



ICLG

The International Comparative Legal Guide to:

Business Crime 2015

5th Edition

A practical cross-border insight into business crime

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Contributing Editors

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Senior Editor

Suzie Levy

Group Consulting Editor

Alan Falach

Group Publisher

Richard Firth

Published by

Global Legal Group Ltd.
59 Tanner Street
London SE1 3PL, UK
Tel: +44 20 7367 0720
Fax: +44 20 7407 5255
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Ukraine

Alexander Minin



Oleksiy Spivak



WTS Consulting, LLC

1 General Criminal Law Enforcement

1.1 What authorities can prosecute business crimes, and are there different enforcement authorities at the national and regional levels?

The Public Prosecutor's Office can prosecute business crimes. Only state prosecutors and victims (to a very limited extent) can act as prosecutors before the Ukrainian courts. The Public Prosecutor's office consists of the General Prosecutor's Office of Ukraine, Public Prosecutor's Office of Autonomous Republic of Crimea, of Kiev and Sevastopol, of each region, the Public Prosecutor's Office of each city, district, interdistrict, district in cities and the Military Prosecutor's Office.

However, the preliminary investigations can be conducted by a variety of state bodies depending primarily on the subject matter of the alleged offence (for example, bodies supervising compliance with the tax legislation, the Ministry of Internal Affairs and the Security Service of Ukraine). These bodies and their territorial departments investigate cases within the whole territory of Ukraine.

1.2 If there are more than one set of enforcement agencies, please describe how decisions on which body will investigate and prosecute a matter are made.

Investigative jurisdiction (competence) of enforcement agencies is defined in Article 216 of the Criminal Procedure Code of Ukraine (hereinafter – "CPC") based on the type of the criminal offence, e.g. special bodies supervising compliance with the tax legislation (tax police) conduct pre-trial investigation of the criminal offences related to the tax sphere, bodies of security investigate crimes against the national security of Ukraine.

The establishment of the Financial Investigation Service and the National Anti-corruption Bureau of Ukraine is also planned.

1.3 Is there any civil or administrative enforcement against business crimes? If so, what agencies enforce the laws civilly and which crimes do they combat?

The Code of Administrative Offences of Ukraine envisages the administrative liability for the offences, which shall be distinguished from crimes (such as violation of the order of tax accounting, non-fulfilment of the lawful requirements of officials of

the State Fiscal Service, conducting of transactions on the stock market without obtaining of the licence, abuse of the monopoly on the market, etc.).

The liability for the administrative offences might be a warning, a fine, confiscation, administrative detention, etc.

The following state bodies of Ukraine are entitled to bring to the responsibility for the above administrative offences: bodies of the State Fiscal Service of Ukraine; the Antimonopoly Committee of Ukraine; the State Security Service of Ukraine; and some others.

2 Organisation of the Courts

2.1 How are the criminal courts in Ukraine structured? Are there specialised criminal courts for particular crimes?

Criminal cases in Ukraine are tried by the courts of general jurisdiction. Within those courts there is a four-level system (in respect of criminal cases): (i) local courts; (ii) courts of appeal; (iii) the High Specialized Court of Ukraine for Civil and Criminal Cases; and (iv) the Supreme Court of Ukraine. Local courts try criminal cases in the first instance. Appeal courts review cases, which have been tried by local courts, in the appellate instance. The High Specialized Court of Ukraine for Civil and Criminal Cases try cases in cassation instance. The Supreme Court of Ukraine is the highest instance among the courts of general jurisdiction. There is a Trial Chamber on Criminal Cases, which reconsiders cases if there was unequal application of the same provisions of the substantive law in similar legal relationships by the High Specialized Court of Ukraine for Civil and Criminal Cases.

There are no specialised criminal courts for particular crimes pursuant to the Ukrainian legislation.

2.2 Is there a right to a jury in business-crime trials?

There is a right to a jury in courts of the first instance if for the commission of the crime the punishment is life imprisonment and if the accused filed a motion on jury trial (Article 31 of the CPC). As for business crimes the punishment of life imprisonment is not envisaged, therefore jury trial in respect of business crimes is not stipulated by the Ukrainian legislation.

