

April 2005  
Volume 1, Issue 2

Chair

*Bruce Bean*  
beanmoscow@aol.com

Vice Chair

*Anna Sokolova*  
anna.sokolova@azbar.org

Editor

*Ekaterina V. Gill*  
kgill@slatenlaw.com

Country Representatives

Republic of Armenia

Republic of Azerbaijan

Republic of Belarus

Georgia

Republic of Kazakhstan

Kyrgyz Republic

Republic of Moldova

Russian Federation  
*Holly Nielsen*

Republic of Tajikistan

Turkmenistan

Ukraine

*Irina Paliashvili*  
irinap@rulg.com

Republic of Uzbekistan

Contributors:

*Bruce Bean*  
*Irina Paliashvili*



**ABA Section of  
International Law**  
*Your Gateway to International Practice*

**Russia and Eurasian States Law Committee**  
**КОМИТЕТ ПО ПРАВУ РОССИИ И СТРАН ЕВРАЗИИ**



Moldova



Russia



Kazakhstan



Turkmenistan



Armenia



Uzbekistan



Ukraine



Azerbaijan



Belarus



Georgia



Tajikistan



Kyrgyzstan

Dear Committee Members,

It is my pleasure to present another issue of our newsletter to you. In this issue we have two outstanding articles.

In the first article, our chair, Bruce Bean, gives a further update on the Yukos affair. Bruce's continuing expertise in the Yukos matter provides us with an excellent analysis.

The second article, contributed by Irina Paliashvili, enlightens us on the current legal situation and need for reform in Ukraine. In light of the recent changes in the Ukrainian government, this article is very timely and informative.

Please keep in mind that we always welcome your contributions. If you have any relevant material that you would like to have included in our newsletter, please forward it to us.

Do not forget that our spring meeting in Washington, D.C. is only one week away. Among other things, our committee will hold a program pertaining to "Russia's Yukos Affair." You will receive a separate detailed letter outlining the events of our committee at the Spring Meeting.

Also, remember the ABA's 2005 annual meeting in Chicago and the fall meeting in Brussels.

On a final note, we welcome all of our new members. We are excited about our expanding growth and we look forward to many new members in the future.

Again, we would love to hear from any of you. Please contact Bruce Bean at [BeanMoscow@aol.com](mailto:BeanMoscow@aol.com), Anna Sokolova at [Anna.Sokolova@azbar.org](mailto:Anna.Sokolova@azbar.org) or me at [kgill@slatenlaw.com](mailto:kgill@slatenlaw.com). I hope you will enjoy this issue of our newsletter.

Best Regards,  
Katya Gill

## The Rule of Law in Russia: Getting Khodorkovsky

*Bruce W. Bean*

A well respected Russian attorney currently practicing in New York responded to one of my recent articles which had criticized the prosecution of Yukos and Russia's richest "oligarch," Mikhail Borisovich Khodorkovsky (MBK) by asking: "What is wrong with wanting Russia to collect all taxes actually owed to it?"

Of course, the answer to this is: "Nothing at all." Utilizing high profile prosecutions to make government policy clear is certainly a tactic regularly practiced in the U.S. The Martha Stewart prosecution is a recent example of such a U.S. "show trial."

I was making quite a different point, however. All that has happened in the sordid charade of "legal proceedings" connected with the Yukos affair demonstrates that it is not about collecting taxes and that the rule of law, not men is far from established in Russia. In a report released at the end of January the Parliamentary Assembly of the Council of Europe ("PACE") concluded that the Yukos affair is a judicial campaign designed "to weaken an outspoken political opponent." Most commentators agree that the Yukos affair arose out of MBK's political ambitions and his failure to comply strictly with President Putin's July 2000 pronouncement to the oligarchs to tend to their businesses, pay their taxes, and stay out of politics. Even President Putin's outspoken Economic Advisor, Andrei Illarionov, has described the Yukos affair as political.

To be sure, any fair recollection of the last years of the Yeltsin era, the period of "state capture" by a small group of ultra-rich oligarchs, must conclude that this presidential directive to Russia's wildly unpopular oligarchs was precisely what the New Russia needed if it was to make genuine progress toward a functioning market economy and representative democracy. In a recent poll, however, 42% of Russian citizens believe the Yukos affair is politically motivated; only ten percent think it is being conducted in accordance with Russian law.

