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GLOBAL PROJECT FINANCE GUIDE 2024

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Disclaimer: *As a result of martial law currently in force in Ukraine (which is likely to be extended if the hostilities from Russia continue) and force majeure events being triggered in the jurisdiction, activity with Ukrainian clients may be subject to restrictions which are not addressed in these guidelines e.g., the National Bank of Ukraine (NBU) has significantly limited cross-border FX payments (repayment of cross-border loans, performance of guaranty (suretyship) obligations, dividends repatriation and acceleration of loans are not permitted, etc.).*

A. Overview

1. What is the main legislation and international treaties governing the project financing in your jurisdiction?

Ukraine has a complex legal system, which includes an extensive range of laws and regulations governing investment activity. In addition to the general legal framework,

the key piece of legislation governing foreign investment is the Law of Ukraine "On the Foreign Investment Regime," which regulates the conditions for investment, the rights and obligations of foreign investors, and the procedure for investing in Ukraine.

It is important to note that there are other laws and regulations that apply to specific investment projects. For example, environmental and construction laws may be relevant to certain projects.

Apart from the domestic legal framework, Ukraine has also signed various international treaties and agreements that play a significant role in project financing in Ukraine. Ukraine has ratified the Convention on the Procedure for the Resolution of Investment Disputes between States and Foreign Persons in 2000, which is commonly known as the ICSID Convention. This Convention provides for the settlement of investment disputes between investors

and states through arbitration. It offers a neutral and transparent mechanism for resolving disputes that arise between foreign investors and the state of Ukraine.

Moreover, Ukraine has concluded over 70 bilateral investment agreements with other countries, which provide favorable conditions for foreign investors and govern the investment process between Ukraine and the signatory state. These agreements typically provide for the protection of investors' rights, including the protection of investments from expropriation, fair and equitable treatment of investors, and the free transfer of funds. The agreements also contain provisions for the resolution of investment disputes through arbitration.

2. How mature is the project finance market in your jurisdiction, and what are the most significant project financings closed during the last 12 months?

The project finance market in Ukraine is relatively undeveloped but it has significantly grown and evolved over recent years. The full-scale war has slowed down the pace of project finance in Ukraine in 2022 and refocused the public and private sectors on supporting resilience of the economy during the war time crisis as well as rebuilding efforts. Exchange and capital controls which remain quite restrictive make it challenging for the parties to implement traditional project finance structures. The level of corruption remains quite high although certain steps are being taken in order to address this on a global scale (including within the framework of Ukraine's accession to the EU).

Over the recent years the most notable project financings implemented in Ukraine include⁵⁸:

- EUR 372 million non-recourse financing for the construction of the 250 MW Syvash wind farm near the Azov Sea;
- USD 150 million limited recourse financing for the constructions of the first 98 MW phase and second 402 MW phase of the 500 MW wind farm in Zaporizhia region;
- EUR 138 million project relating to repair of the Kyiv-Chop highway (financed by EBRD);
- EUR 1150 million project relating to improvement of the transport and operational condition of roads on the approaches to the city of Kyiv (financed by EBRD and EIB);
- EUR 182 million project relating to improvement a road that goes from Lviv in western Ukraine to Rava-Ruska on the border with Poland (within the European Solidarity Lanes project);
- EUR 9,6 million project relating to expansion of a rail terminal near the Polish border and building a grain transshipments complex by Agrosem;

Ukraine is also actively working with its foreign partners to ensure that agreements on assistance reflect the most current needs, regularly holding international conventions and forums with its partners. Recently, the following agreements have been reached both in the public and private sectors⁵⁹:

- The European Union has launched an investment framework for Ukraine, signing the first guarantee agreements worth EUR 1.4 billion to support economic and infrastructure development, demonstrating a strong commitment to bolstering Ukraine's recovery and growth;

58 <https://mtu.gov.ua/content/infrastrukturni-proekti-z-ebr-rr-ta-eib.html>

59 <https://www.kmu.gov.ua/news/yes-pidpysav-pershi-harantiini-uhody-na-14-mlrd-ievro-u-ramkakh-investytsiinohokomponenta-prohramy-ukraine-facility-iulii-svryydenko>