3 Particular Statutes and Crimes

3.1 Please describe any statutes that are commonly used in Ukraine to prosecute business crimes, including the elements of the crimes and the requisite mental state of the accused:

o Fraud and misrepresentation in connection with sales of securities

There is no specific article for fraud and misrepresentation in connection with sales of securities stipulated by the Criminal code of Ukraine (hereinafter – “the CC”). However, the CC contains several articles connected with sales of securities, such as the following: manipulating the stock market (Article 222-1 of the CC); forgery of documents submitted for registration of securities (Article 223-1 of the CC); violation of procedure of register of registered securities (Article 223-2 of the CC); and making, sale and use of counterfeit non-government securities (Article 224 of the CC).

o Accounting fraud

This type of crime is stipulated by Article 222 of the CC, which is called “financial fraud”. According to the abovementioned Article financial fraud is filing knowingly false information by a private entrepreneur or a founder, owner or official of a business entity to government agencies, authorities of the Autonomous Republic of Crimea or local government authorities, banks or other creditors in order to obtain subsidies, subventions, grants, loans or tax credits, where no elements of criminal offence against property are involved.

o Insider trading

This type of crime is stipulated by Article 232-1 of the CC, which involves intentional illegal disclosure, transfer or provision with access to insider information as well as provision using such information with any recommendations regarding purchase or alienation of any securities or derivatives or the commitment upon usage of insider information in their own interests or in the interests of other individuals of deeds, aimed at purchase or alienation of any securities or derivatives, which are in regard of the insider information.

o Embezzlement

This type of crime is stipulated by Article 191 of the CC. It provides for a penalty for the misappropriation or embezzlement of somebody else’s property by a person to whom it was entrusted or misappropriation, embezzlement or conversion of property by malversation.

o Bribery of government officials

This type of crime is stipulated by Article 369 of the CC. It provides for a penalty for the proposition or promise given to an official to provide him or her or a third party illegal advantage as well as providing with such advantage for commitment or non-commitment by an official in the interests of the person proposing, promising of providing with such advantage or in the interests of the third person of any acts using the power or official position, granted to an official.

o Criminal anti-competition

There is no specific article for anti-competition in the CC, however, it contains several articles related to anti-competition. Such articles provide for criminal liability for illegal collection for the purpose of use or use of information on trade secrets and wilful disclosure of commercial secrets without consent of its owner.

o Tax crimes

Liability for the tax crimes is stipulated by Article 212 of the CC, which provides for criminal liability for wilful evasion of taxes, fees or other compulsory payments which are part of the taxation system established by law, by an official of an enterprise, institution or organisation of any ownership status, or by any unincorporated entrepreneur, or by any other person liable to pay such taxes, fees or other compulsory payments, where such actions resulted in actual non-receipt of significant amounts of funds by budgets or special state funds.

A significant amount of funds means any amount of taxes, fees or other compulsory payments which equals or exceeds the 1,000 UAH tax-free minimum income established by law. In 2014 the tax-free minimum income is 609 UAH (about 46 \$ USA). Thus, as for now this Article provides for liability for actual non-receipt of 609,000 UAH (about 46,000 \$ USA) by budgets or special state funds.

o Government-contracting fraud

There is no specific article in the CC for government-contracting fraud. However, general articles which provide for liability for fraud can be applied.

o Environmental crimes

The CC prescribes numerous environmental crimes: violation of environmental safety rules (Article 236); failure to eliminate consequences of environmental pollution (Article 237); concealment or misrepresentation of information on environmental status or disease incidence among the population (Article 238); contamination or deterioration of land (Article 239); violation of rules related to the protection of mineral resources (Article 240); air pollution (Article 341); and marine pollution (Article 243), etc.

o Campaign-finance/election law

In accordance with the CC it is a crime: to prevent a citizen from free exercise of the right to elect and be elected; for a member of an election committee to give a ballot to a person not registered in the list of electors; wilfully violate the secrecy of the ballot; and prevent a citizen from freely exercising their right to take or not take part in a referendum, etc.

