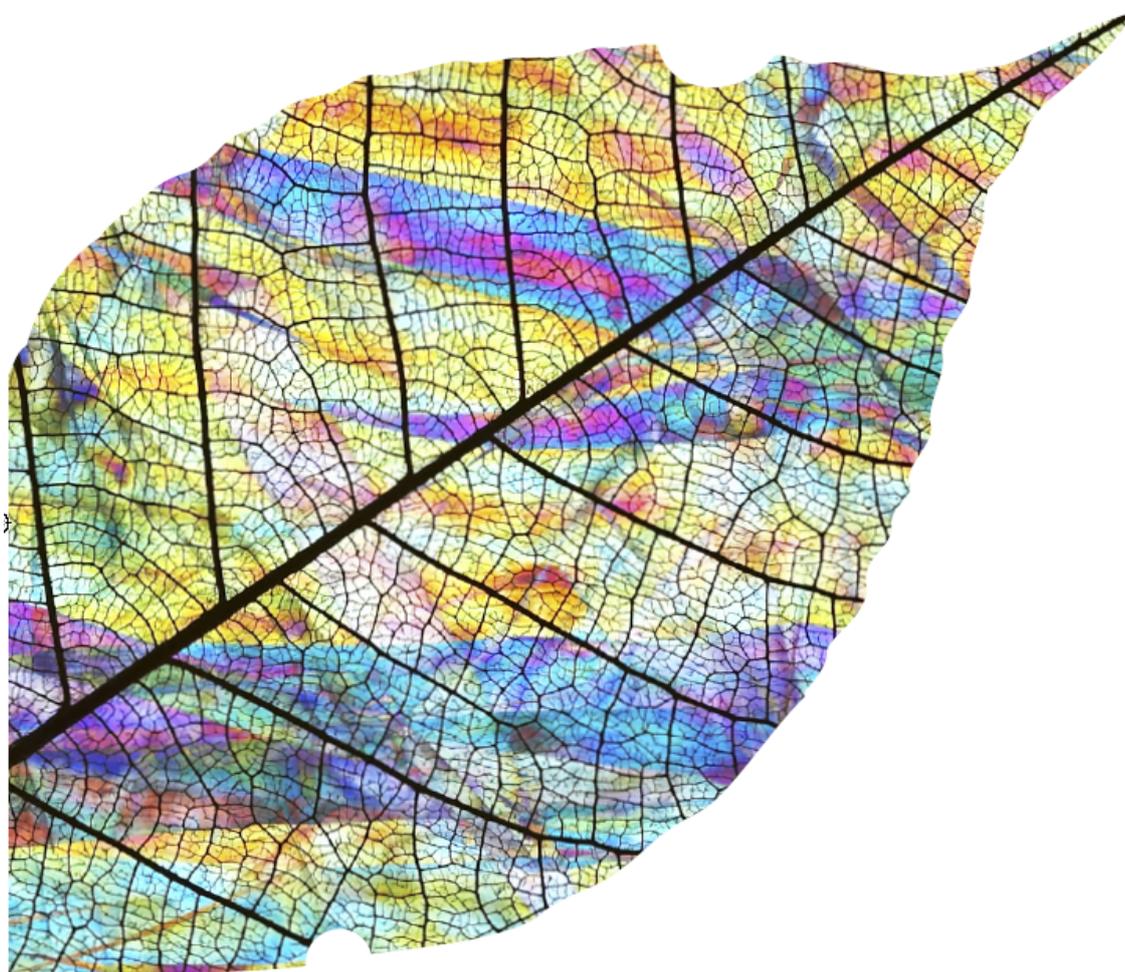


World Universities Comparative Law Project

Legal rating of Ukraine

carried out by students at the Taras Shevchenko
National University of Kyiv

A production of the Allen & Overy Global Law Intelligence Unit



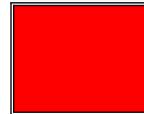
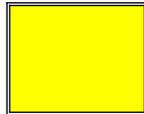
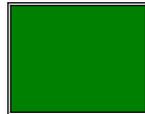
February, 2017

World Universities Comparative Law Project

Legal rating of Ukraine

**carried out by students at Taras Shevchenko National University of
Kyiv**

February, 2017



Produced by the Allen & Overy Global Law Intelligence Unit

World Universities Comparative Law Project

The World Universities Comparative Law Project is a set of legal ratings of selected jurisdictions in the world carried out by students at leading universities in the relevant jurisdictions. This legal rating of Ukraine was carried out by students at the Taras Shevchenko National University of Kyiv.

The members of the Faculty of Law at the Taras Shevchenko National University of Kyiv University who assisted the students were:

Tetiana Pozhodzhuk



Tetiana Pozhodzhuk is an assistant professor of economic law department Faculty of Law at Taras Shevchenko National University of Kyiv. She holds a PhD (Candidate of Juridical Sciences) from the Faculty of Law at Taras Shevchenko National University of Kyiv. Her research interests include economic law, economic procedural law, corporate law. She can be reached at the following email: tshtym@ukr.net

Ivan Romashchenko



Ivan Romashchenko is an assistant professor of civil law department Faculty of Law at Taras Shevchenko National University of Kyiv. He holds LLM in European and International Business Law from Leiden University (the Netherlands) and the degree of Candidate of Juridical Sciences from the Faculty of Law at Taras Shevchenko National University of Kyiv. His research interests include civil law, contract law, corporate law, and private international law. He can be reached at the following email: ivan.romashchenko@knu.ua

The members of the Practitioner Expert Panel with whom the students could discuss the questions in the survey were:

Glib Bondar, Senior Partner of AVELLUM

Igor Lozenko, Counsel of AVELLUM

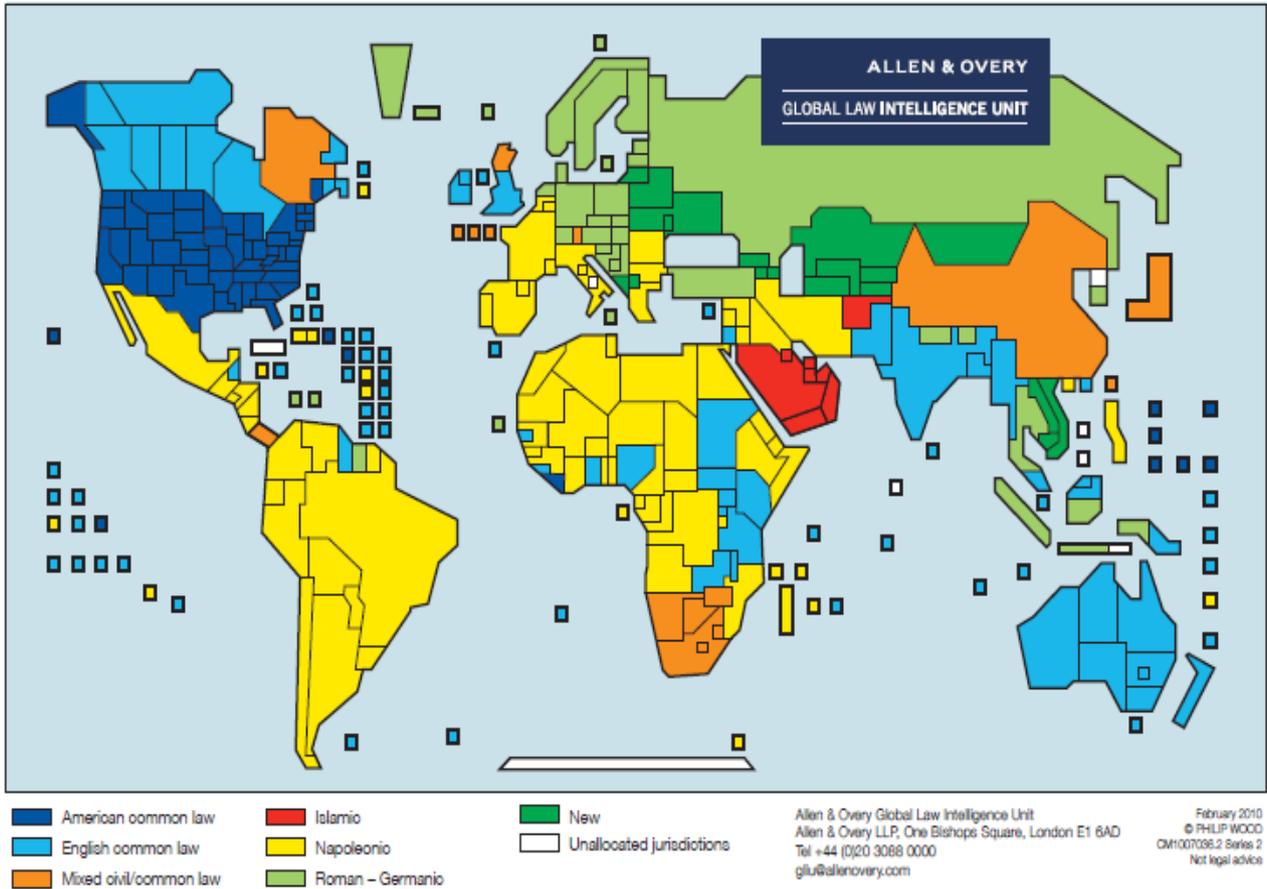
Yuriy Nechayev, Counsel of AVELLUM

Taras Stadniichuk, Associate with AVELLUM

The Allen & Overy Global Law Intelligence Unit produced this survey and is most grateful to the above for the work they did in bringing the survey to fruition.