Under Putin the oligarchs lost the Kremlin access and influence they had enjoyed under the ailing Yeltsin. Through Yukos, however, MBK developed an extensive lobbying machine that successfully opposed Kremlin legislative proposals in both 2001 and 2002 to raise taxes on oil companies. MBK also financially supported political parties opposed to Putin and publicly espoused his own foreign policy for Russia.

When a group within the Kremlin decided to bring MBK "back in line," curbing his opposition and widely rumored personal political ambitions, there were a number of factors that made this an eminently doable project:

- President Putin was enormously popular;
- MBK was the richest of Russia's widely despised oligarchs who were deemed to have "stolen" Russia's natural riches from the populace in the much-criticized loans-for-shares deals of the mid-nineties;
- Not only was MBK fantastically rich in a nation emerging from three generations of "socialist equality," but it did not hurt that Khodorkovsky's father was Jewish;

See "Russia," p.4.

## Urgent and Radical Improvements Needed in Ukraine's Legal Regime for Business and Investment

*Dr. Irina Paliashvili*

In light of the fundamental and systematic economic reforms that our new President and new Cabinet are planning to undertake, their pronounced “rule of law” (“*verkhovenstvo prava*”) policy, and the expected dramatic increase in foreign and domestic investment, it is imperative to ensure that our legal system is prepared to serve as a modern and adequate legal basis for the economy.

As a lawyer educated in Ukraine, practicing business law since the very first days of independence and having extensive experience in other CIS countries and in the West, I regret to say that the current legal basis is not only inadequate, but that to a large extent it sabotages the development of a market economy in our country.

Very often we hear: “the laws are good, but implementation is a problem”. Certainly, there are some good laws in Ukraine, and certainly there are problems with their implementation, but unfortunately there are many more bad laws, numerous outdated laws, and many gaps, inconsistencies and conflicts within the system.

Today, everybody, from small local entrepreneurs to giant multinationals, suffers from this “legal chaos”, and no business can operate in Ukraine without being forced to violate one law or another on a regular basis, sometimes because of their conflicting provisions and sometimes because of their sheer absurdity.

It is well known that the new Government is currently conducting an inventory and evaluation of everything that has gone wrong with our economy, privatization, government and administrative structure, etc. The good news with regards to the legal regime is that the evaluation part has, to a large extent, already been accomplished: the problems and the proposed solutions were identified in great detail in several major recent reports, including:

(i) the UNDP Blue Ribbon Commission for Ukraine's “Proposals for the President: A New Wave of Reform”, which greatly influenced the new Government's Program. This report is available at <http://www.carnegieendowment.org/publications/index.cfm?fa=view&id=16377>;

(ii) the EBA Report on Barriers to Investment in Ukraine, available at [http://www.eba.com.ua/files/Investment\\_paper/Barriers\\_to\\_Investment\\_in\\_Ukraine\\_April\\_2004\\_Eng.pdf](http://www.eba.com.ua/files/Investment_paper/Barriers_to_Investment_in_Ukraine_April_2004_Eng.pdf),

(iii) the OECD Report on Improving the Conditions for Enterprise Development and the Investment Climate for Domestic and International Investors in Ukraine: Legal Issues With Regard to Business Operations and Investment, available at [http://www.rulg.com/OECD\\_project.asp](http://www.rulg.com/OECD_project.asp), and many others.

The main priority for the new Government, therefore, should be to act, and to act swiftly and decisively. Fortunately, our legal system can be improved immediately and dramatically just by canceling the most archaic

See “Ukraine,” p.5.

## Russia. continued

It is not known who made this decision or what quiet, initial messages may have been sent, but after a number of preliminary investigations conducted by the Russian Prosecutor General in the spring of 2003, the signals gradually became obvious. In June Alexei Pichugin, Chief of Security for Yukos, was arrested on murder and attempted murder charges. The pressure on MBK continued with the arrest on July 2 of Platon Lebedev, a long time confidant of MBK. Lebedev at the time was CEO of Group Menatep Limited, the Gibraltar entity that controlled more than 70% of Yukos equity.