Sanctions for such crimes range from fines to a 10-year prison sentence.

o Any other crime of particular interest in Ukraine

It is common practice in Ukraine to qualify tax crimes prescribed by Article 212 of the CC in aggregate with other crimes, such as: fraud (Article 190 of the CC); misappropriation, embezzlement or conversion or property by malversation (Article 191 of the CC); sham business (Article 205 of the CC); legalisation (laundering) of criminally obtained money and other property (Article 209 of the CC); abuse of authority or office (Article 364 of the CC); and neglect of official duty (Article 367 of the CC).

o Market manipulation in connection with the sale of derivatives

There is no specific article in the CC for market manipulation. However, general articles providing for liability for fraud and misrepresentation in connection with sales of securities can be applied.

3.2 Is there liability for inchoate crimes in Ukraine? Can a person be liable for attempting to commit a crime, whether or not the attempted crime is completed?

Yes, there is liability for inchoate crimes in Ukraine. Inchoated crimes can be subdivided to the preparation for crime and a criminal attempt.

The preparation for crime involves such actions as looking out or adapting means and tools, or looking for accomplices to commit, or conspire for, an offence, removing of obstacles to an offence, or otherwise intended conditioning of an offence.

A criminal attempt means a directly intended act (action or omission) made by a person aimed directly at the commission of a criminal offence prescribed by the CC, where this criminal offence has not been consummated for reasons beyond that person's control.

4 Corporate Criminal Liability

4.1 Is there entity liability for criminal offences? If so, under what circumstances will an employee's conduct be imputed to the entity?

Yes, there is. The employee's conduct may be imputed to the company if the empowered person commits an offence in the name and on behalf of the company for money laundering known to be proceeds from the offence, terrorism, use of proceeds from illicit drug trafficking, corruption offences, for failure to carry out obligations to take measures to prevent corruption, etc. (Articles 96-3 of the CC.)

4.2 Is there personal liability for managers, officers, and directors if the entity becomes liable for a crime?

Yes, there is. Both the company and the empowered persons (managers, officers and directors) may be held liable.

4.3 Where there is entity liability and personal liability, do the authorities have a policy or preference as to when to pursue an entity, when to pursue an individual, or both?

It is possible for the authorities to prosecute both the individual and the legal entity in the same proceedings or to prosecute the individual first and then the legal entity in separate proceedings.

5 Statutes of Limitations

5.1 How are enforcement-limitations periods calculated, and when does a limitations period begin running?

The statute of limitations period starts when *actus reus* is completed. The period itself is dependent on the severity of the criminal offence and varies from two to 15 years (Article 49 of the CC).

The statute of limitations shall be saved where a person who committed a criminal offence evaded investigation or trial. In such cases the running of the statute of limitations is resumed as of the date of the person's surrender or apprehension. In this case the person shall be discharged from liability if 15 years elapsed after the commission of the offence.

The statute of limitation shall be forfeited where a person, before the above specified terms, commits another medium grave, grave or special grave offence. In this case a limitation period starts on the date on which such new crime is committed. Each offence gives rise to its own period of limitation.

Where a person has committed a special grave offence punishable by life imprisonment, the issue of limitation is decided by the court.

The statute of limitation shall not apply where any crime goes against the peace and humanity.

5.2 Can crimes occurring outside the limitations period be prosecuted if they are part of a pattern or practice, or ongoing conspiracy?

A person may not be prosecuted outside the limitations period.

5.3 Can the limitations period be tolled? If so, how?

The limitation period cannot be tolled. But as it is stated in question 5.1 where a person has committed a special grave offence punishable by life imprisonment, the issue of limitation is decided by the court.

6 Initiation of Investigations

6.1 How are investigations initiated? Are there any rules or guidelines governing the government's initiation of any investigation? If so, please describe them.