All of those involved congratulate the students who carried out the work.

Families of law



Foreword

The Faculty of Law has a long glorious history of academic achievements dating back to the thirties of nineteenth century when the first law classes were attended by the most talented students from different regions of the territory of modern Ukraine. Since then the country has experienced many dramatic events, and so has the university, but despite various hardships the Faculty has always remained the cradle to famous legal scholars and practitioners. Thanks to the hard work of its administration and teaching staff today I am proud to say that Taras Shevchenko National University of Kyiv is still the leading institution for legal education in the country.

There is no secret that the Faculty of Law follows trends of globalisation and international cooperation. Our lecturers regularly go to conferences in other countries and have their papers published in foreign journals, our students enjoy mobility and exchanges, there are many guest lectures of foreign professors and a growing number of new interesting initiatives. However, in the range of various activities the Worlds Universities Comparative Law Project occupies a special place for the Faculty. The Project's focus on the comparative aspects of both 'law in books' and 'law in practice' is truly unique and cannot be attributed to other projects our institution has dealt with before.

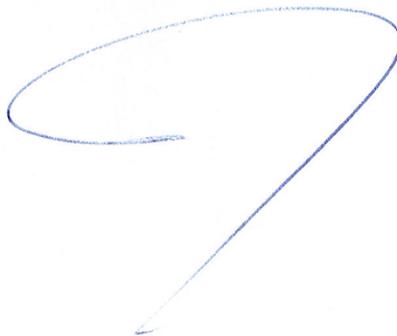
The practical significance of the said Project is perfectly in line with the Faculty's goal to be practice-oriented. Our lecturers are constantly working on the improvement of educational programmes in order to adapt them to the changing modern conditions so that our students acquire skills necessary to enter Ukrainian and international competitive legal market. For our lecturers it is of vital importance either to practice law in addition to their scientific and teaching activity, or to maintain close contacts with legal practitioners. In addition, the Faculty embraces flexible learning paths and recognises competences gained outside formal curricula.

On behalf of the Faculty I would like to express my highest gratitude to the Allen & Overy Global Law Intelligence Unit and the Unit's head Professor Philip Wood for the kind invitation to participate in the project. It is an honour for the Faculty and for me in particular, and also an exceptional opportunity for our students who have been able to carry out a profound comparative research study, to gain new skills and to enrich their international profiles. I would also like to thank the members of the Practitioner Expert Panel as well as the teaching staff of the Faculty who have assisted students in their findings and provided useful input so that the research study is a success.

Sincerely,

Ivan Hrytsenko, D.L.,

Dean of the Faculty of Law



Description of the legal rating method

Introduction

This paper assesses aspects of the law in Ukraine with a view to rating the law in the relevant areas. The survey is concerned primarily with wholesale financial and corporate law and transactions, not with retail law.

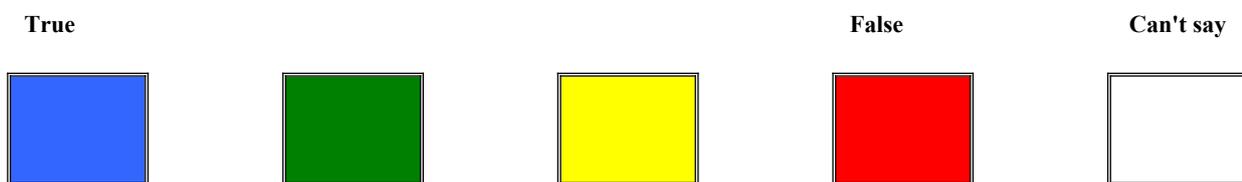
Legal risk has increased globally because of the enormous growth of law; because of its intensity; because many businesses are global but the law is national; because nearly all countries are now part of the world economy; and because the law is considered to play a very significant role in the fortunes of our societies. Liabilities can be very large and reputational losses severe.

The survey was carried out by students at Taras Shevchenko National University of Kyiv. The survey was designed by the Allen & Overy Global Law Intelligence Unit.

The students were requested to express their views freely and in their own way. The views expressed are their views, not necessarily those of Taras Shevchenko National University of Kyiv, the members of the Practitioner Expert Panel or the Global Law Intelligence Unit, the members of Allen & Overy.

Methodology

The survey uses colour-coding as follows:



Blue generally means that the law does not intervene and the parties are free, ie the law is liberal and open.

Red generally means that there is intense legal intervention, usually in the form of a prohibition.

Green and **yellow** are in-between.

The purpose of this colour-coding is to synthesise and distil information in a dramatic way, rather than a legal treatise. The colours correspond to a rating of 1, 2, 3 or 4, or A, B, C or D.

The cross in the relevant box signifies the view of the students carrying out this assessment of the position of Ukraine. This is followed by a brief comment, e.g. pointing out qualifications or expanding the point. These comments were written by the students.

The colour-coding does not usually express a view about what is good or bad. Whether the law should intervene in a particular arena is a matter of opinion. The scale is from low legal intervention to intense legal intervention or control. This is not a policy or value judgment as to whether or not the law should or should not intervene. Jurisdictions often disagree on whether the law should intervene and how much. So one of the main purposes of this survey is to endeavour to identify some of the points of difference so as to promote fruitful debate.

Black letter law and how it is applied

This survey measures two aspects of law. The first is black letter law, ie what the law says or the written law or law in the books.

The second measure is how the law is applied in practice, regardless of what it says. Thus, the law of Congo Kinshasa and Belgium has similar roots but its application is different.

Although there is a continuum, these two measures have to be kept separate. Otherwise we may end up with just a blur or noise or some bland platitude, eg that the law depends upon GDP per capita.

In fact, only the last two questions deal with legal infrastructure and how the law is applied. All of the others deal with the written law, without regard to enforcement or application.

Key indicators

The survey uses key indicators to carry out the assessment. It is not feasible to measure all the laws or even a tiny fraction of them. The law of most jurisdictions is vast and fills whole libraries.

The key indicators are intended to be symptomatic or symbolic of the general approach of the jurisdiction. To qualify as useful, the indicator must usually be (1) important in economic terms, (2) representative or symbolic and (3) measurable. In addition, the indicators seek to measure topics where jurisdictions are in conflict. There is less need for measuring topics where everybody agrees.

An important question is whether this method is useful or not, and, if it is, whether the indicators are relevant.

Legal families of the world

Most of the 320 jurisdictions in the world, spread just under 200 sovereign states, can be grouped into legal families. The three most important of these are: (1) the common law group, originally championed by England; (2) the Napoleonic group, originally championed by France; and (3) the Roman-Germanic group, originally championed by Germany, with major contributions from other countries.

The balance of jurisdictions is made up of mixed, Islamic, new and unallocated jurisdictions.

Many aspects of private law are determined primarily by the family group, but this is not true of regulatory or economic law.

Excluded topics

This survey does not cover:

- transactions involving individuals
- personal law, such as family law or succession
- competition or antitrust law
- intellectual property
- auditing
- general taxation
- macroeconomic conditions, such as inflation, government debt, credit rating or savings rates
- human development, such as education, public health or life expectancy
- infrastructure, such as roads, ports, water supply, electricity supply
- personal security, such as crime rates, civil disorder or terrorism.

Banking and finance

Introduction

Banks and bondholders (typically also banks, but also insurance companies, pension funds and mutual funds) provide credit or capital. Their main risk is the insolvency of the debtor and therefore the key indicators intended to measure whether the law supports those habitual creditors or debtors, such as large corporations

as borrowers, when it matters, ie on bankruptcy. This is when commercial law is at its most ruthless in deciding who survives and who drowns.

This debtor or creditor decision is implemented mainly through the bankruptcy ladder of priorities. A feature of common law systems is the presence of super-priority creditors who are paid before anyone else - creditors with a set-off or a security interest and beneficiaries under a trust. For example, if a bank has universal security over all the assets of a company, the bank is paid before all other creditors, including employees and trade creditors. This regime therefore protects significant creditors who such as banks.

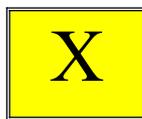
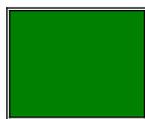
Jurisdictions based on the English common law model give super-priority to all three claimants. Traditional Napoleonic jurisdictions typically do not allow insolvency set-off, have narrower security interests and do not recognise the trust. Their bankruptcy ladder favours greater equality of creditors. Most traditional Roman-Germanic jurisdictions are in-between. They allow insolvency set-off and have quite wide security but most do not recognise the trust. There are wide exceptions to these generalisations.

