



*Frishberg & Partners'*

**PRACTICAL GUIDE TO**  
**UKRAINIAN**  
**CORPORATE AND FOREIGN**  
**INVESTMENT LEGISLATION**



*Alex Frishberg, Esq.*

*Myron Rabij, Esq.*

*Ashleigh Loufer, Esq.*



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# PREFACE

**T**his text was submitted for publication on the eve of the June 26, 1994 Presidential elections in a year widely predicted to be decisive in Ukraine's turn to (or from) the necessary economic reforms.

While campaigning, President Kravchuk stated in the press that Ukraine's "economic leaders are psychologically prepared for the reforms. The Parliament confirmed the programs, and the government has developed the mechanism for their implementation. We received support from international financial organizations. In other words, a new stage of economic reforms is beginning..." Even the new Prime Minister Masol, widely considered to be a central economic planner, appears to be open to finally introducing market reforms.

A knowledgeable person's response to the above is predictable, and cynics we should all continue to be given Ukraine's past performance. However, some very important trends are beginning to quietly take place in such fundamental areas as privatization, taxation and currency regulations.

For instance, the first wave of mass privatization, consisting of about 150 nearly-bankrupt companies, is in the process of completion and the next wave will begin on July 1, 1994 immediately following the official date of yearly re-indexation. Unless another moratorium is placed on the privatization process (as was the case in 1991-92) sometime in the beginning of 1995 foreign investors will be presented with business opportunities at reasonable prices. Increasingly more real property will become available for sale as privatized factories become desperate for infusion of capital or, alternatively, file for bankruptcy.

Local newspapers recently began to publish rumors, some with a degree of sensationalism, that Ukraine is in for radical changes in the tax regime. Apparently, a packet of documents was submitted to the Parliament which will completely and utterly alter Ukrainian economics. For instance, there will be a profit-based tax instead of today's income-based tax (reinstating the previous tax law, cancelled earlier this year by the current income-based tax). As with the last tax law, the new profit tax rate expectedly will be 30%.

A property tax is to be introduced and firms' and companies' property as well as real estate of residents will be taxed under the new system. The draft law currently reads that the income tax and property tax should not exceed 35% in total. Value added taxation will be simplified, and the rate will be lowered to either 20% or to 22% (depending on which newspaper you read) from the current robbery rate of 28%. Reportedly, certain excise taxes (e.g., liquor, cigarettes and cars) will also be reduced.

With reference to the currency regulations, reportedly there are efforts to raise the National Bank's official rate (in June, 1994, it was 15,100 karbovantsi to 1 US dollar) to the auction rate (approximately 40,000:1). At that time when the two rates become the same, there will probably be a 100% conversion requirement for all Ukrainian residents who earn foreign currency from export transactions, instead of the present 50% conversion requirement. If so, this may be a good development because it would eliminate today's hidden currency tax on Ukrainian exporters by allowing them to purchase dollars at the same price as they sell the products in karbovantsi. Presumably, there would be free access to foreign currency (which may not be a valid presumption, rendering the above conclusion erroneous).

If anything resembling the above proposals is implemented, the overall economic climate may actually improve in the near future (1-2 years). However, on the whole, legal and business transactions will continue as they have in the past.

In our experience, doing business in Ukraine is an uneven combination of about 20% law and 80% practice. Ukrainian laws are sufficiently ambiguous to accommodate the ever-changing economic situation, and frequently leave open for interpretation many grey areas. As could be expected, many issues unanswered on paper already have been identified, negotiated and resolved in practice. In this book we present you with the various alternatives involved in structuring transactions in Ukraine, and the issues that recurrently arise in connection with such transactions.

To present the topic matter in an orderly fashion, this book is divided into three parts, each with separate chapters. In the first part of this book, we review the key provisions of the Foreign Investment Decree and outline the business forms foreign investors most commonly use, including joint ventures, wholly-owned foreign subsidiaries and representative offices. Such discussion includes an analysis of the Ukrainian tax laws and the registration procedures.

