



# ICLG

The International Comparative Legal Guide to:

## Lending & Secured Finance 2015

**3rd Edition**

A practical cross-border insight into lending and secured finance

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# Ukraine

CMS Reich-Rohrwig Hainz

Anna Pogrebna



## 1 Overview

### 1.1 What are the main trends/significant developments in the lending markets in Ukraine?

As the Ukrainian economy is currently severely affected by the ongoing conflict, one may expect the downfall of the amount of lending transactions on the market. The market is currently dominated by a number of commodity-based export credit facilities. Considering the economic problems arising in connection with the ongoing conflict, as well as aiming to regulate the foreign currency exchange market and prevent capital outflow from Ukraine, the National Bank of Ukraine has adopted a number of resolutions imposing restrictions on foreign exchange transactions and introducing additional anti-crisis measures in the implementation of some currency transactions.

Such restrictions include, among others, the following:

- mandatory sale of 75% of foreign currency proceeds received from abroad by legal entities (except banks);
- a restriction on cross-border payment of dividends to foreign investors; and
- a restriction on early repayment under loan agreements between Ukrainian borrowers and foreign creditors (subject to certain exceptions).

In February 2015 the Ukrainian Parliament adopted a number of laws as a part of an austerity strategy to secure IMF loans. The international creditor announced a new \$17.5 billion lifeline for Ukraine which raises the total bailout to \$40 billion.

### 1.2 What are some significant lending transactions that have taken place in Ukraine in recent years?

One of the most significant transactions in 2013-2014 was a USD 750.0 million syndicated loan provided to the Government of Ukraine by Sberbank CIB, part of Sberbank of Russia. Other major transactions included:

- a EUR 416 million loan to DTEK from a group of banks, coordinated by ING Bank N.V.;
- a USD 500 million syndicated pre-export finance facility to Donetskiel extended by ING Bank N.V., PJSC ING Bank Ukraine, Unicredit Bank AG, PJSC Ukrsofsbank, VTB Bank (France) S.A., VTB Bank (Deutschland) AG, Raiffeisen Bank International AG, PJSC Raiffeisen Bank Aval, and East-West United Bank S.A.;
- a USD 500 million revolving pre-export finance facility to the major Ukrainian iron-ore producer Ferrexpo as the arranger, agent, and security agent with Deutsche Bank AG; and

- a USD 375 million pre-export financing to DTEK from a syndicate of banks including Raiffeisen Bank International AG, Gazprombank Open JSC, Erste Group Bank AG and UniCredit Bank Austria AG, coordinated by Deutsche Bank AG.

## 2 Guarantees

### 2.1 Can a company guarantee borrowings of one or more other members of its corporate group (see below for questions relating to fraudulent transfer/financial assistance)?

Yes, corporate guarantees are often used to secure lending transactions in Ukraine. Under Ukrainian law, guarantees can only be granted by banks or other financial institutions. Entities other than banks or financial institutions can grant suretyships. A suretyship under Ukrainian law is an accessory undertaking to the underlying obligation.

### 2.2 Are there enforceability or other concerns (such as director liability) if only a disproportionately small (or no) benefit to the guaranteeing/securing company can be shown?

Under Ukrainian Law a director is required to act in the best interests of the company, in good faith, reasonably and within his/her authority. Also, the director cannot represent the company in transactions which benefit him/her personally or for the benefit of a third party if that third party is represented by him/her.

According to Ukrainian court practice, a security agreement may be held invalid on the ground that it does not constitute a "profitable" transaction for the guaranteeing/securing company, lacks economic sense and therefore contradicts requirements of Ukrainian law. The issue of commercial benefit to the company may also be taken into account if the guarantee is challenged in the course of bankruptcy proceedings as described under question 8.2 below.

### 2.3 Is lack of corporate power an issue?

Corporate approvals should be obtained if specifically required by the charter of the guaranteeing company or by law (see question 2.4 below for specific corporate approvals for joint-stock companies). Failure to obtain such approvals may result in challenging and invalidation of the respective transaction.

