainian banks.

- If a company wishes to convert a temporary account into a current account, the law requires that the company submit the following documents to the bank:
 - a bank application signed by the director and chief accountant;
 - a copy of the state registration certificate (notarized or authenticated by the State Registrar);
 - a copy of the statute (notarized);
 - a copy of the statistics registration certificate (notarized, authenticated by the authority that issued this document, or authenticated by an authorized employee of the bank);
 - a copy of the tax registration certificate (notarized, authenticated by the body that issued this document, or authenticated by an authorized employee of the bank);
 - a notarized card with samples of signatures that also contains a sample (or samples) of the

signature (or signatures) of a person (or several persons) with the right to sign documents for transactions.

Companies that have employees (even if the only employee is the director) also submit:

- a notarized copy of the registration certificate from the Pension Fund;
- a statement from the Pension Fund stating that the company will open a bank account in a particular bank within one month of issuing the statement;
- a notarized copy of the insurance certificate of the Fund for Insurance for Workplace Accidents and Illnesses.

After all of these documents are submitted, a bank clerk opens the current account and also signs and stamps a statement in triplicate with the pertinent details of the new account. A copy of this statement must be delivered to the tax inspectorate within 3 working days of opening the account. The tax inspectorate signs and seals the statement; the company then returns one copy to the bank and keeps one for its records.

Only from the moment when a bank gets the statement - signed and sealed by the tax clerk – is the bank allowed to transmit money from the account. When the account is open but the signed and sealed statement does not return to the bank, the bank only allows transmitting money into the account.

REGISTRATION OF THE FOREIGN INVESTMENT

For businesspeople that wish to access the duty-free import of their capital goods, they must go to the oblast administration to register the investment as originating from a foreign source. Assuming the businessperson wishes to take advantage of the privilege to import capital goods duty-free, he may complete this process at any time after registering.

In this registration, it is the investment, and not the company that is registered. This investment can take the form of cash, assets, stocks or other marketable securities, and/or land. In order to register the investment, the following documents must be submitted:

- the application (on a government-provided form in three copies) to register a foreign investment. This form must first be approved by the Tax Inspection authorities before being filed. It requires the following information:
 - If the investment is made by an individual, a full name; for a foreign legal entity, a full company name (with acronyms if applicable) and legal status;
 - the foreign investor's nationality and address;
 - The type of foreign investment. If the investment is made in terms of property, this column shall contain details on said property, its amount, and cost. This can also be cash, assets, and/or stocks and bonds;
 - The form of placement of the foreign investment (whether it's an investment in a business or a fixed property);
 - The specific object of the foreign investment. If it is an enterprise, its name, form of ownership, organizational and legal structure, address, and national economic affiliation shall be checked against statistical reports; if it is property, its name, ownership, whereabouts, etc.;
 - The volume of the foreign investment assessed in hard currency and in Ukrainian currency, as agreed between the parties, based on international market rates or those of Ukraine's market;
 - The planned period of using the investment. If it is not determined, the word "unlimited" shall be entered.

- the certificate for state registration of business entities (a copy);
- a copy of the certificate from the State Statistics Committee;
- the company charter (original and copy);
- the agreement (contract) on the production cooperation, joint production, and other types of joint investment activity, with a note on the state registration (original and copy);
- demonstration of existence of funds:
 - the customs declaration (original and copy) – for property investment;
 - an invoice with translation (original and copies) – for property investment;
 - a transport invoice (original and copy) – for property investment;
 - the certificate from the bank (original) – for monetary investment.
- Power of Attorney, if not submitted by the investor (original and copy). In Ivano-Frankivsk, a second Power of Attorney is required to receive the results;
- the passport of the founder (or other form of identification);
- a fee (340 UAH). This fee is non-refundable, regardless of the outcome.

The registration is valid over the entire term of the investment. If the investment is wholly or partially repatriated, the foreign investor must notify the state registration authorities, which is then noted in the *Journal of Registration of Placed Foreign Investments*.

According to law, the state registration authority must provide a written response within three working days. A written explanation is required in the event of a negative decision. The law provides that a denial may only come as a result of incomplete paperwork, or if the investment is in contradiction with the law.

CUSTOMS ACCREDITATION

Before importing any goods, an investor must be registered with Customs to import. The importer is not required to pass a minimum standard of any kind other than being legally registered. In order to be accredited by Customs, an importer must present the following documents:

- foundation documents:
 - the decision to create a business entity. If there are two or more owners or authorized agencies, the foundation agreement shall be such a decision;
- the charter of the enterprise (if this is required for the organizational form for a business entity pursuant to the legislation).
- a certificate of state registration;
- a certificate of the statistics agencies;
- a certificate of an authorized bank in which the investor holds an account;
- an appointment of employees to work with Customs, their names, passport data, samples of signatures, and samples of stamps used in documents for Customs.

- the VAT identification number (if the company is registered);
- three copies of the registration card of the company;
- the identification documents of people mentioned in the registration card and copies of their tax identification numbers.

B. ANALYSIS

It is difficult to provide a value-added analysis of a process which is undergoing an introduction of a new law. Early returns suggest that all of the phases of the new law require considerable procedural overhauls, and that some of the various registries have not yet fully implemented the new law. The analysis of the registration process begins with a discussion of the pre-July 1 landscape, as this is what was observed by the consulting team.

As with many other aspects of this report, the process of registration is a tale of two cities. As efficient and easy as the one-stop shop in Ivano-Frankivsk seemed to be, a high level of complication and frustration in Kyiv was reported by businesspeople trying to launch their businesses. The user-friendly nature of the Ivano-Frankivsk One-Stop Shop was apparent. While the physical layout of the space was somewhat chaotic and confined, the operation appeared to be run professionally as a service providing agency.

The consulting team did not visit the registration center in Kyiv. Comments have been drawn from investors only. However, an investor in Kyiv must visit each of the different agencies involved in the process, including the registration office, the tax authorities, the various social funds and pension fund, and the statistics agency. While there is no one reason in particular why any of these processes should be complicated, the quantity of visits and required approvals seems to be unwieldy.

Ukraine requires investors to demonstrate that the stated capital fund is available by either depositing money in a bank account or demonstrating the existence of

productive assets that are being contributed as the initial fund. The value of this demonstration is questionable.

It could be argued that the demonstrated presence of these assets suggests that the company is legitimate and therefore safe. However, the existence of these funds and/or assets does not ensure a company's ongoing solvency. The funds can be (ultimately) diverted post-registration by an unscrupulous businessperson. The only thing that this demonstration guarantees is that at the time of registration, the founders of the firm were in possession of half of the stated start-up capital.

Businesspeople reported that despite the laws, different agencies in different rayons and oblasts seemingly had their own requirements for submission. In some cases, notarized copies of documents were required; in other cases, simple photocopies sufficed. In some cases, company founders

were required to personally appear; in other cases, representatives were allowed to file on the founders' behalf.

While these inconsistencies are not necessarily a deterrent for investing and may add up to only a nuisance, they illustrate the uncertainty that an investor faces when dealing with the government of Ukraine. Typically, registration gets done with the help of local facilitators. It can be a time-consuming process which can be fairly easily simplified (as demonstrated in Ivano-Frankivsk).

The fact that the investor is responsible for delivering virtually all documents throughout the registration process increases the likelihood than an investor will skip a registration - either knowingly or otherwise - and operate outside of the law of Ukraine. By allowing the State Registrar to distribute documents to the Social Funds, State Statistics Committee, Pension Fund, and Tax Inspection authorities, the Government of Ukraine can be assured that the investor will complete each of the registrations.

The new law seems to be very promising. It addresses many of the concerns that came up during the analysis of the registration process. The promise of having a single point of registration, and automatic registration with the Social Funds, Tax authorities, Statistics Committee, and Pension Fund will have a significant reduction of bureaucracy for investors, and ensure that investors are fully compliant with all of the laws of registration.

With regard to the registration of foreign investments, the worldwide trend is to simplify these processes and reduce the number of approvals wherever necessary. The case of Ukraine's registration of foreign investment (and the resulting benefit of duty-free importation of goods) is a classic analysis of a country that has made strides to reach what is currently considered best practices, but falls short.

- On a positive note, the laws are very clear on what satisfies the criteria for "investment," the process for approval, the criteria for which denial can be given, and a process that must take place in the event that a denial is given.
- However, the process still requires an "approval." Government officials stated that virtually all complete applications are approved, suggesting that the approval process is something of a formality. If so, it is difficult to understand why there is an approval at all. Best practice suggests that the interaction should only take place with the revenue authority (be it customs or tax) and simply be automatic.
- It is difficult to justify why foreign investment should receive preferential treatment over domestic

investment, particularly in instances where the two might directly compete for either raw materials or market share. Hotels represent the latter – the participation of foreign investors in a hotel in Ukraine creates an uneven playing field.

- The fact that “investment” is only considered to be that which makes up the initial capital investment ignores the fact that reinvestment from retained earnings and/or borrowed money contributes equally to the economy in terms of increased productivity, more jobs created, and a base for generating increased revenue streams for the government.

Current worldwide best practices suggest that:

- All benefits be given equally to foreign and local investors.
- Benefits do not take a form in which tax and duty rates and holidays are granted to select investors – instead, all investors are automatically eligible, regardless of whether the project is in the startup or expansion stage.
- No government authorities participate in approving the benefits.

The process of Customs accreditation seems to be reasonably simple and straightforward. If implemented correctly in all oblasts, the process would benefit both the government and investors alike.

C. RECOMMENDATIONS

1. Eliminate the need for proof of a minimum deposit in a bank. This does very little towards ensuring the company’s legitimacy, and sometimes creates a logistical bottleneck for legitimate businesses.
2. Implement the one-stop shop approach envisaged in the new law and monitor the performance of the registries. This is not just to make the lives of businesspeople easier, but to ensure that each and every business completes all of the necessary registrations.
3. As the registration documents are supposed to be transmitted from the State Registrar to the various registration bodies, it will no longer be necessary for documents to be notarized. The only document that should be necessary as proof of registration is the registration certificate itself.
4. Reform the process of registering foreign investment to:
 - a. eliminate the approval process. Make the benefits automatic;
 - b. disregard the amount of foreign investment, and open all benefits to all investors, domestic and/or foreign;
 - c. reconsider the limitation of only allowing benefits on investment which is in the capital account – allow benefits on all types of investment, regardless of the accounting vehicles used.

VI. LOCATING

“Locating” is the process in which an investor identifies, acquires, and develops land for the purpose of operating a business. Access to land is available through either a lease or purchase. Land can be purchased either on the private property market or from one of the various government authorities that own land. In countries that are emerging from central planning, much of the best land is available from the government only. This chapter details the process of obtaining land from the government and transferring title of land purchased either from the government or on the private property market.

In Ukraine, the only way for an investor to purchase land from the government is to either first lease the land or to go through a tender process; however, we did not find anyone that had been through the tender process nor is the process defined by law. Some local municipalities have defined their own tender procedures; however, a

businessperson that acquires land through this procedure is at some risk of a future challenge to their legitimacy. Accordingly, this report will only detail the process of obtaining land by first leasing the land from the government and purchasing it shortly thereafter.

The hotel investor would likely wish to purchase his land for several reasons; one of the major benefits of owning land is that the land can be used as security for loans on fixed assets.

In order for the businessperson in Yaremche to build a hotel, it will probably be necessary to either lease land from the state in the local National Park or to purchase land from the city of Yaremche. With the exception of the permission from the National Parks Department, the process is identical and managed by the city administration.

