

# ICPS newsletter

## Major pieces of economic legislation: Civil and Tax codes

**Economic legislation determines business conditions in the country. Government and business need to analyse how such legislation impacts economic development. This month, the International Centre for Policy Studies is conducting research on changes in economic legislation of Ukraine that took place in the period from August 1999 through August 2000. Based on this research, on September 12 ICPS held a seminar where participants had the possibility to give their own assessment of changes in economic legislation that happened over the last 12 months.**

### New civil code will renew private law in Ukraine

The new Civil Code has already passed second reading in the Verkhovna Rada. Natalia Kuznetsova, Vice-President of the law firm Salkom and a member of the working group that develops this document, reported on the role of this code and its impact on legal relationships in business. The Civil Code is designed to establish uniform rules of the game in the realm of property relationships, ensuring the equal treatment of business entities and their freedom of choice to enter such relationships. The Code will signify the renewal of private law in Ukraine, and will secure the right to entrepreneurial activity.

The new Civil Code is not supposed to regulate all aspects of business activity. Following the general principles of legal relationships established by this document, special legislative acts related to the mechanics of these relationships needed to be developed (in particular, the Law "On joint-stock companies" and the Land Code). Furthermore, special pieces of legislation that regulate the spheres where business activity affects public interests should be adopted (for example, antimonopoly legislation).

Ms. Kuznetsova believes that there is no need to adopt a special Economic Code. She believes that this document would sooner

play the role of unnecessary intermediary between the Civil Code and the laws regulating business relationships.

### Evaluation of alternatives is vital for successful regulatory policy

Ksenia Liapina, coordinator at the Coordination and Analysis Centre for Ukrainian Business Associations, presented an evaluation of legislative acts adopted over the last 12 months that regulate economic activity. Ms. Liapina underscored that most legislative acts have been adopted without a preliminary analysis of alternatives. Usually, the government uses the slogan "this decision has no alternatives". Ksenia Liapina is confident that regulatory policy will not be effective unless mandatory analysis of alternative is introduced.

Speaking on behalf of business associations, Ms. Liapina expressed appreciation regarding the newly adopted law "On licensing". This document introduces an

### Summary of opinions regarding economic legislation stated by seminar participants

Question/issue	Tax Policy	Regulatory Policy	Civil Legislation
<b>Goals of legislation in this sphere</b>	<ul style="list-style-type: none"> <li>– Stimulating character of legislation</li> <li>– Stability</li> <li>– Simple reporting</li> </ul>	<ul style="list-style-type: none"> <li>– Consent of public and private interests</li> </ul>	<ul style="list-style-type: none"> <li>– Establishment of law enforcement system</li> <li>– Regulation of ownership relations on principles of equal rights for subjects of the law</li> </ul>
<b>Problems of legislation that should be solved to achieve the goals</b>	<ul style="list-style-type: none"> <li>– Clear definitions in legislation</li> <li>– Superiority of international law over Ukrainian</li> </ul>	<ul style="list-style-type: none"> <li>– Conflicts of interest between government and business</li> <li>– Unequal conditions for work of enterprises</li> <li>– Inconsistency in decisions and legislation of central and local governments</li> </ul>	<ul style="list-style-type: none"> <li>– Lack of "legal entity" concept</li> <li>– Universal character of Civil Code draft</li> <li>– Weakness of courts and their dependence on government</li> </ul>
<b>What was the impact on the business environment of changes on economic legislation that took place over the last 12 months</b>	Positive impact: <ul style="list-style-type: none"> <li>– Decree on facilitated system of taxation</li> <li>– Cancellation of critical imports list</li> </ul>	<ul style="list-style-type: none"> <li>– Positive moves in small and individual business activities</li> <li>– Lack of positive changes in regulations of large business</li> </ul>	<ul style="list-style-type: none"> <li>– Bankruptcy law will potentially play an important role, but currently the mechanisms for this procedure are not developed</li> </ul>
<b>What kind of changes in legislation are necessary?</b>	<ul style="list-style-type: none"> <li>– Legislation that would not require additional regulations</li> <li>– Responsibility of officials for law violation</li> </ul>	<ul style="list-style-type: none"> <li>– Unification of legislation</li> <li>– Equality of conditions</li> <li>– Priority of preventive actions over sanctions</li> <li>– Adequacy of sanctions</li> <li>– Tougher legislative restrictions for enforcement and controlling bodies</li> </ul>	The following documents should be adopted: <ul style="list-style-type: none"> <li>– new Civil Code</li> <li>– new Land Code</li> <li>– law on mortgaging</li> <li>– law on joint-stock companies</li> <li>– law on non-profit organisations</li> <li>– law on arbitration courts</li> </ul>
<b>Impediments for implementation of legislation</b>	<ul style="list-style-type: none"> <li>– Time lag in review of public obligations</li> </ul>	<ul style="list-style-type: none"> <li>– Non-transparency, lack of information about the authors of legislation</li> <li>– Lack of alternatives</li> </ul>	<ul style="list-style-type: none"> <li>– Lack of systemic approach to legislation</li> <li>– Prevalence of corporate interests</li> </ul>

## Last week's events

**Training programme for the Accounting Chamber of Ukraine.** Last week, the project "Development of civil society through civic education: Training programme for the Accounting Chamber of Ukraine" was launched at ICPS. The project was instituted under the EU-US Transatlantic Civil Society Project. RAND Europe is the project consultant.

