

KyivPost

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# LEGAL

QUARTERLY

- How to plug a \$12 billion hole
- The global search for allegedly stolen billions
- Disputes mar Ukraine's corruption fight
- Summer internships for law students

## Making Russia Pay For Crimea

Ukraine's legal options for forcing return of peninsula



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## Editors' Note

Dear readers,

We are pleased to present the second issue of Legal Quarterly, with 36 pages – 12 more than the inaugural edition published on March 26.

The Kyiv Post's magazine is dedicated to covering the most pressing legal issues of the day and provides a platform for Ukraine's lawyers and others in the legal community to share their insights with the broader community in government, business and civil society.

Ukraine is undergoing numerous changes on many fronts inspired by the EuroMaidan Revolution. Its new president, Petro Poroshenko, was elected by a landslide vote on May 25 and inaugurated on June 7. Meanwhile, Ukraine still contends with Russia's illegal annexation of Crimea and a Kremlin-backed separatist war in two of its most populous oblasts in eastern Ukraine, home to 15 percent of the nation's population.

Special attention is devoted in this issue to Ukraine's relations with Russia, including the legal prospects for Ukraine getting Russia to return the Crimean peninsula.

We also cover the legal aspects of fighting corruption, unmasking the shadow economy and ending transfer-pricing scams in the never-ending struggle to improve Ukraine's business climate.

Since the 1990s, Ukrainian law schools have been overcrowded with applicants. But Western-educated lawyers who work here say Ukraine's approach to teaching law is flawed. In this edition, we look at ways to improve the situation.

We received several suggestions for improving the Legal Quarterly after the last edition and welcome your feedback on ways for us to improve.

Sincerely,



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All of our contacts are available online at <http://www.kyivpost.com/contacts/>



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## Contents

- 4 Disputes stifle Ukraine's attempts to get rid of endemic corruption
- 6 How to make Russia pay for stealing Crimean peninsula
- 9 Vox Populi
- 10 How to plug a \$12 billion hole
- 12 Justice minister sees himself as a corruption fighter
- 14 Ukraine searches globe for billions allegedly stolen by Yanukovych
- 16 Good news may come on M&A market if Russia stops waging bloody war against Ukrainian state
- 19 Law Firms listing
- 22 How to bring Ukraine's economy out of shadows
- 24 Central bank struggles to give shaky hryvnia a softer landing
- 26 DLA Piper Law recruits summer legal interns from war-torn Crimea as well as eastern Donetsk, Luhansk oblasts
- 28 Ukraine seeking fair price for gas from Stockholm court
- 31 Open Skies Agreement postponed, once again
- 32 Business of Yanukovych's alleged front man still operating in Ukraine
- 34 Legal organizations in Ukraine

**On cover: Activists celebrate Day of Crimean Independence from Russia near the Russian Embassy in Kyiv on June 14. (UNIAN)**



# Disputes stifle Ukraine's attempts to get rid of endemic corruption

By **William Schreiber**  
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**T**etyana Chornovol, the Ukrainian government's corruption-fighting commissioner, has had a bumpy road accomplishing her mission of eradicating the nation's cancerous disease of graft. Her frustration has spilled over as she complains about facing nothing but obstacles in fulfilling her monumental task.

Speaking at the Ukraine Crisis Media Center on June 3, Chornovol accused the Ministry of Justice as well as Transparency International Ukraine – a major corruption watchdog – of belonging to a “political mafia” that has frustrated her efforts to stamp out corruption.

“All the country believes I am in charge of fighting corruption (while) it is the Justice Ministry and ... (Deputy Minister Ruslan) Ryaboshapka who have the power and legal mechanisms to fight corruption in Ukraine,” she said.

“Have you ever heard Ruslan Ryaboshapka instigate any investigation or start any campaign against government corruption, against the (ousted President Viktor Yanukovich's) family?” said Chornovol, whose journalistic investigations contributed much to uncover highly dubious schemes used by Yanukovich and his inner circle.

The Justice Ministry did not respond to her charges.

Ryaboshapka has been the official head of anti-corruption efforts at the Justice Ministry since 2011, when Yanukovich was still in power. Chornovol, who was savagely beaten in an attack linked to Yanukovich, was appointed to her unenviable post on March 5, with plans to create an anti-corruption bureau. So far, Chornovol's bureau doesn't have official status. That's why on April 18 she submitted a bill through the Batkivshchyna party faction in parliament to get legal recognition.

A rival bill also was submitted on April 24, drafted by a coalition of civil society experts, including those from Transparency International Ukraine as well as Vitali Klitschko's Ukrainian Democratic Alliance for Reforms.

According to UDAR's bill, the chief corruption fighter would be chosen competitively, whereas Chornovol's version makes that position an appointment. Earlier, Transparency International-Ukraine said the new office head should have legal credentials, but the group has since withdrawn that condition.

There are other differences between the two bills: Chornovol's draft places the office under the National Security and Defense Council; in the rival version it reports to the Cabinet of Ministers. Chornovol's draft exclusively targets graft in the public sector; in the civil society draft there is some private sector jurisdiction.

Regardless of its structure, Ukrainian legal experts are skeptical. “By itself, an anti-corruption office won't solve the corruption issue. Legislation like this can provide mechanisms to fight corruption, but not to fight the system,” says Vitaliy Gren, a lawyer and anti-corruption activist.

International organizations, such as the Organization for Economic Cooperation and

Development and the Council of Europe's Group of States against Corruption, called GRECO, support the concept of an anti-corruption office.

“In Ukraine, many law enforcement bodies – too many – have an anti-corruption mandate. This resulted in fragmentation. They're all going after small fish, when we all know the fundamental problem is high-level corruption,” said Olga Savran, manager of OECD's anti-corruption network for Eastern Europe and Central Asia.

Independence from high-level political pressure, accountability to both the prosecutor's office and the public, and legally established investigative and procedural powers are crucial for the bureau's activity, according to Savran. “This should be a professional process – not a partisan one,” she concluded.

Oleksandr Lemenov, a lawyer with the Center for Political and Legal Reforms, said that “Chornovol and others are essentially working in the absence of an appropriate legislative framework.”

Chornovol drafted a resolution with the Cabinet of Ministers on May 16 altering procedures related to state seizure of assets connected to the Yanukovich “family,” the ex-president's inner circle. Currently, the law lets the government offer seized assets to private corporations through competitive bids. Chornovol's resolution would allow seized assets to be turned over only to public enterprises. However, the Justice Ministry redrafted this part of the resolution on June 6 to have confiscated assets go to private companies, without notifying the public about the change, said Chornovol. “It's one thing if this property is a car, but if it's a refinery, plant or a gold mine, that's something else,” she explained, while sharing her suspicions about private firms with connections to Justice Ministry officials who could benefit from this change.

In turn, the Justice Ministry said that its position was supported by the Cabinet of Ministers.

Chornovol and Olena Tyshchenko, her advisor on anti-corruption policy, criticized Oleksiy Khmara, head of Transparency International in Ukraine, who they claimed is not affiliated with the Berlin-based Transparency International, a corruption watchdog with global reach.

“First of all, there is no Transparency International in Ukraine. But (Khmara) has used this brand for many years,” Tyshchenko told the Kyiv Post. “From what we know, he just submitted his documents, and they're being reviewed by Transparency International in Berlin. So to me it isn't really honest to take this brand if he doesn't have relations with it.”

Olena Kifenko, a spokesperson for Transparency International-Ukraine, denied these charges. She says that the Ukrainian office became a national chapter of Transparency International in 2012.

Meanwhile, a representative from Transparency International's Berlin office clarified that Transparency International-Ukraine is “a national chapter in formation” – the last step taken before an organization becomes a full-fledged chapter. The group is authorized to use the organization's name and logo, the Berlin headquarters said. ■

**Corruption fighter Tetyana Chornovol has criticized the Justice Ministry and Transparency International Ukraine in their anticorruption efforts. (Pavlo Podufalov)**

A corruption monument depicting a golden toilet is unveiled on April 26 near the headquarters of Naftogaz, the state energy giant, in Kyiv. (Ukrainian News)



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# How to make Russia pay for stealing Crimean peninsula

Russia's President Vladimir Putin (2nd R), Crimean Prime Minister Sergei Aksyonov (L), Crimean parliament speaker Vladimir Konstantionov (2nd L) and Alexei Chaly, Sevastopol's new de facto mayor (R), join hands after signing a treaty on the Ukrainian Black Sea peninsula becoming part of Russia in the Kremlin in Moscow, on March 18. (AFP)

BY EVAN OSTRYZNIUK  
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**It** took some time, but on June 3 Ukraine filed a lawsuit with the European Court of Human Rights against Russia for its annexation of the Crimea peninsula. The nation demands \$90 billion in compensation for assets seized.

The prospects of Russia giving Crimea back in the near future, however, are unlikely.

Justice Minister Pavlo Petrenko submitted 17 volumes of supporting documentation containing value calculations to determine the losses Ukraine incurred when it lost Crimea. And this might be just the beginning.

Prime Minister Arseniy Yatsenyuk also indicated that more lawsuits may follow, stating that the Prosecutor General's Office is only "starting investigations" and the government is "(still) weighing its legal options."

In turn, Russia has already said that it would reject any ruling it considers "biased," which would be any ruling made against it.

Ever since the Russian Federation formally annexed Crimea on March 18, Ukrainian officials have been adamant about getting

the peninsula back. Appeals to the United Nations have resulted in a resolution in Ukraine's favor. No major country or organization recognizes Crimea as a part of Russia. Western nations have also imposed financial sanctions on high-ranking Russian officials to punish Ukraine's former ruler over the annexation.

Then, on April 15, Ukraine's parliament passed a law on the temporary occupation of Crimea that restates it still belongs to Ukraine and that human rights or property violations committed there are the responsibility of the Russian Federation as the occupier.

But with Ukraine's military too weak to suppress an armed insurgency in the southeastern part of the country, it is not in any condition to liberate Crimea by force. That leaves the more

peaceful courts to redress the violation of Ukraine's territorial integrity.

Legal experts say that Ukraine has serious grounds to sue Russia over the occupation in an international court of law. The questions are on which grounds, in what courts, and if the new government truly has the will to go through with a lawsuit and all the complexities it entails.

Ukraine must be careful how it will sue its northern neighbor. To simply appeal to an international court for the return of Crimea to Ukrainian sovereignty would be futile and a tacit admission that Russia owns the place.

As Maksym Lavrynovych, managing partner of Lavrynovych & Partners explains: "The law clearly states that Crimea is a part of Ukraine, so to go to court to get it back would contradict the law, because it is already ours according to the constitution."

In addition, the international community (except Russia) recognizes Crimea as a part of Ukraine, regardless of the reality on the ground. International law is impotent in this case as well.

Volodymyr Vasylenko, head of a public commission that investigates and prevents human rights violations in Ukraine and a judge of the International Criminal Tribunal for the former Yugoslavia, said on March 21 that no legal mechanisms for the return of Crimea in an international court are available. "Consent of both parties is required, and Russia believes that its actions are fair," Vasylenko says.

If Russia was playing by the rules, the legal situation might be different. The Rome Statute of the International Criminal Court has the right to bring legal action against countries that commit crimes of aggression and other war crimes, but while Russia is a signatory of the statute, it has not ratified it, so it remains beyond this court's jurisdiction.

## Show me the money

Barring the geopolitical route, that leaves the economic one, which is what Ukraine has done. Ukraine should sue



Russia for damages to its investments or the investments and assets of its citizens as a result of actions conducted by the Russian armed forces, Lavrynovych argues. It would not be hard to prove lost assets and declining property values, for example.

Finding a place to file a lawsuit is not as difficult as one might assume.