A. PROCESSES

ACQUIRING LAND FOR LEASE

In Ukraine, limited non-agricultural land³ is available on the private property market for purchase. Most investors must either lease or purchase land publicly. Land acquisition from the State is regulated at the national, regional, and local levels. What follows is the process in Yaremche for leasing land. While the Land Code governs the general process of obtaining land in Ukraine, each local administration⁴ may have various procedures that do not exist elsewhere. Therefore, it is difficult to know whether other cities use a similar process or not; those aspects of the process that represent national legislation are noted here.

The process of leasing land (for the ultimate purpose of purchasing) can be broken into seven stages. They are:

1. Identifying the land and determining ownership.
2. Transfer of the buildings via sale and registration of the transfer (if existing).
3. Preliminary approval from the City Council.
4. Verification of the planned use of the land versus the current zoning category of the land.
5. A survey of the land by a private surveyor.

³ At the time of writing, land zoned as agricultural could not be purchased by a foreign investor.

⁴ In Ukraine, there are several types of local administrations, depending whether the investor is within the limits of a city or not. For the purposes of this document, the term “local administration” is used to represent all forms of government that are empowered to manage the land process.

6. The lease is approved; the land is valued, and documents are drawn and signed.
7. The lease is registered with the Land Department, Land Cadastre, and Tax Inspection authorities.

In detailing the process, this report begins with the point at which an investor arrives in the city and, after an investigation, identifies a vacant site with existing structures. The following is a detailed step-by-step process for purchasing land in Yaremche:

- 1) The investor begins by identifying the ownership of the building on the land. Land can be obtained from the responsible government agency.⁵ In a city the size of Yaremche, the most direct approach is to contact the Department of Land Resources in the City Council. When talking to officials, it was determined that the Mayor’s Office has designated a piece of land in the center of the city for the purpose of building a hotel.

If the businessperson has identified a piece of land independently and wishes to lease and ultimately purchase this land, the process of determining ownership is not as clear. The Land Cadastre is slowly being built through the registration of privatized properties. Typically, local city officials should know the ownership of the various plots.

⁵ Different government departments are consulted depending on the type of land and its location. For example, land within the city limits of Yaremche would be managed by local self-governance authorities. Land outside the city limits would be for the local administration. Furthermore, there is land managed by the Department of Parks and Wildlife.

2) It is quite common that land belonging to the state has buildings and other improvements belonging to a citizen or company already on it. If the land belongs to the state but the buildings belong to a private individual, the investor must first arrange to purchase the buildings from the owner, and register the purchase with the Bureau of Technological Inventories. However, it is not necessary that the land have buildings or other improvements on it.

Once the owner is identified, the investor enters into negotiations with the owner and creates a contract of sale. The transfer of the buildings and other improvements is then registered with the Bureau of Technical Inventories. The investor submits a completed application, the title document, a notarized copy of the title document, and identification documentation. The fee associated with this process varies from region to region.

It is planned that the Bureaus of Technical Inventories and Land Cadastres will be jointly managed by the Land Cadastre in the near future.

If the land does not have buildings already present when he makes the transaction, he will be able to erect facilities after leasing the land. This will be necessary to ultimately purchase the land without a tender process.

3) At this point, the investor begins the process of leasing the land under the buildings he has acquired. This starts with permission from the City Council to survey the land.⁶ In order to receive this permission, an investor must submit the following documents to the Department of Land Resources of the City Council:

- a letter of application stating the proposed use of the land;
- a notarized copy of the contract of sale on the building (if such a sale took place);
- the technical passports of the buildings (if any buildings exist on the land);
- identification documents (for a company, this includes a Power of Attorney, and registration and formation documents).

There is no fee for this submission. The Yaremche City Council meets on a quarterly basis.⁷ It typically issues this permission except in the event that the project has zoning violations. Members of the City Council also look at whether the investor has the resources to develop the site as proposed, or intends to simply sell the land for profit at the conclusion of the process.

⁶ There are cases in which the land has already been surveyed recently by the previous owner of the land.

⁷ There is a clause in the law that requires the city to provide a response within one month. City officials indicate that this is possible, and that meetings can be held *ad hoc* if necessary. However, it appears that most approvals will take place during the normal quarterly meetings.

The application should be submitted a day in advance of a scheduled City Council meeting; however, because the Mayor must sign all applications that go to the City Council, it is recommended that applications be submitted a minimum of one week in advance. Council meetings are open and businesspeople with applications are typically invited to attend and answer questions from the Council.

4) Once the investor receives permission to survey the land, he begins Steps 4 and 5 simultaneously. The Council gives the businessperson three months to complete this process; if the businessperson is unable to complete this process during the three months, the Council may grant an extension.

During Step 4, the investor seeks the approval of five departments which are included in the final "Project of Land Survey":

The Chief City Architect – determines whether the zoning is appropriate for the proposed activity.

- The Department of Land Resources of the City Council.
- The State Sanitary-Epidemiological Service – determines the impact of the project on nearby residents' health.
- The Ecology Department – determines whether the proposed project will have an impact on local environment, including wildlife and plant species. Determines whether natural resources are present.
- The Cultural Heritage Department – determines whether the land and/or building site has historical significance, and whether a precautionary excavation of the site will be necessary.

Each department has its own process and documentary requirements and fees for this process. It should be noted that the Chief City Architect, the Department of Land Resources, and the Sanitary-Epidemiological Service are located within Yaremche, while the investor must travel to Ivano-Frankivsk for the Ecological and Cultural Heritage approvals.

In addition, it is normally necessary to include the permission of the local neighbors to proceed with the project. Neighbors' concerns are typically heard at City Council meetings.

5) While simultaneously obtaining the permissions in Step 4, the businessperson engages a private licensed surveyor to conduct a survey of the property. Investors noted a cost of 700 UAH (120 USD) to conduct this survey; however, one surveyor noted that the fee is dependent on the area and category of difficulty. The price is regulated by Ukrainian law. At the conclusion of this process, an investor will receive a survey or Act of Measuring a Land Plot.

This survey is submitted by the surveyor to the Oblast Land Resources Department for examination. This examination is conducted at the oblast level (for Yaremche, in Ivano-Frankivsk). Currently, there is no fee for this review. This review is typically sent by post from Yaremche. Legislation requires that this process take no more than 20 days.

The number of surveyors available to do this survey is limited. The Land Cadastre, which operates as state-owned enterprise, also conducts surveys for a fee. The Land Cadastre uses a local coordinate system to measure plots.

- 6) The approvals, permission of the neighbors, and the surveying documents are then packaged into a "Project of Land Survey." A complete list of documents included in the Project of Land Survey is shown in Figure 6-1. The package is submitted to the City Council for approval. Assuming that the Project of Land Survey is complete, every relevant government department has signed off on the proposed lease, so it is likely to be approved by the City Council - although questions can still arise. As mentioned earlier, the City Council meets quarterly and businesspeople are often invited to participate when their applications are under consideration.

Upon the approval of the City Council to lease the land, the investor then approaches the Land Resources Department (an oblast-level department with an office in Yaremche) to get a valuation for the property. This evaluation is made on a target ratio-based valuation. The Department attempts to

take comparable sales and valuations of recent comparable properties into account in order to make this valuation.

The approval from the City Council of the Project of Land Survey also confers an approval to conclude a lease agreement. The Land Department within the City Council then draws up the lease document. This is often done in a single day. The lease agreement is signed in the Department's offices by the businessperson, and forwarded to the mayor's office for signature (under ideal circumstances, on the same day).

- 7) The businessperson then takes the lease to the Oblast Land Resources Department to register the lease. The Yaremche branch office of the Department handles this process.

At this point, the businessperson registers the land with the Land Cadastre. The Land Cadastre is the registrar for government leases and purchases of land (including purchases from private citizens).

At the time of research, a businessperson that purchased land from a private individual will have to register the buildings with the Bureau of Technical Inventories simultaneously with registering the land with the Land Cadastre. However, there is an intention to merge the two offices into a single registration authority.

The businessperson begins by digitizing the survey. All Land Cadastre registrations are done electronically, as the government is attempting to create a digital database of all of its land plots.

LIST OF DOCUMENTS TO BE INCLUDED IN THE PROJECT OF SURVEY DOCUMENTS FOR SUBMISSION TO THE CITY COUNCIL

1. Title page
2. Duplicate title
3. Contents and explanatory note
4. Application solicitation to the head of the city to receive a permit for making a plan for allocating land plots
5. Application to the director of the enterprise
6. Decision (a permit) of the authorities for making a plan for allocating a land plot
7. Terms of reference
8. Act of selection of a land plot for materials for a preliminary approval of the location of the object
9. A copy of the general plan for construction of objects, as well as materials on their approval by the Chief City Architect
10. Entitlement documents for land plots, upon which the allocation is planned:
 - The decision (resolution) on allocating land plots;
 - The agreement of purchase-sale, rent, exchange, collateral, gift, or inheritance.
11. Accounting sizes of expenses of agricultural or forest production
12. Description of the costs for developing the plot and the sources of income
13. Title list or certificate on sources of financing
14. Conclusions:
 - municipal (rayon) sanitary-epidemiological agency
 - oblast department for ecological safety
 - department for urban construction and architecture
 - department of land resources
 - department of protection of cultural heritage
15. Agreements on the limitations, charge (servitude) when using land plots (if they exist – these are given during the approval process by the various agencies)
16. Approvals of the neighbors
17. Plan for a land plot with an approval in duplicate
18. Act on setting up and approving external boundaries of land use
19. Description of boundaries of land plots
20. Catalogue of coordinates of angles or turns in the external boundary of a land plot
21. Expert conclusion of a chamber of commerce on the trade entity

Documents required for a legal entity (in the case where a person is purchasing the land, identification documents and a state tax ID are necessary)

- A copy of the certificate on the state registration certified by a notary
- A copy of the charter certified by a notary
- A copy of the charter agreement (should it be necessary) certified by a notary
- A copy of the certificate from the State Statistics Committee on including enterprises and organizations in the State Register

PURCHASING LAND FROM THE GOVERNMENT

At this point, the businessperson has use of the land in the long term, possibly up to a 50-year lease. Some businesses may choose to stop at this point, although there is now an option to purchase the land without going through a tender process.

1. The property is registered and listed by the city as intended to be sold.
 2. The property is valued for purchase.
 3. The sales agreement is drawn.
 4. The title is transferred and registered.
1. The first step in this process is to go to the City Council to have the land plot added to the list of land plots that are to be sold. This is done via the Land Department. An application is made in writing. There are no fees for this step. The law provides that the City Council must make a decision within a month to sell the land. In order to apply, the following must be submitted:
 - an application indicating the desired location, designated purpose, and size of the land plot;
 - the lease agreement for the land;
 - the land plot plan and the document certifying its allocation;
 - the registration certificate.

A negative decision can be made if the City Council questions the financial stability of the firm in question, there are mistakes or omissions from the applications, and/or

there is inaccurate information provided. A decision to refuse to sell the plot may be appealed in court.

2. Once a positive decision is given by the City Council, the investor then engages a property valuation firm to give a market value of the property in question. Property valuation firms are licensed to conduct such valuations.

This valuation is then given to the Land Department of the City Council. They decide whether to accept the valuation or provide their own valuation and sales price of the land.

3. Once the City Council has decided to sell the plot, a purchase agreement is concluded. In order to be valid it has to be notarized, and is signed by the major on behalf of the City Council.
4. Upon signing, this agreement has to be registered at the Land Resources Department. And after it is registered, the buyer submits a notarized copy of the agreement together with documents providing identification and a digitized plot of the land (which should already have been digitized during the leasing process) to the Land Cadastre, where the buyer is given a "State Act on Land." This document confirms the buyer's ownership of the land.

The purchase can be contingent upon a certain level of development within a specified time frame. Payments do not have to be made immediately to the City Council. The time frame for payments is established in the contract. According to city officials, payments can be made within a year of the contract signing. The Land Code provides for installment payments to be made as well.