In order to initiate an investigation the investigator or Public Prosecutor shall submit the information regarding possible criminal offences in the Integrated Register of Pre-Trial Investigations. Pre-trial investigation starts from the moment the information on the criminal offence has been entered in the Integrated Register of Pre-Trial Investigations.

6.2 Do the criminal authorities have formal and/or informal mechanisms for cooperating with foreign prosecutors? Do they cooperate with foreign prosecutors?

Ukraine has joined the numerous international conventions providing for such mechanisms of cooperation (for instance, the European Convention "On Mutual Assistance In Criminal Cases" as of April 20, 1959). However, application of the aforesaid mechanisms is not a common practice in Ukraine.

7 Procedures for Gathering Information from a Company

7.1 What powers does the government have generally to gather information when investigating business crimes?

The investigator and Public Prosecutor can make investigative (detective, search) and covert investigative (detective) actions.

Generally, investigative actions include interviewing, presentation of objects for identification, entering home or any other possession of a person (only upon voluntary consent of the owner or based on a ruling of the investigating judge in a strictly regulated manner), to conduct a search (based on investigating judge's ruling), visual inspection of the area, premises, items and documents to find and record the information relating to the commission of a criminal offence, to conduct the investigative experiment, etc.

Document Gathering:

- 7.2 Under what circumstances can the government demand that a company under investigation produce documents to the government, and under what circumstances can the government raid a company under investigation and seize documents?**

The authorised persons upon written request in the course of official investigation may demand the company to provide the provisional access to objects and documents in order to examine it and make copies thereof.

Seizure of documents and raids on the company may be conducted upon the appropriate ruling by the investigating judge or court with the purpose of finding and fixing information on circumstances of criminal offence, finding tools of criminal offence or property obtained as a result of its commission.

- 7.3 Are there any protections against production or seizure that the company can assert for any types of documents? For example, does Ukraine recognise any privileges protecting documents prepared by attorneys or communications with attorneys? Do Ukraine's labour laws protect personal documents of employees, even if located in company files?**

Yes, there are.

Thus, according to Article 161 of the CPC the objects and documents to which access is prohibited include: 1) correspondence or any other form of communication between defence counsel and his client or any person, who represents his client, in connection with the provision of legal assistance; and 2) objects which are attached to such correspondence or any other form of communication. Therefore, documents prepared by a defence counsel are protected by Ukrainian legislation even in the course of official investigation.

Also, the CPC defines the list of objects and documents containing protected by law secrets which includes: 1) information in possession of a mass medium or a journalist and which was provided to them on condition that its authorship or source of information would not be disclosed; 2) information, which may constitute a medical secret; 3) information which may constitute secrecy of a notary's activity; 4) confidential information, including commercial secrets; 5) information which may constitute bank secrecy; 6) personal correspondence of a person and other notes of a personal nature; 7) information held by telecommunication operators and providers of communications, subscribers, rendering of telecommunication services including receipt of services, their duration, content, routes of transmission, etc.; 8) personal data of an individual, which are in his personal possession or in a personal database, which the possessor of personal data has; and 9) State secrets (para. 8 of Article 162 of the CPC).

As to the objects and documents containing secrets protected by law, the investigating judge may issue the ruling to grant provisional access to such objects/documents, if an investigator or Public Prosecutor, proves the following: 1) such objects/documents are or can be in possession of a physical or legal person; 2) *per se* or in combination with other objects and documents of the criminal proceedings concerned, are significant for establishing important circumstances in the criminal proceedings; 3) the possibility to use as evidence the information contained in such objects and documents; and 4) impossibility by other means to prove the circumstances which are intended to be proved with the help of such objects and documents.

- 7.4 Under what circumstances can the government demand that a company employee produce documents to the government, or raid the home or office of an employee and seize documents?**

A similar procedure would apply as in the case of the company. See the answer to question 7.2.

- 7.5 Under what circumstances can the government demand that a third person produce documents to the government, or raid the home or office of a third person and seize documents?**

A similar procedure would apply as in the case of the company. See the answer to question 7.2.