- The World Bank and the Ukrainian government are planning a joint program, Renew Ukraine, to advance renewable energy development, which will involve scaling up projects and attracting private companies;
- The European Investment Bank (EIB) is launching a credit program with a budget of over EUR 1 billion to support small and medium-sized enterprises (SMEs) in Ukraine, aiming to enhance their resilience and recovery amid the ongoing war;
- Ukraine has secured EUR 190 million in guarantees and EUR 10 million in investment grants through agreements with the European Investment Bank to expand financing for small and medium-sized enterprises and support companies affected by the war;
- Agreements with the International Finance Corporation will see EUR 350 million in guarantees and EUR 17.5 million in technical assistance for Ukraine, focusing on accelerating investments in renewable energy, including wind projects, energy storage, and various industrial sectors;
- Ukraine has obtained EUR 140 million in guarantees, EUR 30 million in investment grants, and EUR 7 million in technical assistance from the EBRD to enhance financing access and invest in the production capacities of small and medium-sized enterprises;
- The EBRD has provided Ukraine with EUR 150 million in guarantees and EUR 7.5 million in technical assistance to remove barriers and accelerate the transition of the energy sector to net-zero emissions;
- Ukraine has secured EUR 150 million in guarantees, EUR 25 million in investment grants, and EUR 7.5 million in technical assistance from the EBRD to support urgent needs and reconstruction efforts across various sectors;
- Agreements with KfW will provide Ukraine with EUR 45 million in first-loss capital, EUR 7 million in investment grants, and EUR 3 million in technical assistance to expand financing for small and medium-sized enterprises, green economy businesses, and those adapting to energy efficiency and environmental transitions;
- KfW agreements will support Ukraine with EUR 45 million in first-loss capital, EUR 9 million in investment grants, and EUR 1 million in technical assistance to aid the recovery and relocation of war-affected companies and businesses in deoccupied and frontline regions;
- Ukraine will receive EUR 100 million in investment grants from KfW to enhance the resilience of power transmission by repairing and reconstructing damaged energy infrastructure and restoring electricity supply to critical areas;
- Agreements with Bank Gospodarstwa Krajowego will provide Ukraine with EUR 20 million in guarantees to expand financing for micro, small, and medium-sized enterprises affected by the war, including those in deoccupied and frontline regions;
- The European Investment Bank will offer Ukraine EUR 10 million in technical assistance to build capacity for large infrastructure projects and provide advisory services for prioritizing investments in critical recovery sectors;
- Ukraine has obtained EUR 50 million in guarantees from the EBRD and an additional EUR 60 million from other donors to address risk coverage, initially focusing on military insurance for movable assets like internal cargo transport;

- Ukrzaliznytsia has formalized its agreement with the European Bank for Reconstruction and Development (EBRD) for a EUR 300 million loan to purchase 80 modern freight electric locomotives, aiming to enhance the efficiency of freight transportation;
- Naftogaz Group has secured grant funding for the development of a decarbonization strategy from the European Investment Bank⁶⁰;
- EBRD has signed a Memorandum of Understanding in 2023 to provide EUR 200 mln of new financing for Ukrhydroenergo, the national hydropower entity⁶¹.
- Japan will allocate USD 188 million in grants under a technology transfer project to support Ukrainian businesses, aiming to enhance technological capabilities and drive economic growth in the country;
- The EBRD and IFC are poised to invest USD 435 million in the merged data group Volya and Lifecell, underscoring the significance of this funding in advancing crucial infrastructure and operational improvements that will boost their competitiveness and service quality;
- Ukraine's Ministry of Economy, DFC, and Citibank have signed a memorandum to advance the mortgage housing market in Ukraine by promoting affordable housing and strategic investments.

International finance institutions remain the largest institutional investors in Ukrainian projects: for instance, in 2023, the European Bank for Reconstruction and Development invested a record EUR 2.1 billion in Ukraine, up from EUR 1.7 billion in 2022 exceeding its target of EUR 3 billion

for the 2022-2023 period, reaching this milestone in October⁶².