From July onwards raids, apparently from the prosecutor's office but reportedly not always with warrants, became more frequent and public. Armed, masked gunmen ransacked Yukos and Menatep offices, as well as a Yukos-supported orphanage, a private school attended by his daughters and the offices of a lawyer representing MBK.

In October 2003 MBK declared to a newspaper interviewer that he had no intention of fleeing Russia to live in exile, as two other Jewish oligarchs, Boris Berezovsky and Vladimir Gusinsky, had done early in Putin's reign. MBK concluded his interview by saying he would rather go to jail than leave Russia. Five days later he was arrested.

So what is the fuss all about? After all, "everyone knows" MBK is a genuinely "bad guy". He stole billions from the Russian people and refused to comply with the new rules established by President Putin. As Marshall Goldman of Harvard's Davis Center for Russian Studies recently wrote in *The Moscow Times*, "[E]ven if Yukos officials are innocent of the charges against them, a case could be made and is being made that the privatization process itself was flawed and that some re-examination of it is warranted." And Moscow-based commentator Peter Lavelle recently wrote: "[MBK] is getting what he deserves for his belief that politics is a commodity for purchase for those who can afford to pay the highest price."

There is a problem with this. A trial, even of a "bad guy," is supposed to determine whether party is guilty of the publicly announced charges. It is not a procedure for righting prior wrongs, however grievous. MBK is on trial for specific acts, which, if proved, constitute crimes under Russian law. These crimes do not include, for example, Russian privatization, the 1996 Yukos loan-for-shares transaction or lobbying the Duma on tax increases affecting Yukos.

For certain, there has seldom been a prosecution in any jurisdiction where the defense lawyers did not complain about prosecution tactics. Lawyers are like that. But a number of the alleged abuses in the Yukos Affair have been confirmed by the European Court for Human Rights and the PACE.

Among the alleged abuses are:

- Warrantless searches by masked, armed gunmen;
- Denial of medical care to incarcerated defendant Lebedev;
- Limiting defense counsel access to their clients by requiring prior approval of the prosecutor, although this is illegal under Russian law;

See "Russia," p. 6.

## Ukraine, continued

and damaging legislation, using the so called “guillotine” principle, which worked successfully in other countries that undertook modernization reforms.

The new Government should not engage in any debate on this; there has been enough debate already and the arguments collected by the business and investment communities are overwhelming. Other improvements may take longer, but systematic work should start immediately.

What is also very important for this work is that the Government stays in constant contact with the business and investment communities, which have suffered enough already from the previous Governments’ abuses and which are willing to work productively with the new Government.

To this end, I would suggest a number of practical measures, which basically center on opening up the Government and making it available for on-going dialogue with the business and investment communities, represented by various business groups (such as the European Business Association, AmCham, reputable industrial and trade associations, associations of small and medium-sized businesses, the business press, etc.).

### IN PARTICULAR:

- (i) the Cabinet should designate a Vice Prime Minister and one Deputy Minister in each Ministry, and assign to them the responsibility to act as a liaison with the business and investment communities;
- (ii) Government officials should actively participate in business conferences in Ukraine and abroad (which very rarely happened in the past);
- (iii) Government officials should attend meetings of various business groups and take immediate action on their concerns;
- (iv) the Government should create an analytical/monitoring body (perhaps on the basis of the current Committee on Entrepreneurship and Regulatory Policy) that will research, collect and summarize the problems that businesses are facing and swiftly react to them and hold Government bodies and individual officials accountable for violations;
- (v) the practice of carrying out joint meetings of the Cabinet and representatives of the business community on specific issues should continue and expand (the first such meeting was carried out recently on the issues of customs control and customs fees).

Below, I outline just FIVE key substantive problems that we have in the current legal system and suggest solutions to them. Obviously, there are many more problems, which cannot all be mentioned in the space of one article, but which still require the Government’s immediate attention.

See “Ukraine,” p. 7.

## Russia, continued

- Denying defense counsel permission to deliver notes to defendants in court until the note has been read by the judge;
- Warrantless searches of defense counsel offices and files;
- Seizure of notes from defense counsel immediately after an interview with a jailed defendant;
- Detention and interrogation of defense lawyers about their clients' cases;
- Official and unofficial harassment of defense counsel and witnesses, including informing non-Yukos clients that "Your lawyer defending Yukos will not be winning any more tax cases in our courts;"
- Issuing arrest warrants for Yukos in-house lawyers;
- Conducting more than 200 raids on Yukos offices and the homes of its executives, with the more recent raids coming at night; and
- Arrest of one Yukos in-house counsel because another remained in London to avoid arrest.