Questioning of Individuals:

- 7.6 Under what circumstances can the government demand that an employee, officer, or director of a company under investigation submit to questioning? In what forum can the questioning take place?**

An employee, officer or director of a company under investigation may be summoned to questioning on general grounds as any other third person on condition that there are sufficient grounds to believe that such a person can give testimonies which are important for criminal proceedings. The employee, officer, or director of a company under investigation may be questioned as a suspect or a witness.

- 7.7 Under what circumstances can the government demand that a third person submit to questioning? In what forum can the questioning take place?**

An investigator and/or Public Prosecutor during pre-trial investigation as well as the court during trial on his own initiative or upon petitions of other persons (investigator, Public Prosecutor, the suspect, the defendant, the victim, etc.) are entitled to summon any third person if there are sufficient grounds to believe that such a person can give testimonies which are important for criminal proceedings. The third party may be questioned as a witness.

- 7.8 What protections can a person being questioned by the government assert? Is there a right to refuse to answer the government's questions? Is there a right to be represented by an attorney during questioning?**

Article 59 of the Constitution of Ukraine provides that everyone has the right to legal assistance and everyone is free to choose the defender of his or her rights. In Ukraine, the advocacy acts to ensure the right to a defence against accusation and to provide legal assistance in deciding cases in courts and other state bodies. The aforesaid means that a person during questioning is entitled to be represented by an attorney by his/her own choice.

Article 224 of the CPC envisages that a person is allowed not to answer questions with regard to circumstances in which respect there is a direct prohibition in law (secrecy of confession, medical secrets, defence counsel's professional secrets, secrecy of deliberation room, etc.), or which may become grounds for accusation by himself, his close relatives or family members of criminal offence.

8 Initiation of Prosecutions / Deferred Prosecution / Civil Dispositions

8.1 How are criminal cases initiated?

Criminal cases and the requisite investigation are initiated from the moment the information regarding the crime is entered in the Integrated Register of Pre-Trial Investigations (hereinafter – ‘the Register’).

8.2 Are there any rules or guidelines governing the government's decision to charge an entity or individual with a crime? If so, please describe them.

There are no specific rules or guidelines that govern the authority's decision to initiate criminal proceedings. An investigator or Public Prosecutor has a duty to initiate an investigation into all crimes as soon as he/she has learned on his own from any source about circumstances which are likely to indicate that a criminal offence has been committed.

8.3 Can a defendant and the government agree to resolve a criminal investigation through pretrial diversion or an agreement to defer prosecution? If so, please describe any rules or guidelines governing whether pretrial diversion or deferred prosecution are available to dispose of criminal investigations.

Yes, they can. Criminal proceedings may be disposed by way of concluding a plea agreement between the Public Prosecutor and the suspect or the accused pleading guilty (Article 468, 469 of the CPC).

The plea agreement between the Public Prosecutor and the suspect or the accused may be concluded in proceedings in respect of criminal misdemeanours, as well as crimes of minor or medium gravity, grave crimes, perpetration of which caused damage only to state or public interests. Conclusion of the plea agreement in criminal proceedings with the participation of the victim is not allowed.

8.4 In addition to or instead of any criminal disposition to an investigation, can a defendant be subject to any civil penalties or remedies? If so, please describe the circumstances under which civil penalties or remedies are appropriate.

According to Article 127 of the CPC the suspect accused, upon his consent, or any other physical or legal person, has the right at any stage of criminal proceedings, to repair the damage caused to the victim, the territorial community, and the state as a result of a criminal offence. The damage caused by the criminal offence or any other socially dangerous act may be recovered by a court decision made as a result of hearing a civil action in criminal proceedings. Damage caused to the victim by a criminal offence shall be repaired to him from the State Budget of Ukraine as prescribed by law.

9 Burden of Proof

9.1 For each element of the business crimes identified above, which party has the burden of proof? Which party has the burden of proof with respect to any affirmative defences?

The burden of proof rests with the prosecution (Article 92 of the CPC). A person is presumed innocent in the commission of crime and cannot be subject to criminal punishment, while his/her guilt will not be proved in a legal order or set by the accusatory sentence of court.