Ukrainian citizens who suffered property losses in Crimea could approach the Russian courts, oddly enough, since both countries signed a bilateral agreement in 1998 within the framework of the Commonwealth of Independent States for mutual protection of investments. Russia promised to protect private assets in Crimea when it annexed the region. However, Ukraine should recognize itself as a part of CIS, while the current government has been keen on leaving the organization that unites former Soviet republics. →

Simferopol residents cut a cake given to them on June 7 during the celebration of the city's 230th anniversary. Conflicts constantly arose between people as the cake was given for free and local residents wanted to get as much of it as possible. (UNIAN)

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→ Taking the international route is a better option, legal experts agree.

This would mean asking for arbitration to determine compensation for expropriation, damages or loss of value, which is what Ukraine is doing now.

In addition to the European Court of Human Rights, other possible arbitration venues include the Arbitration Institute of the Stockholm Chamber of Commerce, International Court of Justice at The Hague, and Arbitration Commission of the UN for International Trade Rights.

Russia would have a difficult time brushing off the European or United Nations courts, because it is a signatory to both.

The courts also anticipate claims of jurisdictional ambiguity that could be used to muddy the legal waters. Even though Europe and the UN assume Crimea as a part of Ukraine, its courts recognize the concept of "extra-territorial control." Since Crimea is effectively under Russian control, the courts will recognize Russia's de facto jurisdiction over the territory, Iryna Marushko of Lavrynovych & Partners explains.

From the start, Russia cloaked its military aggression against Ukraine in legal arguments, however spurious, says Lavrynovych. When Russian President Vladimir Putin and his rubber-stamp parliament decided to annex Crimea, they argued that it was in response to a demand made by an independent country, following a declaration through a referendum. In typical double-speak, Russian Foreign Minister Sergey Lavrov declared on March 21 that "the decision to accept Crimea into Russia is based on the free will of the people of Crimea by referendum and corresponds to international law."

So, if Ukraine wants to sue anyone for damages in Crimea, the Russians could merely shrug and state that it would have to be the Republic of Crimea, which conveniently no longer exists.

### Russia remains obstinate

Russia's reaction to Ukraine's legal threats has so far been dismissive.

"Returning Crimea to Ukraine is impossible," said Putin's press secretary Dmitry Peskov on May 26, "so there is no point in talking about it. It is a region of Russia." On the following day Russia's permanent representative to the European Union, Vladimir Chizhov, announced that "any attempts of Kyiv to sue Russia over Crimea will have no prospects."

Such a bellicose attitude has been met and overcome before.

### Cyprus precedent

An international precedent exists that supports Ukraine's ambition to sue Russia on behalf of investors.

"Cyprus sued Turkey in the European Court of Human Rights in 2013 for compensation to Cypriot investors who materially suffered as a result of the (1974) Turkish invasion," explains Iryna Marushko, partner at Lavrynovych & Partners.

On May 11, Europe's highest court ruled in favor of Cyprus and ordered Turkey to pay 90 million euros to the victims of its armed aggression 40 years ago. The amount includes compensation for property losses.

The onus for this lawsuit fell on the state, which should give Ukraine even more impetus to proceed with legal action. "Cyprus is protecting the country and its people," says Lavrynovych. "The court calls them investors, because they were building their hotels and shops that were taken over by Turkey. All of this was done with the help of the state."

Turkey is appealing this ruling, but it has lost and paid up similar lawsuits brought against it by individuals in 1998 and 2003.

### Upholding 1994 Budapest Memorandum

Another advantage to bringing a class-action suit in an international court is to force Russia to respect international agreements, adds Marushko. This could retroactively extend to the 1994 Budapest Memorandum that was supposed to guarantee Ukraine's territorial integrity, which Russia flagrantly violated.

### Enforcement chances 'small'

Winning a lawsuit is one thing. Enforcing the ruling is another, and Ukraine might lose despite winning by virtue of Russia's immense global standing.

"Ukraine has strong chances to win the case in the International Court of Justice," says Alexey Kot, Managing Partner at Antika Law Firm, "but considering Russia's nihilistic attitude towards international institutions, the chances to enforce this decision are rather small."

Kot goes on to argue that, while Ukraine can appeal all the way up to the UN Security Council should Russia refuse to abide by an international court ruling, as a permanent member of the council, Russia has veto power and would be certain to use it. ■

## Vox Populi

Ukraine's parliament on April 15 cancelled the need to have obligatory corporate stamps, eliminating a Byzantine bureaucratic practice. Will this help conduct business in Ukraine?

BY **Solomiya Zinevych** imberammiaz@gmail.com

**Yevgeniy Kalashni,**  
lead attorney, chief of Kalashnik  
and Partners LLP



"The adoption of the law will affect foreign entrepreneurs positively: it will bring new possibilities and new strategic partners. It is possible that huge foreign corporations will not like this law. System changes will scare large business owners."

**Petro Butsky,**  
legal consultant at Gedeon Richter, a Hungary-based pharmaceutical company

"The law will have a rather positive impact on our company. Unlike small companies, big corporations can't provide each worker with a corporate stamp, which leads to constant problems... Moreover, signatures will add trust to partnership relations and make the responsibility for assigned decisions more personal."

**Oleksandr Mashtalyar,**  
lawyer at Agency of Anti-Crisis Solutions



"This law will not make a significant difference. Obligatory corporate stamps do not bring inconveniences to Ukrainian or foreign entrepreneurs. Problems with fake stamps will be simply substituted by problems with forged signatures."

**Christina Nuzhna,**  
legal consultant at Krohne Ltd., Germany-based producer of energy meters

"Every person that makes decisions in our company has a corporate stamp, so adoption of this law will not make any difference for us. However, implementation of new standards in documentation will bring certain inconveniences. I can't imagine cooperation with banks without using corporate stamps."

**Sergiy Defyak,**  
lawyer at Euroconsulting



"Cancellation of corporate stamps will not have an impact on foreign entrepreneurs. Ordering stamps is a simple and cheap procedure: it takes one day and Hr 250, European entrepreneurs usually do not have problems with it."



**Dmitry Pichugin, Managing Partner, Goldblum and Partners,** specializes in corporate and tax law, M&A and financial consulting.

His areas of specialization include advising on restructuring, due diligence, evaluation of tangible and intangible assets, liquidation, split-up, amalgamation, and purchase and sale of ownership rights.

### Amendments to the Ukrainian Act about advocacy

Ministry of Justice has drafted amendments to the Ukrainian Act about advocacy, which has already been sent to the expert discussion of the Venice Commission, and then will be given consideration in the Verkhovna Rada.

Dmitry Pichugin commented the most important changes made to the Act. In his opinion, the aim of the bill is the expansion of the rights of lawyers in the exercise of advocacy, improving the standards of interaction with state authorities, improving the quality of service of the advocacy associations by tightening the rules and requirements of obtaining a lawyer's license. Despite the positive changes for practicing lawyers there could be some negative aspects for lawyers, law firms or individual entrepreneurs who operate not as lawyers, without a license.

### The most important changes and their influence on the future work of lawyers

Significant amendments have been made in the art. 19 of the Act, which says that represent the interests of individuals and legal entities in the trial, administrative, commercial and criminal court proceedings, as well as in cases of administrative offence, is only to be made by the licensed lawyers.

At that rate, employees of law firms or natural persons-entrepreneurs, constituted the majority of representatives in court by power of attorney will be forced to continue their activities in the providing of legal services only on condition to obtain the status of a licensed lawyer in the Ukraine.

With regard to the requirements to become a lawyer, in my opinion, the bill provides the introduction of stricter conditions for obtaining a license, which, by turn, can lead to reduction of low-skilled and unscrupulous lawyers.

One of examples of the stricter requirements can be found in the Art. 6, which increased the necessary work experience as paralegal to 3 years instead of the previous two. The second part of this article supplemented conditions, under which there is no possibility of obtaining the status of a lawyer, as, for example, the imposition of administrative liability for corruption offenses, or if there some diseases that hinder the implementation of advocacy.

The next article to be paid attention to is art. 20, which is more focused on professional rights of the lawyers. I assume, such additions as in paragraph 1 of part 1 "... and receive from them the relevant information and documents" as well as part 3 concerning confidential information, will improve the capability of lawyers to cooperate with state authorities and private individuals to perform their duties.

The last but not least amendment to be mentioned is art. 23, which is dedicated to the advocacy guarantees. According to this article, the lawyer has the right to acquire defenders in the Ukraine (such as pistols and revolvers, ammunition intended for shooting with rubber bullets). Anyway, the advocacy guarantees are providing lawyers a kind of immunity. The rules of art. 23 (especially items 9, 10, 12, 18) are inherent European standards by carrying out lawyers activity and control over their activities.

### Summation

Considering the above, I assume that the new act will improve the quality of law service by strict demands of lawyers' qualification. The act on the one hand may negative affect the activities of lawyers without license, but on the other hand it will weed out unscrupulous legal defenders. Amendment provides and unifies the implementation of the European practice by empowering lawyers in their work; improve communication with the public and other authorities, as well as private companies.



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Picture taken late on May 4 shows people fishing at sunset in the Crimean town of Alushta. (AFP)







The British Virgin Islands are among the most popular offshore destinations among Ukrainian businesses. (Wikipedia)

# How to plug a \$12 billion hole

By **Ivan Verstyuk**  
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**On** May 29, changes to the transfer pricing law, seen as a crucial regulatory act to prevent the shifting of capital abroad, came into effect. Vasil Kisil & Partners law firm estimates that state coffers lose out on \$12 billion annually due to so-called offshore tax optimization schemes.

Initially, the law went into force on Sept. 1, but subsequently later was revised because companies were experiencing hardships in providing reports on their offshore transactions. At first, the deadline was set for May 1, but afterwards was shifted to Oct. 1.

The recent changes, however, introduced far smaller fines for non-compliance with transfer pricing rules, which makes the procedure less bribe-prone, experts say.

“That is an adequate step given the current situation in the country. The lack of certain secondary legislation on the matter coupled with the general turmoil of the past six months made it unwise to keep May 1 as the reporting deadline. The decision to have it shifted to Oct. 1 is a well-balanced one,” says Oleksandr Martynenko, senior partner at CMS Cameron McKenna.

However, most companies have already submitted their transfer pricing reports to avoid fines, says Denys Lysenko, Vasil Kisil’s partner.

The standard way of moving profits starts with registering a resident company in an offshore jurisdiction that has lower taxes. Then a Ukraine-based producer sells what it produces to that offshore entity at an extremely low price to avoid paying a substantial amount of taxes under Ukrainian tax legislation.

When any interested party wants to purchase those products, it buys it from the offshore entity which pays significantly lower taxes at a given jurisdiction. Goods that are actually sold may never leave Ukraine under this scheme.

Transfer pricing legislation is applied when there is a suspiciously low price for the sale of goods or services to foreign companies. In this case, average market prices are used to assess the transactions.

The tax havens of Cyprus and British Virgin Islands remain the most popular offshore jurisdictions for Ukrainian businesses.

Ukraine’s transfer pricing legislation is adequate, says CMS’s Martynenko. It covers deals whose aggregate annual value exceeds \$5.1 million. If transaction take place with a foreign resident, transfer pricing laws are implied if the corporate income-tax rate in that country is lower than Ukraine’s by 5 or more percentage points, or 14 percent and less.

However, secondary legislation that applies to other existing laws is lacking, especially for the banking sector.

Meanwhile, Lysenko of Vasil Kisil &

Partners thinks that Ukrainian transfer pricing rules are more complicated than those nations with a longer track record in this area, namely America, Britain and Germany.

The law leaves enough room for inventive entrepreneurs to engage in capital flight, adds Pavlo Demchuk, a Kyiv-based expert on transfer pricing.

Generally, the most important factors that lead Ukrainian businesses to favor offshore jurisdictions are not only lower taxes, but also the poor quality of Ukrainian corporate and commercial legislation. Inadequate court protection contributes to this, too, lawyers say.

