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RE: The Basics of Ukrainian Import-Export Contracts

## **I. Introduction**

Eastern European countries are known for their strict rules governing cross-border contracts. Ukraine is no exception. A closer analysis, however, reveals that the “strict” Ukrainian legislation is not that different from the demands of comparable European and American laws. Awareness of the peculiarities of Ukrainian law with respect to cross-border contracts is becoming more and more vital as Ukraine strives to stay the course of joining the European Union and the World Trade Organization. Undoubtedly, foreign trade and business relations in Ukraine are increasing on a daily basis.

Generally, what is otherwise known in the world as an import-export contract is known in Ukrainian legalese as a “foreign economic sale-purchase agreement (contract),” which must correspond in form and substance with the Law of Ukraine No. 959-12 “On Foreign Economic Activities” (hereinafter the “Law No. 959-12”) and Order No. 201 of the Ministry of Economy and European Integration Issues “On Approving the Regulations on the Form of Foreign Economic Agreements (Contracts),” dated September 6, 2001 and registered with the Ministry of Justice on September 21, 2001 (registration No. 833/6024) (hereinafter the “Regulations”).

The Regulations define a foreign economic agreement as a transaction executed by two (2) or more business entities and their foreign counterparts directed at the establishment, alteration or termination of mutual rights and duties in foreign economic activity. The agreement (contract) must be executed according to the requirements of Law No. 959-12 and other Laws of Ukraine, especially taking into account the provisions of existing international treaties to which Ukraine is a party.

When drafting the text of a foreign economic agreement, the parties thereto may use recognized international customs and recommendations of international bodies and organizations, unless such use is directly and expressly prohibited by the provisions of Law No. 959-12 and other Laws of Ukraine. Notably, if Ukraine is a party to an international treaty, which provides different terms and conditions than contained in Law No. 959-12, then the provisions of such international treaty will prevail.

There are exceptions, however, such as in the case with the UN Convention on contracts on the international sale-purchase of goods (1980 Vienna Convention). Ukraine has made a reservation to the provisions which permit the parties to an international sale-purchase agreement to conclude oral contracts or conclude written contracts by use of telegraph or teletype. Thus, Ukrainian law only recognizes international sale-purchase agreements which are concluded in written form and signed in original by the parties.

The general rule is that a business entity or an authorized representative thereof must execute a foreign economic agreement in a written form, unless otherwise provided by Ukrainian legislation or international treaties to which Ukraine is a party. A representative's authority may arise out of a power of attorney, the business entity's constituent documents, specific agreements or other grounds, which do not contradict Law No. 959-12. Importantly, actions taken on behalf of a foreign business entity by a properly authorized Ukrainian business entity are deemed to be actions taken by such foreign business entity itself.

Finally, if the parties to an agreement (contract) fail to draft such agreement in accordance with the requirements of the relevant Ukrainian laws or international treaties to which Ukraine is a party, then a court of law may recognize such agreement as invalid.

## **II. Form and Substance: Keeping Within The Guidelines**

In general, the rights and duties of the parties to a foreign economic agreement must be in compliance with the substantive and procedural law of its place of conclusion. Importantly, from September 1, 2005, the Law of Ukraine No. 2709-IV "On International Private Law," dated June 23, 2005, came into force, which cancelled the provisions of the Law "On Foreign Economic Activity" with respect to certain cases of the mandatory application of Ukrainian law to contracts. However, this new law still provides the parties with the possibility to choose the governing law of a foreign economic contract.

Importantly, if the parties fail to insert a choice of law into a foreign economic contract, the Law of Ukraine "On International Private Law" provides that the law with the closest connection to the transaction will be applied. Unless otherwise provided or arising from the terms and conditions, the essence of the transaction or the aggregate of circumstances of the matter, then the transaction is most closely connected with the law of the country (place of residence or place of location) of the party, which must perform, will have the decisive significance for the contents of the transaction. In this case, the party, which must perform and which has the decisive significance for the contents of an agreement, will be as follows: (i) the Seller – under a sale-purchase agreement; (ii) the Service Provider – under an agreement on the provision of services; (iii) the cargo carrier – under a shipping agreement; (iv) the Agent – under a commission agreement; (v) the legal owner – under an agreement on commercial concession, etc.

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