



## Executive Summary

As the 2014 Investment Climate Statement goes to press, Ukraine is in the midst of a fundamental and historic transition, while facing military and economic threats from Russia. After three months of public protests ended the corrupt and increasingly autocratic government of President Viktor Yanukovich in February 2014, a new and reform-minded government initiated important steps to curb corruption, promote transparency, and introduce better governance at the national and local level.

The government also announced its intention to return Ukraine to the path toward closer integration with Europe and the West and to revitalize the stagnant economy. Prime Minister Yatsenyuk and his cabinet have engaged positively with the U.S. and European countries, and have already made a number of difficult decisions necessary to take Ukraine in the right direction. The government has taken the major steps to meet the requirements for an IMF lending agreement that should help stabilize the economy. The planned signing of an Association Agreement with the European Union in June will likely bring numerous reforms which will benefit foreign investment, but will create additional change in the short term as Ukraine's new government works to implement its provisions. Efforts along these lines could well enable Ukraine to turn the page on the past and open its doors more widely to foreign investment through cementing democratic values and adhering to transparent economic principles.

However, the Russian invasion, occupation, and annexation of Crimea in March, Russia's continued interventions in eastern Ukraine, along with Russia's trade and economic policies towards Ukraine have already proved – and may continue to prove – disruptive to the new Ukrainian government's efforts. For example, in August 2013, in response to Ukraine's plans to sign agreements with the EU, Russia imposed a series of trade barriers on Ukrainian exports, particularly in agriculture and steel. This impacted major exporters, including multinational companies who produced in Ukraine for Russian markets.

This report presents the politics, legislation, economic indicators, and business conditions as of April 30, 2014. As noted, the political and economic situation in Ukraine has been in a state of flux over recent months, so there is the potential for the investment climate to change quickly over the coming year. Overall, Ukraine's internal politics provide many reasons to be optimistic about the future, particularly since the popular passions that led to the February 2014 change in government were fueled by widespread unhappiness with corruption and a lack of reform.

### **1. Openness to and Restrictions Upon, Foreign Investment**

#### ***Government's Attitude toward Foreign Investment***

The government has sent strong signals that it welcomes foreign investment, and has already taken bold steps to turn the page from the past. Prime Minister Yatsenyuk has strongly encouraged government officials to engage with businesses and, notably, requested assistance

from business associations in the selection of tax officials. The new governor of the National Bank of Ukraine met with foreign bankers on his first day, promising a new open and transparent relationship. The new head of the tax administration has reached out to foreign business leaders, including through the American Chamber of Commerce. Additionally, the Rada (parliament) has demonstrated its willingness to improve the business climate by passing several measures to improve the ease of doing business, including two laws to improve procedures for obtaining permits and to reduce the number of permits required for doing business.

After the Yanukovich administration's long resistance to economic reforms that would unlock much-needed external financing from the IMF, the new government quickly revived negotiations and moved rapidly on multiple reforms associated with agreed-to prior actions. As of this writing, a \$17 billion loan from the IMF is pending, to be bolstered by additional billions from other international donors. Such financing should go far towards restoring economic stability. The main political components of the European Union Association Agreement were signed in March 2014, with the remainder of the agreement to be finalized in the coming months. The EU unilaterally reduced tariffs on Ukrainian goods as of April 22, which could have significant potential for economic growth if made permanent as part of the Association Agreement (and its component Deep and Comprehensive Free Trade Agreement).

Ukrainian legislation provides for national treatment of foreign investors, in line with its World Trade Organization (WTO) commitments. Due in part to conflicts in the body of laws that govern investment and commercial activity in Ukraine, and a high level of corruption in the country, foreign investors have found it difficult to pursue cases in Ukrainian courts and often seek arbitration outside of the country.

The new government, however, is less than two months old, and reversing deeply embedded practices will require significant time and effort. While in 2013 Ukraine jumped 28 places in the World Bank's "Doing Business" rankings—earning the "Most Improved" award—the fundamental factors that make business difficult remain, particularly for small- and medium-sized enterprises.

Despite the difficult operating environment, some investors are finding opportunities in Ukraine. For their part, officials at local levels are increasingly looking to attract investment and create jobs in their regions. In many instances, these local officials have become willing partners for investors in need of land or permits, which frequently are controlled below the national levels.

#### ***Other Investment Policy Reviews***

In 2012 The **United Nations Conference on Trade and Development (UNCTAD)** conducted an investment policy review of Ukraine: [http://unctad.org/en/docs/webdiaeia2012d2\\_en.pdf](http://unctad.org/en/docs/webdiaeia2012d2_en.pdf)

The **Organization for Economic Cooperation and Development (OECD)** conducted an investment policy review of Ukraine in 2011: <http://www.oecd.org/daf/inv/investmentfordevelopment/ukraine-investmentpolicyreview-oecd.htm>

#### ***Laws/Regulations on Foreign Direct Investment***

The Law of Ukraine on Investment Activity (1991) establishes the general principles for investment. In addition, the following laws and regulations pertain to foreign investment:

- Law "On the Foreign Investment Regime" (1996), which provides for equal treatment of foreign and Ukrainian-owned business, with some restrictions;
- Law "On the Protection of Foreign Investment" (1991);
- Cabinet of Ministers' Resolution, "On the Procedure for the State Registration of Foreign Investment" (1996);
- Law "On Production-Sharing Agreements," (1999), amended in 2012;
- The Land Code (2001) provides for private ownership of land, facilitating the privatization of land for agricultural purposes, but also established a moratorium on agricultural land sales;
- National Bank of Ukraine Resolution "On Regulation of Foreign Investing in Ukraine" (2005);
- Law "On Amending Certain Laws of Ukraine with the Purpose of Overcoming Negative Impacts of the Financial Crisis" (2009);
- Updated Tax Code (2010);
- Law "On Public-Private Partnerships" (2010);
- Law "On Preparation and Implementation of Investment Projects Based on the Principle of the Single Registration Window," (enacted 2012), streamlined investment procedures;
- Amended Customs Code (2012), improved customs clearance and valuation;
- A Civil Code and a contradictory Commercial Code went into effect in 2004.
- Law "On Industrial Parks" (2012)

### ***Industrial Promotion***

Ukraine's industrial strategy is in transition. The government of Ukraine is phasing out the Ministry of Industrial Policy, which it intends to merge with the Ministry of Economic Development and Trade. The move has vexed industrialists brought up in the Soviet system, and it is unclear whether this merger will affect ancillary central organizations that are the primary drivers of national-level investment projects. As of this writing, deteriorating relations with Russia are adversely affecting the industrial sector, as much of Ukraine's industrial production is in the eastern regions of Donetsk and Luhansk, where pro-Russian separatists and insurgents have been most active.

