



TO: Clients and Friends of the Firm
FR: Frishberg & Partners
RE: Practical Guidelines to Doing Business in Ukraine

I. Introduction

As a rule, all foreign companies doing business in Ukraine must interface with government officials at one point or another. In fact, each step of doing business requires some interaction with the state authorities that can negatively influence a given transaction.

In the case of privatization, the State Property Fund is the key agency responsible for failing to implement large and mid-scale privatization with strategic (foreign) investors. In import-export operations, the state customs authorities play the lead role in expediting (or delaying) the customs clearance process. In all cases, each district administration requires a company registration certificate and a valid lease agreement for a company to engage in business activities.

Thus, prior to entering the Ukrainian market, foreign investors must decide whether they will approach the relevant state officials directly or, alternatively, send someone else to represent their interests. This initial choice is important because, depending on the degree of preparation, the first official visit can either produce insurmountable future barriers or provide immediate positive results.

In one case, for example, an initial misunderstanding quickly escalated into a personality conflict when a state official, reportedly not familiar with a multinational foreign company, scribbled an overly inflated amount of a requested bribe on a piece of paper. The shocked representative refused to pay, and the company lost the tender. There was little anyone could do after the conflict of personalities had already developed. Many of these situations, however, can be avoided with minor preparation.

II. Diplomacy or Bribery: That Is The Question

Multinational companies with large investment projects frequently attempt to “arrange” the success of their transactions through diplomatic connections (ambassadors, commercial officers, congressmen, senators). In many cases, direct lobbying through diplomatic channels, however dignified, provides no guarantees that such projects will materialize.

Other companies, often registered in exotic off-shore zones, rely on a more direct approach, including, but not limited to, making cash gifts or other presents of material value in exchange for official favors (example: land allocation for construction in Kiev). In such situations, the projects often receive the green light with greater degree of expediency than through diplomatic connections. This alternative, however, carries significant risks for the reputation of the company and the official employees.

Many mid-size organizations cannot engage the attention of their ambassadors to represent their agenda, and rightfully refuse to “reward” a Ukrainian state employee. Other companies, such as small businesses and non-profit organizations, simply cannot afford the amount of the requested payment. Still others, including many US companies, are legally handicapped by the famous Foreign Corrupt Practices Act, whose provisions they dare not violate.

Inability to wield influence through either diplomatic or financial channels provides these companies with the only, and arguably the most efficient (and legal), alternative: using the infrastructure available only to local consultants.

III. Use of Local Consultants as Intermediaries

Unlike foreign representatives, local consultants are uniquely equipped to operate within the existing system. The Soviet Union blessed local consultants with bitter cynicism, enabling them to anticipate and avoid the numerous pitfalls in the official system that frequently entrap and frustrate foreign entrepreneurs.

Dealing with local consultants is not for everyone: through trial and error, foreign companies have learned that such dealings can become a cruel and unusual experience. During the Kravchuk administration, it was not uncommon for members of various racket groups to sign up their members as representatives of foreign companies, only to appropriate the goods stored in the warehouse for re-sale on the black market. Today, the Ukrainian government punishes anyone caught in the more obvious scams with greater regularity, but we recommend that one select local consultants based on their reputation in the field and references.

Unlike foreigners, local consultants have a variety of tools at their disposal, allowing them to “lobby” individual projects with greater efficiency. Typically, the consultant will begin by gathering information about the parties involved in the transaction. Analysis of this preliminary information often provides clear guidelines in doing the follow-up work to achieve the ultimate results. The actual follow-up can consist of several steps (or events) aimed at building a general consensus of support for the given project.

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