Insolvency set-off

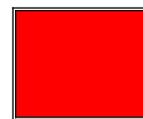
Generally If set-off of mutual debts is allowed on insolvency, the creditor is paid. If it is not allowed, then effectively the creditor is not paid. Very large amounts are involved in markets for foreign exchange, securities, derivatives, commodities and the like, so that the question of whether exposures should be gross or net is a matter of policy as to who the law should protect.

Q1 In Ukraine, creditors can set off mutual debts on the insolvency of a debtor if they are incurred before notice of the insolvency.

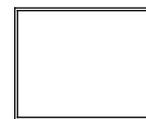
True



False



Can't say



Comment:

Ukrainian law clearly provides for set-off of mutual debts only with the respect to one insolvency procedure – the procedure of liquidation. The law is silent on set-off of mutual debts at the other stages of insolvency proceedings.

Under the Law of Ukraine “On Restoration of Debtor’s Solvency or Declaring Its Bankruptcy” (the “**Insolvency Law**”), if the debtor is exposed to the risk of being incapable to perform its obligations, insolvency procedures under the Insolvency Law may be applied against such debtor.

These procedures include (i) asset management, (ii) rehabilitation, (iii) amicable settlement (optional), and (iv) liquidation.

Asset management

The insolvency procedures start from the asset management. At this stage, a special asset manager appointed by the court manages the debtor’s property for at least 115 days to ensure its safety and efficient use. Moreover, the register of creditors’ claims is formed at this stage. Based on the outcome of the asset management, the court will decide which of the three insolvency processes to apply against the debtor.

Rehabilitation

The rehabilitation procedure includes measures aimed at improving the financial and economic condition of the debtor and full or partial satisfaction of the creditors’ claims. Rehabilitation can be imposed by the court for 6 months (with possible prolongation) and is based on rehabilitation plan. During this period, a

rehabilitation manager appointed by the court carries out all the activities necessary for efficient company management, including execution of new agreements, hiring and firing employees etc. Despite the law being silent on the matter, we understand that creditors may set off their mutual debts if it is within the rehabilitation plan.

Liquidation

The bankruptcy process will move to the liquidation procedure if the court does not see any other viable options for restoration of solvency of the debtor.

Within this procedure, the liquidator arranges all debtor’s property for sale on public auction. The proceeds from such sale are used to satisfy the creditors’ claims in accordance with the ranking (6 ranks) provided for by the Insolvency Law.

The Insolvency Law provides for an ability to set off mutual debt on this stage. At the same time, the creditors seeking set-off must obtain consent of other creditors. Otherwise, such set-off may be regarded as violating the rights of other creditors and, therefore, found invalid.

Amicable settlement

Agreement on amicable settlement may be concluded on any stage of insolvency proceedings and is subject to approval by the commercial court.

Security interests

Generally Security interests give priority to the creditor with security - typically banks - who are the main providers of credit in most countries.

In traditional common law jurisdictions, a company can create universal security over all its present and future assets to secure all present and future debt owed to a bank. Once registered, the security is valid against all creditors, except that the floating collateral ranks after preferred creditors - typically wages and taxes. The security can be granted to a trustee for creditors. On a default there are no mandatory grace periods and the creditor can enforce out-of-court by appointing a receiver (a type of possessory manager) or by private sale. But in some common law jurisdictions there are freezes on enforcement in the event of a judicial rescue of the debtor. Also, in some of these jurisdictions there are stamp duties.

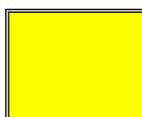
On the other hand, in many traditional Napoleonic jurisdictions, universal security is not possible, neither is security for all future debt. There is no trustee to hold the security. On enforcement, there are grace periods and no receiver. Sale is through the court and a public auction. Preferential creditors rank ahead. Some countries have a freeze on enforcement under a judicial rescue statute.

The main policy issue is therefore whether security should be encouraged or whether the law should intervene to impose greater equality.

The main tests are (1) scope of eligible assets, (2) debt secured, (3) trustee, (4) priority over preferred creditors, (5) private enforcement and receiver, (6) no rescue freezes and (7) low costs.

Q2 In Ukraine, the law offers a security interest which is highly protective of the secured creditor.

True



False



Can't say



Comment:

Ukrainian law provides for a number of types of security to be granted to creditors. Most commonly used instruments include pledge and mortgage.

The pledge is used in relation to movable assets, including tangible (e.g. equipment, inventory) and intangible (e.g. participatory interests, securities in global form, intellectual property, receivables etc.) assets, while mortgage is taken over immovable assets (i.e. land, buildings and construction in progress).

Pledges and mortgages are subject to registration with relevant public registers. Such registration allows to establish the priority of creditors' claims in relation to respective assets on enforcement.

The pledgees/mortgagees having their pledges/mortgages registered earlier will have a priority in relation to those registered later.

Ukrainian law allows enforcement of the security interest either (i) out of court, (ii) via the court, or (iii) by a notary writ.

In insolvency of the debtor, the creditors with the security interest over property of such debtor will have right to satisfy their claim before any other creditors by enforcing against the debtor's property that is subject of such security interest.

At the same time, Ukrainian law also contains some provisions, which can negatively affect the creditors' rights. As example, in the event that the pledgee chooses to enforce the pledge by taking ownership of the collateral (as opposed to enforcement by sale of the collateral), there is a risk that the respective secured obligations would be deemed fully discharged regardless of the value of collateral which was transferred into the pledgee's ownership.

Universal trusts

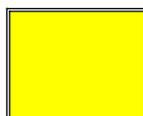
Under a trust, one person, called the trustee, holds title to the assets of another person, called the beneficiary, on terms that, if the trustee becomes insolvent, the assets go to the beneficiary and are not used to pay the trustee's private creditors. The assets are immune and therefore taken away from the debtor-trustee's bankrupt estate.

The main examples of trusts are custodianship of securities, pension funds, securities settlement systems and trustees of security for bondholders and syndicate banks. The amounts involved are enormous.

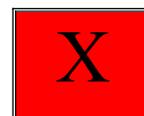
All jurisdictions have an effective trust of goods (called bailment or deposit). The common law group has a universal trust for all other assets (land and intangible property). Most members of the civil code group do not have a universal trust, subject to wide exceptions, especially for custodianship of securities. A few countries in this group have a universal trust by statute, e.g. France and China.

Q3 Ukraine has a universal trust for all assets.

True



False



Can't say

**Comment:**

Although there is a concept of asset management in Ukrainian law, it is different from a typical trust concept existing in common law systems. In particular, unlike in trusts, the title to assets is not transferred to the manager in asset management arrangements.

Other indicators

Other bankruptcy indicators not measured here include freezes on the termination of contracts, fraudulent preferences, the priority of rescue new money, the presence and intensity of corporate rescue proceedings and recognition of foreign insolvencies. Director liability for deepening the insolvency is dealt with below.

Other financial law topics not covered in this survey include the regulatory regime, especially capital, liquidity, authorisation of financial business, conduct of business, control of prospectuses, control of market abuse and frauds, such as insider dealing, and the insolvency regime for banks. Financial regulation is a very large field.

Corporations

Introduction

Financial law involves competition between debtors and creditors so that jurisdictions can be positioned on a straight line. Corporate law however involves three main competitors: (1) shareholders, (2) creditors and (3) managers - a triangle. If the key indicators show that a jurisdiction strongly favours one or other of the parties at the points of the triangle, whether creditors, shareholders or management, then one can begin to build up a picture of the choices which the jurisdiction habitually makes in resolving the conflicting interests of the parties.

For example, a very tough prohibition on financial assistance (which is protective of creditors against shareholders) tends also to support an attitude to other principles of the maintenance of capital or to support the proposition that mergers by fusion are difficult (because they can prejudice creditors). This would be true of the English regime in 1948. Similarly, a view which easily imposes personal liability on directors for deepening an insolvency might also show a legal approach which is not supportive of the veil of incorporation in other areas, eg shareholder liability and substantive consolidation on insolvency.

The two extreme corporate law models are the Delaware model and the traditional English model, exemplified by the English Companies Act 1948 (now superseded). Napoleonic and Roman-Germanic models are in-between to varying degrees.

The Delaware regime is highly protective of management in the key areas. The traditional English regime favours creditors on most of the key contests and, where creditor interests are not involved, it tends to favour shareholders as opposed to managers.

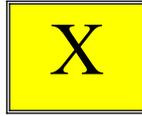
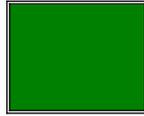
Director liability for deepening an insolvency

Generally If the law imposes personal liability on directors for deepening an insolvency, eg carrying on business and incurring debts where there is no reasonable prospect of paying them, then the regime is hostile to the interests of management. The legal risks of management are increased.