The government of Ukraine has used its State Agency for Investment and National Projects of Ukraine as a clearing house for state approved investment projects. The agency also runs a commercial outreach program called Invest Ukraine where different investment projects are hosted. These entities have run investment conferences and do road shows to highlight investment opportunities in Ukraine. In addition to the national projects, most oblasts (regions) have their own development offices eager to talk with investors.

Inquiries on industrial investment may be directed to:

### **State Agency for Investment and National Project of Ukraine**

<http://www.ukrproject.gov.ua/en>

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***Limits on Foreign Control***

In general, the regulatory framework for the establishment and operation of business in Ukraine by foreign investors is similar to that for domestic investors (apart from the ownership of agricultural land). Investment permits are not required, but all enterprises must be established according to the form and procedure prescribed by law and registered with the appropriate state authorities.

Foreign companies are restricted from owning agricultural land, manufacturing carrier rockets, production of bio-ethanol, and some publishing activities.

In addition, Ukrainian law authorizes the government to set limits on foreign participation in "strategically important areas," but the wording is vague and the law is rarely used in practice. Generally, these restrictions limit the maximum permissible percentage of foreign investment into Ukrainian firms in these sectors. For example, the share of foreign investors' participation in Ukrainian publishing houses is limited to 30%. Investments into the energy sector can also be problematic. A company's "strategic status" can be lifted by the Rada on the recommendation of the Cabinet of Ministers and foreign entities would then be allowed to participate. Although foreigners are prohibited from founding TV or radio stations, they can invest into already established entities in this area. In addition, foreign entities cannot buy agricultural land, as mentioned previously.

Ukraine's Anti-Monopoly Committee implements anti-monopoly, competition, and consumer protection legislation under the 2002 Law "On Protection of Economic Competition." New company start-ups and mergers/acquisitions face strict controls. Most investments, joint ventures with multiple partners, and share acquisitions require the Committee's approval. Those found to be violating fair competition rules may be fined up to 10% of the prior year's turnover and if unfairly gained profit exceeds 10% of income, up to three times the normal penalty can be collected. The applicant, defendant, or a third party may appeal a Committee decision, but the appeal must be filed within two months after the decision is made.

In 2010, Ukraine canceled the mandatory registration requirement for foreign investment, although foreign investors may still register with state authorities.

***Privatization Program***

The State Property Fund oversees privatizations. Privatization rules generally apply to both foreign and domestic investors, and, in theory, a relatively level playing field exists. Observers claim, however, the terms of a privatization contest are commonly adjusted to fit a pre-selected bidder. The coming year may see further privatizations as a means to plug budgetary gaps and

the transparency of any new privatizations will be a good indicator of the new government's approach to business and investment

With several exceptions, few new major privatizations have been conducted since the rush of 2004. The largest recent privatization of Ukrtelekom (Ukraine's monopoly state **telecommunications** operator), was conducted through what was widely viewed as a non-transparent, single-bid process in 2011. In 2012, most regional **gas distribution** companies were privatized and the State Property Fund launched the privatization of **heating plants** with the sale of a heating plant in Kharkiv, in eastern Ukraine. Both privatizations were conducted at what analysts considered below market prices. The 2013 privatization plan yielded only 8% of its projected revenues, despite the sale of Donbasenergo, a regional **energy generation** company. The government of Ukraine also announced it may privatize the state energy monopoly Naftogaz and its subsidiaries, as well as **spirit distilleries**, but the initiative has not moved forward.

In 2012, the government of Ukraine announced its intention to privatize all 112 state-owned **coal mines** by 2014, and the Cabinet of Ministers issued a resolution to begin transforming the mines into joint stock companies in preparation for privatization. The Cabinet of Ministers also permitted the majority of state-owned mines to transfer their assets into concessions. Some industry analysts believe that the majority of the state-owned mines are no longer economically productive and would need to be bundled with other assets to attract investor interest. It is unclear to what degree the current or future government will work to meet this timeline.

## Investment Trends

Measure	Year	Index/Ranking
TI Corruption Index	2013	144 out of 177
Heritage Economic Freedom	2014	155 out of 178
World Bank Doing Business	2014	112 out of 189
MCC Gov't Effectiveness	FY2014	-.2 (38%)
MCC Rule of Law	FY2014	-.33 (27%)
MCC Control of Corruption	FY2014	-.46 (8%)
MCC Fiscal Policy	FY2014	-4.3 (35%)
MCC Trade Policy	FY2014	86.2 (96%)
MCC Regulatory Quality	FY2014	-.29 (35%)
MCC Business Start Up	FY2014	.949 (62%)
MCC Land Rights Access	FY2014	n/a
MCC Natural Resource Mgmt	FY2014	20.2 (31%)
MCC Access to Credit	FY 2014	52 (85%)
MCC Inflation	FY 2014	.6 (92%)

## 2. Conversion and Transfer Policies

### *Restrictions on Converting/Transferring Funds*

The 1996 Law "On Foreign Investment" guarantees the "unhindered transfer" of profits, revenues, and other proceeds in foreign currency after taxes and other mandatory payments. However, since November 2012, the National Bank of Ukraine (NBU, central bank) has

implemented a number of restrictions on foreign exchange, which it further strengthened with a February 2014 resolution intended to halt the decline of the hryvnia at the height of the political crisis. The new NBU leadership has begun to relax these rules, but a number of controls remain.

A March 28 resolution gradually lifted the February requirement for advance application to purchase currency from five days to three, and then two days, and restored swap-and-forward contracts to purchase currency. The NBU has also lifted ID requirements for sale of hard currency. Some currency controls still remain: exporters must sell 50% of foreign earnings in the interbank market, and return exports proceeds to Ukraine within 90 days of the sale. The measures are to expire on May 17, 2014, but may be extended.

Additionally, under previous regulations, foreign investors may repatriate earnings, but companies must obtain a license from the NBU for some operations. Hard currency transactions over \$50,000 require NBU approval, which also incurs a fee.

Other regulations dating back to the 2008 financial crisis include limits on individual residents' and non-residents' monthly transfers of foreign currency to UAH 15,000 (\$1,300) per day without supporting documentation (e.g., court decision, contract, purchase invoice, etc.) or up to an equivalent of UAH 75,000 (\$6,500) a month without supporting documentation. Exemptions are allowed for medical expenses abroad or related travel expenses; payments connected with a death in the family abroad; or money transfers made to enforce court or law enforcement decisions; as well as transfers made as part of a permanent departure from Ukraine.

The government of Ukraine banned the issuance of consumer loans in hard currency beginning in 2011. Previously, the NBU relaxed the cap on foreign currency loans by foreigners to Ukrainians in an effort to attract foreign lending. However, starting in 2010, the NBU required a license from non-financial companies which issue guarantees on foreign loans.