The goal of the project is to assist the Accounting Chamber of Ukraine to become a tool for supporting the integrity, transparency, and accountability of government agencies by sharing experience in the usage of international standards, methodologies, procedures, and institutional control mechanisms.

The Accounting Chamber will be able to fulfil this role only if it matches certain criteria:

- understanding the economic policy process and methods for evaluation of its efficiency at the level of audited bodies;
- systemic approach to public audit;
- knowledge of international standards and audit procedures INTOSAI/EUOSAI and learning the experience of counterpart agencies in other countries;
- knowledge of audit types, stages, and ethics;
- use of contemporary methodology for retrieving information from different sources, analytical tools and criteria for evaluation of effectiveness;
- application of the most effective methods for performing research and the dissemination of research results;
- understanding the advantages and disadvantages of these methods;

The programme assumes the combination of in-class activities with job routine, and the curriculum includes homework and research.

Project participants—Accounting Chamber employees of higher and lower levels—were selected on merit basis. Project experts are Jonathan Cave, Professor of Economics at Warwick University and Senior Economist with RAND Europe, Mirjam van het Loo and Stephan de Spiegeleire, Senior Policy Analysts at RAND Europe.

Fundamental standards, procedures and instruments of public audit were reviewed in the first stage of the project (September 11–19). For homework, participants analysed the effectiveness and efficiency of World Bank Projects by using methods of logical framework and other INTOSAI methods.

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effective licensing procedure, diminishes opportunities for corruption, and shortens the list of economic activities that require a license. However, the success of this law will depend on the quality of the bylaws related to this document: licensing should adhere to the declarative, not permit, principle.

In realm of tax administrating, special attention should be paid to the draft law "On procedures for collecting taxpayer debts to the budget and state target funds", which should regulate tax debt collateral. Ms. Liapina reminded us that the value of assets that are held as tax debt collateral currently totals 14 billion UAH. The bill introduces pretty flexible rules for the realisation of pledged assets. She expressed concern regarding the situation where the tax administration has too much power: there would be no limits for seizing as collateral assets that were liked and then "ordered" by someone.

The Law "On amending the law of Ukraine "On the use of cash controlling machines and commodity-cash books..." got a negative assessment. In accordance with this law, the possibilities of controlling bodies to intrude on activity of businesspeople, especially of those who follow the expedited system of reporting, increase significantly.

### Tax Code: The chance to develop an effective tax policy

Tetiana Sytnyk, Senior Economist at the International Centre for Policy Studies, presented to the audience a review of changes in tax legislation that took place over the last year, and evaluated the prospects of Ukrainian tax policy. In her

analysis, Ms. Sytnyk applied the following criteria to the tax system:

- stability and predictability;
- even distribution of tax burden;
- minimal impact on producers and consumers behaviour;
- ensured budget revenues accompanied by minimal costs.

As a positive move in economic legislation, Ms. Sytnyk mentioned the fact that decisions regarding the number, rates, and base of taxation were made exclusively by Verkhovna Rada. The tax burden was reduced thanks to the cancellation of the "highways levy" and the reduction of excisable commodities. Furthermore, VAT incentives on the sale and import were cancelled for a large group of commodities. However, incentives for entities in special economic zones and for participants of economic experiments still exist, and they impede the development of an effective taxation system.

Ms. Sytnyk believes that the new Tax Code should eliminate contradictions that currently exist in tax legislation. Not only the list of commodities, taxation rates and base, but also the rights of taxpayers, the mandate of tax agencies, the mechanisms of tax collateral, and the introduction of real estate taxes should be harmonised. Finally, we should keep in mind that the elimination of certain taxes and a decrease in rates will result in the reduction of budget revenues. Therefore, public expenditures should be reviewed. ■

*The seminar "Analysis of developments in economic legislation" was held at the International Centre for Policy Studies, with the support of the Canadian Cooperation Fund, on September 12, 2000.*

## Registering business entities: Why should it be complicated?

***The creation of a clear system for enterprise registration is one of the priorities in Ukrainian regulatory policy. The draft law "On the state registration system for business entities" was discussed at a roundtable organised by the Coordination and Analysis Centre for Business Associations (CACBA) that took place at the International Centre for Policy Studies.***

The key discussion surrounded the propositions of the State Tax Administration (STA). STA representatives believe that the introduction of registration based on the permit principle would help to fight sham businesses. This approach is not acceptable for the State Committee for Regulatory Policy and Entrepreneurship

(Derzhpidpriemnytstva). The committee insists on following the declarative principle of registration accepted in all countries with developed economy.

Derzhpidpriemnytstva proposes that controlling bodies perform an additional audit of newly established enterprises after registration but before the enterprise starts financial operations (as established by current STA instructions regarding the registration of taxpayers).

CACBA's coordinator Ksenia Liapina noted that it is not the purpose of registration to make newly created enterprises be good taxpayers. Ms. Liapina believes that the complication of the registration procedure will hurt small business first of all, and it is not likely to help reduce the shadow economy. ■