## 2.4 Are any governmental or other consents or filings, or other formalities (such as shareholder approval), required?

Governmental consent (provided by the Ministry of Finance with respect to long-term or cross-border obligations or by the State Property Fund of Ukraine in all other cases) is required if the guaranteeing company and/or enterprise (except for banks) is owned 50 or more percent by the Ukrainian state.

Corporate approvals for joint-stock companies:

The shareholders' approval is required for "major" transactions (i.e. the market value of a particular asset or service that is the subject matter of a particular transaction exceeding 25% of the total value of the guarantor's assets). The approval of the supervisory board is required if (a) the value of a "major" transaction amounts to 10 to 25% of the total value of the guarantor's assets, and/or (b) the transaction is qualified as an "interested party" transaction.

## 2.5 Are net worth, solvency or similar limitations imposed on the amount of a guarantee?

There are no specific limitations on the amount of a guarantee. The solvency considerations may be taken into account if the guarantee is challenged in the course of bankruptcy proceedings as described under question 8.2 below.

## 2.6 Are there any exchange control or similar obstacles to enforcement of a guarantee?

There is currently a number of currency control issues related to the enforcement of a guarantee issued by a Ukrainian resident guarantor to a non-resident lender. In particular, purchase of foreign currency and its transfer abroad by a Ukrainian guarantor for the performance of its obligations under a suretyship securing the obligations under a loan provided by an IFI or under participation of an ECA is prohibited until 3 June 2015. The same prohibition applies to any payments based on an individual licence issued by the National Bank of Ukraine. Such individual licence is generally required for cross-border payments by Ukrainian guarantors to foreign lenders/creditors with the exception of suretyships granted in connection with loans provided to Ukrainian borrowers based on loan agreement registered by the National Bank of Ukraine.

Ukrainian law also prohibits a Ukrainian resident guarantor from purchasing foreign currency for the performance of its obligations under a suretyship securing the obligations of a non-resident debtor. Obligations under such suretyship may be fulfilled only by the guaranteeing company's own hard currency funds, which have neither been purchased nor borrowed by the company.

# 3 Collateral Security

## 3.1 What types of collateral are available to secure lending obligations?

Various types of collateral are available in Ukraine, including mortgage over immovable assets (including land, buildings and/or construction in progress), pledge over movable assets (including equipment, plant, machinery), pledge of securities, pledge of participation interest, receivables, funds in bank accounts and pledge of rights under a contract.

## 3.2 Is it possible to give asset security by means of a general security agreement or is an agreement required in relation to each type of asset? Briefly, what is the procedure?

Separate agreements are usually used in relation to each type of assets as their pledge is subject to different perfection requirements. General security agreement can be used in case of pledge of assets registered as a so-called "integral property complex", which usually consists of land/buildings, equipment, machinery, etc.

## 3.3 Can collateral security be taken over real property (land), plant, machinery and equipment? Briefly, what is the procedure?

Mortgages may be established over real estate and property rights thereto, construction in progress and property rights thereto, lease rights to real estate and ships and aircrafts (the regime of real estate assets extends to these objects). Mortgage of land lease rights is subject to prior consent of the landlord, which may be difficult to obtain if the land is leased from a local authority (i.e., a local council) as is often the case. Mortgage over real property is subject to notarisation and state registration with the State Register of Proprietary Rights to Immovable Property.

Pledges over other types of assets are made in writing. A registration of pledge of any assets other than immovable assets with the State Registry of Encumbrances over Movable Property is not mandatory; however, it is recommended as it gives the pledge effect and validity in relation to third parties. Pledge of securities is registered with the company's securities registrar and/or the custodian who maintains the securities account of the pledgor.

## 3.4 Can collateral security be taken over receivables? Briefly, what is the procedure? Are debtors required to be notified of the security?

Yes, collateral security over receivables can be taken by way of pledge of present or future rights under a contract. The debtors should be notified of the pledge. Unless otherwise stated in the pledge agreement, if the rights are the right to receive payments, such payments must be transferred by the pledgor to the pledgee on receipt.