REZONING

The process for rezoning land is very similar to that of leasing land. Some businesspeople will have to rezone their land in order to conduct their business. However, as much of the land in Yaremche is agricultural and owning this land is impossible at present, it is not likely that a hotel investor would get involved in this process. Here, in brief, are the steps to rezone land:

1. The re-zoning process begins with the Yaremche City Council. The businessperson must submit a written statement on land rezoning (an explanation as to why it should be rezoned and for what purpose), a copy of proof of ownership of the land, a copy of the state registration and foundation documents, and the grounds

for the rezoning. The City Council must give its approval to issue a resolution on land rezoning. This is done at the quarterly City Council meetings.

2. The businessperson then engages a land surveyor to create a plan of the land with demarcations. Land surveyors are private institutions, although some, such as the one attached to the Land Cadastre in Ivano-Frankivsk, are wholly owned by the government. This process can take up to two weeks, and the payment will vary depending on the size and the difficulty of the land.
3. The businessperson then must obtain permits from the following authorities:

- The Yaremche Chief City Architect (fee: 23 UAH).
- The Yaremche City Council Land Department (fee: 80 UAH).
- The Sanitary-Epidemiological Service (fee: 74.19 UAH).
- The Cultural Heritage Department (fee: 90-180 UAH, depending on the size of the plot).
- The Ecology Department (fee: 50 UAH).

The permits of the Cultural Heritage Department and of the Ecology Department are obtained in Ivano-Frankivsk while three other are obtained locally, in Yaremche. The conclusions of the Chief City Architect and the Department

of Land Resources must be completed before the other three approvals can be made. Each of the processes should take a minimum of 2 weeks – therefore, an investor can expect this process to take a minimum of 1 month.

4. These approvals and the survey documents are then submitted to the Yaremche City Land Department in a package called a “Technical Report on Land Rezoning.” The review of this technical report can take up to one week in Yaremche to complete.

B. ANALYSIS

The issue of obtaining land from governments that were previously centrally planned is a vexing problem. Governments that distribute their land at less than the market value create an environment that heavily favors insiders and can potentially lead to corruption. Governments that distribute land at market rates run the risk of wealthy foreigners purchasing the best assets. Some countries have attempted to overcome this by pricing land differently for foreigners – however, this contravenes multilateral investment agreements with non-discrimination clauses.

Ukraine has decided to sell land at market prices after a fairly lengthy and complicated process. According to the process that was related to the consulting team in Yaremche, the process is capable of deciding whether or not a particular type of investment is needed or not. More often, the process is used to ensure that the project is in compliance with the zoning of the property and that the potential investor is capable of successfully completing the project.

The market price can be determined in one of two ways. If there are multiple demands for the land in question, the city must go through a tender process. Any land that is to be sold that is not currently under a lease must also go through this process. The only time that the tender process is not necessary is when a lease holder chooses to purchase his land.

While there is logic to the concepts of tendering for any sale of open land and allowing leaseholders to purchase their land without tender, it has created a two-step process that is exceptionally long. Because long-term leases have no value due to questions regarding their transferability, the banks will not take a lease as collateral. This makes it a virtual requirement for any small-scale investor to complete the process of purchasing the property.

Because each of the multiple City Council approvals that are necessary for this process, a town such as Yaremche (in which the City Council only meets once per quarter) has an extremely lengthy process to purchase land. It is likely that this process will take considerably longer than one year. One investor noted that they were on their 9th month of the process and had not begun the process of purchasing their land.

The two-step process of leasing and purchasing land notwithstanding, the process of obtaining land is unnecessarily complicated and lengthy. Analysis of the process suggests that many of the steps that lead to both the length and the complexity are unnecessary and do not support the eventual goals of the process.

The city master plan is not as complete as the master plans of western countries. In Ukraine, the master plans do not have enough detail to support full zoning, so the process requires each individual investor to bring in the five different departments (Sanitary-Epidemiological, Ecology, Cultural Heritage, the Chief City Architect, and Land Resources) on each project. This is time-consuming and inefficient.

The process requires two meetings of the City Council for final approval. This seems to be excessive. The first approval – permission to conduct a survey – seems to be wholly unnecessary. Because the investor is responsible for paying for the services necessary to complete the application, the decision should be the investor’s.

The need to first lease land in order to purchase it is also unnecessary. Because land is sold at the market rate (or a near approximation), there isn’t the same level of concern about the appropriateness of transfer. Most government officials seem to recognize this, but cite the political process in land reform as a hindrance to change.

Most CIS countries go through a fairly lengthy process during the land acquisition process to ensure that the project will be compatible with the zoning requirements. This evaluation is then repeated during the building approval process, and repeated a third time during the occupancy permitting process. It should not be necessary to ensure that zoning requirements are met during the acquisition process. An owner that wishes to use a residential plot for industrial activity would not get past the other two zoning checks – and therefore would not likely consider purchasing the land.

There appears to be an overlapping sense of responsibility between the Oblast Land Resources Department and the Department of Land Resources of the City Council. Both seemed to claim responsibility for conducting the land valuation during the leasing process.

Meetings with officials in Kyiv suggested that there are changes on the way. One reform that is in conformity with current legislation is to develop technical passports for specific land sites before the investor ever arrives on the site. This allows the investor to bypass most of the lengthy

processes, and simply sign a contract to lease the land at already-established rates. Other government officials stated that legislation is being processed which would eliminate the double City Council approvals.

C. RECOMMENDATIONS

Many of the recommendations present will require changes to legislation, likely to be a lengthy process as most of the legislation is embedded in the Land Code, a politically charged document. However, the process of obtaining a suitable location from which to operate is critical to a number of businesses. For Ukraine to continue to attract investment - foreign or local - it must create an efficient and equitable system for distributing land.

- Government officials report that the two-stage process of obtaining land from the City Council (permission to create a survey, and the approval of the survey and lease) will eventually be consolidated into a single process. This will save considerable time, particularly in the city of Yaremche in which the City Council only meets once every three months. It is recommended that this process be accelerated.
- The documents required for approval of a survey and lease should be reviewed for necessity. It would be ideal if a list of documents that must be required be placed in the relevant legislation.
- It was mentioned in interviews that the city master plan will be designed soon. The city should take this opportunity to get input from the 5 approving bodies as to the appropriate usage of the various plots around the city. In this way, investors may be able to bypass or expedite some of the approvals from the Ecology, Cultural Heritage, and Fire Departments.
- This process would greatly benefit from a locally produced set of how-to guidelines. Once our team learned the entire process by speaking with upwards of seven government officials, the process seemed reasonably clear with the exception of one or two conflicts. However, it is a lengthy process and we found no single source that could describe it in its entirety. Therefore, it is recommended that the city bring

together each of the participants in this process with the intention of publishing a guide.

- Roles should be clarified between the Oblast Land Resource and City Land Departments.

The nationwide Land Resources Department referred to having cities prepare technical passports in advance of the transfer of properties to businesspeople. This would dramatically reduce the cost of acquiring land for investors, and likely accelerate the development of land in some key areas. However, these programs - which have been implemented around the world with varying degrees of success - will only achieve the sought-after results if the cities identify land which is of economic value to investors.

Historically, governments have been unable to successfully identify land that is desirable to investors. As a result, investors tend to ignore the land that has been already demarcated, and instead conduct the process in its entirety. In order for the technical passport system to be successful in Ukraine, it is recommended that:

- government officials respond to market forces, instead of pressure to develop less desirable areas;
- government officials responsible for selecting land be trained in understanding market trends and investor preferences;
- that the government conduct surveys of potential investors to best understand their needs and select the best potential sites for technical passports;
- That the Government of Ukraine explore the idea of entering relationships with property developers to identify, survey, and develop land for investment. Historically, government programs to exploit land have been much more successful when managed by private property developers.

VII. DEVELOPING A SITE

While some businesspeople are able to find ready-made structures that suit their business needs perfectly, many businesspeople, particularly in the CIS countries, find that they have to make substantial alterations to buildings on their land. In other cases, businesses make greenfield investments on empty plots of land. In either case, the businessperson is required to go through a permitting process to build or make alterations to existing structures.

The typical building permit in any country requires multiple interactions with a large number of departments in the government, and in Ukraine this is no different. In most cases around the world, only the smallest investors will attempt to complete this process themselves. It is much more common to have an architect, an engineering firm, or both create the designs and gain the approvals from the government. This is typically due to the thousands of pages of codes involved in building, architectural design, fire safety, utility access, sanitary safety, ecological impact, and so on. In this text, however, we will refer to the investor taking all of the steps for the sake of brevity with the

implication that an architect is taking the steps on the investor's behalf.

The investor in Yaremche wishes to modify an existing building to create a 25 room hotel. There is nothing out of the ordinary for this process. The only aspect of this that might determine a different procedure would be the size – a larger hotel would require officials from Ivano-Frankivsk to be involved. However, the size is small enough that local officials in Yaremche can manage the process.

The process of rezoning is described in the previous chapter. It is assumed that in this chapter, the investor has chosen to build an appropriate structure for his zoning requirements.

In Yaremche, the process for obtaining building permits requires two City Council approvals, the approval of local officials, the approval of the State Investment Expertise Service, and finally, an approval to begin construction. Many of the approvals can be obtained in Yaremche, although it is necessary to obtain some of the approvals in the oblast seat of Ivano-Frankivsk.

A. PROCESSES

BUILDING PERMIT

1) Obtaining a building permit from the City Council

The first step in this process is to obtain a “building permit”; in essence, this is permission from the City Council to make a plan for construction. This allows the businessperson to get the necessary technical and architectural requirements and begin the architectural design of the building. If the investor acquires the land from the state using the procedures described by land law, there is no need to obtain a separate building permit. According to Ukrainian legislation, the investor must demonstrate the right to use the land (either ownership or lease documents), plus other documents as stipulated by the regional building regulations. In order to obtain this approval in Ivano-Frankivsk, the businessperson must submit the following documents to the Land Department of the City Council:

- a general description of the building project;
- an abstract from the resolution of the executive committee of a village, settlement, or City Council on granting a land plot, indicating its intended purpose;
- a document certifying the right of property or use of the land plot, or an agreement for the right of development of said plot;
- the applicant's identification document or passport data;
- the building's key technical and economic indicators;

- the calculated demand for engineering and transport provision;
- a copy of the state registration.

Upon receiving the application, the Department of Urban Planning and Architecture of the City Council prepares an “integrated conclusion” of the proposal, and prepares a draft of the City Council's decision to give a permit for building an urban development project. This should happen within one month.

This department applies to the heads of the local administration and local Ecology, Sanitary-Epidemiological, Fire, Land Resources, and Cultural Heritage Protection authorities. These authorities issue their conclusions on the proposals (or detailed rejections). If neither a rejection nor an approval is received within 2 weeks, the Department of Urban Planning and Architecture assumes a positive response.

The integrated conclusion is submitted to the City Council, upon which the City Council makes a decision of whether to give or not to issue a building permit.

The law states that the City Council is required to make a decision within two months; however, the Yaremche City

Council meets only quarterly, so there may be some cases where this would take longer depending on the time of the

submission. There is no fee for this step. There is no fee for building permits.

2) Applying to the City Urban Planning and Architecture Department to get “Output Data”

The investor then applies to the City Department of Urban Planning and Architecture for two interlinked items: the Technical Specifications and the Architectural and Planning Statement for the building.