**Many businesses in Ukraine have perfected tax evasion through complicated offshore schemes. But Ukrainian authorities say they are taking aim in order to boost tax revenues.**

However, it is realistic to give companies incentives to return to Ukrainian taxation.

“Further measures, including a potential tax amnesty for previous periods, could and are likely to be considered to boost Ukraine’s investment potential for primarily domestic players,” says Lysenko of Vasil Kisil & Partners.

Martynenko of CMS Cameron McKenna agrees: “Give them good laws coupled with solid protection and decent tax treatment and they will be back with their capital. By ‘good laws,’ I mean a common law system.”

Almost all offshore jurisdictions, apart from Andorra and Monaco, belong to the common law system, which is less dependent on government decisions. Money likes stability and predictability, says Martynenko.

Meanwhile, Boston Consulting Group estimates that globally some \$9 trillion of capital has shifted to offshore jurisdictions, while it expects this figure to reach \$11.2 trillion by the end of 2017. ■



Justice Minister Pavlo Petrenko applies for a new passport on June 5. (Ukrainian News)



## Justice minister sees himself as a corruption fighter

BY Olga Rudenko  
rudenko@kyivpost.com

**P**avlo Petrenko, 34, sees fighting corruption and cutting the Justice Ministry's staff as his key tasks. He became minister on Feb. 27 in the wake of the EuroMaidan Revolution, part of the "kamikaze government" led by Prime Minister Arseniy Yatsenyuk.

"When I was appointed to be the new justice minister, I could either go with the stream or break the system to the root. I chose the second option," Petrenko wrote after his first 100 days in office.

Serhiy Pionkovsky, co-managing partner of Baker & McKenzie law firm, approves some of the ministry's recent actions, but

says that "a lot still remains to be done."

Ukraine's legal community greeted Petrenko's appointment with high expectations once he replaced the disgraced Olena Lukash, who is accused of negligence and was a close ally of fugitive ex-President Viktor Yanykovich.

The minister previously served as a member of parliament in the Batkivshchyna party faction, after practicing law beginning in the early 2000s. Unlike other EuroMaidan-backed government officials, Petrenko was not criticized for gaining office simply for his anti-Yanukovich stance. His expertise is recognized by the legal community.

Petrenko took a radical approach to laying off underqualified employees. Right after he took office, he summoned the heads of the ministry's regional departments and made them pass a test that would demonstrate their legal expertise – similar to those given to four-year students of law schools. As a result, as many as 40 top employees failed and lost their jobs.

The main goal, however, has been fighting corruption. In his progress report, he claims to be satisfied with the initial results. Among them is the adoption of an anti-corruption law, which is part of an action plan to secure visa-free travel for Ukrainians to the European Union.

The law increases punishment for corruption-related offenses. Previously, offering a bribe was not a criminal offense. Also, control over the incomes and property of officials was intensified.

Under the previous government, corruption fighting didn't yield impressive results. In 2013, only 74 people were punished for corruption out of

2,345 investigations that were launched.

"Every new government starts with anti-corruption initiatives," says Maksym Lavrynovych of Lavrynovych & Partners law firm. "Anti-corruption efforts have been going on for a long time, in accordance with the visa-regime liberalization plan."

Unfortunately, Lavrynovych says, the incomes of low-level officials were decreased by 50 percent recently. "So, on the one hand the government makes this good move increasing liability for corruption, and on the other hand it pushes (the officials) to committing such crimes," observes Lavrynovych.

Petrenko has spearheaded a bill to restore public trust in judges. Essentially, the bill calls for reviews of rules made involving the dirty 2012 parliamentary elections, the EuroMaidan protests and the sentencing of protesters. Those found guilty of unjust decisions would be dismissed.

Petrenko says members of civil society and the legal community took part in drafting the law. Lavrynovych, however, downplays the legal community's participation, arguing that it was "very limited."

Petrenko's also managing the introduction of an electronic system of issuing notary licenses. Applicants for notary service positions will have to pass an online examination. Meanwhile, the bribe for becoming a notary has risen to \$160,000 in Kyiv, Petrenko says in his report.

Pionkovsky of Baker & McKenzie said: "A reform of the outdated state enforcement service is badly required. One change is to introduce private enforcement offices in Ukraine. This practice exists in some European countries and it has proved to be very successful." ■



Peter Teluk, Managing Partner, Squire Patton Boggs Ukraine

## Getting Tough on Compliance

Over the last several years, compliance has become increasingly important in civilized countries. Ukraine is now on the way to reforming its economy, government and judicial systems, and anti-corruption practices and procedures are more important than ever before. In this piece, we show how Ukraine can benefit from international experience in this area. Squire Patton Boggs has advised multiple clients on compliance matters worldwide and is well equipped to pursue compliance initiatives to assist Ukrainian government agencies and businesses.

The Foreign Corrupt Practices Act (FCPA) was enacted in the United States back in 1977 for the purpose of making it unlawful for US individuals and companies to make payments to foreign officials in order to obtain or retain business. Since 2010 the US governmental authorities, namely the Department of Justice and the Securities and Exchange Commission, have become much more vigilant in enforcing the FCPA against companies. In 2010, the UK also adopted its anti-bribery act making it a criminal offense to bribe foreign officials. Ukraine has also over the past few years adopted a number of pieces of legislation focusing on anticorruption.

Foreign anticorruption practices and procedures are becoming more stringently applied by governments. Many in Ukraine tend to think that the FCPA is merely a "US matter." However, this is not the case. Currently, of the top ten FCPA cases, only one involved a US headquartered company. The top ten are Siemens (Germany) US \$800 million; KBR/Halliburton (US) US \$579 million; BAE (UK) US \$400 million; Total S.A. (France) US \$398 million; Snamprogetti Netherlands and ENI (Holland/Italy) US \$365 million; Technip (France) US \$338 million; JGC Corporation (Japan) US \$219; Daimler AG (Germany) US \$185 million; Alcatel-Lucent (France) US \$137 million and Magyar Telecom/Deutsche Telekom (Hungary/Germany) US \$95 million.

If Ukrainian companies think that foreign anti-corruption practices do not or will not apply to them, they need to think again. If they are receiving investment from a US company or foreign company that does business in the US, the FCPA will be a concern to such investor. If a Ukrainian company is sold to a major multinational, such company will have FCPA liability for the past acts of the Ukrainian company.

Compliance is not simply following anticorruption regulations. It is also environmental compliance. Companies are paying more and more attention to complying not only with the environmental regulations of a particular country, but also with "world-wide" standards. In case of foreign companies, it is worthwhile to remember that under certain circumstances they have to report back to their country and investors if major ecological issues are revealed in other parts of the world and the potential financial exposure is potentially as great as FCPA exposure.

External counsel can assist with the whole array of services including work with management to establish preventive measures, among them a review and revision of policies and procedures, and assisting when a problem has been identified and an investigation has begun.

Companies are slowly beginning to understand that it is a worthwhile investment to establish preventive measures. The liabilities, not just in terms of fines, but in personal criminal liability that can be imposed on key personnel of the company and in damage to reputational risk are high.

The world has changed and will continue to evolve with respect to transparency, corporate governance and compliance. Companies that wait to be investigated in terms of FCPA compliance will wind up paying a higher price if they do not have preventive measures already in place.

Governments and authorities all around the world are getting tough on compliance matters, whether it is anti-corruption, environmental, or fiscal (banking). There are costs involved in establishing a compliance program, including time and money. However, the costs will be much higher when trying to remedy a compliance matter after it has occurred. Ukrainian companies, if they are looking to expand to US and European markets, will need to be aware of and abide with compliance matter. Even if they remain in the domestic market, if they are receiving funding through international banks and stock exchanges, their cost of money will be higher if a proper compliance program is not in place.



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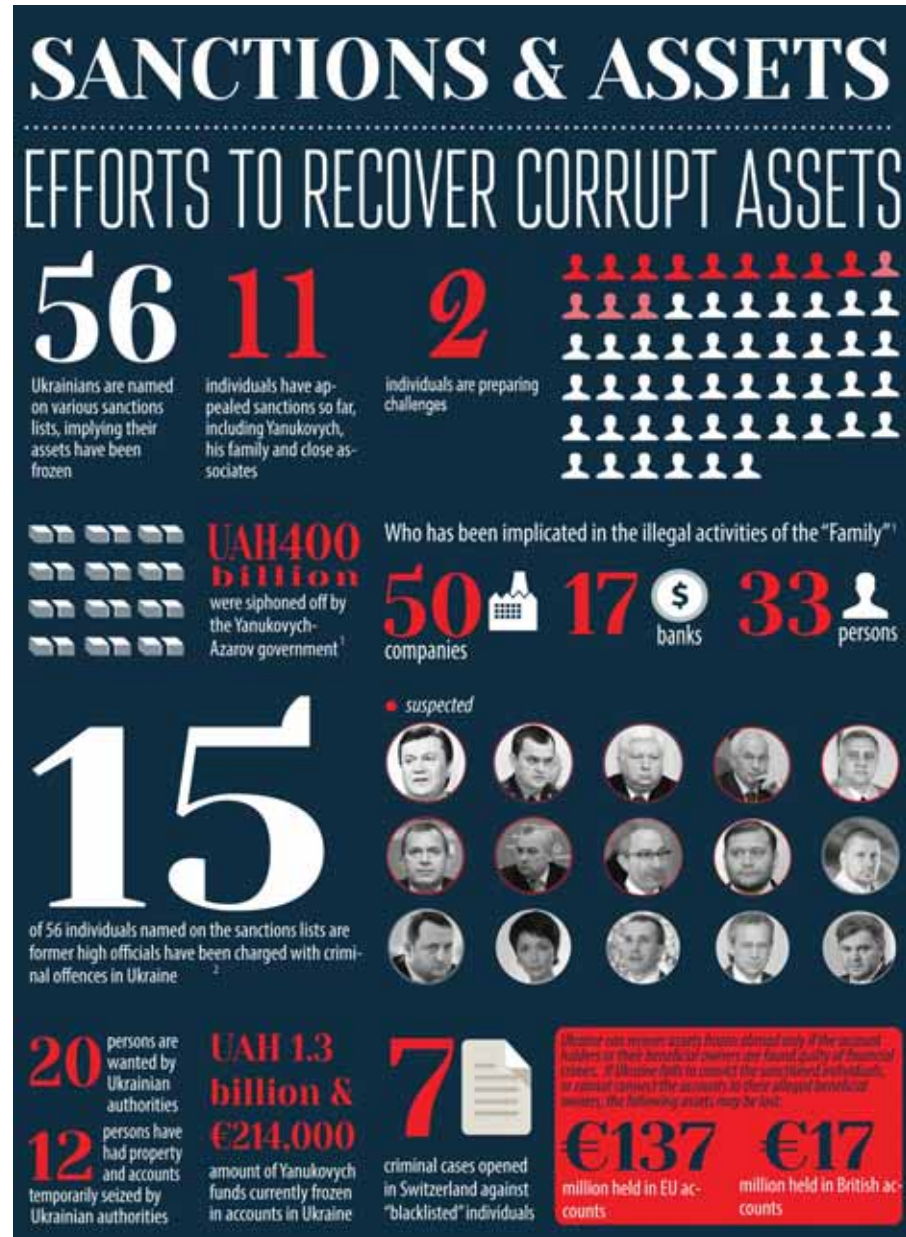
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# Ukraine searches globe for billions allegedly stolen by Yanukovich



Source: Anticorruption Action Center

As of June 3, Ukrainian authorities have opened criminal investigations against 15 of the 56 former high-level officials who have had their assets frozen in the European Union, Switzerland, Lichtenstein, Canada, the United States and United Kingdom. They are: (1st row, from left) ex-President Viktor Yanukovich, ex-Interior Minister Vitaliy Zakharchenko, ex-Prosecutor General Viktor Pshonka, ex-Prime Minister Mykola Azarov, ex-State Security chief Oleksandr Yakymenko; (2nd-row, from left) former presidential chief of staff Andriy Klyuyev, ex-Deputy Interior Minister Viktor Ratushnyak, Kharkiv Mayor Hennadiy Kernes, ex-Kharkiv Governor Mykhailo Dobkin, ex-Revenues and Duties Minister Oleksandr Klymenko; (3rd row, from left) ex-First Deputy Prime Minister Serhiy Arbuzov, ex-Justice Minister Olena Lukash, Oleksandr Yanukovich, ex-Agriculture Minister Mykola Prysiazhnyuk, ex-Energy and Coal Industry Minister Eduard Stavvtsky.