Nobody is obliged to prove his/her innocence in the commission of the crime.

Accusation cannot be based on proofs which were obtained in an illegal way, and/or guesses. All doubts shall be interpreted to the benefit of the accused.

9.2 What is the standard of proof that the party with the burden must satisfy?

The following shall be proved in criminal proceedings: (1) occurrence of criminal offence (when, where, and how a criminal offence has been committed and under what circumstances); (2) the degree of guilt of the accused in the commission of a criminal offence, the form of guilt, motive and purpose of the criminal offence; (3) the type and amount of damage caused by the criminal offence, as well as the amount of procedural expenses; (4) circumstances which aggravate or mitigate the committed criminal offence, characterise the person accused, toughen or mitigate punishment, preclude criminal liability or shall be grounds for terminating the criminal proceedings; (5) circumstances that shall be grounds for relief from criminal liability or punishment; and (6) circumstances which are the basis for the application of measures of criminal law to the legal entities (Article 91 of the CPC).

9.3 In a criminal trial, who is the arbiter of fact? Who determines whether the party has satisfied its burden of proof?

The judge is the sole arbiter of fact in a criminal trial.

10 Conspiracy / Aiding and Abetting

10.1 Can a person who conspires with or assists another to commit a crime be liable? If so, what is the nature of the liability and what are the elements of the offence?

A person who induces or assists others to commit a crime will be held responsible as an accomplice.

The organiser, abettor and accessory are criminally liable for complicity in committing a crime under the article (or paragraph of the article) of the CC which creates an offence committed by the principal offender.

11 Common Defences

11.1 Is it a defence to a criminal charge that the defendant did not have the requisite intent to commit the crime? If so, who has the burden of proof with respect to intent?

The defendant's state of mind (guilt) is a requisite element of the *corpus delicti*. Guilt can be expressed in the form of intent or recklessness (Article 23 of the CC).

Not all crimes have to be intentional though. If intent is a requisite element of a crime, then it is a defence to a criminal charge.

The burden of proof with respect to the intent rests with the prosecution.

11.2 Is it a defence to a criminal charge that the defendant was ignorant of the law i.e. that he did not know that his conduct was unlawful? If so, what are the elements of this defence, and who has the burden of proof with respect to the defendant's knowledge of the law?

In accordance to Article 68 of the Constitution of Ukraine the ignorance of laws cannot be a defence to a criminal charge.

11.3 Is it a defence to a criminal charge that the defendant was ignorant of the facts i.e. that he did not know that he had engaged in conduct that he knew was unlawful? If so, what are the elements of this defence, and who has the burden of proof with respect to the defendant's knowledge of the facts?

Such ignorance will be taken into account by the court when determining whether the necessary guilt is shown. If the defendant should have known the facts he/she ignored, such conduct has been negligent and can constitute a criminal offence where intent is not a requisite element of the crime. If, on the contrary, the ignorance has been legitimate the criminal liability cannot be imposed.

12 Voluntary Disclosure Obligations

12.1 If a person becomes aware that a crime has been committed, must the person report the crime to the government? Can the person be liable for failing to report the crime to the government?

An obligation to report the crime to the government is not prescribed by Ukrainian legislation.

Criminal liability under the CC is foreseen for unpromised concealment of a grave or special grave criminal offence. At the same time family members or close relatives of an offender, as determined by law, shall not be subject to criminal liability for unpromised concealment of a criminal offence.

13 Cooperation Provisions / Leniency

13.1 If a person voluntarily discloses criminal conduct to the government or cooperates in a government criminal investigation of the person, can the person request leniency from the government? If so, what rules or guidelines govern the government's ability to offer leniency in exchange for voluntary disclosures or cooperation?

For the purposes of imposing a punishment, surrender, sincere

repentance or actively assisting in detecting the offence are deemed as mitigating circumstances.

If there are circumstances of mitigation of punishment, term of punishment may not exceed two-thirds of the maximum term or the size of the most severe punishment permitted under the relevant articles of the CC.