In the second part of the book we present you with the alternatives and various issues involved in obtaining long-term access to real property for production purposes, including obtaining such property as a contribution to the joint enterprise's charter fund, leasing state-owned assets, leasing the land, and purchasing the assets by way of privatization.

From privatizing and re-settling tenants in communal apartments in the center of Kiev, to investing into multi-production military conversion factories, real property transactions exemplify the duality of law and practice in structuring business transactions in Ukraine. This part of the book is designed to provide practical solutions in legally structuring transactions to maximize business benefits, and perhaps is the most interesting section of the book.

The third and final part provides a detailed overview of various supporting issues, many of which may have an impact on a particular transaction. Such legal areas include currency regulations, secured transactions and bankruptcy legislation, labor laws and personal income taxation, free trade zones, import-export regulations, intellectual property rights, international and domestic commercial arbitration and enforcement procedures and guarantees.

In reviewing this book, please remember that Ukrainian legislation changes rather rapidly, and the contents of this book are only effective as of July, 1994. In countries such as Ukraine, the time frame for economic development can be greatly condensed due to the swift transitions inherent in this economically revolutionary period. Many economic policies and the supporting legislation tend to change with extraordinary speed. Therefore, this book should not be relied upon as a substitute for legal advice, but rather as an overview of legal issues we have encountered in our practice and solutions we have reached given the Ukrainian legal framework.

We strongly recommend that you seek appropriate professional advice before entering into business transactions in Ukraine.

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# THE AUTHORS

## *Alex Frishberg*

Alex Frishberg is the founder and managing partner of Frishberg & Partners.

Prior to relocating to Ukraine, Mr. Frishberg practiced in one of the largest law firms in Washington, D.C., where he was responsible for Soviet business development and worked with the firm's commercial and international trade groups on U.S. and Soviet corporate transactions. He advises a wide range of North American and European companies in setting up operations in Ukraine.

Mr. Frishberg specializes in industrial and residential real property transactions, including formation of joint ventures with state-owned and private enterprises, arranging leasing association buy-outs, structuring investment in post-privatized enterprises, and documenting leasing of land for greenfield purposes.

In the past, Mr. Frishberg successfully represented clients in negotiations with various Ukrainian government agencies including the State Property Fund, the Ukrainian Ministry of Health, and the Ukrainian State Committee On Food Industry, among others.

Mr. Frishberg serves as the Chairman of the Legal, Government Relations and Economic Committee of the American Chamber of Commerce in Ukraine, and a Senior Editor of *The Ukrainian Legal and Economic Bulletin*. He is also a member of the District of Columbia Bar and the Court of International Trade. Mr. Frishberg is licensed to practice law in Ukraine, and is certified by the Ukrainian State Property Fund to advise on privatization matters. Mr. Frishberg is fluent in English, Russian and Ukrainian.

Myron Rabij is a senior associate at the Kiev-based law firm of Frishberg & Partners. He graduated from the University of Pennsylvania Law School and is admitted before the bars of New Jersey, Pennsylvania and the U.S. District Court of New Jersey. Mr. Rabij is licensed to practice law in Ukraine and is certified by the Ukrainian State Property Fund as a consultant on privatization matters.

Mr. Rabij represents various multinational clients and assists in coordinating the work of the firm's junior associates. He has an extensive knowledge of Ukrainian corporate, investment, and privatization law. His primary focuses are taxation, currency regulations, labor relations, real estate transactions and import/export regulations.

In the past, Mr. Rabij has worked with the European Bank for Reconstruction and Development, assisting in privatization of a local milk factory. Mr. Rabij also

participated in formulating a privatization strategy of Selmi, a state-owned multi-profile member of Ukraine's military industrial complex. At the Selmi factory, Mr. Rabij analyzed inter-company documentation in order to prepare various privatization alternatives and performed other aspects of due diligence which resulted in a detailed draft corporate profile to present to foreign investors. He also has headed a due diligence team investigating the property rights of a large privatized Ukrainian joint stock company in Donetsk, Ukraine.

Mr. Rabij also has written and continues to write extensively on legal issues for such journals and magazines as *East / West Executive Guide*, *BNA's Eastern European Reporter* and *Financial Times East European Business Law*. In Kiev, he is the Managing Editor of *The Ukraine Legal and Economic Bulletin*, a legal and economic journal published by the American Chamber of Commerce in Ukraine.