By **Mark Rachkevych**  
rachkevych@kyivpost.com

**A**uthorities in Kyiv have made progress in tracing, identifying and freezing part of an estimated \$100 billion in assets allegedly embezzled by fugitive ex-President Viktor Yanukovich and his associates.

Deputy Prosecutor General Vitaliy Kasko told the Kyiv Post that some \$3 billion has been frozen involving 22 former high-level officials or their associates.

"The list of people continues to grow as more evidence is uncovered... when we get more, we pass it on to our (European and North American) partners to get assets frozen," said Kasko.

On June 18, authorities further specified that \$1.34 billion had been frozen in foreign bank accounts belonging to Yanukovich and his inner circle. Most money had been converted to domestic Ukrainian government bonds with an interest rate of 19 percent, Prime Minister Arseniy Yatsenyuk said in a Cabinet of Ministers meeting.

The government's Financial Monitoring Service identified 42 companies tied to Yanukovich and his entourage in Cyprus, Seychelles, Panama, Belize and Great Britain. So far, the accounts of 19 companies have been frozen.

"Together with financial intelligence units of in U.S., Great Britain, Latvia, Cyprus and Panama, we uncovered these aforementioned offshore companies and the surnames of (former) high-level officials and their legally appointed company and money managers," Yatsenyuk announced.

The same day, the prosecutor's office said it uncovered a similar bond scheme worth \$2 billion tied to ex-First Deputy Prime Minister Serhiy Arbuzov. Former Prosecutor General Oleh Makhnitsky said that the funds were illegally shifted offshore but were reinvested in Ukrainian government dollar-denominated bonds worth \$1.8 billion and hryvnia bonds of Hr 1.2 billion at a 9 percent discount rate.

He added that nine court claims have been filed to cancel land-lease contracts totaling 281

hectares tied to ex-presidential chief of staff Andriy Klyuyev on which a solar energy farm allegedly is illegally situated. The former chief prosecutor said that investigators are also conducting an audit of documents tied to the alleged overpayment of \$300 million for two offshore drilling platforms by state-owned Naftogaz when Yuriy Boiko was the energy minister. Boiko has maintained his innocence, saying the \$300 million was used as part of a package purchase that included additional items and equipment.

Three court claims were submitted for the return of 159 hectares of residential and hunting land that Yanukovich and his proxies had allegedly embezzled from state ownership. Litigation also was started to re-claim 10 hectares that once belonged to Arbuzov.

## Oligarch-in-chief

During a progress report that Makhnitsky gave on June 5, he said authorities are treating the \$100 billion grand theft as one case, with Yanukovich as the head of an organized criminal group. From exile in Russia, the 65-year-old fugitive has denied charges of corruption and of giving orders to kill more than 100 EuroMaidan protesters.

While Makhnitsky told Reuters that \$32 billion in cash had been taken to Russia in trucks and is now being used to finance separatist actions in eastern Ukraine, the amounts are mere estimates.

"Yanukovich and his inner circle preferred cash and not transfers to bank accounts where this money could be traced and found...but all these amounts are approximate, and because the investigation is ongoing, the (\$100 billion) amount could grow higher," Kasko said.

Thus, a total of 56 Ukrainians, many of whom are former government officials, have been sanctioned in the European Union, Switzerland, Luxembourg, Lichtenstein, Great Britain, Australia, Canada and the U.S where they face asset freezes. Some 20 are on a wanted list, with 12 having had their accounts and property frozen in Ukraine. Criminal investigations in Ukraine have been opened into 15 of the 56 sanctioned individuals. In addition, 50 companies, 17 banks and 33 individuals are suspected of direct ties to Yanukovich's alleged illegal activity, including Serhiy Kurchenko, his purported front man.

Kasko said that the "vast majority of the 22 individuals are hiding out in Russia." He said some of the officials concealed their assets well. "Here it is more difficult to uncover and arrest their assets, but nothing is impossible."

## Pilfering state assets

Money was siphoned in a variety of ways, authorities say. One fraudulent scheme involved using the former Revenues and Duties Ministry to squeeze \$11 billion from coffers. The epicenter was the upper story of the ministry where a secret, sound-proof chamber with a clear plastic table and six matching transparent chairs were used to hatch illegal schemes, Tax Minister Ihor Bilous told the Associated Press. His predecessor, Oleksandr Klymenko,



helped organize phantom firms in return for cash, the news agency reported. Klymenko denied the claims.

In the oil and gas sector, authorities say, tax evasion and other schemes were allegedly used by Kurchenko totaling \$2.2 billion. Makhnitsky on June 5 said they had frozen \$209 million of his personal and business-related assets.

The Education Ministry, for example, would purchase school buses and textbooks at inflated prices through "friendly companies," according to Kasko. He added that a "similar scheme existed in every economic sector."

Some of these companies still exist because of imperfect Ukrainian law and the difficulties in identifying end-beneficiaries, according to Daria Kaleniuk, executive director of watchdog Anticorruption Action Center.

## Challenging asset freezes

Between April 29 and May 30, 11 Ukrainians, nine of whom were former government officials or current lawmakers, initiated litigation in the European Union's General Court in Luxembourg to challenge the asset freezes. They are: ex-first deputy presidential chief of staff Andriy Portnov, ex-Prime Minister Mykola Azarov and his son, lawmaker Oleksiy Azarov, Kurchenko, Klyuyev and his younger brother, lawmaker Serhiy Klyuyev, Yanukovich Sr. and his sons, Oleksandr Yanukovich and lawmaker Viktor Yanukovich Jr., and ex-Prosecutor General Viktor Pshonka and his son, lawmaker Artem Pshonka.

## Prosecutors are working with international partners in seizing allegedly stolen assets.

According to Kaleniuk of the Anticorruption Action Center, former Security Service chief Oleksandr Yakymenko and ex-Interior Minister Vitaliy Zakharchenko are preparing asset freeze challenges in Luxembourg as well. ■

**Deputy Prosecutor Vitaliy Kasko in his office on June 10 told the Kyiv Post that the number of people whose assets are frozen has grown to 22, and continues to rise as additional evidence is uncovered. (Anastasia Vlasova)**





Graham Conlon has been facilitating M&A deals in Ukraine since 2011. (Kostyantyn Chernichkin)

# Good news may come on M&A market if Russia stops waging bloody war against Ukrainian state

By **Maryna Shapka**, marina\_shapka@mail.ru

**G**raham Conlon, partner at CMS Cameron McKenna law firm, foresees a boom in Ukraine's mergers and acquisitions market now that the nation has elected Petro Poroshenko as president in a transparent and democratic process.

Next year, if the separatist tension in eastern Ukraine eases, the market will grow significantly, adds the English lawyer who has been residing in Kyiv since 2011.

"This country is one of the most exciting countries in the entire world, because if you look at all the other countries around here, almost all of them have received fine direct investments maybe within the last 20 years," says Conlon. "Ukraine has received comparatively less because of the fact it is quite difficult to do business here, and now you have a country with a president, so mergers and acquisitions will come back."

In the law firm's 2013-2014 M&A report for

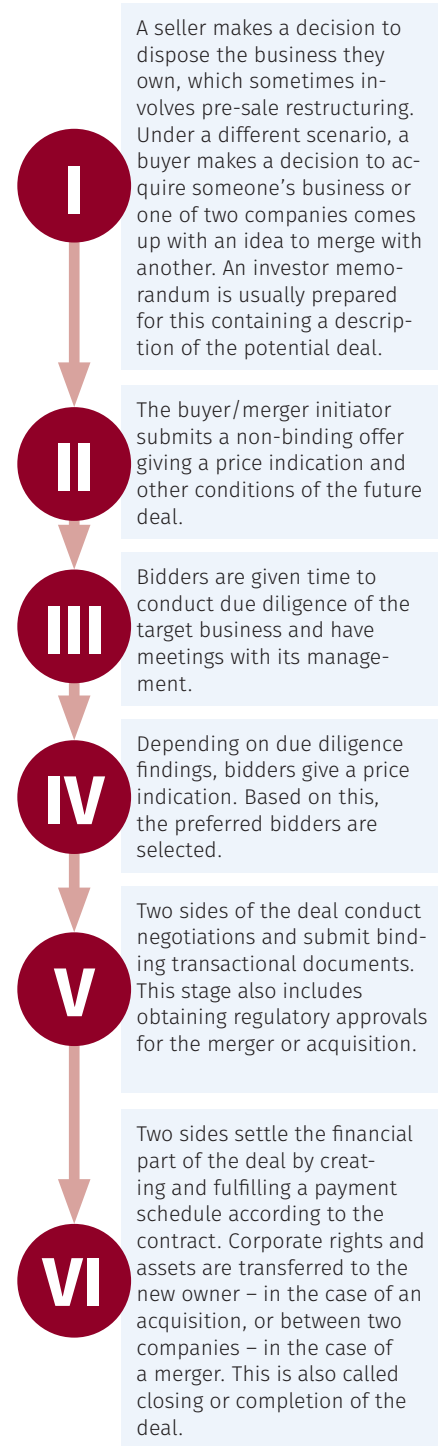
Eastern Europe, Conlon wrote that Ukraine had some bright spots in foreign direct investment, such as Shell's potential \$10 billion investment in shale gas.

But foreign direct investment in the M&A sector presented a more depressing picture.

