Ukraine

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The interest among investors in entering the Ukrainian market has increased markedly in recent times, especially through mergers with, or acquisitions of, Ukrainian businesses. This increased cross-border M&A activity has been possible because of substantial legal reforms introduced to facilitate foreign investment into Ukraine. The increased need to attract inflows of foreign capital will encourage further development of the legal framework.

When contemplating an M&A transaction in Ukraine, special attention should be paid to these legislative developments, in particular the introduction of new Civil and Commercial Codes and new antitrust and insolvency legislation. Furthermore, it is important to factor in Ukrainian tax and foreign investment law rules, and to consider bilateral investment protection treaties and double-tax treaties effective in Ukraine.

From a legal standpoint, the Ukrainian M&A market is relatively simple. M&A transactions are mainly structured through direct acquisitions of existing or newly issued shares in Ukrainian companies, rather than through complex acquisition vehicles and stock exchanges. M&A transactions are sometimes structured as acquisitions of assets (share deals) and through hybrid share-assets deals, with a local special purpose vehicle interjected into the transaction to which the target contributes all its assets and that in turn becomes the new target. This last structure is mainly used to reduce risks while safeguarding certain attributes of the original target.

Although the new Civil Code establishes rules for mergers and consolidations, these are as yet untested. This, as well as the lack of detailed regulations and insufficient clarity regarding the relevant legal and tax issues arising in the process of such transactions, has resulted in mergers and consolidations not being widely used in practice.

Acquisitions

The process for acquiring a shareholding in a Ukrainian company depends on whether the company is a limited liability company (LLC) or a joint-stock company (JSC). If it is a JSC, one also needs to consider whether it is an open or closed JSC, as well as whether the shares are in circulation or will be issued.

The acquisition of existing shares of an open JSC is not subject to statutory restrictions or formal approval, while shareholders of a closed JSC have the pre-emptive right to purchase shares that are being sold by other shareholders (the right of first refusal). Furthermore, the sale of shares both in open and closed JSCs does not require any approval by the companies' governing bodies, whereas the acquisition of an equity interest in an LLC is subject to approval by all participants of the company.

Except in the case of LLCs, if the purchaser is to acquire newly issued shares, these shares must first be registered with the State Commission for Securities and the Stock Market, even in case of a private placement, and the placement requires approval by the general shareholders' meeting. Thus, acquiring a new equity interest in an LLC is simpler than purchasing newly issued shares in a JSC, and only requires a decision of the general meeting of participants and the registration of the amendments made to the company statutes with the local administration. On the other hand, in the case of LLCs, disposal of more than 50% of the company's assets might require a decision of the general meeting of participants (no such restriction applies in the case of JSCs, unless the object of the company is altered by the disposal).

One important aspect of share (or equity interest) acquisitions is the requirement to obtain, before the acquisition, preliminary consent from the antitrust authorities if the transaction, the purchaser and the target exceed certain thresholds established by Ukrainian antitrust legislation. Failure to obtain approval might entail large penalties, and even invalidation (reversal) of the deal.

In certain cases, foreign investors prefer to structure their acquisitions through asset deals rather than share deals, which allows them to acquire only the assets in which they are interested, while ring-fencing or isolating certain risks (such as legal and tax contingencies) that might exist in the target. Depending on the deal structure – especially in respect of the nature of the assets involved – these transactions might also require antitrust clearance.

According to Ukrainian law, assets (including real estate assets) are freely transferable. The acquisition of real estate only requires registration of the right of ownership in the name of the new owner. Some intangible assets might be non-transferable, such as licences for specific activities, different permits and certificates from various authorities. In most cases, the transfer of licences and permits by the initial licensee (that is, by the target company) to a third party means applying for a new licences and permits.

Mergers

At the time of writing, mergers and consolidations are fairly uncommon in Ukraine.

According to Ukrainian law, mergers and consolidations qualify as forms of reorganization that cause the termination of one or more of the companies involved. In both cases, acquirers and targets must have the approval of their shareholders' meeting, which for a JSC means a three-quarters majority vote, and for an LLC means a simple majority. The shareholders of both companies involved must appoint a merger/consolidation commission, and approve the necessary supporting documents. The new Civil Code and securities legislation set out detailed procedures for mergers and consolidations.

For both mergers and consolidations, the new company succeeds the merged/consolidated entities in all their rights and obligations. However, in many cases, licences and permits are not automatically transferred, and the new company has to apply for them.