Before joining Frishberg & Partners, Mr. Rabij was a Legal Consultant with the Council of Advisors to the Parliament of Ukraine. In this capacity, he provided legal analysis to members of Parliament and Parliamentary Permanent Commissions on various aspects of draft legislation, organized international conferences and symposia on the Ukrainian election law and assisted in drafting Ukraine's Constitution. Mr. Rabij supervised formation for the Parliament of an English language data base of Ukrainian laws. Mr. Rabij is fluent in English and Ukrainian, and has a working knowledge of Russian.

Ashleigh Loufer graduated from George Washington School of Law with high honors, Order of Coif, and was a member of the Law Review. Prior to joining Frishberg & Partners, Ms. Loufer worked as a tax analyst with one of the largest Western accounting firms in Washington, D.C. As a tax analyst, she helped design and test corporate tax computer models with a view to minimizing tax exposure. Ms. Loufer received her B.Sc. from King's College, University of London in mathematics and business, graduating in the top 1% of her class.

Working on behalf of the firm's clients, Ms. Loufer participated in the negotiation and formation of joint ventures with state-owned enterprises, drafted charters and shareholders' agreements for joint ventures with privatized, Ukrainian enterprises, and drafted leasing and purchase & sales agreements for the use and/or transfer of real property. Furthermore, Ms. Loufer has represented the firm's clients in various Ukrainian intellectual property matters.

Ms. Loufer has written and continues to write extensively on legal issues for such journals and magazines as *East/West Executive Guide*, *BNA's Eastern European Reporter*, *Financial Times East European Business Law* and *The Ukraine Legal and Economic Bulletin*, a legal and economic journal published by the American Chamber of Commerce in Ukraine. Ms. Loufer is admitted before the District of Columbia bar and is licensed to practice law in Ukraine. She is fluent in English and Russian.

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Frishberg & Partners is one of the oldest and largest Ukrainian law firms with foreign ownership, based in Kiev, Ukraine. Over the years we have accumulated a significant body of experience advising clients on a wide range of Ukrainian business law, including joint venture formation, taxation, currency regulations, import-export and labor relations. In particular, we specialize in real property transactions, including transfer of apartments, land use and lease rights, and small and large scale privatization.

We believe that the privatization process is critical to establishing a market-oriented economic system in Ukraine. To provide our clients with a complete range of privatization-related services, we are pleased to have an advisor to the State Property Fund as Of Counsel to our firm, providing advice on a wide range of Ukrainian real property and privatization matters.

In advising clients, Frishberg & Partners draws on attorneys from all pertinent areas in order to best achieve our clients' objectives. Our unique association between U.K., U.S., and Ukrainian attorneys provides clients with top quality legal services in Kiev, London and Washington, D.C. The team working on a particular client's project generally includes attorneys specializing in Ukrainian investment and privatization laws, taxation, intellectual property and other areas.

The attorneys at Frishberg & Partners maintain close relations with high-level officials of the Ukrainian government who influence the trade and economic climate. Direct contacts are also maintained with the largest and most competitive Ukrainian factories and institutes currently undergoing conversion and/or privatization.

A network of outstanding consultants assures clients of not only top-quality legal advice, but also up-to-date, reliable information on Ukrainian economic reforms as they impact on the formation and operation of wholly owned foreign subsidiaries and other forms of doing business in Ukraine.

Frishberg & Partners offers to clients involved in, or contemplating, business transactions in Ukraine the following services:

- privatization-related advice including consultation regarding structuring acquisition and negotiating strategies; documenting the transfer of ownership;
- legal advice on pertinent Ukrainian laws (including investment, privatization, currency regulations, taxation, intellectual property protection, exports and imports, labor practices);
- selection of relevant business forms, and negotiating and drafting foundation documents for joint ventures, joint stock companies, wholly owned foreign subsidiaries;
- registration of newly created legal entities (joint ventures, joint stock companies, wholly owned foreign subsidiaries);
- assistance with the title search, transfer and registration for real estate purchased by foreign individuals or entities;
- assistance in drafting and negotiating trade agreements with various Ukrainian manufacturing enterprises and trade organizations for export and import transactions and compensation deals;
- assistance in negotiating with Ukrainian authorities for land use permits and leases, business licenses, customs clearances, etc., at various government levels;
- supervising all Ukrainian and Russian language translations of legal and business documents presented to the Ukrainian and foreign parties.