Investors convert earnings into foreign currency through commercial banks, which purchase foreign currency on the electronic inter-bank currency market. Commercial banks may trade foreign currency in electronic form with other banks through participation in electronic inter-bank currency market, regulated and operated by the NBU. To purchase hard currency, companies must provide their banks with a copy of their foreign trade contracts. Commercial banks must announce their clients' intentions to sell on inter-bank currency market if the transactions exceed \$500,000. The Law "On the Circulation of Promissory Notes" provides an opportunity for payments in foreign currency and issuance and circulation of promissory notes, in accordance with the 1930 Geneva Convention "Providing a Uniform Law for Bills of Exchange and Promissory Notes."

At present, there is no developed legal parallel market that investors might use to remit returns on their investment such as convertible instruments or foreign currency denominated bonds. In December 2011, in an attempt to increase the range of instruments available, the Rada permitted issuance of domestic government bonds denominated in hard currency. The government of Ukraine launched a placement of such bonds in the same month. There is no legal limit on the inflow or outflow of funds for profits, debt service, capital gains, returns on intellectual property, or export/imports.

Direct investors seeking to liquidate and repatriate their investments face stringent documentary requirements, though the NBU has stated its willingness to waive requirements if documents from the original transactions are no longer available. Nonresident investors who wish to convert dividends or divestment income into foreign currency must provide proof of the initial foreign investment.

In 2013 Ukraine adopted a number of Tax Code amendments in order to strengthen the legislative framework fighting transfer pricing. The amendments are seen as largely in line with international “arm’s length” principle of transfer pricing control. The new government has indicated that the actual implementation of reporting under the law may be delayed from spring of 2014 to 2015 to provide a transition period for companies.

### **3. Expropriation and Compensation**

Under the 1996 Law "On the Regime of Foreign Investment," a qualified foreign investor is provided guarantees against nationalization, except in cases of national emergencies, accidents, or epidemics. In 2009 the Parliament adopted the law on transfer of land plots and property for public needs. The law gives clear definition of public need, defines procedures for such an expropriation, and provides a list of possible reasons for expropriation for public needs.

Expropriation of property is rare, with several exceptions. In 2008, the government abruptly cancelled a Production Sharing Agreement to explore for oil and gas in the Black Sea. And in 2010, law enforcement officials forcibly removed a U.S.-invested floating restaurant from its moorage in Kyiv without providing documentation or further access to the owners. The annexation of Crimea by Russia has raised the fear that a number of private and Ukrainian state-owned businesses may be expropriated.

International institutions have recommended that definitions of expropriation and nationalization in the foreign investment law and bilateral treaties be expanded to include indirect and creeping expropriation. Courts have the jurisdiction to determine whether owners of privatized enterprises failed to pay for an enterprise or to implement investment commitments in a privatization sale. Failure to pay or invest allows the government of Ukraine, with court permission, to revoke ownership and resell the property.

#### ***Crimean Nationalization***

There is significant concern about the future of businesses in Crimea. For example, although Ukraine does not recognize Russia’s annexation of the region, the Russian government has taken steps to impose control over Crimea, for example installing Russian customs officials on Crimea’s internal border with the rest of Ukraine. Additionally, the Crimean State Council has issued a decree on April 11, 2014 that businesses must follow the Russian tax code beginning January 1, 2015. The decree stipulates interim revisions to the Ukrainian tax code. Further, many are concerned that registration will provide an inroad for raiding attempts. On March 18, armed men conducted a physical raid against an auto showroom, a move that may have been politically motivated. Given the new power vacuum and shifted business alliances in Crimea, further hostile takeovers or raids may occur along lines of ownership.

### **4. Dispute Settlement**

***Extent and Nature of Investment Disputes***

The Embassy continues to advocate on behalf of U.S. investors. These investment disputes frequently reflect the key problems in Ukraine's investment climate such as inadequate rule of law, a lack of fair and impartial dispute resolution mechanisms, official corruption, and poor enforcement of domestic court and international arbitration decisions. Another problem is poor corporate governance (inadequate protection for shareholder rights, insufficient disclosure, asset-stripping, and voting fraud). Currently, there is no single point of contact in the Ukrainian government tasked to help resolve business and investment disputes involving foreign companies. Most U.S. businesses have little confidence in Ukrainian courts. Commercial contracts may permit the parties to use international arbitration or specified foreign courts to settle disputes. Though Ukrainian legislation recognizes international arbitration decisions, in practice such decisions can be very difficult to enforce in Ukraine.

Corruption continues to lie at the heart of many investor disputes. Laws and regulations are vague; the wide latitude for interpretation provides ample opportunities for rent-seeking at every bureaucratic layer.

While the key issues that fuel business disputes remain unchanged, the Embassy has received fewer requests from U.S. investors requesting advocacy on their behalf. The Embassy has also noticed a string of long-standing disputes previously subjected to multiple postponements and delay tactics that have recently had favorable rulings. Whether this small but noticeable change is the result of the recent change in government, or the lack of attention to business disputes brought on by current events in Crimea and the eastern border, is unknown.

***Description of Ukraine's Legal System***

In the event of a commercial dispute, a foreign investor may seek recourse through a number of institutions. Generally, the Foreign Investment Law provides that a dispute between a foreign investor and the state of Ukraine must be settled in the Ukrainian courts, unless otherwise provided by international treaties. All other disputes involving a foreign investor must be settled in the Ukrainian courts, in courts of arbitration, including international arbitration courts, or other bodies of dispute resolution chosen by the parties to the dispute.

Ukraine's judicial system consists of the Constitutional Court and the courts of general jurisdiction. The Constitutional Court has exclusive jurisdiction over interpretation of the Constitution and laws of Ukraine and acts as final arbiter on constitutional issues. Courts of general jurisdiction are organized by territory and specialty and include: (i) local courts; (ii) appellate courts; and (iii) Supreme Courts. Local courts are either courts of general jurisdiction (including military courts) or specialized courts (i.e. commercial and administrative courts). Local commercial courts exercise jurisdiction over commercial and corporate disputes, while local administrative courts administer justice in disputes connected with legal relations in the area of state government and municipalities, with the exception of military disputes. Administrative courts also handle tax, customs, and certain antimonopoly disputes.

Since Ukraine is a civil law country, the exercise of judicial power is based solely on the application of statutes. Court decisions do not constitute binding precedents, although Supreme Court and Supreme Commercial Court decisions are summarized, to introduce uniformity to the interpretation and application of the applicable legislation, and are followed by the lower courts on a quasi-mandatory basis.



Commercial courts of Ukraine accept jurisdiction over disputes between legal entities, including foreign legal entities, Ukrainian legal entities and individual entrepreneurs, arising out of the conclusion, modification, termination, and performance of commercial agreements (including privatization). Commercial courts are also in charge of administering bankruptcy cases and certain cases initiated by the Antimonopoly Committee of Ukraine and the Accounting Chamber.

