

Decree of the President of Ukraine #1648/2005

On the Resolutions of the Council for the National Security and Defense of Ukraine “On Measures to Improve the Investment Environment in Ukraine” dated 29 June 2005 and “On Measures to Ensure Guarantees and to Improve the Effectiveness of Ownership Right Protection in Ukraine” dated 28 October 2005

Under article 107 of the Constitution of Ukraine, I hereby **RESOLVE**:

To enact the resolutions of the Council for the National Security and Defense of Ukraine dated 29 June 2005 “On Measures to Improve the Investment Environment in Ukraine” and “On Measures to Ensure Guarantees and to Improve the Effectiveness of Ownership Right Protection in Ukraine” dated 28 October 2005.

Pursuant to the above resolutions of the Council for the National Security and Defense of Ukraine:

1. To recognize as one of the top priorities of the State policy in Ukraine the assurance of reliable protection of all forms of ownership rights, including State ownership right, as specified by the Constitution of Ukraine, the Convention on the protection of human rights and fundamental freedoms, and Protocol #1 to this Convention.
2. Pursuant to the improvement of the investment environment in Ukraine, rendering assistance in attracting investments to the national economy, ensuring the protection of foreign and domestic investor rights, it shall be recognized as necessary to undertake the following measures:

speed up the formation and the launch of operations of the National Council of Ukraine on Investment and Innovations;

establish the State Investment and Innovation Agency of Ukraine as the central body of executive power with a special status, vesting with it, in particular, the functions of supporting the operations of the National Council of Ukraine on Investment and Innovations.

3. The Cabinet of Ministers of Ukraine shall:
 - 1) ensure full compliance of the executive bodies of the State power with the provisions of the Memorandum on ownership rights guarantees and ensure compliance with legislation while implementing them starting on June 16, 2005;
 - 2) to ensure, while putting together drafts of legislative and other normative acts on matters pertaining to ownership rights, simultaneous development of proposals with regard to the approval of relevant changes to legislation in order to preclude the emergence of differences and conflicts in the legislation;
 - 3) conduct, jointly with representatives of all branches of State power and of the general public, a review of the current legislation regulating ownership relations, and, if it proves necessary, submit, within a month, proposals to the Supreme Rada of Ukraine in conformity with the established procedure concerning amendments to:

the legislative acts regulating the exercise and protection of ownership rights, for the purpose of eradicating the existing differences;

the Laws of Ukraine “On the Procedure of Taxpayer Arrears to Budgets and State Special-Purpose Funds” and “On the Introduction of a Moratorium on Forcible Sale of Property” for the purpose of protecting State interests in the process of sale of tax pledge property by State tax authorities;

the procedural legislation for the purpose of:

- regulating problems with regard to a delineation of the competence of administrative and commercial courts, including a clear delineation of the jurisdiction of cases dealing with tax payment, duties and other obligatory payments, custom duties, and land disputes;
- determination of commercial courts jurisdiction over disputes of founders (participants) of business associations with regard to compliance with the statutory documents, disputes between such persons and corporate governance bodies (except for labor disputes), and disputes in the privatization processes (except for disputes over privatization of State-owned housing);
- improvement of the procedure of accepting appeals, in particular precluding groundless dismissals of appeals by judges;

the Criminal Code of Ukraine with regard to exacerbating the criminal liability for infringements on ownership rights;

legislative acts of Ukraine to preclude artificial bankruptcies, including such matters as:

- enhanced liability of arbitration managers for failure to perform or for improper performance of the plan to restore company viability;
- tougher requirements with regard to their qualifications (work record in the management capacity in a corporation; industry specialization etc.);
- enhancement of control over the activities of arbitration managers by the Ministry of Economy of Ukraine and improvements of the mechanisms to control them;
- improvement of the mechanism of appointing arbitration managers of debtor companies where the State owns part of their property, approving viability restoration action plans, and developing and executing amicable agreements of such debtor companies;
- performance by the State Property of Ukraine of compulsory inventories of debtor assets in case of a debtor being a State or business association, part of whose charter capital belongs to the State, prior to the implementation of a set of measures under the bankruptcy procedure;
- improvement of the method of selling property of debtor companies with the State holding 25% or more of its assets;

legislation of Ukraine regulating veksel transfers for the purpose of raising the effectiveness of using veksels in business operations as legal tender.