"FDI in the M&A sector was muted and we witnessed a number of high profile exits from the country – in particular in the banking sector. The outlook in Ukraine for 2014 is currently unclear, especially in light of the current political climate, but currently we see it much the same as in 2013 – comparatively little FDI, but with a number of high profile M&A deals being carried out by and →

## Mergers & Acquisitions

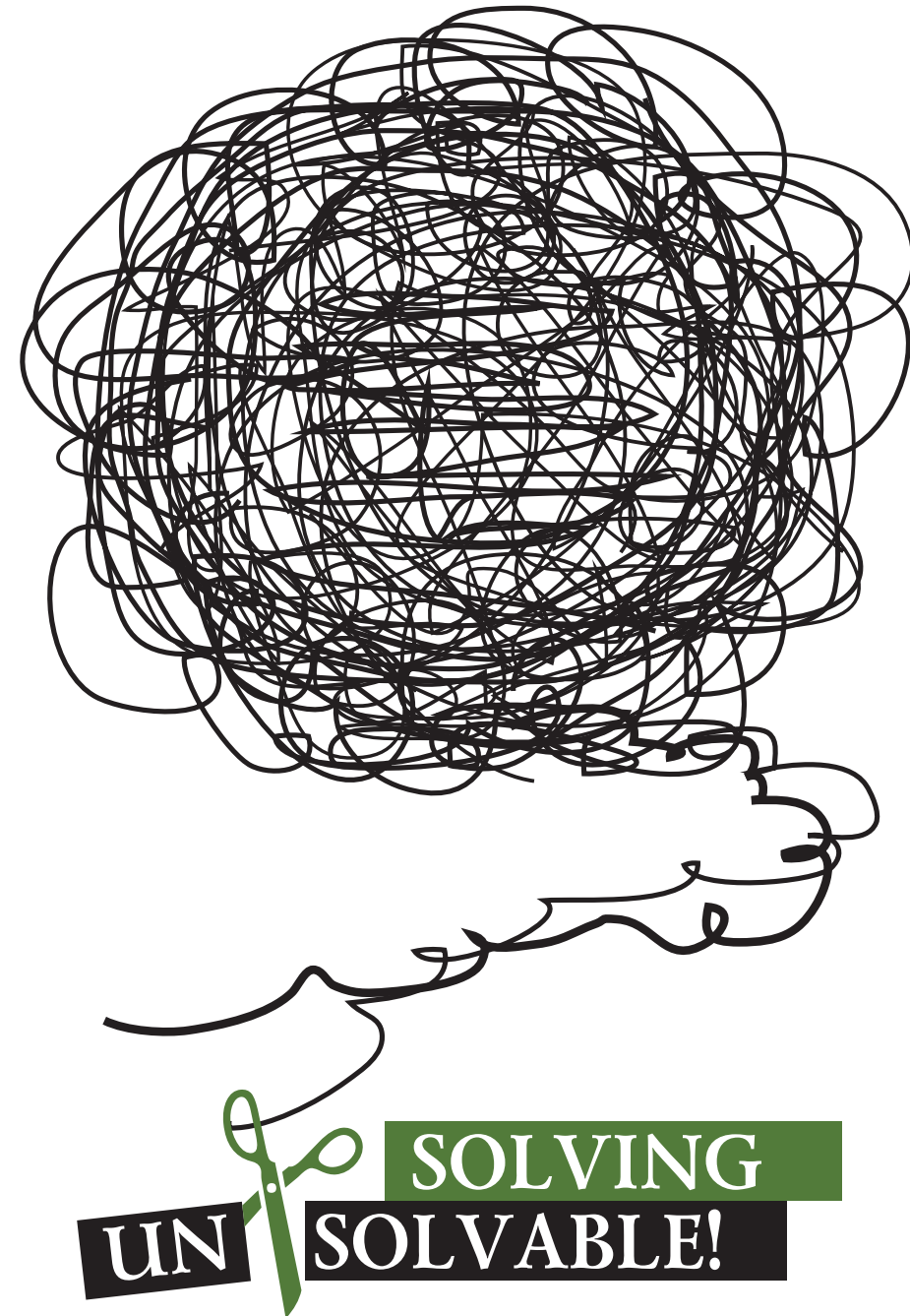
Companies – whether they are large conglomerates or relatively small business actors – constantly seek out opportunities to increase profits. Merging with another corporate entity or acquiring one is part of this strategy.



Source: Syutkin & Partners, Egorov Puginsky Afanasiev & Partners Ukraine  
Data collected by **Daryna Shevchenko**



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Russian-backed militants attack a branch of Privatbank in the eastern Ukrainian city of Donetsk on April 28. Some 300 masked pro-Russian militants wielding baseball bats attacked a branch of the bank owned by an oligarch regional governor who has voiced criticism of Moscow. The gang attacked the Donetsk office of the powerful Private banking and metal industry holding belonging to Igor Kolomoisky, a billionaire who is also governor of the nearby region of Dnipropetrovsk. (AFP)

→ amongst Ukraine's elite, backed by a few more high profile strategic exits," he added.

Agriculture, energy and information technology sectors are of special interest for foreign investors, Conlon said. The CMS Cameron McKenna partner hopes Ukraine will continue to encourage energy companies to come and do business here.

Having participated in a number of M&A deals involving the European Bank for Reconstruction and Development, Royal Bank of Scotland, HSBC and Eurasian Bank, the lawyer acknowledged that the Ukrainian government has to demonstrate commitment to combating corruption in order to convince the business community that it is serious.

Investors have mostly stayed away due to poor law enforcement, Conlon adds, including in which hostile company takeovers and

### President Petro Poroshenko's administration will have to strengthen Ukraine's rule of law to boost interest in mergers & acquisitions.

raider attacks happen in a notoriously corrupt environment.

"I think that the EuroMaidan (Revolution) has changed the situation with Ukrainian courts," says Conlon. He believes that the lustration process will help as corrupt judges lose

their seats, though consulting from U.S. and other Western countries could make the process more fruitful.

Demand for merger-and-acquisition legal service has been weak due to political instability. However, investors realize that improving the legal environment is not a one-day mission, according to Conlon.

Securing a \$17 billion bailout package from the International Monetary Fund along with implementing macroeconomic measures are important steps for Ukraine. Meanwhile, a free trade regime between Ukraine and the European Union will also attract investors. It became effective on March 11.

Investing in Crimea is another big problem for foreign players. The international community does not recognize Russia's annexation, while Russia enforces its laws there.

Investments there under Russian laws violate Ukrainian ones and vice versa, says Conlon. ■

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+38 044 235 8877 +38 044 537 1828	Sergey Alekseev, 2005 Sergey Boyarchukov		Kyiv, Ukraine	Tax, Corporate and M&A; Dispute Resolution; Criminal; Banking and Finance; Bankruptcy and Debt restructuring; Competition and Anti-monopoly law; Real Estate and Land Law; Labour Law	UkrSotsbank (Unicredit Group), Globus Mall (London & Regional Properties), Platinum Bank, Miskhitlobud Ltd., Prizma Beta Ltd., Ukrproduct Group Ltd, Forum Bank	English, Russian, Ukrainian
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+38 044 227 1681 +38 044 227 1682	Volodymyr Ratushnyak	2005	Kyiv, Ukraine	Transport & Logistics; Tax law; Labor Law; Foreign Trade; Insurance; Dispute Resolution, Litigation	DHL International Ukraine, Bruker Optiks Ukraine, JSC Altsest, DB Schenker Ukraine, Raben Ukraine, Candy Hoover Ukraine, BT Ukraine	English, Russian, Ukrainian
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+38 044 490 7001	Andrey Astapov	2002	Kyiv, Ukraine	Arbitration; Competition; Disputes; Corporate; M&A; IP; Banking & Finance; Energy; Pharm; Tax; Restructuring	British American Tobacco, MasterCard, Baxter, Bunge, L'Oreal, LVMH, Christian Dior, PepsiCo, Nemiroff etc.	English, Polish, German, French, Italian, Spanish Russian, Ukrainian
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#### Asters

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+38 044 230 6000	Oleksiy Didkovskiy, Armen Khachatryan	1995		Full-Service Law Firm	L'Oreal, Coca Cola, Nissan Motor Ukraine, S.C. Johnson, EBRD, IFC	English, Russian, Ukrainian
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+38 044 390 5533	Timur Bondaryev	2002	Kyiv, Ukraine	Litigation; Antitrust/Competition; Corporate/ M&A; Real estate; IP; Arbitration; Tax; Banking & Finance; Bankruptcy; White Collar Defense	Astelit, Bayer AG, Bunge, Citibank, GlaxoSmithKline, Henkel, Lafarge, Porsche, SHARP, SCM, UNIQA AG, Ukrtelecom	English, German, French, Ukrainian, Russian
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+38 044 300 11 51	Olga Prosyanyuk, Vitaliy Serdyuk, Igor Fedorenko, Mykola Hrygoriev	2012	Kyiv, Ukraine	Criminal law and process; Litigation; Taxation	Panteleymonivskiy refractory plant, Bank of Cyprus, OTP Bank, Czech Export Bank, Azelis Ukraine, Volkonskogo confectionary	English, Russian, Ukrainian
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+380 44 590 0101 +380 44 590 0110	Serhiy Piontkovsky, Serhiy Chorny	1992		Antitrust & Competition; Banking & Finance; Corporate; M&A; Securities; Dispute Resolution; Employment; IP; International trade; Real Estate and Construction; Tax and Customs	Arcelor Mittal, EastOne Group, Horizon Capital, ING Bank Ukraine, Metinvest BV, Sberbank, UkrSibbank BNP Paribas Group, VTB	English, Russian, Ukrainian
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+38 044 490 6000 +38 044 278 1000	Bate C. Toms	1991	Kyiv, Ukraine	Agricultural Investments; Banking, Finance and Capital Markets; Oil, Gas and Electricity; M&A	WND	English, French, Russian, Ukrainian and Polish


<b>CMS Cameron McKenna LLC</b> 38 Volodymyrska St., 6 <sup>th</sup> floor, Kyiv 01030, Ukraine, kyivoffice@cms-cmck.com, www.cmslegal.com, www.cms-cmck.com 						
+38 044 391 3377	Daniel Bilak	2007	London, UK	Corporate and M&A; Energy; Lifesciences/Pharmaceuticals; TMT; Tax; Banking and Finance; Commercial; Competition; Dispute Resolution; Employment; Intellectual Property and Real Estate & Construction.	WND	English, German, French, Ukrainian, Russian

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+38 044 494 4774 +38 044 494 1991	Oleg Batyuk	1992	Global law firm	Banking and finance, Corporate/M&A, Dispute resolution, Investments, IP&T, Real estate and Construction, Restructuring, Tax	Multinational corporations, commercial and investment banks, energy companies, developers, hotel chains, investment funds, international organisations	English, Russian, Ukrainian

<b>DLA Piper Ukraine LLC</b> 77 A Chervonoarmiyska St., Kyiv 03150, Ukraine, ukraine@dlapiper.com, www.dlapiper.com 						
+38 044 490 9575	Karpenko Margarita	2005	London, UK	Corporate and M&A; Antitrust / Competition and Regulatory; Finance&Projects; Real Estate; IP and Technology; Tax	Slavutich Carlsberg Group, Pfizer, Boeing, EBRD, Toshiba, GlaxoSmithKline, Sanofi, Reckitt Benckiser, Damco, Leroy Merlin, Billa	English, Russian, Ukrainian


<b>EBS</b> 13 A Universytetska St., Kyiv, Ukraine, info@ebskiev.com, www.ebskiev.com 						
+38 044 249 7905	Helen Volska	1998	Kyiv, Ukraine	Company: Establishment, Restructuring and Insolvency; Contractual relations: External and Internal trade; Employment and Migration; Dispute Resolution: Litigation, Mediation; Tax and Customs control; Management on temporary basis	Florange, Yves Rocher, EBA, 3M, Michelin, Dragon Capital and others.	English, German, French, Russian, Ukrainian


<b>Egorov Puginsky Afanasiev and Partners Ukraine</b> 38 Volodymyrska St., Kyiv 01030, Ukraine, kyiv_office@epap.ua, www.epap.ua 						
+38 044 492 8282	Serhii Sviriba, Oksana Ilichenko, Markiyany Kliuchkovskiy, Oleksii Reznikov, Ilona Zekely	1997	Kyiv, Ukraine	Banking & Finance, Capital Markets; Bankruptcy; Competition; Domestic Litigation; Employment; Family Law; IP/ TMT; International Arbitration & Cross-Border Litigation; International Trade & Customs; M&A and Corporate; Pharmaceuticals & Healthcare; Real Estate; Sports Law; Tax; White Collar Crime	BASF, Citi Bank, Credit Suisse, DCH, Erste Bank, IBRC, IDS, Intesa Sanpaolo, Johnson Controls, J.P. Morgan, Morgan Stanley, Regal Petroleum, Samsung, Unilever, Sodrugestvo Group	English, German, French, Polish, Spanish, Russian, Ukrainian


<b>ENGARDE Attorneys at Law</b> 4 G Andrushchenko Str., 4th floor, Kyiv 01135 Ukraine, office@engarde-attorneys.com, www.engarde-attorneys.com 						
+38 044 498 7380	Irina Nazarova	2009	Kyiv, Ukraine	Dispute resolution (litigation and international arbitration), corporate and commercial law (incl. mergers & acquisitions), insolvency and restructuring, tax law, real estate	Major Ukrainian holdings, banks, enterprises, foreign investors	English, German, French, Russian, Ukrainian