It is important to note that the war and high political violence risk remain to be the biggest obstacle for the international investors and financial institutions to finance the projects in Ukraine, even if the projects are located in the Western part of Ukraine and remain untouched by the war. Political risk insurance ("PRI") and political violence insurance ("PVI") coverage have been available to the limited extent only due to inability of the international reinsurers to absorb the excessive political risks currently present at the Ukrainian market. While the regulator and the key stakeholders are planning a reform of this instrument to attract more international financing, the main PRI/PVI coverage providers remain Multilateral Investment Guarantee Agency ("MIGA") and DFC. The German business may benefit from the investment guarantees of the German Federal Government providing the protection of new investments made in Ukraine against war risks.

In April 2024, the Cabinet of Ministers of Ukraine expanded the capabilities of Export Credit Agency ("**ECA**") by approving the list of war and political risks that ECA can insure, as well as the relevant terms of their insurance (reinsurance). In particular, war risks include the following insurance risks that may arise on the territory of Ukraine:

- military conflict, including war or armed conflict, armed aggression, hostilities, mass riots;
- violent change or overthrow of the constitutional order or seizure of state power;
- acts of terrorism and/or sabotage;
- occupation, annexation.

60 <https://www.naftogaz.com/en/news/technical-assistance-grant-decarbonization-strategy>

61 <https://www.ebrd.com/work-with-us/projects/psd/54753.html>

62 <https://www.ebrd.com/news/2024/ebd-deploys-a-record-21-billion-in-ukraine-in-2023-.html>

Political risks include:

- compulsory alienation of property/ seizure of property of a business entity/ private entrepreneur (deprivation of property rights) by the state authorities of Ukraine;
- unreasonable (illegal) revocation of a license by a market regulator or forced termination (suspension) of a business entity's activities by state authorities, as established by a court decision that has entered into force, unless such termination is caused by the business entity's failure to comply with the requirements of the law;
- failure or refusal of the state to fulfill its obligations under the legislation, strategic or program documents approved in accordance with the procedure established by law, and/or an investment agreement, provided that the business entity has the right to demand fulfillment of such obligations;
- imposition by the state of a ban (payment embargo, moratorium) on payments;
- currency inconvertibility or prohibition of transfer abroad by a business entity, except as provided by law.
- Other export credit agencies (for example, Bpifrance, UK Export Finance, KUKA etc.) similarly offer the coverage against political risks in Ukraine for their national businesses.

B. Security Interest

3. What are the most commonly used security types in project financings in your jurisdiction?

In project finance deals in Ukraine, lenders typically require security over the following types of assets:

- **Real Estate:** Quite often project

financing deals relate to construction or renovation of real estate objects which may include energy and energy infrastructure, commercial and residential buildings, logistical objects, etc. In relation to such objects lenders would typically require a mortgage over the existing immovable property, mortgage over the unfinished construction and/or future assets upon their completion and commissioning. Land plots owned by the obligors may also be subject to mortgage (including but not limited to rights of use, servitudes, etc). Unlike most of the other types of security interests, mortgages require notarization and state registration.

- **Shares:** In project finance transactions lenders typically require collateral over the shares in the relevant project and/or holding companies. This is being done due to the fact that the project companies might not have sufficient assets to cover the indebtedness in case of enforcement. In such cases it is recommended to carry out a preliminary due diligence of the target to ensure clear title to collateral and possibility to carry out judicial and extra-judicial enforcement.

- **Fixed assets and other movable property:** A pledge may be concluded in respect of various types of fixed and other moveable assets, including commodities (Pledges over certain assets require mandatory notarisation (e.g., vehicles).

- **Contract proceeds and receivables:** Pledge is usually enforced through assignment of the obligor's rights and interests (often, in project agreements) in favour of the lenders which would normally be conditional on occurrence of a default. This type of pledge is often used in respect of offtake contracts, especially in industries such as mining, energy (including renewables), and agriculture. Note that assignment is different from a novation which under Ukrainian laws is a

substitution of an existing obligation with a new obligation between the same parties. Another method of assigning the benefit of an offtake agreement to the creditor is conclusion of direct agreements whereby the offtaker undertakes to make payments and perform its obligations directly to the creditor. However, it must be noted that in certain cases direct agreements, although lawful and valid, may be hardly enforceable (for example, where state-owned enterprises are involved, like e.g., the Guaranteed Buyer who is responsible for purchasing electricity from producers of electricity from renewable energy sources (RES) under the feed-in tariff (FIT) scheme).