### ***Binding International Arbitration***

Ukraine enacted an international commercial arbitration law in 1994, which parallels commercial arbitration laws set forth by the United Nations Commission on International Trade Law.

Ukraine is a member of the **New York Convention of 1958 on the Recognition and Enforcement of Foreign Arbitration Awards**. Some investors have problems enforcing foreign arbitration awards in Ukraine. Foreign arbitral award enforcement procedures in Ukraine are regulated by a number of statutes and regulations, including Section 8 of the Civil Procedural Code and a law "On Enforcement Proceedings." In 2000 Ukraine ratified the Washington Convention, providing for use of the **International Center for Settlement of Investment Disputes (ICSID)**, an internationally recognized mechanism for resolving investment disputes between investors and the government of Ukraine. The U.S.-Ukraine Bilateral Investment Treaty (BIT), signed in 1996, recognizes arbitration of investment disputes before the ICSID. One major investment dispute involving a U.S. company was resolved in 2006 through a combination of direct consultations with the Ukrainian government and international arbitration by ICSID.

## **5. Performance Requirements and Incentives**

### ***Performance Requirements***

There are no current performance requirements or incentives, except for those made as part of privatization agreements. While negotiating its WTO accession, Ukraine eliminated measures that conflict with the WTO Agreement on Trade-Related Investment Measures (TRIMs) in the automobile industry and other sectors. While not yet implemented, several automobile industry specific import taxes are pending which would prove TRIMs noncompliant.

### ***Investment Incentives***

Ukraine modified its foreign investment law of 1996 to provide state guarantees to foreign investors. The most important of these is the unhindered and immediate repatriation of profits and stable regulations for the time of the investment. Foreign investors are exempt from customs duties for any in-kind contribution imported into Ukraine for the company's charter fund. Some restrictions do apply and import duties must be paid if the enterprise sells, transfers, or otherwise disposes of the property. There is no current requirement that investors purchase from local sources, export a certain percentage of output, or only have access to foreign exchange in relation to their exports.

From January 1, 2013, through January 1, 2018, Ukraine provides a 0% Corporate Profit Tax (CPT) on income from projects resulting in job creation in qualifying industries, including high-tech, eco-friendly, and manufacturing and export-oriented industries. The incentive is granted for new projects as well as reconstruction or upgrades to existing enterprises, under certain conditions concerning the value of the investment, the number of jobs created, and salary levels

Apart from small businesses, agricultural producers, IT companies, and qualifying investors as stated above, the 2011 Tax Code provides for additional tax “holidays” and incentives. Specifically, the following businesses are entitled to 10 years of CPT exemption (subject to certain limitations and qualifying criteria): “Light” industry; ship and aircraft-building; agricultural machinery producers; power-generating companies that utilize renewable energy sources; and three- four- and five-star hotels.

The following industry-specific tax incentives are available:

- For the publishing and cinematography industries (valid till January 1, 2015, and January 1, 2016, respectively)
- For enterprises selling domestically-produced energy-saving goods in Ukraine, up to 80% of profits may be tax exempt; and for enterprises adopting energy-saving projects, up to 50% of profits may be exempt
- Certain incentives are available for taxation of profit of investment funds
- Taxable gains on sales of securities are subject to a reduced CPT rate of 10%
- There are also certain tax incentives for the fuel and energy sectors and for enterprises supplying water, heat, and wastewater disposal services.

Ukraine also offers generous depreciation rates for most fixed assets, including property, plant, and equipment for both foreign and domestic investors.

## **6. Right to Private Ownership and Establishment**

The Constitution of Ukraine guarantees the right to private ownership, including the right to own land. Ukraine's Law "On Ownership" recognizes private ownership and stipulates that Ukrainian residents, foreign individuals, and foreign legal entities may own property in Ukraine. Property owners, including foreign investors and joint ventures, may use property for commercial purposes, lease property, and keep the revenues, profits, and production derived from its use. However, the law is not comprehensive, and mechanisms for transferring ownership rights are weak. Some difficulties have arisen when foreigners acquire majority control of enterprises, with the government or the current management in some cases continuing to exercise effective control of company decisions.

The Land Code (2001) provides for foreign ownership of non-agricultural land and clarifies the rights of foreign investors, and addresses the right of individuals to own, buy, and sell land. It classifies land into seven categories based on potential use, including agricultural, industrial, and natural reserve lands. While industrial-use land can be bought, sold, and mortgaged, Ukraine's parliament set a moratorium on the purchase of agricultural lands, through 1 January 2016.

Ukrainian-registered land management companies for the purchase of non-agricultural land, and the management of (all types) land in Ukraine are permitted. The Land Code codifies the state's right to oversee private land transactions via registration, the court system, and dispute mediation, as well as broad government/state rights to "influence" the land market.

## **7. Protection of Property Rights**

***Real Property***

Ukraine has a functioning registry of real property and mortgages. The Land Cadaster Law of July 2012 provided for a single land registry; its 2013 launch marked an improvement in land ownership protection. Local media estimated that 5% of land in Ukraine does not have clear title. Ukraine has improved its ratings in registering property in the WB Ease of Doing Business ratings from #158 in 2013 to #98 in 2014.

Since 2000 Ukraine has laid the legislative and administrative groundwork for a functioning mortgage market. Adoption of the Laws "On Withholding Land Shares in Kind" in 2002 and "On Mortgages" in 2003 was particularly important. The government of Ukraine created the State Mortgage Institution (SMI) in 2004 as a liquidity facility largely aimed at putting downward pressure on lending rates by allocating capital efficiently. The SMI began issuing corporate securities during the first quarter of 2007. SMI's actions, which were intended to bring liquidity to the market, had limited success due to unfavorable conditions for lending development after the 2009 financial crisis. In line with the mortgage situation, the SMI raised its annual interest rate to 18% November 2012, pushing the final mortgage rates for the customer to as high as 21%. New lending stalled due to the 2008 financial crisis, and came to a virtual standstill after Ukraine banned new mortgage lending to private persons in foreign currency in November of 2009.

According to the Ukrainian government's own estimates, 40% of economic activities in the country are conducted in the informal sector.

***Intellectual Property Rights (IPR)***

As noted, the new government came to power only recently. It has so far shown a strong commitment to increase transparency and the rule of law, which could aid in the introduction of a modern IPR system in Ukraine. The prospects for improvement of IPR protection may thus be improving. Following is excerpted from USTR's 2013 Special 301 Review, released May 1, 2013:

"As a result of the 2013 Special 301 Review, the U.S. Trade Representative (USTR) designates Ukraine as a priority foreign country (PFC). This designation is the culmination of several years of growing concern over widespread IP theft, including the growing entrenchment of IPR infringement that is facilitated by government actors.