4) to work out and submit, under the established procedure, for the Supreme Rada consideration the following draft laws:

- within a month, draft law on the resolution of disputes arising in the process of privatization;
- within six months, a draft law on State unitary companies;

5) to ensure the support in the Rada of the draft Commercial Procedural Code of Ukraine (registration #4157-2), as well as the following draft laws:

on amendments to certain laws of Ukraine (with regard to buying and selling securities of open JSC) /registration #2247);
on Pawnshops and Pawnshop Activities /registration #2424-1/;
on Holding Companies in Ukraine / registration #3355/;
on amendments to certain laws with regard to bank oversight and regulation of complex issues of bank audits / registration #3669/;
on amendments to the Insurance Law, with regard to powers in the area of financial services markets regulation (registration #5296-2);
on amendments to the Banks and Banking Law, with regard to branches of foreign banks (registration #7274);
on amendments to certain legislative acts of Ukraine, with regard to the development of mortgage relations (registration #7482);
on amendments to the Securities and the Stock Market Law (registration #7818);

- 6) to take urgent steps to speed up the completion of the formation of a Single register of State property;
- 7) to ensure the completion of the formation, in compliance with the Law of Ukraine “On State Registration of Property Rights to Real Estate and Limitations Thereof”, of a single system of State registration bodies to register rights to real estate property and limitations of such rights, as well to forming a State Register of rights to real estate and such rights limitation;
- 8) to ensure, by January 1, 2007, in conformity with the Presidential Decree 285 “On Measures to Protect Intellectual Property in Ukraine” (dated 11/27/01), performance of an inventory of intellectual property objects in the process of emergence of which funds had been allocated from the State budget and State specific- purpose funds, and to complete said inventory;
- 9) within one month, to take steps, in conformity with the established procedures, to cut down significantly the timeline to obtain permission documents, primarily from State Fire Protection and Sanitary-Epidemiological Authorities, and to cut down the cost of such services;
- 10) within one month, to bring in line with the Law of Ukraine “On Foundations of the State Regulatory Policy in the Area of Business Activities” the procedure of development, concordance, consideration of draft regulatory acts and approval of regulatory acts of the Cabinet of Ministers of Ukraine, of the central bodies of executive power and their regional offices, of the Cabinet of Ministers of the Crimean Autonomous Republic, and of local bodies of executive power;
- 11) within one month, to ensure full compliance with the procedure of registration and entering into the State register of entrepreneurial subjects on a “one-counter” principle within the timeline that shall not exceed 24 hours from filing the required documents;
- 12) within two months, to submit proposals on the main directions of implementing the tax reform in Ukraine, in particular:

comprehensive solution of problems related to VAT, particularly compensation of the amount of said tax;
stimulating role of tax depreciation in revamping of fixed assets;
tax exemption of stock issuance income with regard to primary placement of securities;
incentives for machinery and equipment imports, particularly hi-tech machinery and equipment that is not produced in Ukraine;
introduction of a single social tax and decreasing the payroll tax burden;
determination of the stages of development of the draft Tax Code of Ukraine and the timeline of completing said stages;

- 13) submit, within a month, and in conformity with the established procedures, the proposals with regard to transformation of the State Committee of Ukraine on Regulatory Policies and Entrepreneurship into the National Commission on Regulatory Policies and Entrepreneurship as a central body of executive power with a special status acting on the basis of collegiality, under the President's control and accountable to the Supreme Rada of Ukraine;
- 14) prepare, jointly with the National Bank of Ukraine, and submit, within a month, proposals on the improvement of the system of State regulation of financial services markets and of oversight over the operations of financial institutions on a consolidated basis and in accordance with the European legislation and bank oversight standards of the Basel Committee;
- 15) submit proposals, within a month, on the systemic work for improvement of Ukraine's investment image;
- 16) submit, within a month, proposals on vesting with SSMC the functions of developing macro economic indicators of Ukraine stock market development, their monitoring and quarterly publications;
- 17) work out, jointly with the National Bank of Ukraine, and submit for consideration within two months, in line with the established procedure, proposals on the introduction of the primary dealers institute in the government securities market;
- 18) within a month, to submit proposals on amendments to the Presidential Decree 703 "On the General Foundations of the operations of the National Depository System of Ukraine" (dated 6/22/99) with regard to bringing the types of operations of the National Depository of Ukraine in line with the Law of Ukraine "On the National Depository System of Ukraine and Special Features of Securities Circulation in Ukraine", and to bring the Cabinet of Ministers of Ukraine Resolution 847 "On the Management of the State Share in the Statutory Fund of the National Depository" dated 7/17/01 in line with the above Law;
- 19) add measures to the State Program for the Development of the National Depository System of Ukraine to set up a consolidated exchange system and to improve the disclosure system in the stock market, allocate the required funds for the Program-envisaged measures, having in mind the need to complete the implementation of said Program by January 1, 2008;
- 20) submit, within two months, proposals on the mechanisms of stimulating investments into the production and social infrastructure;
- 21) ensure allocation of funds by the established procedure for the measures specified by this Decree.