<b>FCLEX Law Firm</b> 14 D Bekhterivsky Lane, Kyiv, 04053, Ukraine, inform@fclex.com, www.fclex.com 						
+38 044 238 6420	Viktor Barsuk	2002	Kyiv, Ukraine	Banking and Finance; Bankruptcy; Competition; Corporate and M&A; Dispute resolution; Intellectual property; Labor; Real Estate; Tax; White Collar Crimes	Finance&Credit Bank, Terra Bank, Ferrexpo AG, NoYards AS, Arterium Corp., AutoKraz, IC "Omega", IC "Avesta Insurance", SOTA Cinema Group	English, Russian, Ukrainian


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+38 044 581 1551	Ernest Gramatskiy	1998	Kyiv, Ukraine	Business-Advocacy; Foreign Investments; Foreign Trade; Real Estate; Agribusiness; IT Law; Litigation; Tax Law&Tax Disputes; Business Restructuring; Corporate Security; Due Diligence; Insolvency & Bankruptcy	City Capital Group, Seven Hills, Danfoss, TM De-vi, PlayTech, TERRA BANK, ULMA Ukraine, Celentano, Banka, Jeltok, Promkabel, Larsen, Playtech	English, Italian, Greek, Polish, Russian, Ukrainian


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<b>Goldblum and Partners</b> Gulliver Business Center, 1 A Sportivna Sq., Kyiv, Ukraine, info@goldblumandpartners.com, www.goldblumandpartners.com 						
+38 044 362 7909	Wan Bo	2012	Zug, Switzerland	Corporate law, M&A, Legal Dispute	WND	English, German, Russian, Ukrainian


<b>International Legal Center EUCON</b> 33 T. Shevchenka Blvd. Off. 12, Kyiv 01032, Ukraine, www.eucon.ua, office@eucon.ua 						
+38 044 238 0944 +38 044 238 0413	Yaroslav Romanchuk	2006	Kyiv, Ukraine	Corporate and M&A; Tax; Transfer Pricing; Due Diligence; Competition & Antitrust; Intellectual Property; Criminal Law/Economic crimes; Land Law; Labor Law	Kyivstar, Kulczyk Holding, Amica Wronki, HUAWEI TECH. INVESTMENT CO., Pipeline, Cersanit, Zepher International Ukraine, TNK-BP Commerce, Hotel complex Ukraine, PJSC LYNK, Mikogen Ukrain, Aviation Petrol Filling Station	English, Polish, German Russian, Ukrainian


<b>Kalita, Markovych and partners</b> 14 Vozdvizhenska St., Kyiv 04071, Ukraine, info@mandk.com.ua, www.mandk.com.ua 						
+38 093 414 3344 +38 093 030 3424	Kalita Adrey	2006	Kyiv, Ukraine	Corporate and other immigration services; employment permits; labour; citizenship; corporate law; litigation	EGIS PLC, Sun Chemical AG, Innotec International SAS, Icelandic bank SPRON; Light Technologies Ukraine Ltd.	English, German, Russian, Ukrainian


<b>Koval &amp; Partners, Patent &amp; Law Company</b> 23 M. Raskovoy St, apt. 602., Kyiv 02660, Ukraine, info@koval-partners.com, www.koval-partners.com 						
+38 044 228 2552	Koval Maxim, Koval Natalia	2003	Kyiv, Ukraine	Legal protection of trademarks, industrial designs, inventions and utility models, copyrights, computer programs and databases, Internet solutions, domain names. International protection of intellectual property rights. Legal services	TERMIX, YI, BWIN, ForexClub, Coral travel, ABERCROMBIE, FrauSchmidt special, SCM, VELYKA KYSHENIA	English, Russian, Ukrainian

<b>LCF Law Group</b> 47, Volodymyrska St., office 3 Kyiv, 01001, Ukraine, www.lcgroup.com.ua 						
+38 044 455 8887	Anna Ogrenchuk, Artem Stoianov	2009	Kyiv, Ukraine	Legal services: Litigation, Corporate, Finance	Alfa-Bank, Bank of Cyprus, Universal Bank, Zlatobank, QBE Ukraine, Allianz Ukraine, Arab Energy Alliance UA, Vikoil Ltd., Ukrenenergy Coal Ltd	English, German, Russian, Ukrainian

<b>Misechko and Partners, Law Firm</b> 76 B Volodymyrska St., office 7, Kyiv 01033, Ukraine, office@misechko.com.ua, misechko.com.ua/en 						
+38 044 279 3943	Volodymyr Misechko	2009	Kyiv, Ukraine	Tax; Transport law; Corporate law; Litigation; Sport law; Antitrust and competition; Intellectual property; Real estate	United Aviation Services, Tokyo Boeki, Panalpina, Progresstech, Sroytransgaz, Metal Holding Trade, SEB Bank, Kraevit Invest, Europe Arm Sport, Kerch Shipyard	English, Russian, Ukrainian

<b>NOBLES</b> 7/11 Khreschatyk St., Kyiv 01001, Ukraine, info@nobles-law.com, www.nobles-law.com 						
+38 044 495 3080	Alexander Weigelt, Tatiana Iurkovska (Khandazhevska), Volodymyr Yakubovskyy	2007	Kyiv, Ukraine	Corporate; M&A; Commercial; Antitrust; Employment; Insolvency & Restructuring; Banking & Finance; Energy; Real Estate; Intellectual Property; Litigation	Avon, BSH, Deutsche Telekom, EBRD, Ferrostaal, Groupon, IKB, Otto, Rocket Internet, Royal Bank of Scotland	English, German, Russian, Ukrainian

<b>Syutkin and Partners</b> 10 Redutnaya St., office 2 Kyiv 01015 Ukraine, office@syutkin-partners.com, www.syutkin-partners.com 						
+38 044 383 0000	Mykola Syutkin, Nataliya Osadcha	2006	Kyiv, Ukraine	M&A; Bankruptcy and Debt; Real Estate; Assets Securitization; Litigation; Corporate Law; Tax	Noble Resources Ukraine, Carlo Pazolini Trading, IFD Kapital, Satellit	English, Russian, Ukrainian

<b>Squire Patton Boggs-Salkom International Association</b> squirepattonboggs.com, salkom.ua 						
+38 044 591 3100 +38 044 591 3140	Peter Teluk, Evgeniy Kubko	1992	Kyiv, Ukraine	Anti-Corruption (FCPA/UK Bribery Act); Antitrust and Competition; Banking and Finance; Commercial Contracts; Corporate; Dispute Resolution; Intellectual Property; Labor and Employment; Litigation; M&A; PE; Real Estate; Tax and Customs	Acron, Carlsberg Ukraine, ContourGlobal, Furshet, Group DF, Lufthansa Ukraine, MTS Ukraine, Nadra Bank, Orithil, Ukrainian Construction Company, UniCredit Bank, United Capital Partners, Velti, Winner Imports Ukraine	English, Russian, Ukrainian



# How to bring Ukraine's economy out of shadows

Pilobus, American theatre group, practices its "Shadowland" on one of the stages in Kyiv. For Ukraine and its economy, "Shadowland" is something more meaningful than just the play name. (UNIAN)

BY William Schreiber  
william.schreiber@yale.edu

**U**kaine's shadow economy is not hard to find. It greets you at the airport with an unmarked cab and insists you sit up front.

It sets up fruit-laden card tables next to the metro entrance and unmarked garment stalls in outdoor bazaars. For many in post-Communist countries, this is the shadow economy – something quite visible and concrete – an everyday resource for surviving the scarcity of consumer goods during the Communist system or the poverty of the 1990s.

But for Ukraine's tax officials, bootstrap black market entrepreneurs account for only a fraction of off-the-books income. The collective sum of street peddling startups is outweighed by tax evasion schemes perpetrated by so-called black business, often cooked up by creative accountants and unscrupulous lawyers.

As Ukraine faces down a staggering budget deficit, levying taxes on the shadow economy – which official estimates place anywhere from \$31 billion to \$64 billion – is a tempting

proposition. But the diverse forms of off-the-books business in Ukraine means any single legislative solution is unlikely. Instead, the government has advanced a host of different tax reform measures since March, aiming both high and low to recover state revenue.

Starting at the low end, there are several laws currently before the Verkhovna Rada to coax small business and individuals into paying taxes. These bills attempt to make paying taxes in Ukraine less painful – by reducing fees for new businesses and by simplifying administrative procedures. One such law cuts the baseline of a payroll tax called the one-time Unified Social Contribution fee nearly in half, to 18.1 percent of income.

"High payroll taxes not only encourage participation in the underground economy, but also shift to bogus self-employment and contracting out," explains Peter Spiro, a University

of Toronto fellow. "Regarding the payroll tax, a cut is likely to be beneficial. The previous 34.7 percent rate is unusually high."

Simplifying administrative procedures for corporate tax could also relieve small businesses of an immense burden.

At the high-end, the government's most ambitious proposition for recapturing lost tax revenue is a May 21 "compromise" bill that attempts to reclaim funds it lost to tax evasion. Unscrupulous companies have a 90-day period to self-declare income that previously escaped taxation – and in return for 15 percent of their revised revenue, Ukraine's tax service will offer them amnesty and an official certificate of compliance.

Serhiy Verlanov, a senior attorney at PwC Ukraine, says the compromise in its current form won't benefit his company's clients, who are mostly big and clean businesses.

"Companies deeply involved in fraud are the ones that will benefit the

most. The situation is not transparent, not available to public scrutiny, and it has the risk of being unfair to tax payers." Sham companies, according to Verlanov, are a major headache for his clients – but until the government goes public with its list of such violators, above-board companies won't be able to eliminate the untrustworthy links in their supply chains.

A second problem with the amnesty is an ambiguous time period between the January start of the fiscal year and the late May enactment of the compromise.

"One can assume that either the law will be extended for these six months, or the law will be extended for 2015," said Verlanov. "This is providing incentives for further tax evasion. There is a high risk that grey and black business will wait for another amnesty."

At the roots of many sham companies and tax evasion schemes is Ukraine's value-added tax, often shorthanded as VAT. Igor Bilous,

Ukraine's head of taxation, singled out VAT tax schemes in April as a huge part of the illegal sector's architecture. Some experts have proposed abolishing the system entirely, but this would be a mistake, according to Oleg Matsekh, a business owner and

**Ukraine's shadow economy may be worth \$64 billion a year. Bringing this activity out into the open will boost tax revenues considerably.**

activist with Reanimation Package of Reforms, a community advocacy group: the European Union sees a VAT system as a non-negotiable requirement for partners.

"The current problem is the administration of the system, which is a very difficult problem," said Matsekh. ■

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# Central bank struggles to give shaky hryvnia a softer landing

BY Iryna Yeroshko [yeroshkoiryna@gmail.com](mailto:yeroshkoiryna@gmail.com)

National Bank of Ukraine ex-governor Stepan Kubiv let the hryvnia freely float when he was appointed to the post more than three months ago, but he kept a measure in place to mandate foreign currency earners to convert half their revenue to hryvnias. (Ukrainian News)

**To** preserve Ukraine's dwindling foreign reserves, a National Bank of Ukraine requirement for exporters to sell half of their foreign currency-denominated revenue has been in effect since Nov. 19, 2012. The measure's latest extension took place on May 20 and will stay in effect until Aug. 20.

However, the provision doesn't apply to individuals who earn less than Hr 150,000 in foreign currency. The norm, instead, applies only to business entities – corporate or individual ones.

Individuals who receive payments that exceed the threshold do not have to personally sell the currency themselves. Banks that receive funds do this for them, explains Andriy Sydorenko, a lawyer for Ilyashev and Partners firm.