## 3.5 Can collateral security be taken over cash deposited in bank accounts? Briefly, what is the procedure?

Collateral security over cash deposited in bank accounts is taken by way of pledge of the pledgor's property rights over the bank account and not the money itself. The bank in which the money is held is usually also a party to this agreement. The pledgor may not be restricted from using the money. However, the bank may withdraw money on behalf of the pledgee (on the basis of an account service agreement that directly stipulates such a possibility).

## 3.6 Can collateral security be taken over shares in companies incorporated in Ukraine? Are the shares in certificated form? Can such security validly be granted under a New York or English law governed document? Briefly, what is the procedure?

Collateral security over shares in a LLC is taken by way of pledge of participatory interest. However, as there are a number of corporate law-related issues that may constitute an obstacle to enforcement

of such pledge, the pledge of participatory interest cannot be considered as an effective security instrument. It is recommended that a conditional sale/assignment agreement on the participatory interest is also entered in order to ease the enforcement process.

Security can also be taken over shares in a JSC and is registered with the company's securities registrar and/or the custodian who maintains the securities account of the pledger. This is done to prohibit any unauthorised transfer of shares, as once the security is registered, the shares are "blocked". If applicable, any right of first refusal held by the other shareholders must be waived when the pledge is enforced.

Security over shares can be granted under a New York or English law governed document if agreed by parties to the transaction. Enforcement of such security, however, will be carried out under Ukrainian law. It is therefore advisable to include the respective mandatory provisions on enforcement into the foreign law governed pledge agreement. It is also established market practice that security over Ukrainian-based assets is taken by way of a Ukrainian law governed pledge.

### **3.7 Can security be taken over inventory? Briefly, what is the procedure?**

Security over inventory is created by pledge of goods in circulation or processing. The pledged inventory can be identified by providing a description of their general characteristics in the pledge agreement, as well as their locations at which they are deemed pledged.

### **3.8 Can a company grant a security interest in order to secure its obligations (i) as a borrower under a credit facility, and (ii) as a guarantor of the obligations of other borrowers and/or guarantors of obligations under a credit facility (see below for questions relating to the giving of guarantees and financial assistance)?**

Yes, this is possible.

### **3.9 What are the notarisation, registration, stamp duty and other fees (whether related to property value or otherwise) in relation to security over different types of assets?**

#### Fees related to the signing of the agreement

For pledge agreements – if the agreement is to be notarised, then the parties must pay a state duty in the amount of 0.01% of the value of the pledged property up to a maximum of EUR 35, as well as a notarial fee, which will vary.

For mortgage agreements: state duty – up to 0.01% of the value of the mortgaged property and notary fees (negotiable).

#### Fees related to the blocking of shares in case of pledge of shares in a JSC

These costs will depend on the custodian's/registrar's internal rates.

#### Fees related to registration of the agreement

Fees related to registering the pledge with the State Register of Encumbrances over Movables Property – approximately EUR 1.50.

Fees related to registering the mortgage with the State Register of Proprietary Rights to Immovable Property – approximately EUR 1.50.

### **3.10 Do the filing, notification or registration requirements in relation to security over different types of assets involve a significant amount of time or expense?**

The registration of the mortgage with the State Register of Proprietary Rights to Immovable Property is carried out by the notary simultaneously with the execution and notarisation of the mortgage agreement. The data in the State Register are updated on the same day.

The registration of the pledge with the State Register of Encumbrances over Movables Property is carried out on the day of filing the application for registration by the pledgee.

### **3.11 Are any regulatory or similar consents required with respect to the creation of security?**

No regulatory consents are usually required with respect to the creation of security in Ukraine except for certain limitations applicable to some types of security. For example, only banks can act as mortgagees with respect to Ukrainian agricultural land. Also, state-owned assets which are prohibited from being privatised, objects of cultural heritage and rights to use state-owned or municipal land are prohibited from being mortgaged.