13.2 Describe the extent of cooperation, including the steps that an entity would take, that is generally required of entities seeking leniency in Ukraine, and describe the favourable treatment generally received.

The judge decides the adequacy of cooperation in the criminal investigation and whether it can be considered as mitigating circumstances.

Please see question 13.1 with regard to the favourable treatment provided as a result of a cooperation agreement and the obligations implied thereby.

14 Plea Bargaining

14.1 Can a defendant voluntarily decline to contest criminal charges in exchange for a conviction on reduced charges, or in exchange for an agreed upon sentence?

Yes, it can. There is a possibility for the defendant or the suspect to plead guilty in exchange for a plea agreement with the public prosecutor. However, it should be noted that the plea agreement may be concluded only in proceedings in respect of criminal misdemeanours, as well as crimes of minor or medium gravity and grave crimes, where damage was caused only to state or public interests. Conclusion of the plea agreement in criminal proceedings with the participation of the victim is not allowed. Conclusion of the plea agreement in criminal proceedings regarding the empowered persons of the company who have committed the offence in respect of which a criminal proceeding as to this legal person is taking place is not allowed (para. 4 of Article 469 of the CPC).

14.2 Please describe any rules or guidelines governing the government's ability to plea bargain with a defendant. Must any aspects of the plea bargain be approved by the court?

In general, the plea agreement may be concluded upon initiative of the public prosecutor or the suspect or the accused. When taking decision on the conclusion of a plea agreement, the Public Prosecutor takes into consideration the degree and nature of cooperation on the part of the suspect or the accused in conducting criminal proceedings regarding him or other persons; the nature and severity of the charges brought (suspicion); the availability of public interest in ensuring a faster pre-trial investigation and trial, and detection of more criminal offences; and the availability of public interest in prevention, detection and termination of more criminal offences or other more serious criminal offences.

The plea agreement has to be approved by the court. The court is obliged to ascertain whether the accused understands clearly enough the meaning of the plea agreement and whether the agreement was concluded by the parties thereto voluntarily, i.e. without use of compulsion, threats or promises or any other circumstances other than those provided for in the agreement. If the court makes sure that the agreement may be approved, it shall pass the judgment by which it approves the agreement and imposes the punishment agreed between the parties.

15 Elements of a Corporate Sentence

15.1 After the court determines that a defendant is guilty of a crime, are there any rules or guidelines governing the court's imposition of sentence on the defendant? Please describe the sentencing process.

The imposition of sentence is at the court's sole discretion. However, there are certain rules a court should adhere to. Namely, a court should impose a sentence within the limits prescribed by a sanction of the article of the CC, which creates liability for the committed criminal offence. The court may also take into account certain circumstances of the offence while deciding on the sentence, namely mitigating circumstances and circumstances aggravating punishment.

15.2 Before imposing a sentence on a corporation, must the court determine whether the sentence satisfies any elements? If so, please describe those elements.

Before imposing a sentence on a corporation the court considers the severity of the offence committed by an empowered person of a corporation, the degree of criminal intent, damages, the nature and size of illegal benefits that were obtained or could have been obtained by a corporation, and measures that have been taken by the corporation in order to prevent the offence (Article 96-10 of the CC).

16 Appeals

16.1 Is a guilty or a non-guilty verdict appealable by either the defendant or the government?

Yes, it is. As a general rule guilty or not guilty judgments which have been passed by courts of first instance and have not yet come into force, may be challenged in an appellate procedure (Article 392 of the CPC).

16.2 Is a criminal sentence following a guilty verdict appealable? If so, which party may appeal?

Yes, it is. A criminal sentence may be challenged by both parties before the court of appellate instance. It can be appealed due to the inconsistency of imposed punishment with the degree of gravity of criminal offence and the personality of the accused, when its type and size is clearly unfair because of its leniency or its severity (Article 414 of the CPC).