Ukraine's exports reached \$63.3 billion in 2013, thus half of this amount was mandatorily converted into hryvnias.

The measure initially took effect under the NBU governorship of Serhiy Arbuzov, who is currently wanted by authorities on suspicion of embezzling state assets. He and his successor at the central bank, Ihor Sorokin, were obsessed with keeping the hryvnia pegged closely at Hr 8 to the U.S. dollar, and in quelling the appetite for foreign currency. Meanwhile, ex-central bank governor Stepan Kubiv had let the hryvnia mostly float freely, a monetary policy inconsistent with making it compulsory to sell half of foreign currency earnings.

Since the beginning of the year, the hryvnia has lost as much as a third of its value, sinking to 13.3 to the dollar in the second half of April, before settling recently closer to 12.5/\$1. Mandatory sales of foreign currency earnings didn't help much to avoid devaluation. Public panic following the political crisis that saw the overthrow of former President Viktor Yanukovich's regime is responsible for the sharpness of the decline. Russia's annexation of Crimea and war against Ukraine in the eastern oblasts haven't helped any.

Sydorenko of Ilyashev and Partners says that, theoretically, the NBU requirement is advantageous for importers as it pushes the hryvnia rate up, which leads to cheaper prices for foreign goods in hryvnia terms. However, this is not beneficial for exporters, who can't hold on to hard currency in order to sell it when the hryvnia becomes cheaper, he adds.

The measure seems to be working, at least in terms of reducing the demand for hard currency on the interbank market, says Roman Stepanenko, head of the banking and finance department at Egorov Puginsky Afanasiev & Partners. There is now more foreign currency on the market and the NBU does not have to make monetary interventions.



However, the NBU did not have too many instruments at its disposal to keep the hryvnia from falling and it is still debatable whether the regulator should have kept the hryvnia from weakening, adds Stepanenko. Had the central bank not conducted such a stringent monetary policy since 2010, when Yanukovich came to power, the hryvnia's landing would've been much softer than this year's devaluation shock.

Olena Shcherbakova, head of the monetary policy department at NBU, thinks that the provision's short, three-month extension is a sign of the central bank's optimism about the country's economic prospects. By contrast, the previous extension had a six-month term.

"Reducing the period of the measure's validity can be explained with better market expectations in the context of resumed cooperation with international financial institutions," said Shcherbakova in a statement published on the NBU website on May 19.

She mainly means the May 1 agreement with the International Monetary Fund to receive a \$17 billion two-year loan with a 3 percent interest rate aimed at stabilizing Ukraine's state budget.

However, the market should not be overly optimistic in its expectations, thinks Ilyashev and Partners' Sydorenko. The current economic situation remains complicated and will likely compel the central bank on Aug. 20 to prolong the mandatory sale of export revenue in foreign currency for another term. ■

The National Bank of Ukraine has struggled to find the true value of the hryvnia as the public appetite for foreign currencies remains strong because of the ongoing instability in the nation. (Kostyantyn Chernichkin)

**Ukrainians saw their currency slide from Hr 5 to Hr 8 to the dollar during the 2008-09 global financial crisis. Now, the shocks of staggering corruption and Russia's war have it sinking to between Hr 12-13.**





Students of the Odesa Law Academy's Crimean campus attend their graduation ceremony in 2013. (onua.crimea.ua)

# DLA Piper recruits summer legal interns from Crimea as well as war-torn eastern Donetsk, Luhansk oblasts

By Oksana Torhan, oksanaukma@gmail.com

**S**tudents from Russia-annexed Crimea and the troubled Donetsk and Luhansk oblasts, where Kremlin-backed separatists are waging war, will have a chance this summer to undergo a one-month internship with leading law firms.

Global law firm DLA Piper accepted applications through June 20 from fourth-year law students from these areas. Skype and telephone interviews are under way. Qualified applicants must have a strong command of English.

The project, called "Break Into Law," is expected to take in 12 interns who will be given free room and board, including a per diem living allowance. Up to six people could start interning as early as June 30, Olena Lazareva, DLA Piper marketing and public relations spe-

cialist for the firm's Kyiv office, told the Kyiv Post.

"If we get more than the expected number of qualified applicants, we'll take in more, and the program will last through August," she added.

Ukraine's education ministry has also taken notice. It recently gave DLA Piper managing partner and supervisor of corporate social responsibility projects Margarita Karpenko a certificate of appreciation for the firm's "contribution to higher education."

Project manager Maryna Kostogryz said: "We want to help students build their future and give them a start." Students will acquire practical experience in a field where graduates usually have only a wealth of theoretical knowledge, a common complaint by seasoned attorneys.

While some Ukrainian graduates believe that a prestigious university diploma is the key to success, Leonid Antonenko, counsel at Sayenko Kharenko law firm, says "a diploma doesn't always indicate a proper job candidate."

Oksana Ilchenko, a partner for Egorov, Puginsky, Afanasiev and Partners, said involving law firms into university curriculum "will reinforce the bridge between theory and practice and also between the law schools and the market."

DLA Piper interns will have a chance to choose an area of specialization and focus on one of the firm's legal practices: corporate law, mergers & acquisitions, finance, real estate, taxation, and intellectual property.

Tetyana Kostina, 21, a senior at Odesa Law Academy and major activist in the Student League of the Ukrainian Bar Association, believes that DLA Piper's internship is a great opportunity to acquire practical skills. She applied, and DLA Piper confirmed receipt of the submission.

In order to become a good lawyer, a student should not only attend lectures of university professors, but also go to conferences and gain practical experience, adds Kostina.

However, DLA Piper's internship is not the only opportunity for Ukraine's troubled regions.



Students of Ukrainian law schools pay more attention to theory rather than practice, while experts say they should do the opposite. (PHL)

The Danish Ministry of Foreign Affairs provides scholarships for obtaining master's degrees in journalism and media communications at the School of Journalism at Ukrainian Catholic University in Lviv. Besides Crimea and Donbas, students from Kharkiv, Kherson, Mykolaiv, Odesa and Zaporizhzhya oblasts are also eligible to apply.

Students from these regions will have a chance to live and study in the country's unofficial western capital of Lviv, known for its European atmosphere. Ukrainian Catholic University's School of Journalism takes a Western-style educational approach, focusing on providing students with hands-on practice in publishing a newspaper, or running a website, television or radio station. ■

**The project 'Break into Law' will take at least 12 law school students and give them summer internships at Ukraine's leading law schools.**



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\*—according to a survey by Moscow-based AGT Communications Agency carried out over the six month period to May 21.



# Ukraine seeking fair price for gas from Stockholm court

By **Evan Ostryzniuk**  
ostryzniuk@kyivpost.com

**T**he numbers keep getting bigger. On June 16, Ukraine and Russia finally decided to sue each other in a Stockholm arbitration court, with Ukraine asking for a just price for gas as well as \$6 billion in compensation for overpayment, while Russia says Ukraine's debt is \$4.5 billion.

The crux of the matter, however, is whether Russian state-owned Gazprom's murky pricing policy regarding Ukraine can be drawn onto the cleaner shores of market relations.

Gas diplomacy between Ukraine and Russia since the collapse of the Soviet Union has been based less on economic principles than on geopolitical ambitions. Namely, the Kremlin has wanted to restrict Ukraine's sovereignty by making it energy dependent

on Russia. To ensure this, gas supply negotiations have been private, personal affairs between the Kremlin and Kyiv. Suspicious intermediaries were used for distribution and accusations of illegal siphoning

and suspension of supply were regularly exchanged.

Prime Minister Arseniy Yatsenyuk wants to get rid of all that. That is why on June 11 he flatly rejected Russian Energy Minister Alexey Novak's \$100 per 1,000 cubic meter rebate, which would have lowered the price to \$285, just a touch above Ukraine's asking price of \$268.

In the end, Ukraine might end up paying more than \$285 for gas.

The Ukrainian side fundamentally distrusts its Russian counterparts, since time and again it has unilaterally altered or suspended the contract between the two nations. For example, the now infamous 2009 gas contract negotiated by then-Prime Minister Yulia Tymoshenko reveals the arbitrary nature of the agreement.

"The price formula for gas was applied only for a few months," explains Alexey Kot, Managing Partner of Antika Law Firm. "For the rest of the time, there were so called 'discounts' determined and applied by political leaders of Russia. Moreover, the political point of such 'discounts,' or their non-market nature, was not a secret."

What was a secret, though, was the formula Gazprom used to determine the price. "We have not seen the contract," says Lavrynovych & Partners managing partner Maksym Lavrynovych. By 2010, the gas price for Ukraine had gone up to \$400 per 1,000 cubic meters instead of going down from \$360, which was promised. This is what the Ukrainian side is claiming as "overpayment".

The government of former President Victor Yanukovich continued

the tradition of secret negotiations. After condemning the 2009 contract as unfavorable, Ukraine let Russia anchor its Black Sea Fleet at Sevastopol for an extra 25 years in exchange for a \$100 gas price discount. Yet again prices continued to rise until Dec. 17, 2013, when Yanukovich got Russian President Vladimir Putin to set the gas price at \$268 in exchange for what amounted to fealty to Russia. Around the same time, Yanukovich unexpectedly rejected a far-ranging political pact and free-trade agreement with the European Union.

## Getting serious

Since the EuroMaidan Revolution, Russia has treated gas negotiations with Ukraine as a joke by trying to dictate terms to its own geopolitical advantage.

So the new Ukrainian government got serious.

On May 28, it retained a prestigious

Norwegian law firm that specializes in energy-related disputes to provide representation against Gazprom in the Arbitration Institute of the Stockholm Chamber of Commerce.

The dispute is technically between Naftogaz and Gazprom, both state-owned yet independent legal entities, although it is actually between the Ukrainian and Russian states.

The parties are contractually obligated to turn to the Stockholm court to resolve disputes.

Naftogaz made it clear on June 1 why it was going to court: "Russia again proposed returning to a mechanism for forming the price unilaterally via the Russian government's regulation of the export duty on natural gas supplied by Gazprom to Ukraine."

Even European Commission energy officer Gunther Oettinger, who is mediating negotiations between Ukraine and Russia, said on June 11 that Russia is offering a price that is closer to a fair market one.

More proof that getting the lowest price possible is not the main aim can be found in the June 13 statement by Naftogaz head Andriy Kobolyev, when he said Ukraine was prepared to pay \$326 per 1,000 cubic meters for

Russian gas. "This price proposed by the EU is not market level,"

he said, "but Ukraine is ready to compromise and fix it for a year and a half, so that during this period we can reach a final agreement with Gazprom and resolve the matter in court."

Should Stockholm rule in favor of Ukraine, it would clear the ground for a new gas relationship.

**Ukraine may have strong case**  
Arbitrators in Stockholm will take into account the economic part of the legal relationships, including the situation on the gas market, explains Kot of Antika Law Firm. "Due to this, Ukraine may, for instance, state that Gazprom has a monopolistic position on the market and try to prove the fact that it may use such a position howsoever."

The Europeans do not look favorably on monopoly. In 2013 and again this year Lithuania filed with the same Stockholm court a lawsuit against Gazprom for overcharging the country since 2004, oilprice.com reports. The Baltic state was paying an astounding \$470-480 per 1,000 cubic meters for Russian gas until it won its first arbitration suit this year for a 20 percent price reduction.

Poland's state gas firm PGNiG went that route back in 2010, and settled out of court for not only lower gas prices, but also for Gazprom to link its pricing formula to market prices, worldoil.com reported. Ukraine wants the same thing.

Lavrynovych told the Kyiv Post: "Russia has previously recognized the jurisdiction of this court, so we are hopeful."

Roman Marchenko of Ilyashev & Partners agrees that Naftogaz may prevail. "Such claims to the Russian monopolist are repeatedly considered by arbitration," he says. "Typically, Gazprom does not like going to court, preferring to settle instead in order to avoid the possibility of an adverse ruling."