### **3.12 If the borrowings to be secured are under a revolving credit facility, are there any special priority or other concerns?**

Special attention should be paid to the amount of the secured obligation in each collateral document. For example, if a suretyship is granted to secure a revolving credit facility, such suretyship is deemed terminated under Ukrainian law upon increase of an amount of underlying secured obligations without a prior surety provider's consent resulting in the increase of amount of the surety provider's liability.

### **3.13 Are there particular documentary or execution requirements (notarisation, execution under power of attorney, counterparts, deeds)?**

Notarisation is mandatory only for mortgage agreements. Both parties should provide to the notary respective documents confirming their authority to sign and execute the agreement, as well as corporate approvals (if necessary).

## **4 Financial Assistance**

### **4.1 Are there prohibitions or restrictions on the ability of a company to guarantee and/or give security to support borrowings incurred to finance or refinance the direct or indirect acquisition of: (a) shares of the company; (b) shares of any company which directly or indirectly owns shares in the company; or (c) shares in a sister subsidiary?**

There are currently no such prohibitions or restrictions.

Specific corporate approvals may be required for JSCs if a transaction qualifies as an interested party transaction (i.e. transaction for the benefit of a company's officers or affiliates) (please refer to question 2.4 above).

## 5 Syndicated Lending/Agency/Trustee/Transfers

### 5.1 Will Ukraine recognise the role of an agent or trustee and allow the agent or trustee (rather than each lender acting separately) to enforce the loan documentation and collateral security and to apply the proceeds from the collateral to the claims of all the lenders?

The concept of parallel debt is not yet recognised or widely used in Ukraine. Under Ukrainian law collateral security must be granted in favour of the respective creditors.

### 5.2 If an agent or trustee is not recognised in Ukraine, is an alternative mechanism available to achieve the effect referred to above which would allow one party to enforce claims on behalf of all the lenders so that individual lenders do not need to enforce their security separately?

The following structures are commonly used in Ukraine:

- lending to an SPV structure, whereby security is granted by the borrower to the SPV, which distributes to the borrower the funds borrowed from the lenders;
- a joint and several structure, whereby security is granted to only one party, which acts as a joint and several creditor with other lenders; and
- proportional distribution of collateral security among the lenders, whereby each lender is granted with a separate collateral security object.

### 5.3 Assume a loan is made to a company organised under the laws of Ukraine and guaranteed by a guarantor organised under the laws of Ukraine. If such loan is transferred by Lender A to Lender B, are there any special requirements necessary to make the loan and guarantee enforceable by Lender B?

First of all, cross-border loans from foreign lenders to Ukrainian borrowers are subject to registration with the National Bank of Ukraine. Transfer of such loan to another lender should also be registered with the National Bank of Ukraine. Changes to the existing guarantee agreements should also be made in order to make the guarantee enforceable by the new lender.

## 6 Withholding, Stamp and other Taxes; Notarial and other Costs

### 6.1 Are there any requirements to deduct or withhold tax from (a) interest payable on loans made to domestic or foreign lenders, or (b) the proceeds of a claim under a guarantee or the proceeds of enforcing security?

- (a) Interest payable by Ukrainian resident companies on loans made to foreign lenders is subject to withholding tax. The general withholding tax rate applicable to different types of Ukrainian sourced income is 15% (unless more favourable rates are provided for by an applicable double tax treaty). In order to benefit from any applicable relief, non-residents should provide the Ukrainian taxpayer with an annual residency certificate as issued by the tax authorities of their country of residence.

Thin capitalisation rules apply to Ukrainian taxpayers whose debts to non-resident related parties exceed their equity

3.5 times (more than 10 times for financial institutions and leasing companies). The interest expense deduction for these taxpayers is limited to 50% of earnings before interest, taxes, depreciation and amortisation. Non-deductible interest can be carried forward indefinitely, but with an annual reduction of 5% of the residual amount.