As is the case with acquisitions of equity interests and assets, mergers and consolidations require the approval of the antitrust authorities, if the companies involved in the transaction meet certain thresholds.

Corporate and commercial

Recommended firms
Tier 1
Baker & McKenzie
Chadbourne & Parke
Tier 2
BC Toms & Co
Grischenko & Partners
Magister & Partners
Salans
Sayenko Kharenko
Shevchenko Didkovskiy & Partners
The Silecky Firm
Tier 3
Beiten Burkhardt Rechtsanwaltsgesellschaft
Frishberg & Partners
Proxen
Sergiy Koziakov & Partners
Vasil Kisil & Partners

Baker & McKenzie

Four partners and 14 associates work in Baker & McKenzie's Ukrainian office. The "well-regarded" Jim Hitch is the partner-in-charge of this "excellent outfit" that "wins roles on lots of the best work." Market murmurings reflected in last year's *IFLR1000* that the firm's dominance was waning slightly because of a concerted effort to branch out into new practice areas seem to have been unfounded, and, for the time being at least, the firm comfortably retains its top-tier position. As well as Hitch, fellow partners Serhiy Chorny and Serhiy Piontkovsky also come in for praise. And the firm's conscious drive to push forward the younger Ukranian lawyers for the benefit of the firm is also not going unnoticed – from the talented team of associates, Glib Bonder is becoming very well known, particularly in the capital markets sphere.

Chorny heads up the firm's banking and finance practice, whose numbers have been boosted recently with the hire of an additional associate from Magister & Partners in November 2004. The practice has had a busy year, especially in the past six months. In July 2004 it advised the International Finance Corporation in connection with extending a $10 million loan to Ukrainian fruit juice maker Sandora, and also advised the city of Kiev on its issue of $200 million loan participation notes. The following month it handled two more debt capital markets deals: in the first, it acted for Dresdner Bank and Merrill Lynch International as lead managers of the state of Ukraine's issue of $500 million floating rate bonds, and in the second in represented the joint-lead managers in connection with the issue of $266 million loan participation notes to fund a loan to CJSC Kyivstar, and on the related exchange offer of existing notes for $160 million.

The hard work continued in February 2005, when the team was involved in two further deals, acting for Société Générale as arranger and bookrunner in connection with a $85 million secured revolving pre-export finance facility granted to the Industrial Union of Donbas, a large exporter of steel products, and acting for the Western NIS Enterprise Fund, the region's leading private equity fund, in setting up the International Mortgage Bank, a Ukrainian commercial bank specializing in residential mortgage lending.

Baker & McKenzie is able to field a team that can handle complex securitizations. This market is not fully developed yet in the Ukraine, but Baker & McKenzie is the firm of choice for legal advice in this area. At the time of writing, the firm is advising a large Ukranian commercial bank in connection with a proposed securitization of mortgage loans and consumer loan portfolios.

The firm's corporate practice is as impressive as its finance practice. Run by leading lawyer Hitch, the practice has seen considerable personnel changes over the past year. New faces included Mariana Marchuk, who relocated to the Kiev office from Moscow, and Mykola Stetsenko, who resumed working as an associate after completing his LLM degree at Georgetown University. The practice also hired Artem Nagdalyan, formerly with Credit Suisse First Boston in Moscow, to replace Vyacheslav Yakymchuk, who left the firm to become European deputy-general counsel of Archer Daniels Midland.

Among the year's deal highlights, in February 2005 Hitch led a team that advised Molinos International, a subsidiary of Molinos Rio de La Plata, in connection with the sale of its bottled edible oil business in Russia and other CIS countries. Two months later the firm represented the International Finance Corporation and three other international financial institutions in relation the sale of a 50% stake in First Ukrainian International Bank to a Ukrainian financial and industrial group. And at the time of writing, partner Olexander Martinenko is spearheading the firm's advice to a group of private equity investors in connection with the acquisition of one of Ukraine's TMT providers.

Leading lawyers
Serhiy Chorny
James Hitch
Serhiy Piontkovsky

Key contact partners
Serhiy Chorny
James Hitch
Olexander Martinenko

Chadbourne & Parke

The collapse of Altheimer & Gray provided Chadbourne & Parke with a number of excellent new lawyers, and it has used its talented team to good effect, increasing its visibility in the market. Jaroslawa Johnson runs the US firm's Ukraine operation, and she and Adam Mycyk come in for praise from peers and clients. Another individual that the market picked out as deserving particular recommendation was Olexiy Soshenko because he is, according to one client, "responsive, and gives good advice."