4. Securities and Stock Market State Commission shall:

- 1) within a month, take steps in conformity with the established procedure, to prevent double registers of owners of registered securities and to introduce safe keeping of copies of registers of owners of registered securities at the National Depository of Ukraine;
- 2) within three months, jointly with the Ministry of Economy and Finance Ministry of Ukraine, and with the involvement of the National Bank of Ukraine, develop and submit, through the established procedure, proposals with regard to the modernization of the record keeping system and of transfers of securities and derivatives, corporate rights protection, and the creation of a consolidated stock exchange system.

5. The Ministry of Economy of Ukraine, upon concordance with the State Property Fund of Ukraine and other central bodies of State executive power, shall develop and submit

proposals by January 1, 2006 with regard to the optimal structure of the State corporate rights.

6. Within a month, the State Property Fund of Ukraine shall:
 - 1) determine measures to intensify control over the operations of the assessors and subjects of the assessment activities;
 - 2) take steps to improve the qualifications of government employees in the area of corporate governance (training, certification, competitive selection of candidates etc.);
 - 3) submit proposals to improve the payments system for leasing the property of state-owned enterprises (taking into account the location of the object, its market value etc.);
 - 4) submit, jointly with the Environment Protection Ministry of Ukraine, to submit proposals on the resolution of the problem of ownership of waste accumulated in the process of operations of companies under privatization, and of liability for such waste safekeeping and utilization.

7. Approve an Action Plan to improve the investment climate in Ukraine (attached).
The Cabinet of Ministers of Ukraine shall ensure control over timely implementation of measures under this Action Plan and coordination of the central bodies of executive power with regard to the implementation of said Action Plan.

8. Approve the Guidelines of Ukraine stock market development for 2005-2010 (attached).
The Cabinet of Ministers of Ukraine shall approve, within a month, measures to implement the 2005-2010 Stock Market Development Guidelines and determine, in conformity with the established procedure, the mechanism of funding such measures.

9. Recommend that the General Prosecutor's Office shall, by January 1, 2006:
 - 1) conduct inspections of compliance with the legislation that guarantees ownership right protection in Ukraine and undertake the necessary measures to improve the effectiveness of State interests in adjudication of cases on privatization and other alienation forms by courts of law;
 - 2) analyze enforcement practices related to articles 218, 219, 233, 235, and 375, and undertake the necessary steps based on the results of the analysis.

10. Recommend that the Supreme Court of Ukraine shall:
 - 1) generalize court practices in order to preclude controversial interpretation of legal provisions in adjudicating cases related to exercising the right of ownership or to infringements on the rights of owners and investors;
 - 2) conduct constant monitoring of court decisions on disputes related to investment activities and capital flow;
 - 3) jointly with the State Court Administration, consider an issue of creating a single information system of court cases for the purpose of precluding a possibility of mutually exclusive court decisions, as well as failure by local courts to take into account the decision of the Supreme Court of Ukraine and the high specialized courts when making decisions on one and the same matter.

11. Recommend that the National Bank of Ukraine shall:

- 1) consider an issue of reviewing the deadlines to return hard currency proceeds to Ukraine and submit, if necessary, the respective draft law under the established procedure;
- 2) within three months, to prepare a draft law on amending the Law of Ukraine “On Banks and Banking” with regard to incorporating banks exclusively in the form of open JSC with at least Euro 5 Mio statutory capital as of the registration date;
- 3) ensure the development, by 31 December 2005, of the strategy of Ukraine banking system development for the 2006-2010 period, in particular providing measures to ensure better stability of both the banking system as a whole and that of individual banks.

12. Control over the implementation of this Decree shall be vested with the Secretary of the Council for the National Security and Defense of Ukraine.

President of Ukraine

Viktor Yushchenko

24 November 2005

Action Plan to improve the investment climate in Ukraine

1. To submit through the established procedure the following draft laws for the Cabinet of Ministers consideration:

- 1) On Amendments to the Law of Ukraine "On Collective Investment Institutions (Share and Corporate Investment Funds)" to improve the work of collective investment institutions inline with international practices;

Justice Ministry, Economy Ministry, SSMSC, NBFIR, in collaboration with the NBU

Completion Timeline – within a month

- 2) "On Derivatives"

Justice Ministry, Economy Ministry, SSMSC, NBFIR, in collaboration with the NBU and the National Depository of Ukraine