- (b) Taxation of proceeds of a claim under a guarantee received by a non-resident is not specifically regulated in the Ukrainian Tax Code. Payments related to the principal amount of obligation should not be subject to Ukrainian withholding tax. Any other payments, which can be attributable as interest, would be subject to withholding tax as described under (a) above.

Proceeds of enforcing security could be subject to Ukrainian withholding tax in case of private sale of the collateral by the pledgee/mortgagee to a third party.

### 6.2 What tax incentives or other incentives are provided preferentially to foreign lenders? What taxes apply to foreign lenders with respect to their loans, mortgages or other security documents, either for the purposes of effectiveness or registration?

There are no tax incentives for foreign lenders. Please refer to question 6.1 above on taxes applicable to foreign lenders in respect of interest payable on loans and proceeds of enforcing security.

### 6.3 Will any income of a foreign lender become taxable in Ukraine solely because of a loan to or guarantee and/or grant of security from a company in Ukraine?

A foreign lender is not subject to Ukrainian corporate income tax unless withholding tax applies (please refer to question 6.1 above) or unless a permanent establishment of such foreign lender is created in Ukraine.

### 6.4 Will there be any other significant costs which would be incurred by foreign lenders in the grant of such loan/guarantee/security, such as notarial fees, etc.?

Please refer to question 3.9 above on costs incurred by foreign lenders in relation to taking security in Ukraine.

Cross-border loans from foreign lenders to Ukrainian borrowers are subject to registration with the National Bank of Ukraine prior to the disbursement of any funds. This registration is free of charge.

### 6.5 Are there any adverse consequences to a company that is a borrower (such as under thin capitalisation principles) if some or all of the lenders are organised under the laws of a jurisdiction other than your own? Please disregard withholding tax concerns for purposes of this question.

Please refer to question 6.1 above on thin capitalisation rules.

## 7 Judicial Enforcement

### 7.1 Will the courts in Ukraine recognise a governing law in a contract that is the law of another jurisdiction (a "foreign governing law"? Will courts in Ukraine enforce a contract that has a foreign governing law?

Ukrainian courts should generally recognise and enforce a contract that has a foreign governing law, if an agreement involves a foreign

element, i.e. at least one of the parties to an agreement is a foreign party.

However, mortgages over real estate assets located in Ukraine should be governed by Ukrainian law. Ukrainian courts have exclusive jurisdiction over the matters involving real estate, including enforcement of mortgages.

**7.2 Will the courts in Ukraine recognise and enforce a judgment given against a company in New York courts or English courts (a “foreign judgment”) without re-examination of the merits of the case?**

Foreign court judgments will be recognised and enforced in Ukraine based only on the respective multilateral/bilateral international treaties or in the absence of such treaty on the basis of the principle of reciprocity whose existence is presumed by the domestic rules of civil procedure.

As there are no international treaties governing issues of recognition and enforcement of court judgments in civil and commercial matters between Ukraine and the USA and/or the United Kingdom respectively, New York and/or English court judgments are enforceable in Ukraine on the basis of the reciprocity principle only.

**7.3 Assuming a company is in payment default under a loan agreement or a guarantee agreement and has no legal defence to payment, approximately how long would it take for a foreign lender to (a) assuming the answer to question 7.1 is yes, file a suit against the company in a court in Ukraine, obtain a judgment, and enforce the judgment against the assets of the company, and (b) assuming the answer to question 7.2 is yes, enforce a foreign judgment in a court in Ukraine against the assets of the company?**

The court proceedings in a court of first instance may take approximately 4-6 months. Proceedings in a court of appeal may take 6-8 months. Timing of enforcement of a court judgment may vary depending on the assets being enforced.

The approximate timing of the proceedings in the court of first instance on recognition and enforcement of foreign court judgments is 4-8 months.

