



IMPROVING REGULATION BY ESTABLISHING PARTNERSHIP BETWEEN GOVERNMENT AND BUSINESS



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BRDO INTELLIGENCE

FACTS, OPINIONS, ANALYTICS



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WHAT'S WRONG WITH THE UKRAINIAN GOVERNMENT?



The Ukrainian government is in a tough spot. On the one hand, reforms are gaining pace, and it is anticipated that within a few years this will drastically change the way the government operates. In essence, these changes are expected to create a new system driven by new people, with innovative procedures and an entirely different approach and philosophy. On the other hand, it is not possible to put the government's ongoing activity on hold, even for a month. Therefore, the "old" structures will function in parallel with the new system, at least for a while.

This new paradigm envisages general directorates in specific policy areas, that will formulate state policy in a civilized manner. The old system consisting of existing departments will gradually migrate to other state bodies dealing with policy implementation: provide services, manage assets, or perform inspections. The new Ministries will not issue papers, govern enterprises and institutions, or go on inspection checks. Instead, they will focus on strategic deliverables, work on policy issues and goals. They will deliver a system of political decisions.

The process of preparing legislative and regulatory acts and the budgeting process, which are currently the focus points for the government, will derive from the policy-making process and will become more procedural in nature.

The primary objective of this reform is to make the Government more efficient and coherent. However, the essence of this initiative is still not entirely clear to everyone at the Ministries, and some officials even perceive the reform as a personal threat, or a danger to the system that they are accustomed to, which may cause additional resistance to ongoing reform efforts. The key to overcoming this opposition is inclusive dialogue among all stakeholders in line with best practices of a civilized policy development process.



Denis Malyuska
Deputy Head

CANCELLATION OF SOVIET LAWS AND REGULATIONS: MCCARTHYISM OR JUSTIFIED PUBLIC POLICY?



Likely all newly independent countries initially rely on the laws and regulations adopted before their independence (and often, by a colonial power). Sometimes the 'old' legal system is good enough to be used for long periods as it happened with British common law adopted by reception statutes of the former British colonies.

This isn't Ukraine's case. In 1991 our country decided to apply the laws of the former USSR based on the principles of the command economy, state micromanagement, and outdated technologies. Despite these bottlenecks, there was an actual need to apply Soviet laws in the 90s. However, after 25 years of independence, it is now necessary to rely only on Ukrainian legislation.

There are four reasons to cease applying Soviet laws and regulations. First, it is necessary to protect human rights. Everyone has the right to know his/her rights and duties. However, there is no reliable inventory of Soviet laws, and no one knows what is written in the old acts hidden on archive shelves. The second reason relates to the economy. The principle of interference in all kinds of business activities coupled with the ignorance of modern technologies makes Soviet laws irrelevant and harmful. The third reason relates to ideology. The laws of the USSR still refer to communist ideas and are based on the command economy system. This is hardly the message we want to send to individuals applying the laws. The fourth reason for why we need to stop applying Soviet laws and regulations is the notion of deregulation. Comprehending and complying with Soviet laws and regulations is a daunting task, and if we are set on decreasing outdated and useless regulation, cleaning up Soviet-era leftovers will produce quantifiable results.

BRDO is dedicated to cleaning up the current mess of Ukraine's laws and regulations. With the support of the Ministry of Economic Development and Trade of Ukraine, BRDO has already succeeded in canceling hundreds of the laws and regulations of the Soviet era, and more will be invalidated in the coming months. However, at some point, we realized that this is a Sisyphean task: it will take years to cancel all burdensome laws of the USSR one by one, and due to the absence of the reliable inventory of Soviet legislation, we will never know for certain if the task has been accomplished.

To address this concern, BRDO proposed to abolish all Soviet acts by a single stroke; together with several members of Parliament, the draft law #4650 was developed. A year later, a similar draft law was submitted to the Parliament by the Cabinet of Ministers of Ukraine. Considering the support of the Government of Ukraine, we are confident that there is the light at the end of the tunnel. Find out more information here.



Igor Lavrynenko
Analysis Head

SLEEPING WITH THE ENEMY: THE EFFICIENCY OF CONTROL OVER MEMBERS BY SELF-REGULATING ORGANIZATIONS



Up until now most politicians and entrepreneurs believed or declared that the best way to effectively regulate is to deregulate - cancel a broad range of regulatory procedures. However, reality has demonstrated that such an approach is effective only at the initial stage of implementing effective regulation. Ukraine's EU commitments and common sense confirm that regulation in specific areas is necessary to ensure consumer protection, guarantee environmental protection, labor security, and so forth. Therefore, BRDO believes that implementation of self-regulating mechanisms is a good alternative to deregulation that will allow organizations of entrepreneurs to regulate the performance of applicable regulatory procedures independently.

However, despite the attractiveness of self- and co-regulation schemes, such systems have an obvious flaw - self-regulating organizations (SROs) must control and penalize their members or 'shareholders' (those who pay their shares and make managerial decisions). A conflict of interests may easily turn SROs into ineffective and expensive entities.