There are also claims of judicial misconduct in connection with the many court proceedings in the Yukos affair. These include removal of one or more judges deemed too "favorable" to Yukos and the resignation of a judge who complained of "pressure." Another judge is reported to have ordered the parties in the secret Pichugin trial to "bring in a conviction before the November holidays."

As one defense lawyer noted, "Even under Stalin, we did not have this kind of prosecutorial abuse."

These are some of the reasons for the fuss about the Rule of Law in Russia.

The arrest of a potential political opponent should not serve as an excuse for destroying Yukos, the source of much of his wealth, by a prosecution hell-bent on "getting the bad guy" by keeping him in jail while hassling his lawyers and witnesses and destroying his wealth. Getting MBK by imposing upon Yukos what PACE calls "trumped-up tax reassessments," has meant 60,000 other Yukos shareholders became "collateral damage" as the market value of Yukos, Russia's largest oil company, fell from \$35 billion to less than \$1 billion.

We do need to keep in mind that the dissolution of the USSR and the rebirth of Russia led by Boris Yeltsin left in place much of the Soviet legal apparatus. That system was characterized by a perfect lack of judicial independence, where "judges" simply awaited a phone call detailing the verdict and punishment. Therefore, we should not expect the rule of law to become instantly rooted in Russia, nor should we believe that a modern, independent Russian judicial system will one day function like the American, British or continental European systems. It will be a Russian system, but it must not incorporate practices currently being complained about in the Yukos affair.

Even assuming MBK is a "bad guy" because of the loan-for-shares auction and his hard ball tactics with minority shareholders as he battled to gain full control of Yukos' operating subsidiaries in the late 1990s, we must keep in mind that MBK is not in trial for these acts. Likewise he is not on trial for being on Forbes list of the Richest Russians or for having a Jewish father.

See "Russia," p. 7.

## Russia, continued

It is as if, when the boys in the Kremlin decided to “get Khodorkovsky,” one of them said: “I want to get that SOB in the worst way.” And that is precisely what they are doing.

## Ukraine, continued

### I. CIVIL AND COMMERCIAL CODES

This problem was many years in the making and culminated on January 1, 2004, when two separate Codes took effect on the same day, becoming the new legal basis for civil and business relations in Ukraine. On that day, the legal situation in Ukraine turned from bad into disastrous, and we have been functioning under these disastrous conditions for more than a year.

Both Codes were developed over the course of several years by two different drafting groups with very little or no coordination between them. The Civil Code, which covers relations among both individuals and legal entities, was developed by a group of Ukrainian academics, who were generally market-oriented and tried to use the experience of other developed countries (unfortunately, many better provisions of the Civil Code were reversed by the Parliament in the process of its adoption).

The Commercial Code was also developed by a group of academics, but with strict socialist anti-market orientation, who seemed to rely in their work mostly on old Soviet laws and concepts.

Those of us who began our careers under the Soviet system are experiencing a surreal sense of déjà vu. Suffice it to say that the Commercial Code severely restricts the freedom of contract and replaces such basic types of contract as sale-purchase with the archaic “supply” contract, which was used under the Soviet system. Moreover, the Commercial Code specifies that “supply” contracts will be further regulated by decrees from the Cabinet of Ministers.

Needless to say, with the two opposing Codes, in practice, we ended up with two fundamental laws, regulating largely the same subject, but being conceptually opposite and containing numerous specific conflicts. Moreover, each of these two Codes has many internal conflicts, and both of them conflict with other existing laws.

Today, drafting any simple contract in Ukraine is a frustrating and impossible exercise in reconciling artificially created irreconcilable differences.

Numerous other unnecessary obstacles and hidden charges (some of them are described below) were created by both Codes that make full compliance with the law virtually impossible.

This is a disaster, the real scale of which will not be known for some time, until half of the businesses operating in Ukraine find themselves in courts disputing opposing provisions of different laws. Such legal chaos will be an excellent breeding ground for corruption in the regulatory authorities and in the court system.