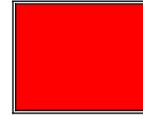
There are basically four regimes internationally: (1) directors are hardly ever liable for deepening the insolvency, eg Delaware and most US jurisdictions, plus some traditional English jurisdictions which only punish fraudulent trading; (2) directors are liable for serious negligence (England, Singapore, Australia, Ireland); (3) directors are liable for mere business misjudgements deepening the insolvency (France); and (4) directors are liable if they fail to file for an insolvency proceeding after the company becomes insolvent (France, Germany and others).

Q4 In Ukraine the law rarely imposes personal liability on directors for deepening the insolvency and there is no rule that the directors must file for insolvency when the company is insolvent.

True



False



Can't say

**Comment:**

There is no statutory liability for failure to file for insolvency in due time. However, several types of liability may be imposed on directors for their actions, which have led to insolvency.

Firstly, the Criminal Code of Ukraine prescribes criminal liability for directors or other officers of a company for insolvency. They may be held criminally liable if their acts have led to financial insolvency and significant harm to the state or a creditor has been caused. The possible punishment may take form of fines with restriction/prohibition to hold particular positions or to carry out particular activities. In 2015, due to the widespread bankruptcy of banks, a new crime of inflicting bankruptcy of a bank was introduced to the Criminal Code of Ukraine. Any person associated with a bank in insolvency may be liable for committing this crime. In this case, the punishment is up to 5 years of imprisonment.

Secondly, the officers of a company may be subject to financial liability for their misconduct that caused damage to the company. This can be performed through business (economic) law and labour law proceedings. Corporate officers bear unlimited financial liability to the company not only for direct damage, but also for the lost profit suffered by the company. In contrast, financial liability of other employees is limited to the average monthly remuneration. Recently the concept of derivative lawsuits has been introduced. It allows shareholders to file lawsuits on behalf of the company against officers of the company for the damages caused to the company by their misconduct.

Besides, directors and other officers of the company bear administrative liability for violation of rules applicable to the bankruptcy procedure.

Financial assistance to buy own shares

Generally Many jurisdictions prohibit a company from giving financial assistance to buy its own shares. The typical example would be where a bidder finances the acquisition of a target company by a loan and after the takeover arranges for the target to guarantee the loan and charge its assets to secure the guarantee. The commercial effect is similar to the repayment of the share capital of the target before its creditors are paid. Shareholders should be subordinated to creditors.

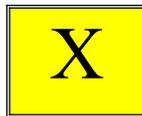
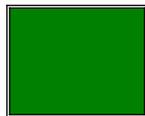
The prohibition therefore favours creditors against shareholders of the target.

The Delaware regime does not prohibit financial assistance. The traditional English regime has a wide prohibition (not England any more). Most Roman-Germanic regimes are against it, with Napoleonic regimes hesitant. The EU has a prohibition against financial assistance by public companies. Some countries allow financial assistance by private companies if solvency is established.

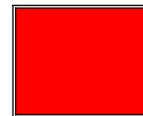
A contravening transaction is usually a criminal offence and void.

Q5 Ukraine permits a company to grant financial assistance for the purchase of its own shares.

True



False



Can't say



Comment:

Ukrainian legislation forbids companies to provide loans or to secure loans of third parties for purchasing the companies' shares. However, as the practice shows, there are other ways for companies to help interested persons to buy their shares. For example, a subsidiary of a company may provide financing to buy shares of the company.

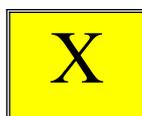
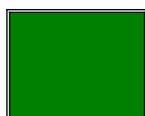
Public takeover regime

Generally A public takeover regime which is free and open tends to favour managers who can guard against takeovers by poison pills and the like and who have relative freedom to acquire other companies. An example is the Delaware regime. A restrictive regime on the lines of the British system tends to favour shareholders.

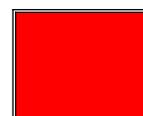
The chief features of a restrictive regime are: (1) the bidder must make a mandatory bid in cash when a threshold of shares in the target is reached, eg 30%; (2) the bidder must pay the same price to all shareholders (sharing the control premium); (3) no partial bids (getting control on the cheap); (4) proof of certain funds to implement the offer; (5) compulsory acquisition of dissenting minorities (squeeze-out); (6) fixed timetable; (7) no ability of the managers to frustrate a bid by poison pills without shareholder approval; and (8) control of the content of circulars, especially forecasts.

Q6 Apart from exchange controls and restrictions on foreign direct investments, the public takeover regime in Ukraine is open and has few restrictions.

True



False



Can't say



Comment:

The Ukrainian public takeover regime favours purchasers of substantial blocks of shares. Managers and shareholders have a few means to prevent a takeover. The possible means to avoid a takeover are predominantly of a precautionary nature.

As a rule, persons who wish to acquire a substantial shareholding of a company (at least 10% of ordinary shares), must notify the company and publish the announcement about it no later than 30 days prior to the acquisition. However, companies have no right to take steps to prevent such acquisition.

In case of acquisition of a controlling shareholding of a company (50%+ of ordinary shares), the controlling shareholder must offer all other shareholders to buy out their shares. The conditions of such buy-out are determined in offers of controlling shareholders addressed to all other shareholders.

Other indicators

Other important indicators are corporate governance (difficult to measure), free ability to merge companies by fusion, the one-share-one-vote rule, and, to a lesser extent, minority protections. Other indicators relate to quick and cheap incorporation, the *ultra vires* rule, maintenance of capital, no par value shares, shareholder liability, substantive consolidation on insolvency and disclosure. These are not measured here.

Commercial contracts

Introduction

Contract is at the heart of commercial life, and is everywhere. In fact, the main tenets of contract law across the main families of jurisdictions are consistent - it is in the fields of insolvency and property law where the main differences emerge. It is true that there are contract differences, for example, between writing requirements, open offers, the time of acceptance and specific performance, but often these differences are of lesser significance in practice in the business field.

The key indicators the survey chooses all tend to symbolise whether the approach of the jurisdiction to contract is hard or soft. If the approach is hard, then the jurisdiction tends to support predictability in business contracts so that certainty and freedom of contract are valued more than mitigating the risk of occasionally abusive behaviour and unfair results, especially for weaker parties. A soft jurisdiction tends to give greater primacy to notions of good faith and the like.

Exclusion of contract formation

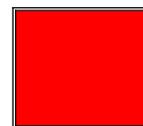
Generally Commercial parties often wish to be able to negotiate heads of terms commercially without being bound by a contract. In some jurisdictions, the courts are ready to infer that the parties are bound if the terms are sufficiently clear, even if they have said expressly that they do not intend to be bound.

Q7 In Ukraine, parties are not bound to heads of terms if they expressly state that the terms are "subject to contract" or some such clear phrase.

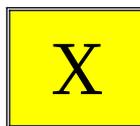
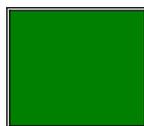
True



False



Can't say



Comment:

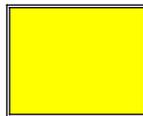
The Civil Code of Ukraine and the Commercial Code of Ukraine provide for the main legal framework for contractual relations in Ukraine. In particular, they outline certain requirements that a contractual relation must comply with in order to be binding. For example, any contract must contain certain material terms (e.g. the subject matter of the contract, value, etc.), which have to be included in a contract for such contract to be binding. Furthermore, in order to be bound by these terms of the contract, the parties must clearly express their will to enter into the contract. In certain cases, such entry into the contract is subject to certain formal requirements (execution formalities, notarisation, etc.). If the "heads of terms" comply with such requirements, they may arguably be viewed as binding on the parties. At the same time, Ukrainian law also recognises pre-contractual arrangements between parties, which may oblige them to enter into contractual relations in the future. Arguably, "heads of terms" may also be viewed as such arrangement to enter into a contractual relation in the future. It should be noted, however, that if the parties state in the heads of terms that they are "non-binding" or "subject to contract", the parties should not be bound by such heads of terms.

Termination clauses

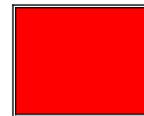
Generally Many contracts, especially loan contracts, leases of goods and long-term sales contracts, contain events of default on the occurrence of which one party can terminate the contract. Jurisdictions which uphold freedom of contract and the literal interpretation of contract give effect to these clauses and do not rewrite the contract according to the court's notions of what is fair. Other jurisdictions prefer good faith. We ignore consumer contracts - where there may be consumer protections.

Q8 In Ukraine, a termination clause in a loan or sale of goods contract between sophisticated companies (not individuals) providing for the termination of the contract immediately on certain events is usually upheld, even if the event concerned is relatively trivial.

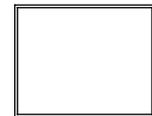
True



False



Can't say



Comment:

Ukrainian law stipulates that contracts may be terminated under the following circumstances:

- by mutual agreement of parties;
- by a court authorised to terminate the agreement upon request of a party in cases provided by the law or by an agreement; and
- by unilateral refusal from the agreement by party in cases directly provided by the law or by an agreement without applying to the court.

