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“Doing business in Ukraine is unlike anywhere else in the world!” is one of the nicer observations uttered by foreign investors. The sad truth is that Ukraine has never been known for its friendly investment climate or transparent business practices.

In late 2004, however, a peaceful “Orange Revolution” captivated the world as ordinary Ukrainians flocked to the streets in protest of the mass falsification of the 2004 Presidential Elections (which was accompanied by a healthy dose of dioxin poisoning). Upon his inauguration, the newly-elected President, Viktor Yuschenko, immediately issued an official statement that Ukraine’s goal is to push forward with massive legislative and social reforms, and to move towards European Integration in the most expedient manner.

A year and a half has passed since that optimistic, revolutionary period, and precious little has been accomplished. The prevailing foreign investment legislation grants few advantages to investors. In cases of free economic zones, the government proved that it can arbitrarily cancel tax privileges retroactively just as easily as it can re-instate them a few months later. Or that it can impose VAT on in-kind contributions to the charter fund (authorized capital) at a whim. Or re-privatize your steel mill.

At the same time, this dynamic East European nation is making giant leaps forward along its capitalistic path, undeterred by the constantly rotating carousel of Prime Ministers and bitter political rivalries. In fact, Ukrainian politicians greatly contribute to the thriving business climate by abstaining from micro-managing the economy.

Everyone agrees that Ukraine is one of the fastest growing markets. It has opportunities no longer available in other countries, plus extremely low labor and

production costs. Thus, despite the justifiably low confidence of investors, rolling with the punches is often well worth the trouble. Regrettably, however, American-based companies have been conspicuously absent from the Ukrainian market, yielding the playing field to their Russian and European competitors. Even American-sounding companies invest from Europe. For instance, McDonalds came from Austria, Coca Cola Amatil (the bottlers) from Australia, General Electric from U.K.

So who are these brave foreigners, doing business in Ukraine? As a rule, foreign businesses are categorized either as:

- (a) import-export companies;
- (b) strategic partners; or
- (c) portfolio investors.

The discussion below will focus on strategic investors only.

These days, most Ukrainian enterprises are privately owned and, therefore, the State Property Fund (and its notorious bureaucracy) is no longer an impediment to acquiring stock in production facilities. Plus, industrial land is frequently allocated for production purposes. As a result, a strategic investor can:

- (a) purchase shares of stock (existing and/or newly issued) in a privately-owned Ukrainian factory;
- (b) enter into a joint venture with a Ukrainian enterprise; or
- (c) own 100% of production facilities by pursuing a greenfield project (via industrial land allocation and construction thereon).

However, all options require careful legal due diligence, a long and tedious process of research and analysis involving the target company's legal structure, its property rights, any existing debts or liabilities, etc. Based on the information gathered in the course of performing due diligence, the parties can agree on the fundamental issues suited to their transaction (percentages of ownership, valuation of respective contributions, etc.). Hopefully, negotiations will result in signed agreements (investment and purchase or joint venture), which must be duly registered with the Ukrainian authorities.

In many cases, experienced multinational companies insist upon setting up their own, 100% foreign-owned production. Unfortunately, greenfield projects necessarily involve participation of government officials, since the local councils of people's deputies are in charge of allocating land. Depending on the region, they are known to either make or break greenfield projects. In any region, however, the investor should have a good working relationship with the authorities in charge of land allocation.

Recently, foreign investors have been employing toll manufacturing arrangements, otherwise known as production outsourcing, which involves the processing of raw materials into finished products, such as electronic components. In addition to employing low-cost labor, toll manufacturing has excellent tax benefits, provided that certain threshold rules are met.

In conclusion, the current Ukrainian investment climate resembles that of the U.S. or U.S.S.R. in the 1920's. It's a time of economic revolutions and unique business opportunities, when people like Armand Hammer become multi-millionaires overnight. Is there corruption? Yes. And yet strategic investors are entering into long-term business relationships in Ukraine's regions and setting up their local production. Rapid growth is reported in virtually every sector. As history shows, the best opportunities often arise during the times of economic revolutions.

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