The process begins with an application to the Chief City Architect to provide the Architectural and Planning Statement, which includes Technical Specifications. The Technical Specifications represent a set of conditions and requirements for the engineering equipment of a building that should conform to its design parameters, including water, sewer, heat, energy, and gas services, the installation of radio service, external lighting, storm run-off, telephone service, television service, dispatching, fire safety, as well as special conditions. The investor must provide:

- a survey of the land;
- information on the design parameters of the facility (the capacity and demand for water, heat, electric power, etc.);
- other information is required for industrial projects regarding the Technical Specifications.

The Technical Specifications indicate:

- basic information including the name and address of the architectural project, the customer, the designer, the type of building, the standard design, and the building terms;
- the sources of water, heat, energy, and gas;
- hookups to respective engineering services, requirements with regard to the equipment of hookup junctions;
- key design and engineering parameters of the building, including:
 - water service
 - sewer service
 - heat service
 - power supplies
 - gas service
 - storm runoff
 - television service
- requirements for the installation of external lighting;
- requirements for the installation of cold and hot water meters, heat meters, gas meters, and provisions for their year-round operation.

The Urban Planning and Architectural Statement must be issued to the investor within a month of submitting the following documents:

- the application form;
- permission from the City Council;

- notarized consent in the event the investor is not the land owner;
- key characteristics of the facility;
- a survey of the land;
- the following approvals:
 - the conclusions of authorities in the area of protection of historical and cultural monuments;
 - the conclusion of the State Sanitary-Epidemiological Service (a copy) obtained by the customer for resolving the issue of approving the architectural object's location (the issuance of a permit for proceeding with project and surveying work).
- for industrial buildings: the technical and economic projections of resource needs;
- in the case of expansion: documentation certifying the property rights over the building and a document describing the change in the use of the building (if any) and the purpose of the reconstruction and/or capital repairs.

In the request, the investor states the design and building period to complete the facility - the Architectural and Planning Statement and Technical Specifications are valid for that period of time, which is no less than two years. This can be re-registered and extended if the project goes beyond this time period.

There are two components of the Statement – the text and the graphical sections. The following makes up the content of the text:

- information about the investor's property rights;
- information about the resolution on approving the building location;
- a description of the land plot boundaries;
- information about urban planning and engineering geological data of the land plot;
- requirements to limit distances of the architectural object with regard to the boundaries of the land plot, red lines, existing buildings and structures, as well as other planning restrictions;
- restrictions regarding the height of the building;
- requirements for equipment of the building and area improvements;
- conditions for using ground floors, basements, and underground spaces;
- requirements for the placement of built-in and annexed premises;
- conditions with regard to phases of design work (coordinated with the investor);
- the type of design work (coordinated with the investor): custom, pilot, and standard design; the site of a standard design; and the reuse of a design;

- a list of organizations and institutions that the design will be coordinated with;
- a list of technical specifications;
- a copy of the conclusion of the State Sanitary-Epidemiological Service;
- requirements for implementing energy conservation actions;
- conditions for obtaining a permit for conducting topographical-geodetic and engineering-geological work;
- for existing buildings undergoing renovation: information about the historical-cultural and architectural value of the architectural object, and information about the investor's property rights;
- for new buildings: the requirements for assessment of the architectural object's impact on the environment;
- there may be other special conditions and requirements.

The graphical part of the Statement contains:

- the survey of the land;
- a copy of the updated topographical-geodetic plan of a quarter/micro-rayon or other area of the architectural object's location;
- a plan for identifying the sites to be developed and improved, with due account for standards and definitions of planning restrictions regarding the location of historical-cultural and sanitary protection zones, etc.;

The investor can request copies of the locality's master plan for an additional fee.

3) Forming a commission to have the Act of Land Survey approved

The investor must then form a commission which is to be headed by the First Deputy Mayor. This commission includes:

- the investor (and his architect);
- the Chief City Architect;
- the Land Department;
- the Sanitary-Epidemiological Department,
- the Fire Department;
- the Ecology Department (for Yaremche, this must be an Ivano-Frankivsk-based official).

This commission must prepare an Act of Land Plot Investigation. It is the responsibility of the investor to arrange the meeting of the commission at the land site.

4) Preparing the project (by a licensed architect) and submit it to the Chief City Architect

5) Obtaining approvals from the various departments

After the project is prepared, it is to be approved by the Chief City Architect. Following the Chief City Architect's approval, the project is submitted for examination to five agencies (the Sanitary-Epidemiological, Fire, and Ecology authorities; the Energy Saving Inspectorate, and the Labor Protection Agency, depending on the type and size of construction).

If a negative conclusion is reached, the government must provide written detailed explanations for the rejection within one month from the application date. Each examination has its own fee and is approved by each agency separately.

6) Submitting the building design to the State Investment Expertise Service

Following the approval of the Chief City Architect, the investor then submits his building design to the State Investment Expertise Service. This approval requires the following:

- an examination by State Investment Expertise Service, including an appraisal of technology, strength, durability, and endurance of buildings and structures; architectural, planning, and engineering designs; estimates and financial documentation, and a summary;
- a State Sanitary-Epidemiological Service examination of investment programs and construction projects;
- a State Ecology Department appraisal of investment programs and construction projects for sites presenting environmental concerns, a list of which is compiled by the Cabinet of Ministers of Ukraine;
- a state appraisal of design and estimate documentation with regard to conformity to fire regulations;
- a state appraisal of design and estimate documentation with regard to conformity to labor safety regulations;
- a state appraisal of investment programs as related to energy-saving and energy technology issues specified in the design and estimate documentation;
- other approvals may be required as needed, depending on the nature of the project.

According to the law, the appraisal should be completed between 15 and 45 days depending on the complexity of the project. The committee can either approve the project or make suggestions for improvement. It is also possible for the committee to consider the project infeasible. If recommendations are made for improvement, a follow-up appraisal is conducted by the State Investment Expertise

Service. Normally, the project documentation should be submitted for a follow-up appraisal within 30 calendar days.

While the State Investment Expertise Service is responsible for making as many copies of the construction projects as

necessary, the investor may supply the State Investment Expertise Service with multiple copies to expedite the process and keep costs down.

7) Obtaining approval from the City Council

The next step is to submit the design to the Urban Planning Council attached to the Chief City Architect. The design documentation is then approved based on the

meeting of the City Council, and based on a comprehensive positive conclusion of the oblast branch of the Ukrainian State Investment Expert Commission.

8) Applying for permission to begin construction

Following the approval of the City Council, the investor must then receive permission to begin construction activities. The investor must submit the following documents to the State Architecture and Construction Inspectorate:

- the application;
- a resolution of the executive body of the pertinent council or local state administration authorizing a given urban planning project;
- a document attesting to the owner's right to own or lease the plot accommodating the urban planning project;
- comprehensive State Investment Expertise Service approvals;

- a description of the various personnel involved in the construction (taskmasters, building engineers, officials in charge of technical and architectural supervision);
- approved project documentation.
- proof of property rights for existing structures

The time limit for an approval is 15 days. If there is a refusal, a written statement specifying the reasons is given. If the owner applies again, the application must be considered within 10 days from the date of receipt of the documents. After construction work begins, the owner notifies the State Architecture and Construction Inspectorate within 7 days.

B. ANALYSIS

While it was noted in the introduction that the process of obtaining a building permit is a complicated one in any country and involves interactions with multiple government departments, Ukraine is somewhat different due to the number of stages of interaction that take place.

In most countries, the quantity of interaction is governed by the need for all of the various technical approvals. Typically, the process of obtaining a building permit is to either submit the drawings to a central architecture office and wait for them to circulate the documents to all of the various technical departments, or the investor himself carries the drawings to each individual department. Irrespective of whether there exists a central coordinating office, the process is basically a single stage – once you obtain all of the approvals, you begin construction.

Ukraine requires the investor to go through multiple stages of approvals before building may commence. As with the land acquisition process, permission is required for the investor to start their planning. There seem to be overlapping and conflicting approvals from the local Chief City Architect's office and the State Investment Expertise Service, and the necessity to get approvals to begin construction once the drawings are approved seems unnecessary given that the construction profession is licensed by the government.

The processes within the individual stages appeared to be efficient in the Ivano-Frankivsk Oblast and the City of Yaremche (interviews with investors in Kyiv suggested that the individual stages are much more complicated there). Laws and regulations that govern the permitting process assign a reasonable maximum number of days for the approvals. Therefore, it would seem that by rationalizing the entire process and eliminating the unnecessary stages, the process could show dramatic improvements in simplicity and saving both time and money for the government and the private sector.

One government official suggested that draft legislation is under discussion that would remove the two-tiered City Council approval that now exists. Given the fact that the Yaremche City Council meets only on a quarterly basis, this change by itself would shave substantial time off of the process.

Specific comments are as follows:

- The stage of gaining approval to begin the process seems wholly unnecessary. Because the investor is the one assuming all of the liability and cost in the process, this stage of the process only contributes a (sometimes lengthy) delay to the whole process. It is not a step

normally found in countries in Europe, Africa, Asia, or the Americas.

- The requirement for the Technical Conditions and an Architectural and Planning Statement from the government is unique. This step needs to be done in the building design process, but it is usually done by the architects and/or engineers in the planning stages. Typically, the designers must obtain this same information by approaching the individual utility and ecology departments. However, it is not clear that requiring the businessperson to complete this process as a matter of law adds any value to the process. This process would be better served as a service to be offered by the government more than as a mandatory stage of the process.
- The formation of a committee is unnecessary. Individual technical specialists can perform their roles without the delays and bureaucracy inherent in forming an *ad hoc* committee led by the Deputy Mayor. There should be a dialogue held regarding the building, particularly in areas of natural beauty such as Yaremche, but those discussions are typically held only after the technical specialists have concluded their research and reached their conclusions.
- There was considerable confusion as to the various roles between the State Investment Expertise Service and the Yaremche Chief City Architect. From our discussions with the two offices and meetings with investors, the two performed what essentially appeared to be the same function. The law appears to support the State Investment Expertise Service's role more than that of the local architect's office.
- There was confusion as to who was required to interact with the individual government authorities (such as Fire, Sanitary-Epidemiological, and Ecology). The Chief City Architect of Yaremche requested (but did not require) multiple copies of the building plans in order to distribute them to the various technical authorities. The State Investment Expertise Service essentially said the same. However, conversations with the individual agencies suggested that they are approached directly by the investors, and not via other government departments.
- The necessity to have a lengthy permitting process to begin construction even after all technical reviews have been completed with positive outcomes and the City Council has approved the project seems to be entirely unnecessary. This particular step appears to be done to assess the capability of the construction firm to undertake the project and ensure that the project will be done safely. However, the government licenses construction firms, making the concept of individual building approvals seem redundant. This department could effectively review the plan for construction during the various technical reviews that take place before the City Council's approval is given.
- In addition, the list of documents that are necessary to obtain this permission is highly repetitive. If the City Council has already approved the project (a requirement to obtain permission to begin construction), all of the other required documents, particularly property rights and other permissions, must have been approved already.

C. RECOMMENDATIONS

As most of the process is governed by the law of Ukraine, making wholesale changes to the process will be a lengthy effort, but will lead to substantial improvements in the process. There are, however, a few recommendations that can be implemented more simply:

- 1) To only require a single approval by the City Council after all of the assessments have been delivered by the various technical departments. This will save the investors substantial time, and will reduce the burden of the local councils. The City Council could conceivably hold a hearing at the beginning of the process in order to publicize the development, raise neighbors' concerns (if any), and make the investor aware of the general political climate surrounding the project, but it should not be an approval for which investors must wait before proceeding on to the next step.
- 2) Eliminate the legal requirement for the Technical Conditions and Architectural and Urban Planning Statements, and make them a service of the government instead. In most cases, architects and/or engineers will contact the government to get many of the specifications in advance in order to avoid problems after the building has been designed.
- 3) Eliminate the need to form a committee. Similarly, ensure that the tasks undertaken by the Chief City Architect's office and the State Investment Expertise Service do not overlap. Each of the various technical reviews should be clearly identified, with the responsible parties noted. Experience in other countries suggests that this should be between 15 and 23 different technical approvals.
- 4) Clarify the roles of the State Investment Expertise Service and the Chief City Architect.
- 5) It is recommended that the investor be given a choice of proceeding by having the State Investment Expertise Service manage the flow of their documents through the various technical bodies, or performing this function themselves. There are different reasons in different cases why each option would be the preferable approach.