**7.4 With respect to enforcing collateral security, are there any significant restrictions which may impact the timing and value of enforcement, such as (a) a requirement for a public auction or (b) regulatory consents?**

Under Ukrainian law, a collateral can be enforced either through out-of-court settlement (if so provided for by the agreement), a notary writ or court judgment. In practice, out-of-court enforcement is impossible without the cooperation of the pledgor. Therefore the most reliable method of enforcement is through a court judgment. Typically, collateral is sold by public auction; however, the security agreement can permit the transfer of the collateral into the ownership of the pledgor, or the sale of the collateral by the pledgor to a third party.

**7.5 Do restrictions apply to foreign lenders in the event of (a) filing suit against a company in Ukraine or (b) foreclosure on collateral security?**

There are no special restrictions as foreign lenders enjoy the same procedural rights as Ukrainian parties.

**7.6 Do the bankruptcy, reorganisation or similar laws in Ukraine provide for any kind of moratorium on enforcement of lender claims? If so, does the moratorium apply to the enforcement of collateral security?**

A moratorium on enforcement of creditors' claims is imposed by the court in the pre-trial rehabilitation procedure of the debtor, which can be initiated by the debtor or any creditor prior to the commencement of the debtor's declaration of bankruptcy in court. Upon the court's approval of the debtor's rehabilitation plan, the court will impose a moratorium prohibiting satisfaction of creditors' claims during the debtor's rehabilitation, which cannot last longer than 12 months.

The court may also impose a moratorium on enforcement of the claims of the debtor's creditors that arose before the date of the initiation of the bankruptcy proceedings.

The moratorium applies to all creditors' claims that arose before the date of approval of the debtor's rehabilitation plan or the initiation of the bankruptcy proceedings, including enforcement of collateral security.

**7.7 Will the courts in Ukraine recognise and enforce an arbitral award given against the company without re-examination of the merits?**

A foreign arbitral award will be recognised and enforced in Ukraine without retrial or examination of the merits of the case, subject to the exceptions set forth by the New York Convention on Recognition and Enforcement of Foreign Arbitral Awards and Code of Civil Procedure of Ukraine. In addition to the exceptions set forth by the New York Convention, according to the Code of Civil Procedure of Ukraine, the recognition and enforcement of foreign arbitral award can be refused in Ukraine if (i) the Ukrainian court has an exclusive jurisdiction over the case, (ii) the Ukrainian court has rendered its judgment in respect of a dispute between the same parties, regarding the same subject, and on the same grounds and such judgment has become effective, (iii) the Ukrainian court is in the process of consideration of the same case between the same parties and on the same grounds, and (iv) the term for submission of motion for recognition and enforcement of a foreign arbitral award in Ukraine as such term is defined by respective international treaty and Code of Civil Procedure of Ukraine is missed. According to the general rule, the motion for recognition and enforcement of a foreign arbitral award should be submitted to competent Ukrainian court within a 3-year period after such arbitral award has become effective.

## 8 Bankruptcy Proceedings

**8.1 How does a bankruptcy proceeding in respect of a company affect the ability of a lender to enforce its rights as a secured party over the collateral security?**

As mentioned under question 7.6 above, if a court imposes a moratorium on enforcement of the claims of the debtor's creditors that arose before the date of the initiation of the bankruptcy proceedings, the lender may not be able to enforce the collateral security for the duration of the moratorium.

**8.2 Are there any preference periods, clawback rights or other preferential creditors' rights (e.g., tax debts, employees' claims) with respect to the security?**

Under the Insolvency Law, a transaction entered into by the debtor one year prior to or after the commencement of the bankruptcy

proceedings may be challenged by the bankruptcy administrator or by any of the competitive creditors and invalidated by the court, if:

- the debtor alienated its assets, assumed obligations or refused its claims without compensation;
- the debtor has fulfilled its obligations prior to the due date;
- prior to commencement of the bankruptcy proceedings, the debtor entered into the agreement that led to its insolvency;
- the debtor paid to its creditor or accepted any property/assets as a set-off of payment obligations of its contractor when the debtor's assets became insufficient to satisfy the creditors' claims;
- the debtor alienated or acquired property at a price that was lower or higher, respectively, than the market price, provided that the debtor's assets were insufficient for the satisfaction of the creditors' claims at that time; or
- the debtor pledged its property to secure the fulfilment of the pecuniary claims.