Self-regulation is not a novel concept for Ukraine; the first self-regulated organizations were established more than ten years ago, but up until now they were not efficient mechanisms for several reasons, including inefficient legislation and the inability of entrepreneurs to organize themselves. The drawbacks of self-regulation in the area architectural activity are illustrated here.

The Government understands the problem and believes that the issue could be addressed by the development of the 'umbrella' law on self-regulation. Such a draft law became one of the key points of the Government Deregulation Action Plan.

Therefore, we expect that next year an effective system of self-regulation will be created that allows the state to transfer to businesses its market access, oversight, and rule-setting functions in selected markets that are ready for self-regulation.



Olena Shulyak
Construction Sector Head

GONE WITH THE WIND: THE UKRAINIAN APPROACH TO INVESTMENTS IN REAL ESTATE



Only a small number of Ukrainians have the means to buy an apartment or a house which is ready for use. Most Ukrainians prefer to buy their real property at the initial stages of the construction process when the price is much lower. In theory, this saves money for the consumer and the construction company. However, in real life, not every construction is completed.

According to the City-Planning Cadastre of the Kyiv City Hall, there are about 800 legitimate construction objects (i.e. those which passed all mandatory authorization procedure), but there are over 500 illegal objects. Additionally, there are over 350 objects currently under 'verification procedures.' These include residential areas, parking lots, and commercial property sites. 50 percent of these constructions are within the "risk zone".

In fact, as of 2016, 58 multi-dwelling complexes were confirmed to be illegal. The leadership in this dubious rating belongs to the Shevchenkivskyi district of Kyiv - 13 illegal objects. In 2006 Ukraine was shaken by the "Elita-Center" fraud scheme. 1 443 cheated investors filed a fraud case. This was the first officially confirmed large-scale fraud case in the real estate sector of Ukraine. An expert assessment confirmed losses from the scheme amounting to approximately UAH 400 million (USD 80 million).

As of 2015, only 267 victims of construction schemes obtained homes. Based on preliminary expert assessments, it would be necessary to build 2,2 million square meters of residential property on 100 hectares of city land to compensate the victims of the fraud (and only those that are residents of Kyiv). Considering that in 2015 less than 1,4 million square meters of residential property was put into exploitation in Kyiv, it would take two years of giving away all property to cheated investors. In reality, even 100 years would not be enough. Moreover, fraudulent residential construction is a fact in any region of Ukraine - Dnipro, Odessa, Lviv, Ternopil. In the beginning of 2015, there were 2 118 uncompleted multi-dwelling residential properties throughout Ukraine. The construction of 864 buildings with an overall area of 4,5 million square meters is unfinished and frozen.

The main reasons of incomplete constructions and related fraudulent schemes are the following:

- Lack of or no city planning documentation and no inventory of land resources that leads to the inability to monitor violations from the outset;
- Lack of unified stable rules regulating the market;
- Lack of investor/purchaser protection mechanisms which leads to low level of trust in the developer;
- An 'unhealthy' economy that hinders planning and developing business in Ukraine;
- Legislation loopholes that allow fraudulent schemes in construction, including state corruption.

In practice, investment into the construction of residential property is threatened by a variety of risks, including the possibility of changing the technical specifications, multiple selling of a single property, appealing property ownership rights, and so forth.

To minimize the above risks that contribute to a fraudulent scheme on the residential construction market, BRDO has developed a draft law, which specifies the moment of obtaining ownership rights to real estate that will be built in the future and establishes a new insolvency procedure for insolvent developers who attracted investors funds at the early stages of construction. More information can be found here.



Oleksandr Kubrakov
IT and Telecom Sector Head

GREAT EXPECTATIONS FOR A NEW MARKET OF MOBILE PAYMENTS



Residents of more than 90 countries are already using financial services through their mobiles, while Ukraine's 8 million potential users are missing out on this opportunity. The introduction of new methods of non-cash payments in Ukraine would help to provide wider segments of the population with financial services. This is crucial because currently, only 53 percent of Ukraine's population have bank accounts, while in neighboring Poland this figure is 78 percent. The widespread use of mobile payments would benefit the state through the growth of cashless sales, the shrinking the shadow economy sector, the general intensification of business activity, and through increased tax revenues. The introduction of such payments would also improve the opportunities for small and medium-sized businesses: mobile payments are often used for micro-transfers by small businesses, for which bank payment terminals may be too expensive.

To date, BRDO experts have developed draft amendments to two legal acts: (1) the «Procedure for Compulsory State Pension Insurance for Certain Types of Business Transactions» in order to cease the collection of charges for telecommunication services that had not been provided, and (2) the «Rules for the provision and receipt of telecommunication» to allow subscribers that receive services anonymously, to demand the return of unused funds not only personally through a cash desk, but also with the use of financial services, and specifically through mobile payments.

Hopefully, the Government will support this initiative and our "great expectations" will be fulfilled differently than in the well-known ending of the Charles Dickens classic.

IMPROVING REGULATION IN UKRAINE

BRDO is an independent think tank. Our mission is to promote effective regulation and economic freedoms in Ukraine with a focus on small and medium sized enterprises as important drivers of growth.

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