- 6) Include amongst the technical approvals the approval of the state architecture and construction inspectorate. This will allow them to ensure that the quality of materials used and building techniques are of modern and safe and properly conform to local conditions. However, this should not be a step at the end of the process.
- 7) To the degree possible, have all approvals be made in parallel, and reduce the number of dependent approvals.
- 8) Review all of the documentary requirements throughout the process to determine superfluous requirements and reduce them where possible.

VIII. STARTUP APPROVALS

Once a businessperson has either built a structure or has improved the existing structure on a land plot, he is, for practical purposes, prepared to begin with operation of the company. However, before he can begin, virtually all industries will require some combination of certifications and licenses. Some of the certifications are optional, while others are mandatory. Depending on the industry, licenses are required.

In Ukraine, much of the licensing and certification processes for the hotel business are dependent on the readiness of the structures; for other industries, licenses are issued on the basis of other demands, such as the experience of the employees. "Readiness" is typically measured by the safety of the general public and the workforce. The business must be able to pass Fire, Sanitary-Epidemiological, and Labor Protection Department inspections before it can obtain most of its licenses. In the case of some licenses, a business must demonstrate that either sufficient money is in the bank or an insurance fund has been arranged in the event of a mishap.

Because the hotel investor is foreign, he will be able to bring in capital goods duty-free. He will then go through the following processes:

- Applying for Duty-Free Importing
- Hotel Safety Certification
- Restaurant Safety Certification
- Optional Hotel Certification/Classification
- Optional Restaurant Certification/Classification

Our investor would also like to offer some services such as horseback riding in the mountains. While there is a license for acting as a tour operator, it is not clear that a hotel must have this license.

In Ukraine, there are no hotel licenses or restaurant licenses. A tour operator's license exists, but does not appear to be required for a hotel owner. Both hotels and restaurants must be safety-certified. They have an option of obtaining hotel and restaurant certifications, which provide them with a rating based on a set of established criteria.

A. PROCESSES

INCENTIVES

Ukraine has done away with many favorable incentives for foreign investors starting from the early 1990's. Ukraine has created special economic zones and territories in which businesses enjoy a simplified registration procedure and a favorable tax and customs regime. Foreign investors also benefit from duty and VAT exemption for the import of fixed assets that represent contribution to charter.

Table 8.1. below shows data about special economic zones (SEZ) and areas of priority development (APD) formed in Ukraine.

TABLE 8.1: SPECIAL ECONOMIC ZONES AND AREAS OF PRIORITY DEVELOPMENT IN UKRAINE

SEZ/APD	Territory of special economic zone	Region
SEZ	Porto-franko	Odessa Region
SEZ	Yavoriv	Lviv Region
SEZ	Sivash	Donetsk Region
SEZ	Slavutich	Kyiv Region
APD	Kerch City	A.R. of Crimea
APD	Kharkiv City	Kharkiv Region
APD	Donetsk Region	
APD	Zakarpattia Region	
APD	Luhansk Region	

IMPORTING GOODS DUTY-FREE

Foreign investment can be executed in the form of a contribution of cash or fixed assets in return for a share in the equity of a Ukrainian company. Foreign investment in the form of fixed assets is exempted from VAT and import duties. These fixed assets are also exempted from certification.

The limitations of this duty-free exemption are as follows:

- The investment may not be disposed of within the three years following the time of importation.
- The investment may only represent that share of the company's initial capital account that is foreign – for example, if a company is 30 percent foreign, and the initial share capital is 1,000,000, USD the company may only import up to 300,000 USD duty-free. However, officials state that exceptions can be made to this rule for minority foreign shareholders.
- The company must legally execute a promissory note.

In order for a company to import goods duty-free, it must first be accredited by Customs as an importer (which represents little more than a registration process – see Chapter 5). The investor then must complete the following process⁶:

The investor must execute a promissory note. This can be done before the company has registered its foreign investment (see Chapter 5). However, it will be necessary for the company to complete the registration of the investment before the goods are made available. The promissory note can be advanced up to 30 days from the date of declaration of goods to provide time to have the investment registered. Customs generates two copies of the promissory note, one staying with Customs, and the other forwarded to the State Tax Administration. The Customs declaration documentation is the same as the

standard declaration for all imports – however, the documentation must specify that the goods are being imported duty-free as part of the charter fund of a foreign capital investment.

The investor must then go to the State Tax Administration and apply to have the promissory note stamped. In order to apply, the investor must supply the State Tax Administration with:

- the application;
- a copy of the promissory note;
- a copy of the shipper's declaration;
- documents attesting to the placement of the property;
- the registration fee (paid to the Treasury, a receipt of which is submitted in this package);
- company registration documentation.

At this point, the investor returns to Customs in order to finalize the contract. This process must be completed within 30 days of the declaration. If the investor fails to complete the process within the allotted 30 days, duties and VAT become payable within five days. Customs does have the right to pursue payment directly with the investor's bank (as stated in the promissory note) if the investor fails to pay.

If the investor chooses to dispose of the assets within three years of importing the goods, the investor is immediately responsible for paying the import duties and VAT. This is not the case if the goods are exported. If the sale of the assets takes place and the investor fails to notify Customs of the transaction, Customs has the right to call the promissory note unconditionally. In addition, penalties can be assessed on the import tax.

SAFETY CERTIFICATION

The State Committee on Technical Regulation and Consumer Policy of Ukraine (UkrDerzhStandard) is responsible for certifying products and services in Ukraine. In addition, UkrDerzhStandard issues ISO 9000 certificates, although they are currently not internationally recognized. It has a network of 28 Regional Centers for Standardization, Metrology and Certification reporting directly to UkrDerzhStandard providing among others certification services for hotels through Ukraine. Each of the centers work as independent profit centers that operate under pricing guidelines.

Safety Certifications are very close to what would be considered a Ukrainian equivalent of an "occupancy permit." This process typically takes place upon the conclusion of the building process, and is needed for the business to get started. Unlike occupancy permits, which are typically issued for completed but empty buildings, safety certifications require that all furnishings and other fixed assets already be in place.

Once the building is complete and the furnishings and other fixed assets are in place, the investor will receive inspections. These inspections should be done in the form of committees representing the authorities listed below.

- **Fire Safety:** this inspection largely looks at the availability of fire safety equipment and ensures that the specifications outlined in the building plan were met in the construction of the building.

⁶ If an existing business is investing new capital in order to purchase these fixed assets, the company must first make changes to the company's constituent documents (to increase the company's capital fund, and mention in the statute and foundation agreement what goods shall be included in the capital fund). The importer will be asked for their constituent documents, in which it is written that the goods are to be put into the company's capital fund.

- Sanitary-Epidemiological (including air quality, microclimate and noise levels): this inspection is mostly examining the conformity of the building with the sanitary norms and requirements. In the case of a restaurant, the sanitary inspection will be the first of many regular inspections.
- The Labor Protection Agency: examines the conformity of the building with the construction norms, electric and gas system requirements, checks boilers and general condition of the building.
- For hotels in the mountains or other unusual locations, other experts are called in to examine the safety of the hotel.

On an annual basis, hotels must be certified as “safe.” In case if hotel introduced ISO 9000 standard – such a hotel must be certified ones per 5 years as “safe”. According to officials in Ivano-Frankivsk, this certification is an automatic result of getting passing grades from a number of inspectorates including Fire, Sanitary-Epidemiological, and so on.

Each inspectorate will issue a conclusion. In some cases, the conclusion will be issued with notes of either minor flaws

OPTIONAL HOTEL AND RESTAURANT CERTIFICATION

Hotels and restaurants have the option of being certified by the State Committee on Technical Regulation and Consumer Policy (in Ivano-Frankivsk, this authority is called the “Ivano-Frankivsk State Center for Standardization, Metrology, and Certification”) and given a star rating. This certification is reviewed once every three years for a hotel, and once every two years for a restaurant. In case if the hotel is ISO 9000 certified – this certification is reviewed ones every five years. The rating system is based on a set of guidelines established by UkrDerzhStandard. While it is a purely voluntary process, Ukraine-based tour operators are increasingly making it a precondition for booking clients in hotels.

In the Ivano-Frankivsk Oblast, only one hotel has attempted to be certified. The process for applying for certification requires that the hotel submit an application to the State Committee on Technical Regulation and Consumer Policy.

B. ANALYSIS

As discussed in Chapter 5, the worldwide best practice on incentives is to create a level playing field for local and foreign investors, eliminate approvals, and simplify the eligibility for incentives as much as possible.

In Ukraine, preferential treatment is given to foreign investors over local investors. Foreign investors can import their capital goods duty-free, VAT-free, and, interestingly, without certification (as related by a customs broker). This raises several interesting points:

that should be resolved, or major flaws which prevent the successful issuance of a positive conclusion.

Once a hotel or restaurant has the conclusions of each of the inspectorates, it then approaches the territorial authority of the State Committee on Technical Regulation and Consumer Policy for a safety certification. The business must provide all of the conclusions, plus the technical passport of the building. This is the effective equivalent of a hotel and/or restaurant license. According to officials from the State Committee, the issuance of this certification is automatic.

Safety certifications must be renewed annually. There is a minimum payment of 390 UAH which increases depending on the size of the project (the number of rooms, etc.). For hotels, this process is done only for facilities in excess of seven rooms. For smaller hotels (bed and breakfasts), the process of certification is governed by the normative document issued by UkrDerzhStandard named “Means of accommodation. General requirements” that came into effect starting July 1.

Upon receipt of the application, the State Committee visits the facilities and examines such items as:

- the process of providing services (including customer service by employees, availability of qualified employees)
- the availability and quality of food service;
- raw materials for catering;
- fire safety;
- sanitation safety;
- labor protection.

This process takes about a week, given that all materials are available. Periodic checks (so-called “technical supervision”) take place, up to twice yearly – the cost for these checks is between 200 and 400 UAH.

- If a foreign investor and local investor build competing hotels next to one another, the foreign investor starts with a clear cost advantage in his building.
- Why would certification not be necessary for a foreign investor? It is more than possible that the goods to be imported by both a foreign and local investor will come from the same source. While the author does not agree with the premise of certifying goods that have already received a safety or health certification in their country of origin, it is clear that if the role of the certification is to ensure the public’s safety and health, no group should

be exempted solely due to the nature of the source of their capital.

- Due to the fact that foreign investors are given preferential status on goods they directly import, local manufacturers and traders of capital equipment are put at a significant competitive disadvantage. While it is recognized in state literature that a great deal of the goods for a business such as a hotel are available locally, an investor would likely choose to import goods directly, if for no other reason to avoid the payment of VAT.

By implementing the promissory note and three-year rule of asset disposal, the government does a reasonably good job of ensuring that the goods imported will go towards production (as opposed to consumer resale). Therefore, it raises the question as to the benefit of restricting duty-free importation solely to funds registered as a foreign investment.

If left unchanged, the current process is somewhat cumbersome in terms of the number of steps the investor must take. The necessity for the investor to obtain stamps from the Tax Inspector's office represents an unnecessary step in this process.

