

March 6, 2003

Approval of the New Civil and Commercial Codes

The President of Ukraine has signed the new Civil and Commercial Codes enacted by Parliament this past January. The final approval of these codes will significantly improve the business environment in Ukraine. Their adoption has been long awaited since the Civil Code Ukraine has been using dates back to 1963.

Earlier versions of these codes were passed by the Ukrainian Parliament in November 2001. However, President Leonid Kuchma vetoed them on the grounds that they were inconsistent with the Constitution, and that they had internal contradictions. In February 2002, the President presented his amendments to the documents for review and approval by the Parliament. In January, the Parliament finally passed new versions of the codes that included most of the amendments requested by the President. On March 3, the President signed both codes, which will become effective on January 1, 2004.

According to international experts, the new Civil Code is one of the most advanced and progressive, even compared to those of other European countries. It provides greater personal freedoms, particularly in choosing one's place of residence. Human rights protection is enhanced in part by a broader list of authorities that a person can address in seeking defense of one's civil rights. The list will now also include the President. The new version of the Civil Code puts restrictions on state and government officials, including members of Parliament, for engaging in commercial activities.

The Civil and Commercial Codes provide for less regulation of economic activities by government authorities. They also give greater protection to property rights and to the rights of minority shareholders. The codes give greater assurances to investors that international contracts will be honored in Ukraine. In fact, in line with international law, the Commercial Code indicates that international contracts will come into effect immediately upon signing, without having to be ratified by Ukrainian Parliament.

The codes further de-politicized economic activities by stipulating that the list of activities that cannot be performed commercially should be set by law, rather than on an ad-hoc basis by Parliament or government agencies. Also, the Commercial Code states that regulations on competition and anti-monopoly should be adopted only by Parliament in the form of laws, rather than as regulatory acts by government authorities. In addition, in order to avoid the proliferation of influence of state agencies on state enterprises, the Commercial Code excludes ministries and other government authorities from the regulation of state property, leaving only the Cabinet of Ministers as the sole administrator of the state sector.

Adoption of the codes came as a result of intense political dialogue and represented a consensus of different groups. The codes are extremely important documents for regulating public and private economic activities in the country. However, there are still a number of issues that were not adequately addressed in the codes. In particular, on a number of topics the Civil Code and Commercial Code provide for regulations in different ways. This situation may lead to legal inconsistencies and create possibilities for legal manipulations. Among the issues that need more explanation are the definition of the types of legal entities that may operate in a particular business environment, the types of regulations needed to protect legal property rights, and the types of commitments that may be made between private and legal entities. In addition, the assets of state enterprises still enjoy more legal protection than private enterprises in legal disputes. Thus, in order to create a more effective legal environment, the Civil and Commercial Codes still need to be supplemented by special laws to better define specific issues of their regulation. Since both Codes will come into effect on January 1, 2004, the supporting legislation should be drafted in the meantime.