16.3 What is the appellate court's standard of review?

As a general rule the court of appellate instance review decisions of the first instance court within the scope of the appellate complaint (para. 1 of Article 404 of the CPC). However, the court of appellate instance may go beyond the scope of the appellate demands if the status of the accused or the person in respect to whom the issue has been disposed of applying compulsory medical or educational measures, is not aggravated thereby and if consideration of appellate complaint gives grounds for adoption of a decision in favour of persons in whose interests no appellate complaints have been received, the court of appellate instances shall be required to adopt such decisions.

At the same time a court of appellate instance has no right to consider the charge which was not brought in the court of first instance.

16.4 If the appellate court upholds the appeal, what powers does it have to remedy any injustice by the trial court?

According to para. 1 Article 407 of the CPC upon results of the appeals trial on a complaint against judgment or ruling of a court of first instance, the court of appellate instance may: 1) uphold the judgment or ruling challenged; 2) change the judgment or ruling; set aside the judgment in full or in part and pass a new judgment; 3) set aside the ruling in full or in part and pass a new ruling; 4) set aside the judgment or ruling and close criminal proceedings; and 5) set aside the judgment or ruling and assign a new trial in the court of first instance.

**Alexander Minin**

WTS Consulting, LLC
5 Pankivska Str.
01033 Kyiv
Ukraine

Tel: +380 44 490 71 97
Fax: +380 44 492 88 59
Email: a.minin@wts.ua
URL: www.wts.ua; www.kmp.ua

Alexander Minin is a Senior Partner at WTS Consulting LLC and Attorney at Law at KM Partners.

Alexander specialises in tax and customs law, tax litigations, criminal law and procedure and currency regulation. He has over 20 years of successful experience in tax and customs law and litigation. He is well-known in Ukraine for his successful tax litigation practice and experience in criminal proceedings on tax related crimes.

Alexander graduated from the International Relations and International Law Institute of the Taras Shevchenko National University of Kyiv. He started his professional career as a financial director of one of the first Ukrainian-German joint ventures and as a freelance tax consultant. Later Alexander joined Arthur Andersen - the international professional services organisation. In 1999 Alexander Minin and several colleagues founded their own law firm, where he is a Senior Partner to date. Alexander Minin is one of the most famous practising lawyers on tax and customs-related matters in Ukraine. In 2013-2014 he has been recognised as one of the best lawyers in Ukraine in the tax category according to many international rankings, such as *The Legal 500 EMEA*, *Chambers Europe Clients Guide*, *Who's Who Legal*, *Tax Directors Handbook*, *Best Lawyers*, *International Tax Review*, *Ukrainian Law Firms* and many others.

**Oleksiy Spivak**

WTS Consulting, LLC
5 Pankivska Str.
01033 Kyiv
Ukraine

Tel: +380 44 490 71 97
Fax: +380 44 492 88 59
Email: o.spivak@wts.ua
URL: www.wts.ua; www.kmp.ua

Oleksiy Spivak is a Senior Counsel at WTS Consulting LLC and Attorney at Law at KM Partners.

Oleksiy specialises on criminal and administrative law and procedure, tax and customs legislation and dispute resolution. He has a Certificate in advocacy No.4686/10 and belongs to the Kyiv Regional Bar Association.

Oleksiy mainly specialises as an attorney at law for the defence of clients' officials in criminal proceedings on white collar crimes, cases of administrative violations and violations of customs rules. The areas Oleksiy practises also include tax and customs litigations and other regulatory dispute resolution.

Oleksiy has profound practical experience in protecting clients' interests during the criminal investigations conducted by the officials of supervising bodies such as the tax police, prosecutor's office, bodies of the Ministry of Internal Affairs and Security Service of Ukraine, and in the process the tax audits and consideration of complaints and objections of taxpayers by the tax authorities.

Oleksiy is the author of many publications on taxation, criminal law and procedure. Apart from his native Ukrainian, Oleksiy is also fluent in both English and Russian.



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59 Tanner Street, London SE1 3PL, United Kingdom
Tel: +44 20 7367 0720 / Fax: +44 20 7407 5255
Email: sales@glgroup.co.uk

www.iclg.co.uk