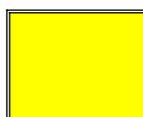
In light of this, a termination clause should generally be upheld if it has been clearly agreed by the parties and does not contradict any mandatory provisions of law.

Exclusion clauses

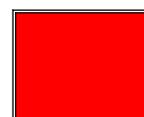
Generally Contracting parties often seek to exclude their liability for defective performance of the contract. So the issue is whether these exclusion clauses are generally upheld if they are clear and whether freedom of contract is allowed in this area.

Q9 In Ukraine, exclusions of liability in most commercial contracts between sophisticated companies, such as a sale of goods contract, are generally upheld if they are clear.

True



False



Can't say



Comment:

Under Ukrainian law, a breach of contract obligations occurs when a party fails to perform the contract completely, or in a case of defective performance or by rendering late. First of all, the Commercial Code of Ukraine declares the principle that any clause on limitation or elimination of manufacturer's (seller's) liability under commercial contracts is not permissible.

Furthermore, pursuant to the Civil Code of Ukraine a manufacturer or seller of goods or provider of works or services must reimburse damages suffered by any individual or legal entity because of structural, technological or other imperfections of goods, services or works as well as due to provision of false or insufficient information about them. The reimbursement is provided regardless of the degree of fault and the existence of contractual relations between the injured party and the manufacturer, seller or provider.

Other indicators

Other contract indicators not assessed here include writing formalities, open offers, mistake, frustration, damages, penalties, specific performance and whether notice of assignment of the contract to the debtor is mandatory if the assignment is to be valid on the insolvency of the assignor.

Litigation**Introduction**

The first three key indicators of governing law, jurisdiction and arbitration tend to show whether the jurisdiction does or does not place a high value on international comity and freedom of contract as opposed to national primacy.

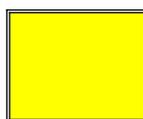
The indicator on class actions tends to show whether or not the jurisdiction's litigation system is orientated towards plaintiffs, especially mass plaintiffs in product liability cases. This indicator may also show the attitude of the jurisdiction to the protection of individual parties as against business parties, both in terms of the incidence of costs and enforcement.

Governing law clauses

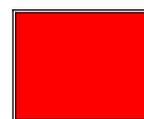
Generally Most countries apply a foreign governing law of a contract even if there is no connection between the contract and the jurisdiction. If the courts do not uphold the governing law, the effect is that the contract obligations may be different.

Q10 The Ukrainian courts will apply an express choice of a foreign law in a loan or sale of goods contract between sophisticated companies, even though the contract has no connection with the foreign jurisdiction, but subject to Ukrainian public policy and mandatory statutes.

True



False



Can't say

**Comment:**

Although Ukraine is not a party to the Convention on the Law Applicable to Contractual Obligations dated 1980, commonly referred to as the Rome Convention, certain provisions of its laws address the issue of free choice of law. In particular, the Law of Ukraine "On Private International Law" provides that contracting parties may choose the law applicable to the agreement except for the certain cases.

Therefore, the Ukrainian courts will freely apply an express choice of a foreign law in a loan or sale of goods contract irrespective of the connection between the contract and the jurisdiction.

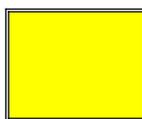
However, there is still risk that the court may find that the contents of foreign law cannot be established and, therefore, will apply Ukrainian law.

Foreign jurisdiction clauses

Generally Many contracts confer jurisdiction, sometimes exclusive, on the courts of a foreign jurisdiction, usually accompanied by a choice of foreign governing law.

Q11 The Ukrainian courts will generally uphold a clear submission in a loan or sale of goods contract between sophisticated companies to the exclusive jurisdiction of the courts of a foreign country, even if there is no connection between that country and the contract.

True



False



Can't say



Comment:

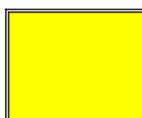
Foreign jurisdiction clauses are generally not enforceable in Ukraine unless international treaty to which Ukraine is a party expressly provides otherwise. There are no such international treaties with the most popular jurisdictions to which the parties usually submit their disputes (UK, US, Western European jurisdictions).

Arbitration recognition

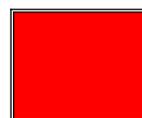
Generally Contracting parties, especially in trading and construction contracts, but less so in loan contracts, wish to submit disputes to arbitration, sometimes in a foreign country. The resulting award is often enforceable locally under the New York Arbitration Convention of 1958, to which most countries have adhered.

Q12 In Ukraine, the courts allow sophisticated contracting parties to submit contract disputes to a foreign arbitral tribunal to the exclusion of the Ukrainian courts.

True



False



Can't say



Comment:

Ukraine has adopted all major international arbitration instruments, including the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards dated 1958, the European Convention on International Commercial Arbitration dated 1961 and the ICSID Convention dated 14 October 1966.

However, Ukraine's reputation of a not entirely arbitration-friendly jurisdiction is the result of problematic enforcement of arbitral awards in Ukraine. Sometimes it may be a longstanding proceeding, which must be planned even before the commencement of the arbitration.

Basically, the recognition and enforcement of foreign arbitral awards is within the competence of local courts in accordance with the rules provided in the Civil Procedural Code of Ukraine. The rulings of the courts of first instance regarding recognition and enforcement of a foreign arbitral award may be appealed first to the appellate court, then to the High Court for Civil and Criminal Cases, and then, rarely, to the Supreme Court of Ukraine.

Class actions

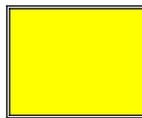
Generally In some countries, such as the United States, a plaintiff can be authorised by the court to sue on behalf of all claimants who are similarly situated. Claimants have to opt out or they are bound.

Q13 In class actions where the class is bound if they do not opt out are generally not allowed.

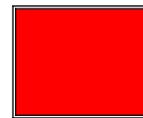
True



False



Can't say



Comment:

Generally, class actions do not apply in Ukraine. In fact, traditional lawsuits, where one party sues another party and all of the parties are present in court, are more typical for Ukraine.

At the same time, the possibility of protection of group of people's rights is realised by the institute of procedural complicity provided in civil, commercial and administrative proceedings.

Thus, according to Ukrainian law, an action can be brought by two or more plaintiffs, if: a) common rights and responsibilities make the subject of the suit; b) rights and responsibilities of several plaintiffs arose from the same factual basis; and c) the claims are similar (homogenous), whether or not either the basis or object of the suit is similar.

However, it is important to note that such kind of procedural complicity differs from the institute of class action. While the court decision for class action is compulsory not only for the participants of the trial, but also for those subjects who failed to take part in the trial or could even be unaware of it, the court decision for the claim, brought by two or more plaintiffs is compulsory only for these persons.

However, in order to be completely precise, some Ukrainian acts contain provisions that provide the possibility to protect the rights of indefinite number of persons.

The opportunity to unite the citizens to appeal to the court with a lawsuit to protect violated rights of an indefinite number of consumers was provided after adoption of the Act on Protection of Consumer Rights (1991). However, due to the unregulated procedure of bringing a "group suit", this progressive norm does not find a practical implementation.

Other indicators

Other indicators not covered by this survey include contingent costs, loser pays the costs of the winner, prejudgment freezes or arrests, appeals, scope of disclosure (discovery of documents), efficacy of waivers of sovereign immunity and the enforceability of foreign judgments.

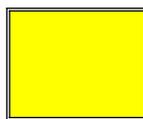
Real property

Ownership of land

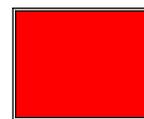
Generally In most countries, nationals can own land absolutely and are not restricted simply to leases for a limited term or simple rights of occupancy. However, in some jurisdictions, absolute ownership of land is not available to nationals or local corporations. If this is so, then the jurisdiction would be coloured green if citizens can lease land for a very long term without material restrictions, such as 999 years, and can also mortgage or sell the land or give it away or bequeath it under their wills without official consent because the ownership is a close proximate of absolute ownership. If on the other hand citizens are entitled only to a lease of, say, 70 years or less, or to similar rights of occupancy, and if there are limitations on dealing with the land without official consent, such as mortgaging, selling or bequeathing it, then the jurisdiction would be red.

Q14 In Ukraine, nationals and local corporations are entitled to own land absolutely.

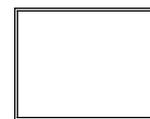
True



False



Can't say



Comment:

In Ukraine, once you have acquired a land plot, nobody can arbitrarily deprive you of the title of ownership. Within the meaning of Ukrainian legislation, the right of ownership provides the right to freely possess, use and dispose the land. However, the Land Code of Ukraine establishes some limitations with respect to usage and disposal of land.

First, the owner's right to freely dispose of its land is limited by the moratorium on sale of land plots designated for agricultural use. The Parliament of Ukraine firstly imposed the moratorium on alienation of agricultural land in 2002 and has recently extended it until 1 January 2018.