During intensive bilateral engagement, Ukraine has made a series of commitments to make specific improvements in the areas of government use of pirated software, nontransparent administration of royalty collecting societies, and online piracy. Notably, Ukraine and the United States agreed to an IPR Action Plan in 2010, which Ukraine publicized in 2011. Implementation of this plan was the subject of intensive bilateral engagement in 2012, including through the Trade and Investment Council meeting. Unfortunately, the situation has continued to deteriorate on each of the issues identified below. Recent efforts on the side of the government of Ukraine have not gone far enough to demonstrate a commitment to resolving long-standing problems.

The United States is deeply concerned by the deterioration of the entire system for collecting and disbursing music royalties in Ukraine. Ukraine has recognized that it has a significant problem with the operation of illegal or "rogue" collecting societies, i.e., organizations that collect

royalties by falsely claiming they are authorized to do so. Such organizations tend to operate without adequate transparency and rarely disburse sufficient funds that they collect to the rights holders entitled to the royalties. The government has not prosecuted several rogue collecting societies -- even societies that the government of Ukraine determined were collecting money without the necessary authorization.

Furthermore, in 2012, the State Intellectual Property Service of Ukraine revoked the authorization of the Ukrainian Music Rights League, a collecting society that producers report had fairly disbursed royalties. This action has been credibly characterized as an attempt to empower rogue collecting societies, including a rogue collecting society that reportedly has strong ties to government officials. Moreover, in August 2012, Ukrainian courts issued a ruling that eliminated the current procedure for accrediting all collecting societies. Currently there are no authorized collecting societies for producers' or performers' rights in Ukraine.

Moreover, despite committing to promoting legislation to improve the collecting society system, the only legislative amendment proposed to change the collecting society system was an amendment proposed by the government in January 2013 which appeared to empower the aforementioned rogue collecting society that has ties to government officials. That amendment has been withdrawn, but no alternative has been proposed.

The current system of collecting societies in Ukraine institutionalizes misappropriation of royalties. Ukraine must implement a fair and transparent system for authorizing collecting societies as soon as possible and must provide rights holders with a fair and transparent mechanism for enforcing their rights.

The United States has repeatedly conveyed its concern about software piracy in Ukraine. The government of Ukraine acknowledges that a significant percentage of the software used by the government itself is unlicensed. The most recent industry data identify Ukraine as having a higher software piracy rate than almost all other countries on the Priority Watch List. Ukraine has acknowledged the need for the government to use legal software, and has issued repeated official documents calling for such legalization as far back as 2002, and most recently, in April 2013.

However, these statements have not produced results. In the past, the government of Ukraine has stated that it will allocate funds that are "necessary to transition government ministries to licensed software, to include training for inspectors, as well as ongoing technical assistance to each Ministry in setting up an internal monitoring and compliance system," but has failed to do so. While the government of Ukraine budgeted 100 million UAH (\$12.3 million) for 2013 software legalization in state institutions (which the government of Ukraine admits does not reflect the value of the illegal software being used), the government has not spent this money or taken other steps toward legalization, and disbursement of the funds is uncertain. Ukraine must adopt a transparent and effective system to transition to the use of legal software by the government and ensure that legal software is used on an ongoing basis.

The United States has repeatedly raised its strong concerns about the significant and growing piracy of copyrighted content. Optical disc piracy was one of the principal reasons underlying the U.S. decision to add Ukraine to the Watch List in 1998, the Priority Watch List in 1999 and 2000 and to designate Ukraine a PFC from 2001 through 2005. Online piracy now has significant and growing consequences for both the Ukrainian market and for international trade.

For example, ExtraTorrent.com, which is based in Ukraine, professes to be “The World's Largest BitTorrent System.” This site is the 76th most visited site in India, and among the top 200 sites in six other countries (including the United Kingdom and Australia), illustrating how Ukraine has become perceived as a safe haven for online piracy enterprises serving other markets.

There was not a single online piracy-related conviction in Ukraine in 2012. In late January 2012, the government of Ukraine seized servers as part of a criminal investigation into EX.UA, which is both the country’s twelfth most visited website and a prolific source of infringing international music, software, and video (It also appears on USTR’s Notorious Markets list.). Following intense negative public reaction, and public statements in support of the website by influential figures, the site reopened shortly thereafter and continues to monetize infringing content today. The United States views the few ad hoc and nontransparent government actions against online piracy as underscoring the need for Ukraine to establish a predictable and transparent system to combat online piracy. Enhanced interagency coordination, consultation with all affected stakeholders and targeted legal reforms to provide clarity and predictability are necessary to creating an adequate and effective strategy to combat online piracy.

### ***Other IPR Concerns***

In addition to the acts, policies, and practices that are the grounds for this PFC designation, the United States remains concerned about other IPR matters discussed in previous Special 301 Reports. Industry has reported that criminal prosecution for counterfeiting crimes are stalled and ineffective, and that seized goods are not disposed of or released in a timely manner.

Additionally, large amounts of counterfeit products, as well as pirated goods, are openly sold in physical market in Ukraine. The United States will continue to engage Ukraine bilaterally on these and other matters, outside of the Section 301 investigation.

The acts, policies, and practices described as the grounds for PFC have cumulatively resulted in significant financial damage to U.S. copyright-related industries, including the foregone market opportunities and the impact on the markets in other countries. Intensive bilateral engagement by the United States has not resulted in meaningful change, and the situation in Ukraine appears to have worsened rather than improved.

### ***Patents and Trademarks***

Trademarked and copyrighted goods must be registered for a fee in the Customs Service's rights holder database in order to be guaranteed protection. Counterfeit goods, including products containing protected trademarks, remain readily available. Counterfeit apparel is particularly common. Most counterfeit goods are not produced in Ukraine, although industry has reported instances of counterfeit cigarette production. The amount of counterfeit pesticides on the market has increased, now accounting for a significant percentage of the market, according to industry. government of Ukraine officials recently seized large quantities of counterfeit pesticides, but industry representatives have raised concerns that the pesticides will not be disposed of properly, as Ukraine lacks the technical capability to destroy some forms of counterfeit pesticides.

### ***Judicial System for IPR Protection***

Civil IPR lawsuits remain rare because of a general lack of confidence in Ukraine's legal system, and because few judges are properly trained in IPR law. Law enforcement officials and industry also complain that too many IPR cases result only in small fines, which do not deter illegal

activity. In some cases, infringing companies have won dubious and nontransparent court decisions that appear to violate the patent and trademark rights of other companies. For additional information about treaty obligations and points of contact at local IP offices, please see WIPO's country profiles at <http://www.wipo.int/directory/en/>.