[Continued on next page](#)

### Ukraine, continued

Based on a thorough study of both Codes and on more than one year of trying to apply them in practice, we have come to a firm conclusion, which is the same as the one made in the UNDP Blue Ribbon Commission Report's Key Recommendation #8 (out of 12): there is an urgent need "to abolish the anachronistic Economic [Commercial] Code and improve the market-oriented Civil Code."

The "guillotine" principle would work perfectly in this case, and should bring an immediate and unequivocal end to the long and fruitless academic debates about which Code is better and how to reconcile them.

The Civil Code should be quickly and substantively improved, based on the Dutch Civil Code, which in a slightly transformed format, has been successfully applied in Russia and Kazakhstan for the last 10 years (good quality civil and commercial legislation in Russia should not be associated with infamous cases of abuses by the Russian government, such as the Yukos case, which result from bad policies rather than from bad legislation).

## II. CORPORATE LEGISLATION

Corporate legislation suffers from two major gaps: we badly need a Law on Joint-Stock Companies and a Law on Limited Liability Companies, which are the two most often used corporate structures in Ukraine. Here I would like to again cite the UNDP Blue Ribbon Commission Report's Key Recommendations (#7), which calls on Ukraine to "improve corporate legislation".

The catch here is that good quality corporate laws cannot be developed until the problem of the irreconcilable Civil and Commercial Codes is resolved. Otherwise, we will have just another addition to our existing legal chaos.

## III. ANTIMONOPOLY LEGISLATION

The unnecessarily broad and ambiguous antimonopoly legislation of Ukraine, which regulates (actually over-regulates) coordinated actions and economic concentrations, and the formalistic and low monetary thresholds for transactions requiring prior approval from the Antimonopoly Committee of Ukraine ("AMC"), force companies to seek AMC prior approval of actions that really have no bearing on competition in the Ukrainian market at all. It is no surprise that the AMC's prior approval requirement is frequently ignored, knowingly or unknowingly.

The problem is that the AMC has extensive instruments for applying large and often unjustified sanctions for even minor violations. The solution would be to remove the prior approval requirement in many cases altogether, or to replace it in some cases with notification requirement.

## IV. UNNECESSARY OBSTACLES AND HIDDEN CHARGES

Under the previous political regime, Ukraine was notorious for its bureaucratic red tape, its unnecessary barriers and serious charges that were disguised as various fees, fines, mandatory intermediary and commission payments,

[Continued on next page.](#)

## Ukraine, continued

etc. The new Government has an excellent opportunity now to reverse this bad reputation, but it will require immediate and drastic measures.

One of the most outrageous examples here is the ongoing “war” of the National Bank of Ukraine (“NBU”) against foreign investors. This story probably deserves a separate article because it demonstrates how Ukrainian bureaucracy sabotages at least two key priorities declared by the President, which are to support foreign investment and the rule of law.

The NBU started this war in October 2004, i.e., under the previous regime, by adopting NBU Resolution 482, which created massive roadblocks to foreign investment in Ukraine and violated key laws and international treaties on foreign investment.

Without going into detail, suffice it to say that the Resolution demanded that:

All direct foreign investment into Ukraine (i.e., investment into Ukrainian companies from abroad) must be made first into separate foreign currency “investment” accounts that must be opened by foreign investors in Ukrainian banks, then converted into UAH, then placed in yet another separate UAH “investment” bank account and only thereafter transferred to the recipient company in UAH.

Not only did this multi-step operation place additional time and cost burdens (banking charges at each step, currency exchange losses, etc.) on making direct investment into Ukraine, but it also deprived foreign investors of all their rights, protections and guarantees because UAH investment cannot be registered as “foreign” and without such registration (which, by the way, the Commercial Code absurdly demands must be made within three days), all protections and guarantees are lost.

All other investment operations, including with securities between non-residents outside Ukraine, must be “domesticated” by the same procedure of opening “investment” accounts in Ukraine, converting foreign currency into UAH, etc. Imagine how “happy” this made non-residents who had already invested in Ukrainian securities.

No less “happy” should be Ukrainian companies that are trying to list their securities on international stock exchanges. If a Ukrainian company issues ADRs on the New York Stock Exchange, for example, trading even a small amount of such ADRs will require going through the “domestication” procedure.