No one can be certain, however, how the judges will decide, which may prompt an out-of-court settlement, Lavrynovych said.

Energy Research Institute's Yuriy Korolchuk argues that it is always better to go to court over gas pricing after all debts are settled. However, this remains a complicated issue since the size of Ukraine's gas debt depends directly on the pricing.

Gazprom claims Ukraine owes it \$1.45 billion for gas supplied in November and December and \$3 billion for April and May.

On May 30, Naftogaz paid off its first quarter gas debt of \$786 million.

Ukraine is also suing Russia for stealing 2.2 billion cubic meters of gas stored in Crimea when its armed forces occupied the peninsula.

Separately, on June 3, the Ukrainian government filed a lawsuit in the European Court of Human Rights against Russia for \$90 billion in compensation for Russia's illegal annexation of Crimea on March 18. ■

Ukrainian Minister of Energy and Coal Industry Yuriy Prodan (L) and head of Russia's state gas firm Gazprom Alexei Miller (R) arrive for talks over Russia's gas supply to Ukraine in Kyiv on June 14. (Ukrainian News)







Lviv Danylo Galytsky airport, built during Ukraine's preparations for co-hosting the 2012 European soccer championship, may become one of the beneficiaries of signing the Open Skies Agreement. (Ukrainian News)

BY Isaac Webb isaac.d.webb@gmail.com

**On** June 5, the Ukrainian Infrastructure Ministry announced international airspace won't be opened up with the European Union for the second time.

# Open Skies Agreement postponed, once again

Designed to allow any European-based airline to fly from anywhere within the European Union to any city within Ukraine and vice versa, the ministry's news release said the treaty, known commonly as the Open Skies Agreement, was postponed because Spain and the United Kingdom had not agreed on the territorial definition of Gibraltar.

Citing a "well-informed source in the European Commission," Interfax Ukraine reported that the European Commission hopes to sign the agreement on June 27 along with a landmark free-trade deal within the EU Association Agreement.

This is the second time in three months that the agreement has been postponed. On March 12, the Infrastructure Ministry announced the postponement, also citing a definitional dispute about the territory included in the agreement.

In theory, and based on the results of other Open Sky agreements, passenger volumes would increase, fares would decline, flight frequencies would rise and tourism would be boosted.

The European Commission started talks on the deal with Ukraine in 2007 after receiving a mandate the previous year. Discussions, however, didn't pick up steam until last November at the Eastern Partnership Summit in Vilnius, Lithuania, when Ukraine and the EU initialed the agreement. Experts believe that the agreement will be ratified and enter into force in summer 2015.

According to Igor Gavrilov, the head of the corporate department of Alekseev, Boyarchukov & Partners, the Open Skies Agreement will "create a common aviation area which will be based on identical rules in the areas of safety, security, air traffic management, environment, consumer protection, computer reservation systems and others."

Gavrilov thinks the agreement will lead to greater competition among airlines, which will benefit Ukrainian and European travelers by driving down the cost of airfare.

"The cost of air tickets will be reduced... Moreover, boosted competition between EU

and Ukrainian airlines, consumer protection, safety, security and the other regulations stipulated by the agreement will also enhance safety and security standards. Thus, users of air transport will also get more advanced protection of their consumer rights and their safety," says Gavrilov.

Ukrainian and EU airlines will also reap rewards from the agreement.

Gavrilov expects that "EU airlines will be able to operate direct flights to Ukraine and vice versa. Ukrainian airlines will have the right to operate flights to the EU provided that the service serves also a point in Ukraine." Similarly, EU airlines will be able to operate flights to Ukraine, as well as domestic flights inside the country.

"So it is clear," Gavrilov says, "that both Ukraine and the EU will benefit from cooperation under the agreement when it is signed."

Ukrainian air traffic should grow considerably after the agreement is signed. Since 1991, Ukrainian air traffic has increased nearly fivefold. According to the Ukrainian State Air Traffic Services Enterprise, more than 534,000 flights traveled through Ukrainian airports in 2013, up from just 120,500 in 1993.

Signing the agreement will likely give a boost to the Ukrainian economy as a whole. Vadim Samoilenko, an expert on aviation law at Asters Law Firm, told the Kyiv Post in March that his firm expects "that OSA will promote the free movement of persons and goods, [and] expand commercial opportunities."

In a news release issued by the European Commission after the agreement was initialed on November 28, the EU commissioner for mobility and transport called the agreement "an important stepping stone for our strategy to achieve closer cooperation between the EU and its neighbors, particularly in the context of the Eastern Partnership."

The EU has signed similar comprehensive aviation agreements with other neighboring countries, including Morocco, Georgia, Israel, the Western Balkans, Moldova, and Jordan. ■



# Businesses of Yanukovich's alleged front man still operating in Ukraine

By Solomiya Zinevych imberammiaz@gmail.com

**D**uring ex-President Viktor Yanukovich's truncated presidency of more than three years, Ukraine's coffers lost around \$100 billion in assets, authorities say, including some \$2.2 billion that his alleged front man, Serhiy Kurchenko, had embezzled, roughly half through tax evasion. Thus far, some \$209 million of his personal and business-related assets have been frozen, General Prosecutor Oleh Mahnitsky stated on June 5 at a briefing.

Serhiy Kurchenko, owner of the Kharkiv Metalist soccer team, and other major assets, displays the 2013 Ukrainian soccer championship silver medal. (UNIAN)

Since March, the Prosecutor General's Office has forwarded seven criminal cases on the alleged illegal activity of 50 Kurchenko-related companies to Ukrainian courts. Also accused are 62 suspects involved in the wanted businessman's alleged fraud.

In March, Kurchenko, through his VETEK conglomerate, vehemently denied any wrongdoing.

"I am an honest Ukrainian businessman who has always been investing in Ukraine, the Kharkiv-native emphasized.

Kurchenko is believed to be hiding out in Russia. Meanwhile, his assets have been frozen in the European Union, Luxembourg, Great Britain and Canada, according to Kyiv-based watchdog Anticorruption Action Center. The group says Kurchenko is currently challenging the asset-freezes in courts.

Before disappearing on Feb. 19, just two days before Yanukovich fled office for exile in Russia, Kurchenko's business empire spanned oil and gas, media, banking and a soccer team. Korrespondent magazine, in collaboration with Kyiv-based investment house Dragon Capital, estimated his net worth in December at \$2.4 billion.

"Kurchenko used schemes in which his legal ownership was hidden, (and) liability for assets (were) minimized. However, his corporate rights for the company may also be confiscated by a court order," said Roman Khrustenko, managing partner of BA Lexel.

Ukraine's Security Service, the SBU, has accused Kurchenko of illegally purchasing Ukrainian Media Holding, which included Forbes Ukraine among 50 other brands, the Metalist Kharkiv soccer club, and Sparschweingas GmbH & Co, a network of 170 gas stations in Germany.

Still, despite being put on an international wanted list, Kurchenko continues doing business in Ukraine. In April, according to Ukrainian web portal Oil News, Kurchenko purchased Sovremennik, the third-largest network of gas stations in Crimea, and later in May, the Lukoil gasoline station network on the peninsula.

Additionally, he is still listed as the president of Metalist Kharkiv on the club's website.

The Ministry of Revenues and Duties says that after checking the bank accounts and activities of 50 suspected companies in relation with Kurchenko's alleged money laundering schemes, their accounts were temporarily frozen. The list of companies includes oil and gas refinery companies Odesa Oil Refinery and Gas Ukraine 2020, media holding Vesti Mass Media as well as other companies. Vesti, a free daily newspaper with a circulation of 350,000, is still distributed in Kyiv. And the media outlet has dismissed allegations of money laundering, and called a May 22 tax police raid on its office an act of "political pressure."

In 2013 Kurchenko bought the Odesa Oil Refinery for \$125 million. Later in the year, the plant was used as collateral to receive a loan from VTB, a Russian bank. But the procedure for getting this loan, as well as its conditions, shows evidence of fraud, investigators say.



Law enforcers now hope that their investigation will give Ukraine an opportunity to challenge the transfer of Kurchenko's assets to the ownership of Russia's VTB bank.

But getting control of the property is challenging.

Kurchenko received two loans from Russia's VTB Group worth \$300 million, while the refinery's shareholders approved the credit line from VTB to reach \$370 million, according to an April 11 Kyiv Post investigation. The refinery was used as collateral for the loans. In addition, oil products that belonged to Kurchenko's offshore company were used in one of them, worth \$270 million.

"Besides confiscation of corporate property, a court can also decide to nationalize Kurchenko's businesses if proof of his ownership is established," said BA Lexel's Khrustenko.

Interior Minister Arsen Avakov said that 80,000 tons of fuel and lubricants within Kurchenko's group were seized and will be sold at auction.

On June 11, the central bank revoked the banking license held by Brokbi-znesbank, which belonged to Serhiy Kurvhenko, due to insolvency. (PHL)

**Serhiy Kurchenko, ex-President Viktor Yanukovich's alleged front man, is being probed for corrupt schemes that cost the state at least \$2 billion.**

In response to Avakov's statement, anti-corruption commissioner Tetiana Chornovol said on June 11 that the arrested assets had not been sold as promised. "The money could be spent on the Ukrainian army," Chornovol added.

But Khrustenko doubts that Kurchenko's business will become national property. "Should the abuse of law be proven when purchasing the enterprises, Kurchenko's ownership may be judicially invalidated or terminated using rules of restitution by returning the property to the previous owner," he added. ■



## Legal organizations in Ukraine

### National Association of Advocates of Ukraine

unba.org.ua

The National Association of Advocates of Ukraine is essentially the Ukrainian bar, to which all lawyers must belong. Legally, it is a non-profit professional organization whose aim is to ensure the objectives of the legal profession, promote the development and strengthening of the legal profession in Ukraine, and protect the rights and legal interests of its members. The association serves as an umbrella organization for the governing authorities of the legal profession, including the Congress of Lawyers of Ukraine, which is the highest governing body, and the Qualifications-Disciplinary Commission of Advocacy, which serves as a complaints board for the common citizenry.

### Union of Advocates of Ukraine

cay.org.ua

The Union of Advocates of Ukraine claims to be the first nonprofit, voluntary, professional, independent, self-governing organization of lawyers association in independence. The organization brings together lawyers for their professional development and improvement of training, promotes the legal profession, legal awareness, standards of conduct.

### Ukrainian Bar Association

uba.ua

Despite its name, this is not the Ukrainian bar per se, but rather a nongovernmental organization founded in 2002 to bring together lawyers for a strong and influential professional community, which would become a powerful voice of the legal profession. It is

a lobby organization, in practice. More than 3,000 lawyers from all regions of the country belong to the UBA, including attorneys, notaries, scholars, judges, civil servants, members of parliament and other legal experts. Among its aims are to increase legal awareness and legal culture in society, develop the legal profession, improve legislation, implement ethical standards in the provision of legal services, and protect the professional rights of UBA members and human rights in general. The UBA is a member of the International Bar Association.

### Association of Lawyers of Ukraine

uaa.org.ua

The Association of Lawyers of Ukraine is a public non-profit organization created to unite lawyers to promote the development and strengthening of the legal profession in Ukraine, raising the legal assistance provided by lawyers, enhancing the role and authority of the legal profession in society, and protecting of rights and legal interests of its members.

### Christian Lawyers Association of Ukraine

clau.org.ua

The Christian Lawyers Association of Ukraine claims to be a non-profit public organization that brings together Christian lawyers for professional service to the Church and society. The association professes to be non-denominational. Its aim is to bring together active lawyers carrying out their professional activities based on Christian values, to protect the rights and interests of citizens, legal aid organizations and legal education, as well as draft regulations.



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