

Raiders of the Wild East

New president faces task of creating investment environment where rules are the same for all

Agencies and staff writers

Although foreign investment has grown considerably since 2005, overseas investors continue to remain cautious about Ukraine and the country continues to under-perform in attracting Foreign Direct Investment (FDI) compared to its Eastern European neighbours and even Russia. Ukraine scores poorly in the World Bank annual Ease of Doing Business index (142nd compared to 11th for Georgia in 2010). Ukraine scores even worse in the Transparency International annual Corruption Perceptions Index (146th compared to Georgia's 66th place in 2009). Both Ukraine and Georgia had democratic revolutions within one year of each other in 2003-2004 but of the two elected presidents only President Mikheil Saakashvili possessed the political will (and massive national majority) to battle corruption.

Little progress has been made in Ukraine to attract foreign investors and make the business climate more conducive to small and medium-sized businesses, despite this being one of the expected outcomes of the 2004 Orange Revolution – which, for the first time, had seen middle class businessmen showing vocal support for democratic politics. In the first round of the 2010 presidential elections Ukraine's emerging middle class was again evident in the combined twenty percent vote for Sergiy Tigipko and Arseniy Yatsenyuk who reached third and fourth place respectively.

With a new president elected on February 7, his priorities should be to revive the economy after two years of recession brought on by the global financial crisis. Ukraine alongside Latvia, Hungary and Iceland suffered the most in Europe from the crisis. Making Ukraine business-friendly and open to foreign investors should be one of the priorities of the new president and his team.

Struggling to enforce the letter of the law

Trans-Carpathia is where Canadian businessman Steven Chepa decided to launch a foreign investment project in 2006-2007, an area of Ukraine where his family had originated prior to World War I and before emigration to Canada. Mr. Chepa has a career in business development, investment and management spanning five decades behind him. However, his business venture in Ukraine's mountainous borderlands did not quite go according to plan. What went wrong with Mr. Chepa's investment is an example of what contributes to Ukraine's poor international image, which remains commonly associated with corruption and weak rule of law.

The plan to revive a sawmill in the Trans-Carpathian town of Vylk that would have created 100 jobs was appealing to Mr. Chepa as it was close to where his ancestors came from and it would have created employment in a depressed area. The proposal made by two Ukrainian-Canadians, Peter Prytula and Aivor Khourkine, eventually led to an alleged corporate raider takeover and battles in court to prove Mr. Chepa's ownership. In 2009 his plant suffered the alleged corporate raider attack which was based on a ruling from Kyiv's Sviatoshyn Court effectively endorsing a

rival claim to ownership of Mr. Chepa's investment, the Starwood Zakarpattia wood manufacturing plant. Nevertheless, Ukraine's judicial system is not all doom and gloom.

Ten months later Mr. Chepa won an appeal in the Kyiv Administrative Court of Appeal which issued an official reprimand to the Kyiv Sviatoshyn Court Judge for his earlier decision in favour of the group occupying the plant. The decision stated that the Sviatoshyn court had no right to rule on the case.

In November 2009 an Interdepartmental Commission on Counteracting Illegal Takeovers and Raids, headed by First Deputy Prime Minister Oleksandr Turchynov, established a regional working group. It concluded that Mr. Chepa had indeed been the victim of a corporate raider takeover and recommended that the police investigate the matter. However, this government commission has only the power to issue a 'moral' (not legal) verdict and no power to order the eviction of the alleged raiders. The government commission did not have the power to instruct Minister of Interior Yuriy Lutsenko to evict the new occupants and, if it had, they could have returned at a later stage and in turn evicted Mr. Chepa's security guards.

Mr. Chepa's lawyers, based in Uzhhorod, have additionally successfully overturned seven court cases launched by the alleged raiders. Nevertheless, favourable rulings by the government committee and court of appeals have still not led to the Canadian's re-possession of the factory which continues to stand idle. Meanwhile, he claims to have lost more than USD 12 million as a result of the dispute. Mr. Chepa says he is shocked that 'Private armed security guards proved to be more powerful than the law and the government officials attempting to enforce it'. Starwood's status continues to remain in limbo as the Canadian investor's success in the courts has not yet translated into actual possession of the factory.

More than just elections: Democracy demands rule of law

Cases like this one in Trans-Carpathia highlight the challenges facing the new president if he is to succeed in creating a more FDI-friendly business climate. At present there is clearly a need to increase the legal and law enforcement powers enshrined in the government's Interdepartmental Commission on Counteracting Illegal Takeovers and Raids so that corporate raids can be quickly reversed. The current raider culture is a symptom of the weakness of the state and its representatives, government and president. Each example only serves to give sustenance to corrupt businessmen, raiders and organized crime. Democracy means not only free elections and media pluralism, as outgoing President Yushchenko seemed to believe. Democracy is also commensurate with the rule of law and public trust in state institutions. If this is true for democracy, then it is doubly so for international investment. If Ukraine is to mount a serious economic recovery in the coming 12 months it will need to work much harder to attract FDI and create a level playing field for international investment players.

Recruitment search: Employment opportunity in the EU

Wanted: Ukrainian national for position of personal assistant to company director of agro-industrial concern based in Scandinavia. Candidates should be English speaking, practical, presentable and computer literate including Excel. Preferred age 22-25 years. Candidates must be free to travel and be able to qualify for an EU work permit. Valid driving license preferable. Competitive salary and compensation package to be discussed pending successful application.

Applicants should send CVs with covering letter and photo to:

Company Director PA Position
Box 35
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