It is indeed surprising and appalling how the new management of the NBU is rigorously defending this Resolution and adamantly refusing to repeal it. While President Yushchenko spoke to major international investors in Davos last month about low foreign investment in Ukraine and tried to persuade investors to come to Ukraine, extending his hand to business, the “new” NBU was fighting in the courts against legitimate attempts by foreign investors to block Resolution 482, thus altogether paralyzing foreign investment into Ukraine for several weeks.

[Continued on next page.](#)

## Ukraine, continued

Numerous direct investments were stuck outside of Ukraine, ready to enter, but Ukrainian banks refused to accept them because it was not clear what the status of Resolution 482 was, and the NBU was not cooperating. No foreign investment whatsoever came into Ukraine for several weeks!

This shameful saga continues because courts also demonstrated their devotion to the old ways and tried to dismiss legitimate claims by foreign investors on procedural grounds, and the NBU refuses to give up its illegal approach.

The investment community and business press (see the article in “Business” dated 21 February 2005: “Games of ‘Patriots’”) is declaiming this abuse and continues fighting in the courts. The main and most urgent questions now are: how can this sabotage be immediately stopped and who will pay for the tremendous damage caused to the Ukrainian economy and its international reputation?

Other unacceptable hidden obstacles and charges include:

The artificial, unnecessary, overly expensive and steadily increasing involvement of notaries in many aspects of business relations.

For example, a mandatory notarization requirement was imposed on many routine transactions between legal entities for a notary fee of a hefty 1% of the value of the transaction. Thus, the new Civil Code introduced an unnecessary rule that all lease agreements, including between companies, whose term is one year or longer, are subject to notarization, forcing all such lease agreements to carry a burden of an extra 1% for no added value.

Another problem, partially created by the new Civil Code and partially by subsequent regulations, is complications with issuing powers of attorney, which businesses use in their operations all the time.

First, an underlying contract is now required for a power of attorney to be issued (a requirement that does not exist in most legal systems of the world) and second, a power of attorney no longer can be broad, but must be very specific. Considering that the cost of notarizing each power of attorney is around UAH 50 (\$10), this adds unnecessary complications and costs to doing business.

The following measures are recommended for putting notarization under control:

- (i) immediate cancellation of all unnecessary notarization requirements;
- (ii) reducing notary fees for all remaining notarizations;
- (iii) returning to a simple power of attorney system with no underlying contract requirement and

[Continued on next page.](#)

### Ukraine. continued

reintroducing a possibility for giving broad authorizations.

90-days rule. This is a rule that was designed some time ago, allegedly to prevent capital flight, and which while failing this task, put a tremendous financial burden on legitimate business operations. Specifically, the tax authorities impose severe fines and sanctions when a Ukrainian business fails to receive hard currency proceeds from sales (in case of export contracts), or goods (in case of import contracts), under its international contracts within 90 days of the due date.

Moreover, the fines are not limited to the amounts that the Ukrainian company in question failed to receive within 90 days, meaning that the imposition of fines continues indefinitely and can exceed the original unreceived amount by many times, and could theoretically bankrupt a company.

The best recommendation here would be to remove this outdated 90-days rule altogether, because it has proved incapable of preventing capital flight, and only serves as an absurdly heavy burden on doing legitimate business.

Outdated requirements as to the form of contracts. Modern business operations are often conducted electronically; the contracts are signed via fax or electronic mail and corporate seals are not used in most developed countries. It is interesting to note that in Ukraine, until the new Civil Code came into effect in 2004, the law only required that parties to a contract agree, in appropriate form, on certain essential terms and conditions.

The lack of an imprint of a corporate seal on a signed agreement in most cases did not constitute a violation of the form of the agreement. The new Civil Code, however, demands that all contracts, domestic and international (including addenda, amendments, and other contractual documents) be signed with an original corporate seal affixed.

Lack of a corporate seal can make the contract invalid. This is a big step backwards and a major inconvenience, so businesses continue making contracts ignoring the corporate seal requirements, which obviously puts the validity of numerous contracts in doubt and provokes unnecessary disputes.

The recommendation with regard to this problem is to modernize the requirements as to the form of contracts, including accepting contracts made by fax and other electronic means of communication and removing the corporate seal requirement altogether.