We represent seven embassies in Kiev, including those of United States, Canada, Netherlands, Norway, and various multi-national clients, such as Westinghouse, Kelloggs, Digital Equipment, Intel, Hotpoint Limited, Alcatel CIT, Rhone Poulenc, Rothmans of Pall Mall International Limited, Seagrams, Philips, KLM Royal Dutch Airlines, Ernst & Young, American Chamber of Commerce in Ukraine, and the British Know-How Fund, among others.

Our permanent residence in Kiev, Ukraine, staffed with qualified professionals, as well offices in London and Washington, D.G., greatly enhance our clients' opportunities. Please feel free to contact us anytime if you have any questions concerning Ukrainian corporate legislation or wish to learn more about the firm's practice.

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# CONTENTS

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<b>Preface</b> .....	xiii
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## **PART I: UKRAINIAN CORPORATE AND INVESTMENT LEGISLATION**

<b>GENERAL CORPORATE LAW</b> .....	3
<i>Commercial Forms</i> .....	3
<i>Foreign Economic Activity</i> .....	4
<b>THE FOREIGN INVESTMENT LEGISLATION</b> .....	7
<i>Foreign Investment Decree</i> .....	7
<i>Program for Encouraging Foreign Investment</i> .....	9
Priority Investment Areas.....	10
Qualification .....	11
Foreign Investment Benefits.....	12
Upcoming Legislation.....	13
Business Infrastructure Development .....	14
<b>UKRAINIAN COMPANY LAW</b> .....	15
<i>Selection of a Parent Company</i> .....	15
Dividend Payments.....	15
Business Profits .....	16
Interest .....	17
Royalties.....	18
<i>Common Business Forms</i> .....	19
The Representative Office.....	20
Joint Stock and Limited Liability Companies .....	21
Securities and Stock Options .....	22
<i>Closed Stock Companies</i> .....	22
<i>Open Stock Companies</i> * .....	24

Company Management Structure .....	26
<i>The Initial General Shareholder Assembly</i> .....	26
<i>Management Structure</i> .....	27
<i>Capitalization</i> .....	30
<i>Reorganization and Liquidation</i> .....	31
Non-Profit Organizations.....	32
Legal Status .....	33
<b>TAXATION</b> .....	35
<b><i>Income Tax</i></b> .....	35
Foreign Legal Entities — Non-residents .....	35
Representative Offices.....	36
Joint Stock and Limited Liability Company .....	37
General Company Income Tax Overview.....	37
Non-Profit Organizations.....	39
Non-Profit Company Tax Overview.....	39
Taxation of a Non-Profit Grantee .....	40
<i>Private Individuals</i> .....	40
<i>Organizations</i> .....	41
Miscellaneous Taxes .....	41
Value-Added Tax .....	41
Excise Tax .....	43
Customs Duties.....	43
Profit Repatriation Tax.....	44
Non-Commercial Sales Taxes .....	44
Limitation on Sales Mark-ups .....	44
Summary of Taxation Requirements .....	45
<b><i>Taxation Procedures</i></b> .....	46
<b>REGISTRATION PROCEDURES</b> .....	49
<b><i>Registration of a Representative Office</i></b> .....	49
<b><i>Registration of Joint Stock and Limited Liability Companies</i></b> .....	50
Foreign Partner's Background Documents .....	51
Shareholders Agreement and Company Charter .....	52
Pre-Registration Capital Contributions .....	52
Cash contributions .....	53
In-Kind Contributions.....	54
<b><i>Registration of Non-Profit Organizations</i></b> .....	55
Registration by Legalization .....	55
Registration by Notice of Formation .....	56
Registration of Symbols .....	56
Registration Fees .....	57