The process of licensing activities is typically an issue of a government attempting to either control an industry and/or collect revenue from the activity. Many of the former Soviet republics are currently addressing licensing concerns. However, the issue is much greater than the topic of "licensing" specifically. Any activity which requires the consent of the government is of importance to investors. This includes licenses, permits, permissions, approvals, certificates, and many other titles for what appears to be simple government interference.

However, licensing does play an important role in society, particularly with regards to protecting public safety. Frequently, government licenses are issued to types of businesses in which the quality and knowledge of the personnel employed might make a difference in the public's safety and health. In other cases, licenses can represent an amalgamation of passed inspections.

Ukraine is one of the few countries that do not have either a hotel or restaurant license; however, certification from one of the authorized bodies of the State Committee on Technical Regulation and Consumer Policy operates as a *de facto* license. The certificate is based on the successful completion of various inspections that ensure guests' safety and health.

However, hotel licenses typically have some sort of basis in the knowledge of hotel employees of how to deal with emergency situations and how to work with hotel clientele. This is important not only to the health of the hotel's guests, but to the hotel and tourism industry as a whole – visitors from foreign countries rely on reports from those that have previously been to the country. A bad experience in a hotel creates a poor image of a country as a tourist destination.

In the best case, the tourism industry itself recognizes this fact, and is responsible for assigning ratings - and in some cases licenses - to its member hotels. However, many countries with young economies (such as those of the former Soviet Union) typically rely on government agencies to ensure that the hotel industry meets high standards. The use of a certificate from a regional standards authority does not meet the needs of licensing for hotels.

C. RECOMMENDATIONS

- It is recommended that Ukraine adopt a policy for all goods to be used in production regardless of the origin or form of investment. It is suggested that this policy:
 - have a reduced duty;
 - not apply preferential treatment for certification;
 - be available to local traders (through a plan in which they can get rebates).
- The existing process should be simplified by examining such tools as a one-stop shop.
- Hotel licensing should replace the current certificate regime in Ukraine. Hotel licenses should be partially based on the capabilities of the employees in the hotel.
- Because restaurant safety certification is largely based on the sanitary inspection, it is unnecessary to create a second process. A restaurant should be able to operate on the basis of a clean inspection from both the fire and sanitary inspectorates.

IX. OPERATING

Once a business has launched its operations, there are a number of instances when it is required that the investor interact with the government in order to run their business on a day-to-day basis. This includes the annual renewal of permits, the payment of taxes, and the interaction that takes place when importing and exporting goods. This chapter highlights aspects of operating such as taxation, inspections, importation of goods, and labor procedures.

The hotel investor will interact with the government in a number of different ways during operations. For example:

- Paying taxes
- Receiving inspections
- Importing goods for the hotel and restaurant
- Ensuring the labor code is met
- Renewing certifications
- Renewing work permits for foreigners

The final two items (the renewal processes) are almost identical to their respective original processes; the process of renewal is described in their respective chapters.

The hotel investor is not likely to export goods or utilize any of customs schemes, so these processes will be described as written in law.

A. PROCESSES

TAXATION

Following a major reform of the tax system in 1997 aimed at streamlining compliance, taxes can now be categorized as follows:

- corporate profits tax
- personal income tax
- value-added tax (VAT)
- payroll tax
- excise tax
- land tax
- tax on owners of motor vehicles
- import duties

Corporate Profit Tax

The Corporate Profit Tax Law, introduced in 1997, applies a uniform tax (with the exception of insurance companies) at a rate of 25% to taxable profits earned by companies in Ukraine. Tax returns are filed on a quarterly basis within 40 calendar days of the end of the quarter. Taxpayers are required to make payments within 10 calendar days following the date when the tax return has to be filed.

Non-resident companies are allowed to apply an “Allocation Method” for calculating taxes.

- **Allocation method** - based on data provided by the parent company about the permanent establishment’s share of foreign expenses and the number of employees, fixed assets, and working capital (used by non-resident entities which operate both in Ukraine

- stamp duties

A simplified tax is available to individual entrepreneurs and legal entities. In order to be registered for simplified taxation, the business must fall below a particular income level (UAH 500,000 for entrepreneurs, and UAH 1,000,000 for legal entities).⁷

Other industry specific taxes include royalties on oil and gas extraction, charges for the exploitation of natural resources and environmental pollution, and charges for retail trade patents. In addition, there are 14 different local taxes, depending on the local government.

and in other countries, and do not determine profits from activities of a permanent establishment in Ukraine).

- **Notional method** - involves applying a notional margin of 30% to gross revenues earned from activities within Ukraine.

(a) Depreciation

Depreciation charges are calculated quarterly. Assets are grouped into two categories: tangible assets and a separate schedule for intangible property. The depreciable life of these assets is as follows:

- **Buildings** – 12.5-year depreciable life.
- **Transport vehicles, furniture, and office equipment (computers, phones, etc.)** – 2.5-year depreciable life (computers and office equipment acquired after 1/1/2003 must be written off in a little more than a year and a half).
- **All other tangible assets** – 4-year depreciable life.
- **Intangible assets** – 10-year depreciable life.

⁷ In addition, individual entrepreneurs may employ up to 10 workers before they are no longer eligible for simplified taxation.

(b) Losses carried forward

Losses generated after January 1, 2003 can be carried forward for an unlimited period of time. Losses accumulated during earlier periods may only be carried forward for three subsequent years.

Income earned by non-residents that originates from Ukrainian sources is subject to a withholding tax at the following rates:

- **20%** on fees for rendering advertising services in Ukraine;
- **25%** on income earned from investments on interest bearing bonds, treasury bills, and discounted bonds issued by resident entities; insurance payments and premiums;
- **6%** on income earned from freight services.

TAX TREATIES

Double taxation treaties exist with Armenia, Austria, Azerbaijan, Belarus, Belgium, Bulgaria, Canada, China, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Hungary, India, Indonesia, Iran, Italy, Japan, Kazakhstan, Korea, Kyrgyzstan, Latvia, Lebanon, Lithuania, Macedonia, Malaysia, Moldova,

Mongolia, the Netherlands, Norway, Poland, Portugal, Romania, Russia, Slovakia, Spain, Sweden, Switzerland, Tajikistan, Turkey, Turkmenistan, the United Kingdom, the United States of America, Uzbekistan, Vietnam, and Serbia and Montenegro. .

Value-Added Tax (VAT)

Entities whose volume transactions exceeded 3,600 non-taxable allowances (currently UAH 61,200 or approximately 11,500 USD) in any period during the previous 12 months are required to obtain a VAT registration certificate (companies and individuals which import goods must complete the registration as well). Companies that have sales over UAH 122,400 or 23,000 USD must calculate and pay VAT monthly. Firms with less than this amount may choose to report quarterly or monthly.

For monthly VAT payers, the return must be filed within 20 days of the end of each month. For quarterly filers, the return is filed within 40 days following the end of the period. Payments are due within 10 days of filing.

VAT Refunds

A VAT refund is sent to exporters within 30 calendar days following the date of their submission of the following documents to the tax authorities:

- a calculation of the VAT refund in respect to the taxable period;
- the customs declaration evidencing the export of goods out of Ukraine, or a statement evidencing the provision of works or services for consumption outside of Ukraine;
- copies of payment orders certified by the bank and evidencing the transfer of funds to suppliers of goods or

Items to which VAT is not applicable the issue, sale, and exchange of securities; depository, clearing, and registrar activities concerning securities; transfer of property by a domestic lesser to a lessee and return of property upon expiration of the lease; lease payments under financial lease agreements and rental payments for an apartment which is the main residence of the lessee; provision of financial loans and bank guarantees; exchange of foreign currency; insurance and reinsurance services specified in the Law of Ukraine "On Insurance"; contribution of fixed assets to the statutory fund of a Ukrainian legal entity, both domestic and cross-border (import); payment of dividends and royalties in cash; funds under loan, deposit, insurance, or proxy agreements; brokerage and dealer services in respect of a securities transaction; purchase of a taxpayer's property by another taxpayer in the course of acquiring a company; transit of cargoes and passengers through Ukraine.

services, or a customs declaration in respect to imported goods cleared by Customs for free circulation.

VAT refunds for operations other than zero-rated operations may be offset against VAT liabilities arising during the three months following the reporting period. If not fully offset during these three months, the VAT must be refunded to the taxpayer within a month from the date of filing. A taxpayer may opt to offset the VAT refund against future VAT payments.

According to the law, VAT refunds not paid to the taxpayer within the 30-day time limit accrue interest at 120% as per discount rate of the National Bank of Ukraine. The taxpayer has the right to turn to the courts for debt collection.

TABLE 9.1: COMPLETE LIST OF GENERAL STATE TAXES AND DUTIES

1	Value-added tax
2	Excise tax
3	Income tax of enterprises, including dividends paid to the budget by the state-owned, non-corporatised, government-owned, or community-owned enterprises
4	Personal Income Tax
5	Customs duty
6	State duty
7	Tax on real estate
8	Land tax
9	Rental payments
10	Tax for owners of transport devices and other self-propelled machines and mechanisms
12	Collection for exploration work performed with the state budget
13	Collection for special usage of natural resources
14	Collection for pollution of the environment
15	Collection to the Fund for Accomplishment of Actions for the Liquidation of the Consequences of the Chernobyl Disaster and Social Protection of the Population
16	Collection for obligatory state pension insurance
17	Collection for the State Innovation Fund
18	Payment for the trade patents of some kinds of business activity
19	Fixed agricultural tax
20	Common tax, collected in checkpoints along the border of Ukraine
21	Collections for usage of radio-frequency resources of Ukraine
22	Duty aimed at the promotion of viticulture, gardening, and hop-growing
23	Duties (initial, regular, and special) payable to the Individual Guarantee Deposit Fund
24	The duty in the form of the special-purpose supplement to the applicable electric and thermal energy tariff rate
25	Advertising tax
26	Local [property] tax (communal tax)
27	Parking collection
28	Market collection
29	Collection on issuing an order for an apartment
30	Resort collection
31	Collection from participation in horse races on the racetrack
32	Collection from racing wins
33	Pari-mutuel collection
34	Collection on the use of local symbolism
35	Fee for the right to make television and movie shoots
36	Collection on local auctions, tenders, and lotteries
37	Collection for issuing a permit for placement of a trade and service outlet
38	Collection levied on dog owners

INSPECTIONS

Inspections are carried out at different intervals depending on the inspectorate. There is no central inspectorate authority. Businesses are allowed to maintain a logbook (as prescribed by law) in which inspectors must log in before each of their visits (with the exception of inspections related to criminal prosecutions). Inspections must be

Tax Inspections

According to officials, businesses are checked once every three years, and trade businesses that primarily deal in cash are checked annually. The Tax Inspectorate checks for a number of things beyond the accounting, including whether necessary licenses are present and up-to-date. As with other inspectorates, the Tax Inspectorates provide a minimum of 10 days notice, except in the case of criminal inspections.

The Tax Inspectorate can also carry out unscheduled inspections when:

- a company is in breach of the law;
- a company has filed its documents late;
- reporting documents contained false data;
- businesses have made a claim against the Tax Inspectorate;
- a company is in the process of liquidation.

During each review, the business is typically required to provide space for the inspectors to work. Normally the

Fire Inspections

Fire inspections are conducted twice per year – one detailed inspection and one basic inspection. In both cases, businesses are given 10 days notice before each inspection.

The Fire Department may issue penalties in the event of a “misuse of fire safety measures,” or if the director fails to improve upon items noted in earlier inspection reports.

The Fire Department does have the capacity to halt the operations of a business, but only after a process. Typically, the Fire Department issues a letter to the director regarding needed improvements. If the director fails to

State Sanitary-Epidemiological Service Inspections

The frequency of Sanitary-Epidemiological inspections is dependent on the type of business. In the case of hotels, inspections take place once per year. However, if the hotel has a restaurant, they can expect inspections four times per year. In the event of an outbreak of food poisoning,

decided in advance, and investors are informed of scheduled inspections.