Embassy point of contact: Larry Pixa [PixaLD@state.gov](mailto:PixaLD@state.gov)

Local lawyers list: <http://ukraine.usembassy.gov/lawyers.html>

## **8. Transparency of the Regulatory System**

Ukraine's weak institutional framework, plagued by corruption and poor governance, causes low levels of competition and high barriers to entry and exit to businesses. Ukraine ranked 137 of 148 countries in terms of institutional framework according to the World Economic Forum's 2013/2014 Global Competitiveness Index. Ukrainian regulatory institutions are characterized by poor transparency of government policy making, high favoritism in decisions of government officials, poor judicial independence, weak protection of property rights and minority shareholders' interests, highly irregular payments and bribes, burdensome government regulation, inefficient legal framework in settling disputes and challenging regulations, poor ethical behavior of firms, and weak auditing and reporting standards.

Ukraine's highly inefficient goods market entails a great deal of unnecessary government intervention and distortionary practices, stifling competition and earning Ukraine a ranking of 124 of 148 countries in goods market efficiency. Ukraine's goods market is characterized by high degree of unfavorable business impact of rules on Foreign Direct Investment, burdensome customs procedures, low prevalence of foreign ownership, high adverse effects of taxation on incentives to invest, high degree of market dominance, weak effectiveness of anti-monopoly policy, high agricultural policy costs, and high prevalence of non-tariff trade barriers.

## **9. Efficient Capital Markets and Portfolio Investment**

### ***Banking***

The Ukrainian banking system consists of the National Bank of Ukraine (NBU, the central bank) and commercial banks. The NBU is responsible for monetary policy, licensing of commercial banks, and oversight of their activities. Foreign capital represents 34% of total capital in the banking sector as of March 2014. In absolute terms, the banking sector is still fairly small, and highly concentrated: the top 20 Ukrainian banks control 70% of assets in the system. Total bank assets in Ukraine are about \$127 billion, with total loan assets of \$79 billion as of January 2014.

The 2008-2009 financial crisis brought corporate and consumer lending to a near standstill; its consequences continue to burden the banking system, with about 40% of its assets identified as non-performing. Insufficient foreclosure and bankruptcy procedures prevent fast resolution of bad debt, forcing banks to accumulate large provisioning to cover possible losses, which limits lending opportunities and slows recovery. However, the government has begun cleaning up the loan portfolio, and plans further stress-testing to identify capitalization needs.

The 2002 law "On Banks and Banking Activity" eliminated discrimination against foreign-owned banks. Foreign-licensed banks may carry out all activities conducted by domestic banks,

and there is no ceiling on participation in the banking system, including operating via subsidiaries. In 2006, the Rada approved permitting foreign banks operating via branch offices. A foreign company can open a bank account in Ukraine for the purposes of investment operations; otherwise it needs to register a representative office in Ukraine. A nonresident private person can open a bank account in Ukraine.

Legislation aimed at protection from hostile takeovers cover both domestic and foreign companies. However, hostile takeovers have been a common problem given the poor rule of law.

### ***Capital Markets***

The government of Ukraine gives preference to attracting real rather than portfolio investment. The capital market for portfolio investment is slim and lacks sufficient liquidity. The local institutional investment sector, including private pension investment, is fragile. Ukraine has ten operational privately-owned stock exchanges, with the largest trade volumes conducted at three major exchanges. These exchanges operate largely in compliance with international best practices, and there is increasing competition in the sector. Currently, over 90% of trading takes place “on exchange” as a result of “off-exchange” transaction fees. The remaining exchanges are largely “pocket exchanges” that rely on revenue from sales of state-owned enterprises. Ukraine has accepted the obligations under Article VIII of the IMF agreement in 1996, and refrains from restrictions on current international transactions.

There are no legal restrictions on the free flow of financial resources needed to support growth in the product/factor markets. Credit is largely allocated on market terms and foreign investors are able to get credit on the local market, utilizing a variety of credit instruments. However, the market environment has long lacked transparency; enforcement of key laws and regulations has been weak, and investors, both domestic and foreign, continue to face significant uncertainty. The National Securities and Stock Market Commission (NSMSC) and Financial Services Regulator (FSR) have insufficient enforcement power, and their rulings are not always followed by the courts. The NSMSC and FSR also face problems with budgetary and political independence. That said, the new government has pledged to increase transparency and strengthen enforcement, and initial indications have been positive.

## **10. Competition from State-Owned Enterprises (SOEs)**

Ukraine’s state sector was largely privatized in the 1990s and early 2000s, and is now estimated to comprise less than 10% of the economy. Nonetheless, according to the Ministry of Economic Development and Trade, the state sector is one of the largest in Europe and contains more than 5,000 business entities. The sector is inefficient and often unprofitable.

The majority of SOEs rely on government subsidies to function, and cannot directly compete with private firms. Most of the SOEs capable of making a profit have already been privatized, leaving mainly inefficient firms in government hands. Private firms, however, are barred, under Ukrainian law, from engaging in certain types of business, including in the areas of certain natural monopolies, the rocket industry, and the production of bio-ethanol. The government has heavily subsidized its state-owned enterprises (especially in the coal mining, rail transportation, gas and communal heating sectors) to keep them operating. The government long resisted raising consumer gas prices to market levels, forcing the state energy monopoly, Naftogaz, to run

massive operating deficits. However, the new government has agreed to raise gas tariffs as a condition of a lending agreement with the IMF.

Research and development are practically non-existent in the energy sector. The nuclear, hydroelectric, and extractive industries are run at a loss, with any potential profits siphoned off through corruption schemes, so little remains to invest in new equipment, let alone R&D.

SOE senior management reports directly to the relevant ministry, which has the authority to appoint the firm's management. Ukrainian law specifies that the ministries are not permitted to interfere with the daily economic activities of an SOE, but anecdotal reports indicate that this restriction is often ignored. Ministries have the power to decide on the creation, reorganization, and liquidation of SOEs; adopt and enforce SOE charters; conclude and cancel contracts with SOE executives; grant permission to the State Corporate Social Property Fund to create joint ventures with state property; and prepare proposals to divide state property between the national and municipal levels. Ukraine does not maintain or operate a sovereign wealth fund.

## **11. Corporate Social Responsibility (CSR)**

Corporate Social Responsibility has not yet taken hold in the mind of the consumer and is just beginning to gain ground amongst producers in the country. Ukraine does not adhere to generally accepted CSR principles such as the OECD Guidelines for Multinational Enterprises. International companies continue to be the strongest proponents of CSR within Ukraine and have made efforts to transfer the idea of CSR over to their Ukrainian affiliates. With help from the American Chamber of Commerce (ACC), the East Europe Foundation, the U.N. Global Compact Initiative, and other NGOs, Ukrainian companies have been made aware of the potential long-term benefits of CSR as they relate to positive exposure for a company. ACC has cited lack of interest from the business community and a commercial environment in Ukraine beleaguered with other investment difficulties. However, it has now partnered with a number of NGOs in promoting non-discriminatory policies in Ukrainian businesses.