PRODUCTION OF GOODS .....	59
<i>Benefits Afforded to Company's "Own Production" .....</i>	59
<i>State Production Standards .....</i>	61

FOREIGN CONTRACT LAW .....	63
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## **PART II: REAL PROPERTY LAWS**

RESIDENTIAL AND COMMERCIAL REAL ESTATE .....	69
<i>Introduction .....</i>	69
<i>Residential and Commercial Real Estate .....</i>	69
Closing Before the Notary Public.....	71
Execution through a Commodity Exchange .....	72
Investment in Communal Apartments for Residential or Commercial Purposes .....	73
Commercial Real Estate .....	75
OBTAINING ACCESS TO INDUSTRIAL REAL PROPERTY .....	77
<i>Formation of a Joint Venture with State-Owned Partner .....</i>	77
Selection of a Ukrainian State-Owned Partner .....	77
Commonality of Interests Between Foreign and Ukrainian Partner .....	79
Ukrainian Partner's Longevity.....	79
Ukrainian Partner's Right to Contribute Property .....	80
Leasing Associations .....	81
Miscellaneous Considerations in Forming a Joint Venture with a State-Owned Enterprise .....	82
Procedure For Entering Into a Joint Venture With a State-Owned Enterprise.....	84
Negotiation with the State Property Fund .....	86
Role of State Property Fund .....	86
Controlling Change of the Joint Venture Partner in the Event of Privatization .....	87
Workers' Priority Rights to Joint Venture Stock in Event of Privatization.....	88
<i>Leasing and Sub-Leasing Assets of State-Owned Enterprises .....</i>	88
Leasing State-Owned Assets .....	88
Sub-Leasing State-Owned Assets .....	91
<i>Leasing the Land for Greenfield Projects.....</i>	93

<b><i>Allocation of Land Rights</i></b> .....	96
Overview .....	96
Project Allocation .....	96
Obtaining Permission .....	97
Preliminary Confirmation .....	97
Granting of Land Use Rights .....	98
<b>LARGE SCALE PRIVATIZATION</b> .....	101
Overview .....	101
Corporatization .....	102
Corporatization Order .....	104
<i>Initiation of the Privatization Process and the Formation</i> <i>of a Privatization Committee</i> .....	105
<i>Preparation of The Privatization Plan</i> .....	108
Valuation .....	109
Valuation Under the Methodology for Valuating Privatization Objects .....	110
Special Valuation .....	112
<i>Priority Rights of Workers and Other Parties</i> .....	113
<i>Privatization Methods and Procedures</i> .....	115
Auction and Competition .....	116
Auction Procedure .....	117
Competition Procedure .....	117
<i>Privatization and Land Rights</i> .....	118
<b>PECULIARITIES OF LARGE SCALE PRIVATIZATION</b> .....	121
<i>Military Conversion Complexes</i> .....	121
Introduction .....	121
Structuring Acquisition Before Corporatization .....	123
Corporatization of a Military Conversion Complex as a Single Unit .....	124
Corporatization of One or More Production Lines as a Separate Legal Entity: Cherry-picking Season? .....	126
Analysis of Appropriate Privatization Structures for Multi-Production Profile Factories .....	127
<i>Food Processing Plants</i> .....	128
Introduction .....	128
Possible Abuses of Legal Ambiguity .....	129
Foreign Investment in a Food Processing Factory .....	130
<i>Leased Enterprises</i> .....	131
<i>Unfinished Construction Sites</i> .....	133
Selection of the Site .....	134

The Privatization Process .....	135
Valuation.....	135
Competitive Sale by Tender Offer or Auction .....	136
Transfer of Ownership .....	136
<i>Post-Privatization Investment</i> .....	137
Stock Purchase From Existing Shareholders .....	139
Purchasing Additionally Issued Stock .....	140
Entering Into a Joint Venture With a Privatized Enterprise .....	140
Purchase of Assets Through Bankruptcy Proceedings .....	141