Unnecessary obstacles and hidden charges in the areas of the currency regime and the financial sector, including:

(i) overregulation of ordinary financial activities (for example, in order to issue a simple parent guarantee, a company needs to be registered with the State Commission of Ukraine for Regulation of Financial Services Markets of Ukraine);

(ii) the requirement that any sale-purchase of Ukrainian securities (even outside of Ukraine between non-

[Continued on next page.](#)

## Ukraine, continued.

residents) must be carried out only with the participation of a Ukrainian securities trader;

(iii) restrictions on inter-company loans;

(iv) excessive licensing requirements by the NBU with regard to foreign currency transactions and payments outside Ukraine, including overly burdensome scrutinizing of transfers of foreign currency abroad in amounts exceeding EURO 50,000; and many others.

Ongoing restrictions on land ownership for foreign investors, whereby Ukrainian subsidiaries of foreign companies still cannot acquire ownership of land plots in Ukraine.

## V. REGULATORY GOVERNANCE AND THE PERMITS SYSTEM

Another tremendous problem, which affects all businesses operating in Ukraine at all times, is the chaotic, arbitrary, excessive and incredibly costly overregulation and interference by the authorities in all spheres of business. It is loosely referred to as the “permits system”, or by the broader, internationally known term “regulatory governance”.

Several half-hearted attempts to “deregulate” were made by previous Ukrainian Governments, but in the absence of true political will, they generally resulted in more overregulation and more chaos. In this regard, I would like again to refer you to Chapter 5.2 of the UNDP Blue Ribbon Commission Report.

The solution to the above problem has been proposed by the OECD which, as a first step, suggests adopting a framework Law on Fundamentals of the Permits System as soon as possible, which shall achieve two major goals:

(i) stop the abuse of entrepreneurs; and

(ii) give a head start to establishing a modern, transparent and liberalized permits system, setting up its principles and its framework, including for enforcement, monitoring, appeals procedure and liability (for the abuse of the system by Government officials) mechanisms.

## IN SUMMARY

It is clear that the legal regime for business and investment in Ukraine demands urgent and radical improvements. Without them the current legal regime will remain a major obstacle to implementing the new Government’s program and to creating a business- and investment-friendly environment in our country.

# Russia and Eurasian States Law Committee

## Комитет по праву России и стран Евразии

### About the Russia and Eurasian States Law Committee

The geographic scope of this committee encompasses Russia, Ukraine, Belarus, Moldova, Caucasus, and central Asia. The committee considers various current, substantive issues related to this area including among others, business regulations, tax, customs and trade law, intellectual property rights, and nuclear nonproliferation. The Russia/Eurasia Committee Newsletter endeavors to provide relevant information pertaining to current developments in Russia and Eurasian States law and practice, as well as other information of professional interest to its members and other readers

#### Visit Us Online at:

[http://www.abanet.org/intlaw/committees/regional\\_comparative/russia\\_eurasia/home.shtml](http://www.abanet.org/intlaw/committees/regional_comparative/russia_eurasia/home.shtml)

#### Subscribe to Our Listserve:

Send an email to [listserv@mail.abanet.org](mailto:listserv@mail.abanet.org) with the text "subscribe INTRUSEURASIA followed by your FIRST NAME LAST NAME."

#### Join the Russia and Eurasian States Law Committee!

Members of the Section of International Law may join as many committees as they want, including the Russia/Eurasia Committee. Visit <http://www.abanet.org/intlaw/committees/join.html> to join the committee(s) of your choice.

#### Not a Member of the Section of International Law?

If you're not a member of the Section of International Law, visit <https://www.abanet.org/members/join/> to join today.

#### Mark Your Calendars!

*The Section of International Law's 2005 Spring Meeting will be held in Washington, DC from April 13 to April 16, 2004. This is a MUST-ATTEND meeting for international lawyers. Visit the Section's homepage, <http://www.abanet.org/intlaw/spring05/home.html>, for more information.*

*The Russia and Eurasian States Law Committee is sponsoring the following events:*

*April 14, 2005 at 7:30 AM: Committee Breakfast*

*April 14, 2005 at 8:30 PM: Committee Dinner*

*April 15, 2005 at 9:30 AM: Program "Russia's Yukos Affair: The Use and Abuse of Law"*