The firm's increasing work meant it needed to hire more staff this year, and two new associates joined the firm in August 2005. The market was unanimous in its opinion that, like Baker & McKenzie, Chadbourne & Parke should most definitely remain in the top tier after another strong showing. One client noted that the firm has "a good understanding of the needs of a western client, a good knowledge of English and is very responsive."

Project finance forms a large part of the firm's work globally, and its work in Ukraine is no exception. Among the year's standout corporate deals, the firm provided advice to a global investment bank on its potential bid to Ukraine's State Road Service in respect of financing major highway improvements and on its potential bid to the State Railway Administration of Ukraine for the financing of improvements to railroad bridges, and represented the European Bank for Reconstruction and Development in connection with two projects: the $44 million financing of the Rubizhanskiy Cardboard and Packaging Mill, and its $30 million financing granted to Imez for the construction of a new edible oil crushing facility to be built by Ilichevsk Maslo Extraction Zavod, a 50:50 joint venture between American agribusiness company Archer Daniels Midland and Risoil, a Swiss registered agri-commodities trading company. At the time of writing, the firm is also representing the sponsor of soccer club Shakhtar in relation to the early stages of the development of a $300 million soccer stadium, to be built in Donetsk.

But projects work is by no means the only string to Chadbourne's bow; in particular it also handles its fair share of M&A work. In September 2004 the firm represented Scandinavian chemicals conglomerate Tikkurila in relation to evaluating and structuring a potential acquisition of a Ukrainian paint manufacturing facility. And more recently, in March 2005, Johnson led a Kiev and London team that acted for Powszechny Zaklad Ubezpienczen when it acquired a controlling stake in Skide-West, a large Ukrainian insurance company. At the time of writing, the firm is working on various confidential matters in the agricultural and financial services sectors.

Leading lawyers
Jaroslawa Johnson
Adam Mycyk
Olexiy Soshenko

Key contact partner
Jaroslawa Johnson

BC Toms & Co

The first western firm to set itself up in Ukraine in 1991, following the country's independence, BC Toms & Co is a solid second-tier firm that wins its fair share of work and enjoys a good reputation among clients and peers, who note that it "does a good job." The firm suffered a bit of a blow last year, as one of the firm's partners, Vladimir Sayenko, left to start his own firm. However, the main driver behind the firm's presence and expertise is its name partner Bate Toms, and as long as he remains at the helm, the market does not predict that the firm's status will slip. Indeed, the firm is making sure that it is adequately resourced to handle the instructions it wins, reflected in the hiring of three additional associates over the past year.

While most of the specifics of BC Toms' work are confidential, ongoing work at the time of writing includes advising on a $20 million Italian-Ukrainian joint venture to produce batteries, acting on the $25 million acquisition of one of Ukraine's largest banks, and providing counsel on the $100 million acquisition of a Ukrainian telephone company. In the past, BC Toms has advised on the $50 million acquisition of Credit Lyonnais' Ukrainian operations.

Leading lawyer
Bate C Toms

Key contact partners
Taras Dumych
Bate C Toms

Magister & Partners

Magister & Partners has made real efforts to make its mark on the growing Ukrainian market, and comments from peers and clients suggest that it has been successful in doing so. Many interviewees remarked that "the firm has adopted a western-style partnership structure, and is growing well, and very fast," and that it has "developed into a very good niche firm, most of whose business is based on trade finance."

The firm's healthy deal flow over the past 12 months is further evidence that it is steadily becoming one of Ukraine's top local outfits. Most recently, in August 2005 Magister & Partners joined forces with international firm Herbert Smith to advise US consumer brands company Fortune Brands on Pernod Ricard's successful £7.4 billion ($13.2 billion) takeover of Allied Domecq; Oleg Marchenko led the team, which specifically advised Fortune Brands on Ukrainian antitrust aspects of the acquisition, representing it before Ukraine's Antimonopoly Committee.

Other work in 2005 has seen Magister & Partners act for Naftogaz in negotiations with Russia's Gazprom concerning the resolution of issues arising in connection with storing 7.8 billion cubic meters of Russian gas in Ukraine's underground gas storage facilities, and advise Ukravtodor (the Ukraine's state road service) in relation to the $100 million facility granted to it by Deutsche Bank for the reconstruction of the Kiev-Odessa highway.