Further, the owner must use its land plot in accordance with its designation. Depending on designation of the land, there are nine categories of land plots in Ukraine. If an owner wants to change the land designation it should receive an official permit from the Ukrainian authorities. Non-compliance with the required regime of use can lead to deprivation of the land title.

Another obstacle that could be considered as a limitation is that a maximum period of land lease cannot exceed 50 years.

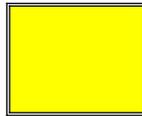
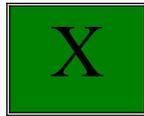
Security of land title and land registers

Generally Many jurisdictions improve the security of title to land by a registration system which, although not necessarily state-guaranteed, has high reliability. An example is the Torrens system developed in Australia and used in many other countries, eg Canada and England.

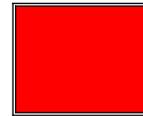
Most countries in the civil code groups do not have a title register but instead require documents concerning land to be notarised and filed at the registry so that they can be searched. The United States does not generally have title registers for land although there may be mortgage registers. They rely on title registration companies which provide title insurance.

Q15 Most land in Ukraine is registered in a land register which records most major interests in land, eg ownership, mortgages and longer-term leases.

True



False



Can't say

**Comment:**

According to the Civil Code of Ukraine, an ownership right and other property rights to immovable objects, restrictions thereof, their emergence, transfer and termination is subject to state registration. With respect to land, information regarding land plots, titles to land plots, mortgages and leases must be registered with the State Register of Proprietary Rights to Immovable Property (the “**Register**”). The extract from the Register is a document certifying the title to a land plot.

Ukraine has adopted a system of state registration of land title in 2013. That is why not all land titles are registered with the Register.

Land development restrictions

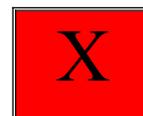
Generally Many countries restrict development and the change of use of land and require permits to be obtained for any development or change of use.

Q16 In Ukraine, apart from environmental controls (dealt with later), the control of commercial development and the change of use of land is very light and, where required, permits are quick and cheap to obtain.

True



False



Can't say

**Comment:**

Depending on designation of the land, there are nine categories of land plots in Ukraine. Each of them has its own special legal regime of use. Owner must use its land plot in accordance with its designation. In case the owner of the land plot wants to change designation and use of land, he/she is required to obtain permits from local authorities.

The procedure of change of use of land consists of the following stages:

- (1) elaboration of a land surveying plan;
- (2) obtaining an approval of the land surveying plan from local authorities;
- (3) passing the state expertise in cases prescribed by the Law of Ukraine “On State Expertise of Land Surveying Documentation”;
- (4) obtaining the final approval of the land surveying plan and change of use of land from local authorities; and

(5) amending information regarding the land plot to the Register.

The currently effective moratorium on alienation of agricultural land also prohibits change of designation of agricultural land.

Other indicators

Other indicators not surveyed include transfer costs, stamp duties and lessee protections.

Employment law

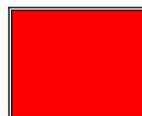
Generally The indicator here is whether it is easy or hard to hire and fire employees. The measures include high minimum wages, maximum hours, minimum holidays, maternity rights, equal pay for equal work (non-discrimination) and severance costs.

Q17 In Ukraine, there are few controls on hiring and firing employees or on the terms of employment.

True



False



Can't say



Comment:

Ukrainian legislation provides explicit regulation on employment and dismissal of employees under the employment contract.

Employment: First, Ukrainian law prohibits employers from unjustified refusal of employment on the ground of race, gender, nationality, disability, religion, political opinions, membership in trade union or other association. There also exist additional employment guarantees provided for certain categories of citizens, so called “protected classes”. These categories include pregnant women, single women, parents with children, disabled people, people in need of social protection etc. However, there are certain restrictions on employment, such as age (16 years is the minimum legal age for employment, 14-years old children are entitled to work only with a parental consent), citizenship (to employ foreigners and stateless persons, the employer is obliged to obtain permission for in the State Employment Service - an employee shall be subject to penalties for violation of this rule). In practice, labour relations are usually commenced by the order on hiring of an employee instead of signing a written employment contract. Each new employee must be provided with the time-board number, personal card and personal file. Ukrainian law prohibits the employment without proper registration of the employment relationships. Actions taken to conceal the employment relationship is a subject for special control by public authorities (especially tax authorities).

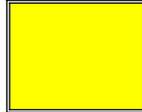
Dismissal: An employee may terminate his/her contract by resigning, or an employer may terminate the contract by dismissing an employee. It is necessary to point out that dismissal is allowed only for the reasons provided by law. There are special reasons provided for dismissal of certain categories of employees, such as company directors, their deputies, chief accountants, their deputies, as well as customs officials, officials of state tax authorities, who are conferred the personal rank, officials of the State Control and Revision Service etc. Ukrainian law makes it illegal for employers to dismiss employees during the period of their temporary incapacity, during their vacation, as well as pregnant women, and women with children. There are also restrictions on dismissal of employees under 18.

Wrongful dismissal may be appealed against in the trade union committee, in the State Labour Inspectorate or in the Court.

Environmental restrictions

Q18 In Ukraine the rules governing the environment and liability for clean-up are very light and relaxed.

True



False



Can't say



Comment:

The rules governing protection of the environment, sustainable use of natural resources and environmental safety of human life in Ukraine cannot be considered as light and relaxed.

First, it should be noted that relations in the field of environmental protection in Ukraine are subject to a large regulatory framework. Thus, these relations are regulated by the act on environmental protection, land, water and forestry legislation, legislation on subsoil, air protection, protection and use of flora and fauna, and other special laws. All these regulations provide rules on environmental protection and rational use of natural resources, the violation of which entails disciplinary, administrative, civil or criminal liability.

Thus, persons are liable for breaching the norms of ecological safety; breaching Ukrainian law during the environmental expertise, including submission of obviously false expert opinion; failing to comply with the state environmental expertise; financing and introduction of new technologies and equipment without a positive conclusion of the state ecological expertise; breaching of environmental requirements in the design, location, construction, reconstruction, commissioning, operation and liquidation of enterprises, buildings, vehicles and other movable objects; assuming abnormal, and emergency salvo emissions and discharges of pollutants and other harmful effects on the environment; exceeding limits and violating other requirements of natural resources use; and unauthorized special use of natural resources etc. The minimum administrative fine for violations in the field of environmental protection is equal to three minimum incomes (about \$80), and imprisonment for 10 years is the strictest criminal penalty for environmental crimes.

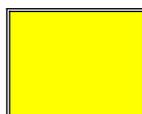
Openness to foreign business

Generally These indicators measure the degree to which the country is open to foreign businesses. The indicators are quite generic and therefore subjective.

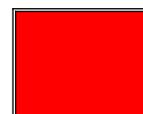
Foreign direct investment

Q19 In Ukraine, foreigners may freely own and control local companies outside protected industries, such as media, banks and defence.

True



False



Can't say



Comment:

Under the Law of Ukraine “On the Regime of Foreign Investment”, foreign legal entities and individuals may invest in the forms provided by the laws. Any type of property or property rights in all sectors of national economy, which can be transferred to the investor in consideration to his foreign investments may be considered as an object of foreign investment. In Ukraine, foreign investors enjoy national regime of investing with certain exceptions provided by the laws and international treaties of Ukraine. Qualified foreign investors are granted guarantees against nationalisation, except in cases of national emergencies, accidents, or epidemics.

The foreign investor may invest in any form not expressly prohibited by Ukrainian laws, including, in particular:

- (1) participation in the Ukrainian joint ventures (including non-corporate forms) and acquisition of shares in Ukrainian companies’ equity;
- (2) establishment of fully-owned subsidiaries in Ukraine;
- (3) acquisition of movable (including securities) and immovable property in Ukraine; or

participation in production-sharing agreements

Exchange controls

Q20 In Ukraine, there are no exchange controls. Businesses may therefore have foreign bank deposit accounts in foreign currency, borrow in foreign currency and repatriate profits to foreign shareholders in foreign currency.

True



False



Can't say



Comment:

Ukraine has strict foreign exchange controls regulations adopted by the National Bank of Ukraine (the “NBU”). Servicing banks in Ukraine are required to exercise control over foreign currency transactions and check the legitimacy of grounds before carrying out such transactions.

All currency control rules and measures can be divided into two groups:

- (1) **general currency control restrictions** introduced without specific term; and
- (2) **temporary currency restrictions** introduced from 2013 and subsequently prolonged (each time for 3-4 months) with a number of modifications in order to stabilise the Ukrainian currency and Ukrainian economy in general.

The general framework for Ukraine’s currency controls is set out in the Decree of the Cabinet of Ministers of Ukraine “On System of Currency Regulation and Currency Control” (the “Decree”), which provides for the individual licensing regime for the foreign currency transactions. In particular, the following transactions require prior obtaining of individual license of the NBU:

- foreign currency payments abroad;
- settlements in foreign currency within the territory of Ukraine;

- making overseas investments by Ukrainian residents;
- depositing funds by residents on a bank account overseas; and
- import of national currency (hryvnia) to Ukraine.