Completion Timeline – within a month

- 3) On Amendments to the Anti-Corruption Law with regard to periodic publication in the media of the information about officers of companies, institutions, and organizations recognized by courts of law to be guilty of corruption, particularly information on such officers' earnings, property, including bank deposits, and same about Rada deputies, deputies of local self-government bodies, management of executive power bodies, and judges;

Justice Ministry

Completion Timeline – within a month

- 4) On amendments to the Law of Ukraine "On Corporate Income Tax", with regard to levying income tax on insurance companies at the general tax rate;

Justice Ministry, Finance Ministry, Financial Services Markets State Commission, State Tax Administration of Ukraine

Completion Timeline – within a month

- 5) On amendments to laws regulating business operations, with regard to the introduction of the European principles of commercial law;

Justice Ministry, Economy Ministry, Industrial Policy Ministry, Energy and Fuel Ministry, Coal Ministry, Transport and Communications Ministry, Agrarian Policy Ministry of Ukraine

Completion Timeline – within two months

- 6) On amendments to legislative acts of Ukraine on currency regulation and currency control with regard to the improvements and optimization of currency regulation;

Justice Ministry, Finance Ministry, Economy Ministry, in collaboration with the NBU

Completion Timeline – within two months

- 7) On amendments to the laws of Ukraine on pension funds forming their securities assets exclusively with securities listed and traded at stock exchanges or those securities whose

rating conforms to the investment level by the national scale specified by the legislation of Ukraine;

Justice Ministry, SSMSC, NBFIR, in collaboration with the National Depository of Ukraine

Completion Timeline – within two months

- 8) On amendments to the Law of Ukraine “On the National Depository System and Special Features of Electronic circulation of Securities in Ukraine” (new version) with regard to bringing the regulation of NDS activities in line with the EU requirements;

Justice Ministry, SSMSC, in collaboration with the National Depository of Ukraine

Completion Timeline – within two months

- 9) On amendments to the Law of Ukraine “On the Physical Persons Bank Deposits Guarantee Fund” with regard to intensifying the Fund role in the development of the banking system, the expansion of its regulatory functions, step-by-step increase of the compensation for bank depositors, ensuring equality of conditions for the compensation, and the expansion of a list of sources for the formation of the Fund;

Justice Ministry, Economy Ministry, Finance Ministry, in collaboration with the NBU

Completion Timeline – within two months

- 10) “On Amendments to the Law of Ukraine “On the Method of Settlements in Foreign Currency” with regard to vesting with the Cabinet of Ministers of Ukraine the power to increase the period of settlements for sophisticated technical goods;

Justice Ministry, Economy Ministry, Finance Ministry, in collaboration with the NBU

Completion Timeline – within two months

2. To develop and submit for the Cabinet of Ministers consideration proposals, including as needed respective draft regulations, with regard to:

- 1) speeding up the implementation of IFRS

Finance Ministry, Economy Ministry, State Tax Administration, Justice Ministry

Completion Timeline – by 31 December 2005

- 2) alienation of State-owned blocks of shares (stakes, shares) in companies that are 25% or more owned by the State through their sale exclusively via stock exchanges;

The State Property Fund, SSMSC, and the Anti-Monopoly Committee of Ukraine
Completion timeline – within two months

- 3) the introduction of preliminary quoting and sale of 5%-10% of State holdings in companies to be privatized through stock exchanges for the purpose of determining the real value of such shares;

The State Property Fund, SSMSC, and the Anti-Monopoly Committee of Ukraine
Completion timeline – within two months

- 4) simplification of the licensing and quoting procedures with regard to foreign economic transactions and customs procedures, and the procedures of granting respective certificates to entrepreneurship subjects.

Justice Ministry, Economy Ministry, Agrarian Policy Ministry of Ukraine, the State Tax Administration, the State Customs Service of Ukraine
Completion Timeline – by 1 February 2006

3. To take measures under the established procedure with regard to:

1) mandatory stock exchange listing procedure for JSCs with over 60% State holding and encourage participation in such listing of JSCs with less than 60% State holding;

The State Property Fund, SSMSC – by 31 December 2005

2) retargeting the utilization of the funds of international financial organizations and international technical assistance for investment purposes and for the development of the institutional infrastructure, in particular envisaging respective provisions in finalizing the design of the cooperation strategy of Ukraine with international financial organizations.