Below are some of the inspections that an investor is most likely to encounter:

alternative is for the tax inspectorate to remove documents from the facility. The chief accountant is required to be close by at all times. At the conclusion of an inspection, the business receives an “act of inspection,” which is written by the inspector and signed by the head of the local Tax Inspectorate. All fines must be approved by the directors.

If a businessperson has an appeal for a fine, he may write an “act of disagreement” and appeal to the local tax administration within 10 days of the receipt of the act of inspection. The businessperson has the right to appeal to successively higher bodies within the Tax Administration, each time within 10 days of receiving a written decision. During this process, investors are not liable to pay the fines and taxes until the process is exhausted or the businessperson agrees to pay the fines and taxes.

Businesses also have the option to go to court at any point in the process within three years of the act of inspection.

make improvements, the Fire Department has the capacity to fine the director personally.

If still no improvements are made, the Fire Department has the authority to close the operation.

Inspections also take place upon the completion of a new building or a renovation to an existing building. In this case, the Fire Department must issue an approval. Approvals can either be temporary (if minor problems still exist) or permanent (in the event that everything meets the fire laws). An approval is necessary for a hotel to receive a mandatory safety certification.

unscheduled inspections can also take place. Regarding the outcome of the inspection, the inspector will write a conclusion of the inspection citing the level of danger of the business.

IMPORTING AND EXPORTING GOODS

A new Customs Code went into effect on January 1, 2004, codifying uniform Customs procedures for all goods, specifies elements of Customs procedures, and creating a mechanism for submitting a preliminary declaration for Customs clearance for those who declare items on a regular basis. There are currently 210 Customs checkpoints,

including 109 automobile checkpoints, 38 railway checkpoints, 30 sea checkpoints, 3 pedestrian checkpoints, 18 air checkpoints, 3 ferryboat checkpoints, and 9 river checkpoints. Every checkpoint covers a particular geographical area.

Ukraine has concluded free trade agreements which allow for the duty-free import of goods from the following countries: Armenia, Azerbaijan, Belarus, Estonia, Georgia, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, the Former Yugoslav Republic of Macedonia, Moldova, Russia, Turkmenistan, and Uzbekistan.

Other countries that have favorable trade regimes with Ukraine include: Austria, Algeria, Argentina, Belgium, Bosnia and Herzegovina, Bulgaria, Brazil, Canada, China, Croatia,

the Czech Republic, Cuba, Denmark, Egypt, Finland, France, Germany, Great Britain, Guinea, Greece, Hungary, India, Indonesia, Iran, Ireland, Israel, Italy, Japan, the Democratic People's Republic of Korea, Lebanon, Libya, Liechtenstein, Luxembourg, the Former Yugoslav Republic of Macedonia, Malaysia, Mongolia, the Netherlands, Norway, Poland, Portugal, Romania, Serbia and Montenegro, Slovakia, Slovenia, the South African Republic, South Korea, Spain, Switzerland, Sweden, Tunisia, Turkey, the United Arab Emirates, the United States of America, and Vietnam.

Accreditation

Before importing any goods, an importer must first register with the regional Customs control authority to be "accredited."

Specific Import/Export Permits

The list of goods subject to licensing includes agricultural chemicals such as insecticides, fungicides, pesticides, and other means to prevent growing of plants; regulators of growth of plants; rodent poisons (except veterinary remedies); post stamps, excise stamps, and similar stamps; optical polycarbonate; sulphate of copper; ozone-depleting

chemical substances; products that may contain ozone-depleting chemical substances (such as products in aerosol packaging, air conditioners, refrigerating equipment, refrigerated vending machines, and fire extinguishers and their refills).

The list of goods subject to licensing is renewed annually.

Import Procedures

Upon crossing an international border point, goods will be classified in one of two ways: transit or Customs-cleared. If marked as transit, the container or vehicles will be sealed by Customs agents and then cleared at the final destination. Vehicles transporting goods marked for transit and subject to excise tax will be provided with a numbered band assigned by Customs and designated on the declaration. Goods can also be marked for temporary import into Ukraine. The following import taxes and duties are payable by the importer when goods are imported into Ukraine:

Currently, there are two rates for import duties: relieved rates and full rates. Relieved rates of duties apply to goods manufactured in countries which have granted Ukraine "Most Favored Nation" trade status or are members of

Customs unions with Ukraine. Full rates of duty apply to goods originating in other countries. Rates of duty can be *ad valorem* (in percentage of customs value), specific (in monetary units per unit of goods) and combined. There are also seasonal, special, anti-dumping, and countervailing duties; excise duties on certain goods (cars, alcoholic beverages, tobacco products, beer, petrol, and diesel fuel). Rates of excise duty are specific to each item. VAT is currently at a 20% rate.

These taxes are declared in EUROS per unit and are payable in hryvnya. In certain cases, Customs payments must be deposited with Customs prior to the goods crossing the Ukrainian border.

Required Documents

For taking delivery of the cargo, the following package of documents has to be surrendered to the Customs office:

- the original bills of lading;
- the original invoice (the Port Customs-stamped invoice will be returned to the client);
- a copy of the packing list;
- a copy of the certificate of origin;

- a copy of the contract (between the shipper and the consignee);
- a copy of the accreditation card (customs registration certificate);
- a copy of the hygienic certificate from the Health Ministry (for certain goods).

Temporary Admission

Permission for temporary import (export) with full conditional exemption from import taxes may be issued in respect to the following items:

- goods intended for display or use during exhibitions, fairs, conferences, and similar events;

- professional equipment used by the mass media or required for making films;
- containers, pallets, packaging, or any other goods imported in connection with a commercial transaction;
- samples of goods and advertising films for non-commercial use, provided that they remain in the ownership of a person established outside Ukraine;
- transport vehicles used for moving passengers and goods across the Ukrainian; border
- goods imported for educational, scientific, or cultural purposes;
- personal items of passengers and goods imported for sport purposes;
- materials for tourism and advertising.

Customs Warehouses and Terminals

All goods of Ukrainian or foreign origin may be stored in a Customs licensing warehouse, whether they are imported to or exported from Ukraine, whether they are subject to import/export restrictions, or whether said goods are subject to Customs duties and fees.

Goods placed in a Customs licensing warehouse may be released only in the presence of authorized Customs officials. All operations in a Customs licensing warehouse are carried out upon permission from the Customs authorities and at the expense of the warehouse owner.

REMITTING PROFITS

Foreign investors are entitled to repatriate profit, income, or other funds relating to investments without any restrictions following the payment of any outstanding taxes.

Foreign investors are guaranteed the right to prompt and unimpeded repatriation of profits and other funds in foreign currency derived from their investments in Ukraine.

Exchange Control

The key provisions of Ukraine's current exchange control regulations are as follows:

- export proceeds in hard currency received by a Ukrainian company are subject to a mandatory 50% conversion requirement (although there are exceptions to this rule);
- payments under foreign trade contracts between a resident and a non-resident entity should be in foreign currency only, unless Ukraine's agreement with the relevant country allows for the use of national currency in such transactions;
- foreign loans must be registered with the National Bank of Ukraine prior to their receipt;
- payments in foreign currencies between residents made on the territory of Ukraine are prohibited (although there are some exceptions to this rule);
- salaries on the territory of Ukraine must be paid in Ukrainian currency only;
- Ukrainian companies must receive payment for exported goods (services) and obtain goods (services) pre-paid to a foreign supplier.

Payments by Ukrainian business entities for services rendered by non-residents for values exceeding EURO 50,000 require obtaining confirmation from an authorized state organization that the service fee (price) corresponds to market prices.

ACQUIRING AND DISMISSING LOCAL LABOR

Under Ukrainian labor laws, in order to hire any Ukrainian citizen, an employer should receive from the prospective employee his or her labor book, passport, education certificate, and health record. In most cases, just the labor book and passport are necessary. Particular industries have certain requirements: for example, workers in the restaurant industry must have a sanitary book. If the position requires a special skill (e.g., a driver), the employee must also submit the appropriate professional document (e.g., a driver's license). No other documents are required from the Ukrainian employee. There is a legal instruction that governs what must be contained in the contract for employment.

Importantly, all employers - including enterprises, institutions, and organizations - must maintain labor books for all of their full-time employees, including seasonal and temporary workers. Such labor books typically contain information about the type of work performed, any awards,

and the duration of employment. In essence, labor books serve as a basis for ascertaining the employee's work longevity, which will determine his or her social security and pension rights after retirement.

There is limited interaction between the government and the business in the case of hiring people. However, there is substantial legislation governing the transactions between the employee and the employer, particularly regarding the dismissal of the employee. What follows is a discussion of some of the governing legislation and the procedures that employers are required to follow.

The benefits package typically consists of two parts: benefits guaranteed by law, and additional benefits and bonuses provided by the company. At the initial stage of employment, an employee is hired on the basis of a labor agreement and may be placed on probation for a period of no more than either three months or one month depending

on the classification of said worker under Ukrainian law. If the employee continues to work after this period has expired, the employee is considered to have “passed the test” and is entitled to all rights and protections under Ukrainian law.

Essentially, this means that Ukrainian employees are entitled to social security benefits and must be paid at least the minimum monthly wage (205 UAH) during the course of a normal workweek of no more than 40 hours. Any additional time put in by the employee, even if he or she is hired on a temporary basis, is subject to overtime payment rates. No compensation for overtime work by giving time off from work is allowed under local legislation. Depending on the actual duration of the employment term, the employee is also entitled to vacation and sick leave and a regular schedule of salary payments twice a month.

Ukrainian employers are liable to withhold social security contributions at the following rates based on gross remuneration:

- 32% to the Pension Fund;
- 2.9% to the Social Security Fund;
- 1.9% to the Employment Insurance Fund;

B. ANALYSIS

The most frequently mentioned concern of exporters in most literature is the time it takes to receive the VAT refund. This is a critical problem for Ukraine, because it renders the country virtually uncompetitive when competing for exports with neighboring nations that pay VAT in a timely manner. Government officials have been quoted in the press as saying that they believe that there are sham companies that have been established merely to obtain VAT refunds. Regardless of the existence of fraudsters, the government must establish an approach that would ensure that genuine exporters have timely access to VAT refunds.

In a survey conducted by *Global Insight*, only 34.5% of exporters surveyed reported applying for VAT returns. And only 73.7% of them received such a reimbursement. Furthermore, on average, this reimbursement was paid in an amount of 63% from the applied sum. Difficult processes, delays, no guarantees, and application costs of more than the returned VAT were named by most respondents as influencing their decision not to apply for VAT returns (62.4%).¹⁰

Also from the study, respondents reported that clearing Customs took 3.2 days on average for one clearance, and cost exporters 156.6 USD on average in administrative costs (this excludes duties and taxes). The most common expense when clearing customs is the purchase of forms

- 0.2 – 13.8% to the Fund for Insurance for Workplace Accidents and Illnesses. The tax rate depends on the level of risk of an accident for enterprises belonging to certain sectors of the economy.

Businesses must remit social security payments as contributions that are withheld from salary payments by the employer and remitted directly to the appropriate authorities.