At the same time, the Decree also provides for a number of exemptions from the individual licensing regime (e.g. payments of interest under cross-border loans extended by foreign lenders to Ukrainian borrowers, payments under import contracts of Ukrainian residents etc.).

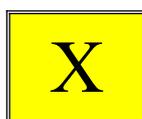
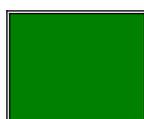
As regards the temporary currency control restrictions imposed by the NBU, the key restrictions include:

- limitations on withdrawal of cash from a bank account and the purchase of foreign currency by private individuals;
- individuals may receive only UAH from third persons within Ukraine (there are certain exceptions from this rule);
- obligatory sale of 65% of receivables in foreign currency (refers to foreign currency of 1st Group of Classifier of Foreign Currencies) from overseas;
- temporary prohibition on payments and purchase of foreign currency if such transaction or purchase requires obtaining of individual license of the NBU. Exceptions are: depositing funds by legal entities overseas on their accounts in foreign banks; fulfilment of obligation under the loan agreement with international financial organisation or with participation of export-credit agency ensured by a resident-guarantor; payment in foreign currency of participatory fees by legal entities-residents to legal entities-non-residents; other payments, made by legal entities under individual license of NBU, providing that such transactions do not exceed USD50,000 per month (or equivalent in another foreign currency);
- prohibition on early repayment of loans from non-residents in foreign currency, including payments under amendments to the loan agreements aimed at shortening the loan repayment period, with some exceptions;
- prohibition on repatriation of funds, which foreign investors obtained from sale of securities of the Ukrainian issuers (except for sale of debt securities on stock exchanges) and from sale of equity interests in Ukrainian companies other than shares (e.g., participatory interest in limited liability companies); and
- limitations on dividend payments that can be made to foreign investors.

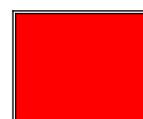
Alien ownership of land

Q21 In Ukraine, foreign-controlled companies have the same rights as nationals or residents to own or lease land without a permit.

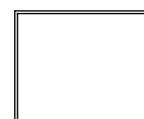
True



False



Can't say



Comment:

Foreign legal entities may acquire ownership to lands of non-agricultural designation:

- within settlements in the case of 1) acquisition of immovable property; and 2) construction of buildings related to commercial activities in Ukraine; or
- outside settlements in case of acquisition of immovable property.

These restrictions also apply to joint ventures, i.e. companies established under Ukrainian laws by foreign investors and Ukrainian legal entities and/or individuals.

At the same time, the agricultural land plots may not be acquired by the foreign individuals, nor by the foreign legal entities. If such land plot is inherited, it shall be alienated during the year. A refusal to fulfil this obligation entails the mandatory sale of the land plot.

The purchase of municipal land plots by foreign legal entities and joint ventures requires the approval from the Ukrainian government, and the purchase of state land plots requires approval from the Ukrainian parliament.

Ukrainian legislation does not impose any restrictions on the temporary use of land by foreign individuals and legal entities.

Application of the law

Generally These indicators deal with the application of the law, as opposed to what the law actually says. They are bound to be generic and subjective, a matter of impression.

Q22 In Ukraine, the higher courts usually treat big businesses as fairly as they treat individuals and do not favour local interests over foreigners.

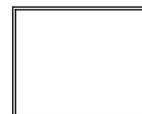
True



False



Can't say



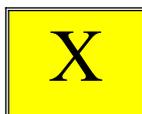
Comment:

Foreign legal entities and individuals may apply to the Ukrainian courts to protect their rights, freedoms and interests. The Civil Procedural Code of Ukraine and the Commercial Procedural Code of Ukraine provide that foreign legal entities have equal procedural rights and obligations with the Ukrainian legal entities.

Costs and delays of commercial litigation

Q23 The costs and delays of commercial litigation in the higher courts in Ukraine are not considered materially greater than in other comparable countries.

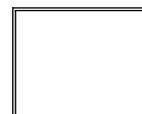
True



False



Can't say



Comment:

The costs and delays of commercial litigation in Ukraine are relatively insignificant.

The Commercial Procedural Code of Ukraine provides that the High Commercial Court of Ukraine shall consider the cassation appeal within one month from the day of filing of such appeal.

Notwithstanding that, practically, such terms exceed those imposed by the law as the courts are overloaded with the number of cases in proceeding, they are still insignificant comparing to other comparable jurisdictions.

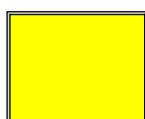
The court fee for filing of a cassation appeal constitutes 120% of the fee for filing of a suit (to the court of the first instance), any application and an appeal (to the relevant appellate court).

Overall ranking

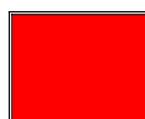
This overall ranking is achieved by a survey of all the rankings as shown in this table:

	Question	Rating
1.	Insolvency set-off	
2.	Security interest	
3.	Universal trusts	
4.	Director liability for deepening insolvency	
5.	Financial assistance to buy own shares	
6.	Public takeover regime	
7.	Exclusion of contract formation	
8.	Termination clauses	
9.	Exclusion clauses	
10.	Governing law clauses	
11.	Foreign jurisdiction clauses	
12.	Arbitration recognition	
13.	Class action	
14.	Ownership of land	
15.	Security of land title and land registers	
16.	Land development restrictions	
17.	Employment law	
18.	Environmental restrictions	
19.	Foreign direct investment	
20.	Exchange controls	
21.	Alien ownership of land	
22.	Court treatment of foreign big business	
23.	Costs and delays of commercial litigation	

True



False



Can't say



Profiles

The survey was carried out by the following students:

Ilhar Hakhramanov



Ilhar is a first-year Master student at Faculty of Law, Taras Shevchenko University of Kyiv. His main areas of interest are corporate law and M&A, banking and finance, capital markets and contract law.

Ilhar has actively participated in extracurricular activities. In particular, he won the first prize at KPMG Legal Competition, 2015, the first prize at the competition organised by Prokopyshyn & Partners Law Firm, 2016 and proceeded to the final round of the competition organised by Lavrynovych & Partners Law Firm, 2016.

Moreover, Ilhar has been involved in scientific activity. He took part in several scientific conferences regarding legal issues related to sale of integral property complex and has publications in scientific magazines.

Ilhar is an associate with Corporate and M&A and Banking and Finance practices of AVELLUM, a top-tier law firm in Ukraine. Ilhar has also worked at Kyiv Office of “Ernst and Young”.

Ilhar can be reached at ilhar.hakhramanov@gmail.com.

Alisa Ostrovska



Alisa is a second-year Master student at Faculty of Law, Taras Shevchenko University of Kyiv. Her main areas of interest are contract law, civil law, commercial law, public and private international law, arbitration, banking and finance.

Alisa has always been involved in different extracurricular activities, including management of Civil Law Scientific Club at the faculty for three years, participation in various training programs and conferences, participation in 2nd Taras Shevchenko National University of Kyiv Mediation Tournament, 2014.

She was a member of university team, which participated in ELSA WTO Moot Court Competition 2015/2016 and proceeded to the Final round in Geneva among 20 teams from around the world.

Alisa has working experience at non-governmental organisations and private companies as an intern and paralegal. Additionally, she has also undertaken summer internships at Baker & McKenzie Kyiv Office.

Alisa can be reached at aliceostrovskaya@gmail.com.

Bohdana Marchuk



This year Bohdana is going to complete her Bachelor's Degree in Law at Taras Shevchenko National University of Kyiv. Her areas of interest are corporate law, private international law and commercial law.

Bohdana takes an active stand on the issue of civil liberty and rights, and in 2015, Bohdana became a co-founder of the non-governmental organization "Liberal Democratic League of Ukraine", which comprises about 150 members nowadays.

Bohdana works at Law Firm "Jurimex", where takes a position of associate in the International Trade and Investment department.

Bohdana can be reached at Bogdana.Marchuk@bigmir.net

Yaroslava Zagoruiko



Yaroslava Zagoruiko is a first-year Master student at Faculty of Law of Taras Shevchenko National University of Kyiv.

During the previous years of study, Yaroslava was active in moot court competitions. In particular, she participated in and coached teams for both the Philip C. Jessup International Law Moot Court Competition and the International Criminal Court Moot Court Competition. Moreover, Yaroslava was a board member of the Kyiv Chapter of the European Law Students' Association (ELSA).

Yaroslava works for Vasil Kisil and Partners Law Firm (Kyiv) specialising in Dispute Resolution, Labour and Employment.

Yaroslava can be reached at yaroslava.zag@gmail.com.

Kateryna Zatulko



Kateryna is a second-year Master student at Faculty of Law, Taras Shevchenko National University of Kyiv. Her main areas of interest are commercial law, corporate law, transport law and public procurement.