### **8.3 Are there any entities that are excluded from bankruptcy proceedings and, if so, what is the applicable legislation?**

Yes, certain categories of debtors are excluded from bankruptcy proceedings based on the Insolvency Law and certain other Ukrainian legislation. For example, state enterprises included in the list approved by the Law of Ukraine "On the list of state-owned objects which cannot be privatised", certain municipal enterprises in cases established by law, some mining companies, etc.

### **8.4 Are there any processes other than court proceedings that are available to a creditor to seize the assets of a company in an enforcement?**

No proceedings other than court proceedings are available, and security should also be enforced through court proceedings.

## **9 Jurisdiction and Waiver of Immunity**

### **9.1 Is a party's submission to a foreign jurisdiction legally binding and enforceable under the laws of Ukraine?**

The parties may generally submit their disputes to a foreign jurisdiction if one of them is a non-Ukrainian party. Ukrainian courts should generally recognise and enforce this submission if it does not violate the exclusive jurisdiction of Ukrainian courts (see the example under question 7.1 above on exclusive jurisdiction over matters involving real estate, including enforcement of mortgages).

### **9.2 Is a party's waiver of sovereign immunity legally binding and enforceable under the laws of Ukraine?**

The concept of waiver of sovereign immunity is not developed under Ukrainian law.

## **10 Other Matters**

### **10.1 Are there any eligibility requirements in Ukraine for lenders to a company, e.g. that the lender must be a bank, or for the agent or security agent? Do lenders to a company in Ukraine need to be licensed or authorised in Ukraine or in their jurisdiction of incorporation?**

There are no specific requirements for foreign lenders or agents/security agents involved in loan transactions with Ukrainian companies.

### **10.2 Are there any other material considerations which should be taken into account by lenders when participating in financings in Ukraine?**

As new anti-crisis measures and further restrictions on foreign exchange transactions are imposed by the Ukrainian Government and the National Bank of Ukraine, it is recommended to pay close attention to proper structuring of lending transactions with Ukrainian companies.

Foreign lenders should take into consideration the requirement to register a loan agreement with the National Bank of Ukraine prior to the disbursement of any funds as well as the maximum interest rate limitations with respect to such loans, which is as follows:

- (i) for fixed interest rate loans: with maturities less than 1 year – 9.8% *per annum*; with maturities from 1 to 3 years – 10% *per annum*; and with maturities over 3 years – 11% *per annum*; and
- (ii) for floating interest rate loans: LIBOR for three-monthly USD deposits plus 750 basis points.

For the purposes of calculation of the maximum interest rate, the National Bank of Ukraine reviews "total borrowing costs" which represent the "nominal" interest rate under the loan agreement increased to take into account any and all commissions/fees, default interest and "other charges" (which may include any payments other than the repayment of principal) that may be payable by the borrower pursuant to the loan agreement.

The restriction on early repayment under loan agreements between Ukrainian borrowers and foreign creditors (subject to certain exceptions), which is currently in force until 3 June 2015, should also be taken into consideration.

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Anna Pogrebna joined CMS Reich-Rohrwig Hainz in Kyiv in April 2012. She completed her studies of law at the Taras Shevchenko National University in Kyiv. She also holds a Master's degree in translation for German and English. With over eight years of experience in an international law firm and more than five years as in-house counsel for an agricultural company in Ukraine, Anna Pogrebna not only offers outstanding legal advice, but also knows the needs of clients from a company perspective.

As local partner, she focuses on the fields of banking & finance, real estate and tax law. Chambers Global and Legal 500 have recommended Anna as a leading tax expert. Chambers Europe 2014 comments: "Anna Pogrebna is helping to boost the profile of the firm's tax department. She covers banking and finance and real estate matters, in addition to her tax work, and is highlighted by commentators for her commercial knowledge."



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