The firm also acted for international lenders on two high-profile bond issues this year. In February 2005 it acted for Dresdner Bank and UBS as joint-lead managers on the $100 million bond offering by Ukreximbank, and in May it served as Ukrainian counsel to ABN Amro and MNB Capital Markets when they joint-lead managed Ukrsots Finance's $100 million issue of loan participation notes to fund a loan from Moscow Narodny Bank to Ukrsotsbank, Ukraine's fourth-largest bank.

These two bond issues followed on from similar debt instructions for the firm in 2004, solidifying Magister's reputation as the firm of choice for investment banks and corporates looking for advice on their bond-related activities in Ukraine. In September 2004 the firm advised Dresdner Kleinwort Wasserstein and UBS as the joint-lead managers of the $150 million loan participation notes issued by state-owned Ukreximbank. And in October 2004 the firm proved it was equally capable of acting on the other side of bond issues, when it teamed up with White & Case to represent Naftogaz in relation to its debut $500 million eurobond issue, the largest corporate eurobond issue ever in Ukraine.

Leading lawyer
Eugene Korniychuk

Key contact partner
Eugene Korniychuk

Salans

Market opinion of Salans is divided. Although some interviewees remarked that the firm's profile has not been quite as high on deals as in previous years, and that the other foreign firms in Ukraine are slightly pulling away from it in terms of winning instructions, most peers stressed that this might only be a temporary blip. And it is certainly the case that the firm contains some excellent lawyers. Among these, one client singled out partner Myron Rabij as being "extremely knowledgeable." Rabij is a corporate finance expert who also has specialist experience of the gas and insurance sectors.

In one standout deal that closed in mid-2004, Rabij led a Kiev office team that joined forces with Salans' Turkish lawyers to advise Turkcell Iletisim Hizmetleri, the leading GSM operator in Turkey, on its joint venture with the shareholders of Digital Cellular Communications. The transaction marked the largest Turkish investment in Ukraine to date.

Leading lawyer
Myron Rabij

Key contact partner
Oleg Batyuk

Sayenko Kharenko

Sayenko Kharenko is a young firm, formed last year by well-regarded ex-BC Toms & Co partner Vladimir Sayenko, and Michael Kharenko, formerly of rival firm Shevchenko Didkovskiy & Partners. And although the firm has only been around for about a year, it is already making a name for itself in the market, fully jusitifying its second-tier ranking this year. Plaudits for the firm were plentiful. One peer put the firm's success down to the fact that "all its lawyers are very competent and professional." Three partners and nine associates make up a strong team; three of those associates are recent hires, having joined in the past six months, most notably Taras Pryhoda, a former senior lawyer at the International Finance Corporation's Ukraine branch.

The firms' strongest suit is advising on debt capital markets work, where it has a wealth of experience. One impressed client noted that the firm "understands the relevant issues, and focuses on them." And another echoed this sentiment, commenting that the firm "has an understanding as to which issues are less important and putting less emphasis on those." The firm's lawyers also come in for praise from satisfied clients for their "ability to work with all parties, including lead managers, issuers and other lawyers" and because they are "approachable, and flexible when needed."

Sayenko Kharenko teamed up with Clifford Chance on two deals over the past year. In November 2004 the two firms acted for ABN Amro, Credit Suisse First Boston and Dresdner Kleinwort Wasserstein in relation to their $150 million state-guaranteed syndicated loan facility provided to Yuzhnoye, the state design bureau. And in February 2005 the firms advised the State Export-Import Bank of Ukraine on its two-stage financing, comprising a $100 million eurobond tap issue (which was consolidated with its initial $150 million issue, the largest-ever eurobond issue by a Ukrainian bank) and a $40 million subordinated debt placement, the first subordinated debt placement by a Ukrainian bank.

In other work, in December 2004 the firm acted for Thyssen Krupp on the Ukrainian law aspects of its acquisition of Howaldtswerke-Deutsche Werft, and in April 2005 Michael Kharenko led a team that successfully defended Western Union against Antimonopoly Committee claims regarding an abuse of dominant position, which was the largest-ever claim for a violation of competition law in Ukraine.