Kateryna participates in extracurricular student activities, including management of Commercial Law Scientific Club at the faculty for three years, participation in various training programs and conferences. In particular, Kateryna is a member of Taras Shevchenko National University students' scientific society and a representative of students' trade organization. Kateryna has a 1,5 year of practical experience in both governmental and non-governmental organizations.

Kateryna can be reached at zatulkokateryna@gmail.com.

Hanna Rud



Hanna is a last-year student at Faculty of Law of Taras Shevchenko National University of Kyiv. Her main areas of interest are commercial law, insurance law and public procurement.

Hanna participates in many extracurricular student activities. She has been a chair of the local student's trade organisation for the last three years. She has also represented law students at the Academic Council of Taras Shevchenko National University of Kyiv.

Moreover, Hanna is actively involved in scientific activity. Currently she is engaged in research in the field of insurance, including prudential supervision of the Ukrainian insurance market.

Hanna can be reached at anetta.rud@gmail.com.

Olesia Mashtaler



Olesia is a second-year Master student at Faculty of Law, Taras Shevchenko University of Kyiv.

She is interested in Competition Law, Commercial Law, Contract Law, Civil Law, Banking and Finance and Capital Markets.

Olesia participates in many extracurricular student activities, including participation in various conferences training programs, management of Civil Law Scientific Club at the law faculty and participation in Taras Shevchenko National University students' parliament and scientific society.

Olesia works for Sayenko Kharenko Law Firm (Kyiv) specialising in Antitrust/Competition.

Olesia can be reached at olesyamashtaler@gmail.com.

Diana Pysarenko



Diana Pysarenko is a fourth-year student at Faculty of Law of Taras Shevchenko National University of Kyiv. She is mostly interested in corporate law and M&A; however, she is passionate about public international law.

Diana manages to combine working at CMS Cameron McKenna with successful participation at Phillip C. Jessup Moot Court Competition, coaching members of other moot court teams, running the Moot Court Society at her university and providing legal aid in a law clinic.

Diana can be contacted at dpysarenko@gmail.com

Members of the Practitioner Expert Panel



Glib Bondar is a Senior Partner of AVELLUM and the Head of Finance and Debt Restructuring Practice. Glib focuses on financings, capital markets and debt restructurings. Glib's additional expertise spans over energy and infrastructure projects.

The last 15 years of his legal practice Glib devoted to international financing and capital markets projects from Ukraine and was involved in many of the high profile and landmark cross-border lending, eurobond offerings and debt restructurings for Ukrainian sovereign/quasi-sovereign, municipal and corporate borrowers. He represented international and local clients, including major investment and commercial banks, financial institutions and corporates.

Glib holds Master of Laws degree (with honors) from Taras Shevchenko Kyiv National University, Ukraine (2000) and LL.M. degree from Columbia Law School, USA (2001).

Contact email: gbondar@avellum.com



Igor Lozenko is a Counsel with AVELLUM's finance practice with the primary focus on cross-border finance, international capital markets transactions, debt restructurings and renewable energy. He has extensive experience of advising on numerous finance and capital markets transactions involving borrowers from public sector as well as various industry sectors including agriculture, energy, mining and metals.

Igor regularly advises international and Ukrainian clients on a wide range of offerings, both debt and equity, secured financings, syndicated loans, project finance and trade finance transactions.

Igor holds Master of International Law degree (with honors) from the Institute of International Relations of the Kyiv International University, Ukraine (2008).

Contact email: ilozenko@avellum.com



Yuriy Nechayev is a Counsel with AVELLUM's corporate practice with the primary focus on corporate law, mergers and acquisitions and private equity. Yuriy regularly advises international and Ukrainian companies on various aspects of their business activities in Ukraine. His experience includes advising clients on the aspects of a wide range of major cross-border corporate transactions. Yuriy also advises his clients on various matters of commercial law.

Yuriy holds Master of International Law degree (with honors) from the Institute of International Relations of the Kyiv International University, Ukraine (2007).

Contact email: ynechayev@avellum.com



Taras Stadniichuk is an Associate with AVELLUM's finance practice with a primary focus on general banking & finance and restructuring & insolvency. Taras advises both Ukrainian and international clients on a broad range of matters related to cross-border finance, project finance, commodity finance and restructuring & insolvency, as well as advising on real estate and telecommunication regulation.

He holds Bachelor of Law degree from National University of Kyiv-Mohyla Academy, Ukraine (2009) and LL.M. degree from the Institute for Law and Finance, Goethe-Universität, Frankfurt am Main, Germany (2011).

Contact email: tstadniichuk@avellum.com



Oleksandr Onufrienko, Head of the Practice of private clients of Lavrynovych & Partners Law firm.

Oleksandr has been working over 20 years in the oldest Ukrainian investment company "KINTO", holding the position of Director of Legal Department, also worked on projects of BoozAllen & Hamilton in Ukraine. During 25 years of his legal career, Oleksandr has got unique experience in asset management, corporate and

private finance, securities, M&A, and investment projects, participated in the construction of unique schemes of ownership and management of Ukrainian businessmen' business systems.

Oleksandr graduated from Kyiv State University named after Taras Shevchenko. Has a scientific degree in legal sciences, a docent, an author of over 60 publications on the legal regulation of investment activity.

Mr. Onufrienko is a member of Kyiv City Bar Association.

Contact email: aionufrienko@gmail.com

About AVELLUM

AVELLUM is a leading Ukrainian full service law firm with a special focus on finance, M&A, and dispute resolution. Our goal is to be the firm of choice for our clients with respect to their most significant business transactions. We are recognized by all major international and Ukrainian legal directories.

Band 1 within Banking & Finance, Capital Markets, Corporate/M&A, and Restructuring: Chambers Europe 2017 | 2016

Tier 1 within Finance and Corporate: Chambers Global and IFLR1000 2017 | 2016

Tier 1 within Banking & Finance, Capital Markets, Corporate/M&A and Real Estate: Legal500 2017

Ukraine Law Firm of the Year: IFLR European Awards 2016

38 Volodymyrska Str., 4th floor
01030, Kyiv
Ukraine

Tel./fax: +380 44 591-3355

www.avellum.com

info@avellum.com

Allen & Overy Global Law Intelligence Unit

The Allen & Overy Global Law Intelligence Unit is part of the international firm of Allen & Overy and produces papers, surveys and other works on cross-border and international law within the field of its practice. Allen & Overy is one of the largest legal practices in the world with approximately 5,000 people, including some 512 partners, working in 40 offices worldwide. For further information, please contact Philip Wood, philip.wood@allenoverly.com or Melissa Hunt, melissa.hunt@allenoverly.com.

Philip R Wood CBE, QC (Hon) BA (Cape Town), MA (Oxon) LLD (Lund, Hon)

Head, Allen & Overy Global Law Intelligence Unit

Special Global Counsel at Allen & Overy LLP

Visiting Professor in International Financial Law, University of Oxford

Yorke Distinguished Visiting Fellow, University of Cambridge

Visiting Professor, Queen Mary University, London

Philip Wood is one of the world's leading comparative lawyers and practitioners. He has written about 18 books on financial law. He was formerly a partner and head of the banking department of Allen & Overy. For many years he has been developing innovative and pioneering methodologies for assessing legal jurisdictions and has produced a book of maps of world financial law. His university textbook on the Law and Practice of International Finance has been translated into Chinese and a Japanese version is forthcoming.

Melissa Hunt is project director of the Intelligence Unit and is responsible for the management of the project. She carries out other work for the Intelligence Unit, including the preparation of tables covering rule of law and legal infrastructure risks in the jurisdictions of the world.

Allen & Overy LLP

One Bishops Square

London E1 6AD

T: 00 44 (0)20 3088 0000

D. 00 44 (0)20 3088 2552

M. 00 44 (0)7785 500831

philip.wood@allenoverly.com

intelligence.unit@allenoverly.com

D. 00 44 (0)20 3088 2750

melissa.hunt@allenoverly.com

Allen & Overy LLP

One Bishops Square, London E1 6AD United Kingdom | Tel +44 (0)20 3088 0000 | Fax +44 (0)20 3088 0088 | www.allenoverly.com

In this document, Allen & Overy means Allen & Overy LLP and/or its affiliated undertakings. The term partner is used to refer to a member of Allen & Overy LLP or an employee or consultant with equivalent standing and qualifications or an individual with equivalent status in one of Allen & Overy LLP's affiliated undertakings.

Allen & Overy LLP or an affiliated undertaking has an office in each of: Abu Dhabi, Amsterdam, Antwerp, Athens (representative office), Bangkok, Beijing, Belfast, Bratislava, Brussels, Bucharest (associated office), Budapest, Casablanca, Doha, Dubai, Düsseldorf, Frankfurt, Hamburg, Hanoi, Ho Chi Minh City, Hong Kong, Istanbul, Paulo, Shanghai, Singapore, Sydney, Tokyo, Warsaw, Washington, D.C. | BK:39338045.1