# Ukraine: Overview of the current status of investment regulations and M&A market

One of the consequences of the recent economic crisis is a sharp drop in companies' market capitalizations and, generally, in valuations of businesses throughout the emerging markets. In Ukraine such re-valuation of businesses occurred on the background of a rather substantial currency devaluation which led to an increase in competitiveness of Ukrainian exports. While relatively few foreign investors have spotted this unique opportunity to put their money on a winning horse, it is widely expected that an inflow of direct foreign investment will substantially increase in the next few years, including private equity deals.

The Ukrainian government has rather limited financial resources for giving the country's economy a boost. In these circumstances regulatory measures designed to attract foreign investments become more important. While some long-awaited pieces of legislation have been finally passed (e.g. the Law on Joint Stock Companies), there is still a list of legal rules requiring amendment and codification. The draft Tax Code, the draft Law on Limited Liability Companies along with some other essential draft laws still sit in the Verkhovna Rada (Parliament) of Ukraine.

## Investment Regulations

Ukrainian legislation generally creates equal opportunities for both domestic and foreign investors. There are only few restrictions on foreign investments, e.g. foreign companies cannot hold legal title to agricultural land.

The Law on Foreign Investment Regime provides guarantees for foreign investors, such as protection from subsequent changes in regulation, prohibition of nationalization of foreign investments, right to claim damages suffered as a result of acts or omissions of the state bodies and guarantees for repatriation of foreign investments.

Ukraine is a party to over 40 bilateral agreements on cooperation and mutual protection of investments (BITs), including the USA-Ukraine treaty, which contain certain additional protections for foreign investments.

Furthermore, Ukraine has double tax treaties (DTTs) with over 60 countries, including the US. These give foreign investors useful tools for structuring cashflows from Ukraine, as taxation of dividends, interest and royalties is generally reduced by such treaties.

There are still some legal and technical difficulties with foreign currency regulation issues, but recently substantial positive changes have been seen in this area (including lifting of the onerous mandatory requirement to foreign investors to settle in the Ukrainian domestic currency only and through Ukrainian banks for any Ukrainian shares or assets).

## *M&A market*

In the current financial situation M&A was often the only way to attract capital for many businesses. The sellers were looking either for reputable business partners with available financial resources or for cash to fund their business activities elsewhere.

The majority of recent M&A transactions may be called buyers' driven as most of the buyers were often able to dictate their terms and conditions, especially in deals involving distressed assets.

The immediate need for funds has also influenced the timing of a large number of M&A transactions, as the deals were negotiated and completed usually in a much shorter timeframe than in the pre-crisis period.

It is widely believed that in the short-to-medium perspective the traditional foreign investors focus on Ukrainian agricultural sector, telecommunications, pharmaceuticals and energy will remain unchanged. Experts also predict potential investors' interest in the dairy products, confectionary industry and breweries.

Increase of the interest from Russian and Asian investors in Ukraine is a sign that Ukrainian M&A market is likely to stay afloat for the observable future, and a higher risk appetite is likely to be rewarded.

Author:

**Denis Y. Lysenko,** partner, heads Corporate / M&A, Antitrust & Competition, Banking and Finance practices of Vasil Kisil & Partners. Lysenko@vkp.kiev.ua