Leading lawyers
Michael Kharenko
Vladimir Sayenko

Key contact partners

Alexandr Glotov
Michael Kharenko
Vladimir Sayenko

Shevchenko Didkovskiy & Partners

Shevchenko Didkovskiy & Partners is another local firm that is standing its ground against the international firms operating in Ukraine, and results of this year's research show that it is a client favourite. One long-term client of the firm said that it "has been using Shevchenko for the past few years and we are very satisfied with their performance," while a rival practitioner described it as a "smaller firm, but a good one, with numerous people who have studied abroad." *Yuridicheskaya Practika*, Ukraine's premier legal weekly, recently named the firm the best Ukrainian law firm in its annual ranking of the top 50 Ukrainian law firms 2004.

From among the talented team of six partners and 26 associates, two stood out during *IFLR1000*'s research process. A client described name partner Oleksander Didkovskiy as "one of the outstanding lawyers at the firm ... he is knowledgeable, and [can see] both the details and the totality of a deal." And a peer also picked out Armen Khachaturyan, who is "well aware of transactional law and how to work well."

The firm's two-partner, eight-associate finance practice had a busy second half of 2004 advising on syndicated lending transactions. In July it acted for ING Bank in relation to an $18 million loan to Prominvestbank, the following month it advised Citibank on a $75 million syndicated loan provided to Kyivstar, and in November it represented the European Bank for Reconstruction and Development on its $10 million syndicated loan to CJSC Energy Alliance. Capital markets work, meanwhile, included impressive imstructions from the respective lead managers of various bond issues by, among others, Kyivstar (a $135 million bond issue in August 2004), UkrSibbank ($100 million, May 2004), the city of Kiev ($200 million, July 2004) and Ukreximbank ($150 million, September 2004).

The M&A team grew considerably last year with the hire of three new associates, and now comprises four partners and 10 associates, headed by Oleksandr Padalka and Oleksiy Didkovskiy. Among the year's highlights, in July 2004 the firm acted for a large Polish bank in relation to its acquisition of a controlling block of shares in a Ukrainian commercial bank, the following month Padalka led a team that advised the Baltika Grupp on its purchase of a Ukrainian retail chain, and in January 2005 the firm assisted SEB Vilniaus Bankas (part of the Scandinavian SEB banking group) when it bought Bank Agio.

Shevchenko Didkovskiy & Partners is an exclusive member for Ukraine of the World Services Group, the largest multidisciplinary network, and Counsel Alliance law firm network.

Leading lawyers

Oleksander Didkovskiy
Armen Khachaturyan

Key contact partners

Oleksander Didkovskiy
Armen Khachaturyan
Igor Shevchenko

The Silecky Firm

The Silecky Firm is a local outfit affiliated to US firm Squire Sanders & Dempsey. As such it enjoys good relationships with a number of international clients, and "has access to good resources from Squires." Name partner Markian Silecky stands out as the firm's leading lawyer, praised for his technical knowledge and "strong work ethic." Other than Silecky, the firm comprises two partners and four associates.

At the time of writing, the firm is working on a number of deals that have yet to close. These include advising an investor in relation to its investment into a local telecoms operator, assisting a foreign investor with its due diligence exercise before its acquisition of shares in Ukrainian producer of glass containers, and acting for an international manufacturer in relation to its sale of its manufacturing facilities in Ukraine.

Leading lawyer

Markian Silecky

Key contact partners

Helen Kryshtalowych
Markian Silecky

Other notable firms

Beiten Burkhardt Rechtsanwaltsgesellschaft appears for the first time in the rankings after receiving frequent recommendations from peers and clients. The German firm's Kiev office mainly handles restructurings and privatizations, international tax planning and the provision of legal and commercial advice in relation to cross-border investments. At **Frishberg & Partners**, name partner Alexander Frishberg is "very fluent in English, and is more polished than some other Ukrainian lawyers," and, according to one peer, the firm "definitely gets its share of good clients." **Grischenko & Partners** is described by one rival practitioner as "a very good firm with an American influence," and comments from the market show that peers and clients alike consider it to be one of Ukraine's best local firms.

Proxen is described as a firm with close political links that, like Grishenko, "gets a good share of business," while **Sergiy Koziakov & Partners** is "a smaller player," although name partner Sergiy Koziakov is looking to increase the firm's visibility – according to one peer, "he has developed more connections with the new regime and work may come out of this." And lastly, **Vasil Kisil & Partners** came in for praise, being described as "a very good law firm with great connections." Name partner Vasil Kisil is considered a corporate and M&A specialist who is "of great eminence in Ukrainian law."