In contrast to labor agreements, sub-contractual agreements typically contemplate hiring a worker to complete a specific task at his or her own risk. As elsewhere in the world, the sub-contractor maintains relative independence in performing the designated task and typically receives payment upon completion of their services. Notably, the sub-contractor does not receive social security benefits, and is independently responsible for paying his or her own personal income tax. To legally act as a sub-contractor for foreign business entities, Ukrainian sub-contractors must register as so-called “subjects of business activity” for tax purposes. Most citizens ignore this requirement with impunity, since it entails additional time, effort, and expense.

and filling them out. According to the survey, 53.9% of respondents used the services of Customs brokers.¹¹

According to Office of the United States Trade Representative (USTR), foreign investors regard Ukraine’s product certification system and licensing procedures as some of the most serious obstacles to trade, investment, and ongoing business. The standardization-certification body in Ukraine is the State Committee for Technical Regulation and Consumer Protection. U.S. businesses have complained that the standards and certification procedures:

- lack constant, clearly defined standards and regulations;
- include registration schemes that are not feasible for mass trade;
- lack procedural flexibility;
- involve complex and lengthy import licensing procedures;
- impose overly complex and expensive certification requirements;
- are unevenly enforced;
- involve high certification and licensing fees.

¹⁰ “Exporting from Ukraine: Administrative Barriers and Strategies.” *Global Insight*, Civic Center for Institutional Development, June 2004.

¹¹ *Ibid*

While the standards process has been significantly streamlined over the past two years, it remains complex and is subject to frequent changes.¹²

Although Ukraine belongs to international standardization bodies such as the International Standards Organization, it often fails to recognize foreign product certificates unless recognition is mandated through an international treaty signed by Ukraine.¹³

Tax inspections are a cause of concern for investors. The inspections themselves can be highly disruptive in the amount of time and energy that the inspections require of investors. While all tax audits - regardless of their location in the world - are lengthy and often intrusive activities, Ukraine's requirement that all businesses complete an audit at a minimum of once every three years is a troublesome aspect for businesses.

Businesspeople complained that in virtually every tax inspection, problems with record-keeping are uncovered and penalties are issued. Frequently, the businesses said, the fines are not legitimate in nature. While Ukraine has a strong appeal process that protects the rights of those inspected, it was said that many businesses choose not to fight the penalties and agree to pay fines as a cost of doing business in Ukraine.

In general, businesses did not complain about other types of inspections. Businesspeople referred to the importance of "the relationship" during an inspection. The officials in the various inspectorates agreed that it would not be possible to enforce all of the laws, since many are outdated.

¹² United States Trade Representative, taken from the website http://www.ustr.gov/assets/World_Regions/Europe_Mediterranean/Russia_the_NIS/asset_upload_file63_4215.pdf.

¹³ Ibid USTR

C. RECOMMENDATIONS

Because many of the issues related to operating a business are a matter of policy and not procedure, recommendations in this section will be briefly devoted to policy reform. However, an in-depth analysis is necessary for each individual area to form a set of recommendations with an appropriate level of analysis.

As a matter of urgency, the Ukrainian government must resolve its issue with providing VAT refunds in a timely manner. It is somewhat useless to provide incentives to foreign investors (particularly those intending to export) if most investors give up on ever seeing their VAT get refunded. This would be a firm barrier to investment for a foreign export-based business.

Ukraine should drop requirements for mandatory certification of all products, except for those that have an impact on the health and safety of consumers. In the case of the health and safety certificates, Ukraine must recognize foreign certifications in order to become more integrated into the global economy.

Tax inspectors should not look to maximize revenue collections (as the current case seems to be). Inspections should be conducted on a risk-management basis, choosing targets that primarily are in high-risk industries and those who have had significant violations in the past.

APPENDIX A:

PROBLEMS IDENTIFIED DURING RESEARCH

Problem	Impact/Potential Impact*
Information	
There is no centralized effort to provide information to prospective investors (or anyone going through an official procedure).	<p>The lack of written information (with the exception of laws) means that government officials are in a position to extract bribes from uninformed investors.</p> <p>Investors can make many mistakes during official procedures, slowing the investment process significantly.</p> <p>Government officials process documents differently (and sometimes within the same office) due to a lack of written procedures.</p> <p>Uncertainty adds to the investment risk.</p> <p>Due to ignorance, many informal businesses remain informal despite desires to become formalized.</p>
<p>The government rarely involves the business community in formulating policies, laws, or regulations.</p> <p>The new law on regulatory reform provides for significant improvement – although some instances were noted in which this law was either ignored or not fully complied with.</p>	<p><i>Businesspeople who do not participate in official decision making are generally negative about the investment environment (from worldwide experience). This negativity gets conveyed to foreign investors and sometimes causes them to look elsewhere.</i></p>
Entry	
Review committees are often entirely made up of Immigration and Labor officials.	<i>The narrow viewpoint of the application process could turn down needed expatriates.</i>
There are no clear criteria upon which the committee makes decisions on expatriate employees.	<i>Committees could turn down applications on the basis that local labor is available.</i>
Immigration requires a tax clearance certificate – even from new companies.	Getting the tax clearance certificate has proven to be very difficult when no taxes have been paid yet.
By law, a foreigner in Ukraine cannot work as the director of any company (even his own) until he gets a work permit; however, a new company cannot be registered without an appointed director already in place.	This problem has caused delays and presents an opportunity for officials to seek rent. This is a very real legal barrier, but reports suggest that it is ultimately overlooked.
Government officials frequently ask for additional documents not described by law.	This creates further delays and opportunities for officials to seek rent.

Problem	Impact/Potential Impact*
Registering	
The requirements for demonstrating that stated capital funds are available are unnecessary.	Primarily a nuisance for businesspeople, not a barrier.
Cities without one-stop shops have a lengthy and bureaucratic registration procedure.	This may be prevented by the implementation of the new law, but reports suggest that in Kyiv, problems with completing all the steps of the registration process are still very time-consuming. Because this affects small companies that attempt to self-register, the impact may be found in the number of informal businesses.
Different documents appear to be required in different regions.	This may also be prevented by the new law; however, differences from what is stated in the law mean that registrants must keep guessing as to which documents are necessary.
Registration of foreign investment requires an approval by oblast-level authorities.	<i>Registration of foreign capital should be automatic, and not depend on anyone's approval. This did not cause problems in Ivano-Frankivsk.</i>
Preferential treatment – in the form of duty-free and VAT-free imports for a firm's statutory fund that skip quality inspection – is given to entities that operate locally with foreign investment.	This creates an unfair advantage for companies that have foreign investment over those that do not.
"Investment" is only considered to be equity investment – ignoring reinvestment and debt.	This narrow vision of investment overlooks what may be the vast majority of investment.
Locating	
The process is extremely lengthy.	Could deter investment in property.
The process is extremely complicated, with duplicative processes.	There are many opportunities for error on the part of the investor, and possibilities for rent-seeking by government officials.
The two-stage process of first leasing land and then purchasing it is unnecessarily lengthy.	This adds time to an already lengthy process.
A conflict exists between the Yaremche City Land Department, and the State Land Resources Department in Yaremche (This problem may be isolated to Yaremche).	This can cause great confusion for businesspeople (as it did for the authors). Steps are duplicated by both agencies, and departments tend to extend their influence beyond the reach of the law.
Zoning requirements must be met during the acquisition process.	This is common within the CIS – but wholly unnecessary. Rights of ownership should not be tied to usage. There are plenty of checks and balances to ensure that usage complies with state regulations.
Investors must go through at least two City Council sessions in order to acquire land.	Because the City Council meets on a quarterly basis, this ensures that the process cannot be completed in less than five months.
There are few surveying firms available for investors.	Many investors are required by default to use the State Land Cadastre when conducting surveying.

Problem	Impact/Potential Impact*
Developing	
The process is extremely lengthy and time-consuming.	
The investor must gain approval simply to begin the process.	This seems unnecessary, and is very time-consuming since it requires a meeting of the Council (quarterly meetings).
There appears to be an overlap between the responsibilities of the Chief City Architect and the State Expertise on Investment (this may be limited to Yaremche).	Most investors appear to be required to complete both processes in order to build. Because they happen in sequence, this adds to the length of the process.
The process occurs in stages. Most countries require 15-23 approvals, but they happen in parallel.	The staging of the process requires significant additional time for completion.
It is necessary to get a permit to begin construction even after all of the plans have been approved.	An unnecessary step adding time and cost. Essentially, this step is to ensure the investor is using a qualified builder. Site inspections could do this without the necessity of an additional permit.
Several of the required reviewers do not have local offices.	This causes delays, as investors must wait for government officials to travel to the site.
It is mandatory that an investor obtain technical requirements from the city. This should be an optional service offered by the city, not a mandatory step.	For investors who already know the technical requirements and/or employ engineers to find them, this step adds to the length of the process.
There are conflicting procedures coming from each of the different agencies.	The staff of each of the agencies where we interviewed felt that the investor needed to approach them directly (rather than following a process). The Chief City Architect and the staff of the State Expertise on Investment stated that they circulate documents. However, agencies to whom the documents are to be circulated insisted that investors visit them directly rather than through a third state department.
Starting	
Product certification appears to be a major hindrance to business.	It was stated that it is not required for all goods (i.e., furniture) to be certified. However, because a safety certification is necessary to open a business, all of the furnishings have to be certified in advance. Many certifications are dubious at best. An example was given of Sony big-screen TVs being certified by a Lviv television manufacturer.
Certification is unnecessary for goods imported as part of the statutory funds of enterprises with foreign investment, due to preferential treatment on the basis of the Law of Ukraine "On Foreign Investment."	If certification is necessary to protect the safety and health of the public, why would goods then be excluded from this process on the basis of the source of the funds they were purchased with?
Foreign investors are given preferential treatment when directly importing capital assets for the statutory funds of local companies.	This means that local traders and manufacturers stand at a disadvantage compared to foreign suppliers when providing goods to start-up companies.
Ukraine does not have restaurant or hotel licenses, but instead uses certifications which are questionable as substitutes.	It doesn't appear that the rigor of obtaining a restaurant or hotel certification is equal to that involved in processes to obtain licenses in other countries.

Problem	Impact/Potential Impact*
Functioning	
Financial inspections can be extremely long and burdensome – and can potentially close a business.	While not documented in the research, it was noted that financial inspections can often be used as a tool against businesspeople. The inspection itself consumes managements' time (up to several months). Significant fines can be assessed for paperwork violations.
The State Tax Administration rarely issues written opinions on ambiguous clauses in the tax law – and even when the opinions are issued, they aren't necessarily binding or adhered to by inspectors.	Investors (even large foreign investors) operate in an environment of constant uncertainty.
Tax inspectorates inspect not only financial issues, but the status of licenses as well.	It is not clear that tax inspectors are qualified to conduct these inspections.
Inspection laws are often significantly outdated.	Inspections rely on “relationships” because the laws are so outdated. Inspectors know that they are not obligated to follow the laws exactly, unless the investor has a poor relationship with the inspectors. In these cases, the inspector will use the law (sometimes in absurd ways) to extract fines – and in some cases, bribes – from businesspeople.
While appeal processes are available to investors, large companies frequently won't use them for fear of harming relationships with government officials.	Large companies will often simply pay what they consider to be petty fines, even though they know this is in contradiction of the law. Small companies tend to fight.
VAT refunds are often never received, and thus cannot be applied toward future tax bills. When they do come, they are significantly late – and often accompanied by extensive financial audits.	VAT refunds are critical for any export-based industry, and poor implementation of the VAT refund scheme is a major deterrent to export-based investors. Because of the troubles associated with VAT refunds, many businesspeople have stopped applying for them altogether.
The certification authorities do not recognize foreign certifications, and require certifications that most would deem unnecessary for imports. Product certification appears to be a major hindrance to business.	Many certifications are dubious at best. An example was given of Sony big-screen TVs being certified by a Lviv television manufacturer. Another example was the necessity to certify Mercedes Benz buses through a local Ukrainian bus manufacturer.

* “Potential Impact” represents cases in which the procedures, regulations, and/or laws could potentially be problematic, although no problems of this nature were discovered in interviews.