A major obstacle is the lack of legislated tax incentives encouraging CSR. Therefore, companies must be willing to undertake CSR projects without tax or legislative assistance. Consumers do not expect companies to develop or finance projects that do not directly affect growth or profit, and there are few broad indications of social responsibility by consumers.

Though not required, foreign firms in Ukraine generally follow and are judged by NGOs on the following standards: AccountAbility's AA1000 standard, Global Reporting Initiative's Sustainability Reporting Guidelines, Verite's Monitoring Guidelines, Social Accountability International's SA8000 standard, and the ISO 14000 Environmental Management Standard. The Centre for CSR Development Ukraine is an active proponent of CSR.

## **12. Political Violence**

Large-scale political protests began across Ukraine in November 2013, when then-President Yanukovich announced his decision to reverse years of progress toward an Association Agreement with the EU. Several periods of intense violence marred the otherwise peaceful protests, particularly when the Yanukovich regime conducted periodic crackdowns on the protests between November 2013 and February 2014. Civil society groups, activists, and



journalists in particular, were the targets of violence by the previous regime and by pro-Russian elements in Ukraine. President Yanukovich fled the country February 22 and the Rada established an interim government and called for new presidential elections. In Ukraine's east and south, protests against the government in Kyiv have taken place in parallel with armed and sometimes violent attacks and provocations from Moscow-sponsored pro-Russian forces. The situation remains tense and unpredictable, and the presence of Russian military forces in Crimea and on the Ukrainian border as well as Russian-sponsored agents provocateurs in eastern Ukrainian cities have caused great concern about future unrest.

More generally, incidents of racially-motivated violence occasionally occur; groups of "skinheads" and neo-Nazis sporadically target people of color, members of religious minorities, and people perceived as lesbian, gay, bisexual, or transgender (LGBT) in Kyiv and throughout Ukraine.

### **13. Corruption**

Corruption, which pervades all levels of society and government and all spheres of economic activity in Ukraine, has long been a major obstacle to foreign investment. The full scale of corruption at the highest levels was revealed after the fall of the Yanukovich regime, when all but \$500,000 remained in the treasury account, and officials departed with billions of dollars of public funds. As fighting corruption was one of the primary tenets of the Euromaidan protests, the new government has pledged to eliminate corruption, and has taken several positive steps, including passing a new law on public procurement in April, which addressed some of the existing shortcomings of the previous law. However, the problem runs deep, and fighting will take considerable time and effort.

The government has proposed two new anti-corruption entities, which remain in the conceptual stage, and may not be formed and funded before 2015. One is an anti-corruption law enforcement investigation agency, for which draft legislation is pending, which would take over the Prosecutor General's responsibilities for investigating and prosecuting corruption. The other is an anti-corruption prevention and detection bureau for which legislation is being drafted. The functions are under considering, but may include setting anti-corruption and ethics policies, making criminal referrals, managing hotlines for complaints, promoting public awareness and accountability, and protecting whistleblowers. A prospective leader, a journalist with significant anti-corruption investigative experience, has been identified.

Corruption stems from such factors as such as a lack of institutional transparent decision-making and low societal understanding of the importance of corporate governance. That said, opinion polling shows increasing public frustration and anger with official corruption, which helped to mobilize the Maidan protests. Low public sector salaries fuel corruption in local administrative bodies such as the highway police, the health system, the tax administration, and the education system. Corruption within the Customs Service often makes it more difficult and more costly for businesses to import/export goods. Agricultural firms, for example, have been affected by significant overvaluation of imports. High-level corruption ranges from misuse of government resources and tax evasion to non-transparent privatization and procurement procedures.

Ukraine's guiding authority on corruption is the 2011 law "On Corruption Prevention and Counteraction," whose articles on Financial Controls came into force in 2012, but has been

rarely enforced. Over the years, Ukraine adopted several strategies aimed at fighting corruption, though to little effect. In 2011, President Yanukovich announced a National Strategy on Fighting Corruption, creating an anti-corruption committee, but the committee never convened.

Although government action is still limited and uncoordinated, a regulatory and legislative framework to address corruption is slowly being developed. In 2005, Ukraine ratified the Council of Europe Civil Law Convention on Corruption and became a member of the Council of Europe's Group of States Against Corruption (GRECO). GRECO concluded its Joint First and Second Rounds of Evaluation of Ukraine and published its report in 2007. The Third Round Evaluation Report was published in 2011, with recommendations for improvements in criminalizing corruption offenses and transparency of financing political parties. In this transitional period, resources to report corruption are limited.

Ukraine also participates in the OECD Anticorruption Network for Eastern Europe and Central Asia. Parliament passed laws to ratify the Council of Europe Criminal Law Convention on Corruption, signed in 1999, and the UN Anticorruption Convention, signed in 2003. However, ratification of these Conventions will come into effect only when additional implementing legislation is adopted. Ukraine is not party to the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

In 2010 the State Department funded a new Resident Legal Advisor from the U.S. Department of Justice, focusing on ethics, asset declaration, and internal investigative units.

#### **14. Bilateral Investment Agreements**

##### ***Bilateral Investment Agreements***

The Bilateral Investment Treaty between the United States and Ukraine came into force on November 16, 1996. The following countries have also signed bilateral investment agreements with Ukraine: Albania (2004), Austria (1996), Argentina (1995), Armenia (1994), Azerbaijan (1997), Belarus (1995), Belgium (2001), Bosnia and Herzegovina (2002) Bulgaria (1994), Brunei (2006), Canada (1994), Chile (1995), China (1992), Cuba (1995), Croatia (1997), the Czech Republic (1994, amended 2010), Denmark (1992), Equatorial Guinea (2005), Egypt (1992), Estonia (1995), Finland (2005), France (1994), Gambia (2006), Georgia (1995), Germany (1993), Great Britain and Ireland (1993), Greece (1994), India (2001), Indonesia (1996), Iran (1996), Israel (1995), Italy (1995), Jordan (2005), Hungary (1995), Kazakhstan (1994), Congo (2010), Korea (1996), Kuwait (2002), Kyrgyzstan (1993), Latvia (1997), Lebanon (1996), Libya (2001), Lithuania (1994), Macedonia (1998), Morocco (2001), Moldova (1995), Mongolia (1992), Nigeria (2010), the Netherlands (1994), OAE (2003), Oman (2002), Panama (2005), Poland (1993), Portugal (2003), Russia (1998), San Marino (2006), Saudi Arabia (2009), Singapore (2006), Syria (2002), Slovakia (1994), Slovenia (1999), South Korea (1996), Spain (1998), Sweden (1995), Switzerland (1995), Tajikistan (2001), Turkmenistan (1998), Turkey (1996), Uzbekistan (1993), Vietnam (1994), Yugoslavia (2001), Yemen (2002).