Economy Ministry, Finance Ministry, Industrial Policy Ministry, Fuel and Energy Ministry, Transport and Communications Ministry, Agrarian Policy Ministry - by 31 December 2005

3) inventory of unfinished construction objects and identification of a possibility of their further utilization, including the terms of investor capital investment to complete their construction;

Economy Ministry, Construction, Architecture and Housing Ministry, Industrial Policy Ministry, Fuel and Energy Ministry, Agrarian Policy Ministry, Transport and Communications Ministry, the Cabinet of Ministers of the Republic of Crimea, and local State administrations - by 1 February 2006

4) the introduction of Corporate Governance Principles in the operations of Joint Stock Companies in which the State holds a controlling interest, in particular through entering relevant amendments under the established procedure to statutory and other documents of such companies;

The State Property Fund, SSMSC, jointly with the National Depository of Ukraine
Completion timeline – by 1 March 2006

5) increased awareness by shareholders and management of JSCs of corporate governance and investor protection issues;

The Radio and Television State Committee, SSMSC – continually

6) monitoring of the effectiveness of regulatory acts of the central bodies of executive power, those of their regional offices, of the Cabinet of Ministers of the Republic of Crimea, local State administrations, reviews of regulatory acts, particularly bringing such acts in line with the Law of Ukraine “On the Foundations of the regulatory policy in the area of business operations”, and, in case of the presence of grounds envisaged by said Law, suspension or cancellation of regulatory acts;

Regulatory Policies and Entrepreneurship State Committee, central bodies of executive power, the Cabinet of Ministers of the Republic of Crimea, and local State administrations - continually.

SIGNED:

Oleh Rybachuk
Head
Secretariat of the President of Ukraine

GUIDELINES for 2005-2010 Ukraine Stock Market Development

The State policy in the area of stock market operations is to be aimed at creating the environment for raising continually the economy capitalization, introducing an effective investor protection system, ensuring transparent rules and operating procedures of stock market participants, and suing reliable and liquid instruments in the securities market.

The development of the stock market in Ukraine shall be effected through:

I. Improvement of the investor right protection mechanisms:

- introduction of generally recognized international principles of corporate governance and Joint Stock Company (hereinafter referred to as JSC) operations;
- introduction of the position of a corporate secretary at JSCs, vesting in such an officer the functions of organizing corporate governance events in JSCs;
- development and implementation of the effective dividend strategy at JSCs;
- introduction of the mechanism to evaluate the efficiency of corporate governance at individual companies via the indicator of company capitalization on stock exchanges;
- establishment of a system of specialized courts to review JSCs corporate disputes;
- launch of training and education programs in the media for minority shareholders with regard to the issues of legislative regulation of corporate governance, shareholder rights and obligations;
- systemic generalization by the Supreme Court of Ukraine of the court practices in cases on the protection of rights and legitimate interests of shareholders;
- support of the formation and activities of non-government organizations of citizens who are minority shareholders, for the purpose of protecting their rights, and providing the necessary consultation assistance to shareholders.

II. Development of Securities Market Instruments:

- introduction of new types of mortgage-backed securities and term financial instruments;
- setting up the environment for local self-governance bodies to use on a massive scale municipal bond issues for the purpose of attracting investments to implement regional social and economic development programs;
- introduction of a rating system for companies and stock market instruments to be rated by independent rating agencies, including international agencies.

III. Concentration of securities trading on stock exchanges and other securities trade organizers:

- improvement of securities open placement mechanisms through stock exchanges;
- setting forth requirements to securities trade organizers in terms of the minimal trade volumes there;
- bringing the legislation in line with the EU Directives with regard to the establishment and operations of securities trade organizers;
- completion of the introduction of single operating standards for securities trade organizers.

IV. Improvement of the National Depository System:

- establishment, on the basis of the National Depository of Ukraine, of the Central Depository of securities, controlled by the State and independent of the influence of financial and industrial groups and professional participants of the stock market;
- introduction of a centralized, transparent and reliable system of record keeping of securities ownership;
- introduction of uniform rules and technological procedures of securities record keeping;
- unification of the principles and procedures of the operations of participants of the National depository system and of their interaction;
- introduction of new types of professional operations in the securities market.

V. Improvement of the Disclosure System on the Securities Market:

- further improvements of the disclosure system on the stock market based on the free, timely, and cost-free access of investors to information about securities issuers and professional market participants, including the introduction of international standards of disclosure;
- introduction of administrative and criminal liability for using insider information in securities transactions and for creating obstacles for access to information on securities issuers and professional market participants, and/or for misrepresentation of such information.

VI. Development of Investment Infrastructure:

- expand the list of financial instruments for non-State pension funds to invest their assets;
- set forth tougher requirements to non-State pension fund assets management companies;
- improve the method of keeping accounting records in collective investment institutes.

SIGNED:

Oleh Rybachuk
Head
Secretariat of the President of Ukraine