### **PART III: RELATED CORPORATE ISSUES**

CURRENCY REGULATIONS .....	145
<i>Overview</i> .....	145
<i>Currency Restrictions and Exceptions</i> .....	148
Currency Restrictions .....	148
Exceptions to Currency Regulations .....	149
Procedure.....	149
Foreign Currency Licenses .....	151
Overview .....	151
Application Procedures .....	151
Enforcement .....	152
Summary .....	153
<i>Currency Regulations and Privatization</i> .....	153
SECURED TRANSACTIONS.....	155
<i>Introduction</i> .....	155
<i>Discussion</i> .....	156
BANKRUPTCY .....	159
<i>Introduction</i> .....	159
<i>Discussion</i> .....	159
UKRAINIAN DOMESTIC AND INTERNATIONAL COMMERCIAL ARBITRATION SYSTEM AND ENFORCEMENT OF ARBITRAL AWARDS .....	163
<i>Introduction</i> .....	163
<i>Arbitration Options for Foreign Investors</i> .....	163
Arbitration Under the Ukrainian National Court System .....	164

International Arbitration .....	166
International Arbitration in Ukraine .....	166
International Arbitration in a Foreign Forum .....	169
<b>Enforcement of National Arbitral Awards in Ukraine Involving</b>	
<b>Personal and Real Property</b> .....	170
Personal Property .....	171
Real Property .....	171
<b>LABOR LAWS AND HIRING PROCEDURES</b> .....	173
<b>Labor Agreement Overview</b> .....	173
<b>Labor Agreements</b> .....	173
General Requirements and Benefits.....	173
Social Security Benefits .....	174
Employee Compensation .....	174
<b>Employment Contracts</b> .....	175
<b>Sub-Contractual Agreements</b> .....	175
<b>Foreign and Local Employee Hiring Procedures</b> .....	176
Work Permits for Foreigners .....	176
Consequences .....	177
Issuance of Permits.....	177
Application Procedure .....	178
<b>Representative Office Employees and Hiring Regulations</b> .....	179
<b>PERSONAL INCOME TAXATION</b> .....	183
<b>Standard Tax Rates</b> .....	183
<b>Income Tax Exemptions and Deductions</b> .....	184
<b>Penalties</b> .....	186
<b>FREE ECONOMIC ZONES</b> .....	187
<b>Overview</b> .....	187
<b>General Principles and Rights of the Parties</b> .....	188
<b>Creation of a Free Economic Zone</b> .....	189
<b>Jurisdiction and Administration</b> .....	189
<b>Necessary Documentation to Create a Free Economic Zone</b> .....	190
<b>Labor Rights</b> .....	190
<b>Dissolution of Free Economic Zones</b> .....	191
<b>IMPORT-EXPORT ACTIVITIES</b> .....	193
<b>Import to Ukraine</b> .....	193
Import Documents for Customs Clearance .....	194
<b>Export from Ukraine</b> .....	195
Procuring an Export License .....	196



<i>Bonded Warehouses</i> .....	196
<i>Consignment Sales</i> .....	197
<b>INTELLECTUAL PROPERTY</b> .....	199
<i>Industrial Property Subject to Protection in Ukraine</i> .....	199
Inventions, Utility Models and Industrial Designs .....	199
Trade and Service Marks .....	200
<i>Owners of Industrial Property in Ukraine</i> .....	202
<i>Exclusive Right to Use the Industrial Property</i> .....	202
Duration of the Right .....	202
Violation of the Right .....	202
Sufficient Utilization of the Right .....	202
<i>Discontinuation of Effect and Declaration of the Certificate Invalid</i> .....	204
<i>Protection of Rights</i> .....	204
<i>License Agreements</i> .....	204
<i>Ukraine's Recognition of International Treaties</i> .....	205
<i>Documentation Requirements for Protection of Industrial</i> <i>Property in Ukraine</i> .....	205
Inventions and Industrial Designs .....	205
Trademarks .....	206
<b>FOREIGN INVESTMENT GUARANTEES</b> .....	209
<i>Overview</i> .....	209
<i>Procedure for Securing Government Guarantees</i> .....	210
Ukrainian Government Guarantees Under Interstate and Inter-Government Agreements.....	210
Government Guarantees and Tenders.....	212
<i>Conclusion</i> .....	213