The United States and Ukraine signed a Trade and Investment Cooperation Agreement (TICA) in 2008. The TICA established a joint U.S.-Ukraine Council on Trade and Investment, which works to increase commercial and investment opportunities by identifying and removing impediments to bilateral trade and investment flows. The Council last met in in 2012, and held a working-level sub-group meeting in Kyiv in 2013.

## **15. OPIC and Other Investment Insurance Programs**

The U.S.-Ukraine Overseas Private Investment Corporation (OPIC) Agreement was signed in Washington in 1992. OPIC resolved a long-standing dispute in 2009, and restored its programs in Ukraine after an extended hiatus. In 2002, the Board of the U.S. Export-Import bank opened facilities for short and medium-term (up to seven years) lending for commercial and sub-sovereign projects. Ukraine is a member of the Multilateral Investment Guarantee Agency (MIGA). In 2010 OPIC concluded an agreement enabling the Ukrainian Development Network (UDN) to serve as an originator for a growing alliance with the private sector designed to support small and medium-sized enterprises expanding into emerging markets overseas.

## **16. Labor**

### ***Labor Availability***

Ukraine has a well-educated and skilled labor force (about 21-22 million people) with nearly a 100% literacy rate. As of January 1, 2014, unemployment (ILO methodology) averaged 7.7%, although unemployment in some regions, particularly in western Ukraine and central Ukraine, was significantly higher. According to government statistics, which counts only those officially registered to receive unemployment benefits, employment was only 1.8% as of January 2014 and 1.9% as of March 2014. In February, the unemployment insurance allotted to each worker amounted to UAH 1141 or approximately \$100.

### ***Wages and Conditions of Work***

Wages in Ukraine remain low by Western standards. In February, 2014 the nominal average monthly wage increased by 4.8% year-on-year to UAH 3,189 (about \$362), while the real average wage increased by 3.6% year-on-year during the same period. The highest wages are traditionally in the financial and aviation sectors; the lowest wages are paid to agricultural and public health workers. As of March 1, 2014, wage arrears equaled almost UAH 998 million (approx. \$ 100 million), a 23.5% increase from January 1. The biggest arrears accumulated in industry, transport and construction sectors.

### ***Minimum Wage***

As of December 1, 2013 the minimum monthly wage is UAH 1,218 (approximately \$105), which by law equals the monthly subsistence level. The 2014 state budget does not include minimum wage increases, adjusting only for inflation, owing to the government's focus on stabilizing the financial situation.

The law prohibits all forms of forced or compulsory labor. The law sets 16 as the minimum age for most employment and 18 as the minimum age for hazardous jobs. Ukraine has a 40-hour workweek, a 24-hour period of rest per week, and at least 24 days of paid vacation per year. The law provides for double pay for overtime work and regulates the number of overtime hours allowed. The law requires that all overtime be agreed upon with the respective local trade union organization and sets limits on the number of allowable overtime hours. The law contains occupational safety and health standards and provides workers the right to remove themselves from dangerous working conditions without jeopardizing their continued employment.

### ***Labor/Management Relations***

Ukrainian law allows workers to organize, and unions are prevalent in most industries. The law provides most workers with the right to form and join independent unions and to bargain collectively without previous authorization. By law, trade unions are equal, and a union's establishment does not require government permission. Within classic sectors of the economy, sector-specific collective bargaining agreements involve representative employers' associations (e.g., chemical employers), sector trade unions, and some participation of the government through the Ministry of Social Policy. Such agreements can also take place at the regional level.

The constitution grants the right to strike, and by law most workers have the right to strike. There were noteworthy obstacles to calling a strike, however, including the requirement that a large percentage of a workforce vote in favor of striking and vague legal authorities which can be invoked to judicially deny a strike. On the whole work stoppages in Ukraine are infrequent.

Although investors may encounter government resistance to trimming the work force to an efficient level, across-the-board demands to maintain employment levels are disappearing. Ukrainian enterprises often still maintain much of the social infrastructure of their immediate community (schools for local children, cafeterias, and medical facilities). While many local officials are willing to work with businesses to identify social services that an enterprise must support, such arrangements should be clearly spelled out before investments are started.

Ukraine's outdated Labor Code dates to 1971 and remains inappropriate for a market economy. The lack of a modern Labor Code hurts workers, whose rights are not clearly defined and protected, and employers, who face rules that make it hard for them to conduct business. Drafted in part with ILO and other international experts' guidance, the updated Labor Code has idled in parliament, where it has not moved beyond its first reading in 2008. It has since undergone multiple revisions but remains unpassed.

### **17. Foreign Trade Zones/Free Trade Zones**

Ukraine has maintained special or free economic zones (SEZs-FEZs), but in 2005 the government canceled tax exemptions (i.e., from land tax, corporate income tax, import duty, and VAT) to investors in SEZs-FEZs to stop the misuse of these zones for tax evasion and smuggling.

### **18. Foreign Direct Investment Statistics**

#### ***Foreign Direct Investment***

According to official data, as of January 2014, the total stock of FDI in Ukraine was \$58.16 billion or approximately \$1,284 per capita, representing a 5.2% increase from January 1, 2013.

#### ***FDI by Country***

In 2013, Ukraine's major investors included: Cyprus (32.7% of FDI), Germany (10.8%), the Netherlands (9.6%), Russian Federation (7.4%), Austria (5.6%), the United Kingdom (4.7%), the British Virgin Islands (4.3%), France (3.1%), Switzerland (2.3%), and Italy (2.2%). U.S. investment comprised 2.0% of FDI. Many Ukrainian and Russian enterprises continue to channel investments through Cyprus due to a favorable bilateral tax treaty. In 2012, Ukraine signed a Double Taxation Convention with Cyprus to replace the current bilateral agreement dating from 1982. Under the new treaty, which was ratified by the Rada in July 2013 and entered into force in August 2013, most income earned in Cyprus is taxed between 5% and 15%,

reducing the tax gap between the two countries. While the Ukrainian government announced plans to introduce a 12% tax on the operations of companies registered in offshore countries (in order to increase collections to the Pension Fund), Cyprus was not designated in the list of offshore countries.

***FDI by Industry Sector Destination***

31% of FDI went to industry of which 11.1% was to the steel industry, 5.6% for the food processing and tobacco industries; 3.0% for the production of natural resources; 2.5% to the chemical industry; and 1.8% to machine-building industries. 29.7% goes to the financial sector of which 11.1% for trade and auto repairs and 7.2% for the real estate sector.

***FDI from Ukraine***

As of January 1, 2014, Ukraine's FDI to other countries equaled almost \$6.57 billion. 88.5% of Ukrainian investment (or \$5.818 billion) went to Cyprus. Cyprus is a popular destination for Ukrainian capital due to a lucrative double taxation agreement between Ukraine and Cyprus concluded in 1982 (see above). The second largest destination for FDI from Ukraine is Russia, which received 5.5 % (or \$363 million) of Ukraine's FDI.

**19. Contact Point at Post:**

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