- **Bank accounts:** Being categorically one of the types of pledge over movable assets, bank accounts pledge agreements have specific features deriving from the peculiarities of functioning and legal status of bank accounts in Ukraine. Current and savings accounts are subject to different legal regimes and regulations, leading to distinct enforcement methods. Also, as a matter of law, the obligor's servicing bank must be notified about the pledge in order for it to be enforceable.

Suretyship and guarantees are another type of security under Ukrainian laws, and the scope of rights, obligations and liability thereunder varies by virtue of law.

Suretyship is a secondary (ancillary) obligation and does not survive termination or cancellation of a principal obligation.

A guarantee, as opposed to a suretyship, is considered as fully autonomous bond and it can be issued solely by financial institutions such as banks and credit unions. Guarantee is usually independent of the secured obligation and can survive its termination or cancellation.

In Ukraine, a non-recourse financing is very rare compared to the limited recourse deals where the sponsor issues the guarantee

with respect to a portion of financing extended to the project company or undertakes to provide necessary financial support for the project company in case it is unable to meet its payment obligations.

It is worth noting that the security types used in project financings in Ukraine may vary depending on the nature and complexity of the project, as well as the preferences of the lenders and borrowers involved. As a general note, extensive security coverage requirements applicable to domestic banks in Ukraine are considered to be one of the reasons why local banks are not very active in project financings. Strict provisioning requirements make it commercially unviable for the local banks to act as lenders, although sometimes they might act as local security agents to the foreign lenders.

4. Can the shares of a company be pledged as a security to the benefit of lenders? If so, is there a specific requirement in terms of formalities or procedure to be followed for establishing or perfecting a share pledge?

Yes, the shares of a company can be pledged as security to the benefit of lenders. The procedure for establishing and perfecting a share pledge is regulated by the Civil Code of Ukraine, the Law of Ukraine "On Pledges", the Law of Ukraine "On capital markets and organized commodity markets" and the Law of Ukraine "On protection of creditors' rights and registration of encumbrances". The most common types of shares are the stock in the joint stock companies and the shares in limited liability companies.

A pledge of shares must be made in writing and signed by the parties. The pledge agreement must include a description of the pledged shares, the main terms of the principal obligation, and usually contains the rights and obligations of the parties.

Notarization and state registration of a share pledge is not mandatory, but in many cases are advisable, particularly, to ensure the first priority of the pledge over security interests or other creditors. Note that if the securities (stock) in a joint stock company are subject to pledge such agreement shall usually involve a depository institution and perfection (as well as enforcement) would include making respective entries in the depository system.

5. Is private sale a recognized method for the enforcement share pledge? What are the endorsement types typically used for the share certificates?

Under Ukrainian law, private sale is a recognized method for the enforcement of a share pledge. If the borrower defaults on the principal obligation, the lender may enforce the share pledge by selling the pledged shares privately or through a public auction. The specific method for enforcing a share pledge will depend on the terms of the pledge agreement, the type of collateral and the lender's preference.

Note that in Ukraine stock in a joint stock company exists in electronic form only. Share certificates in a paper form are not usually issued and are rarely required in security transactions. Title to stock is evidenced by a statement from the depository system and a depository institution plays an important role in the process of enforcement of such security interests.

It should be noted that in practice, the enforcement of a share pledge can be a complex process, especially if there are disputes or litigation involved. It is recommended that parties seek legal advice and follow the appropriate procedures for the enforcement of a share pledge.

6. Can security interest be established over future assets, rights and receivables of the borrower?

Yes, security interest can be established over future assets, rights, and receivables of the borrower in Ukraine. The Civil Code of Ukraine provides for the possibility of creating security over future assets, including future property rights and claims (receivables).

In order to create a pledge over future assets, it is necessary to specify the subject matter of the pledge in the pledge agreement in sufficient detail to ensure its identification in the future. Note that no full equivalent of an English law 'debenture' is available in Ukraine, meaning that each collateral must be identified in every security instrument quite thoroughly. It is also possible to secure the claims which the lender will hold in the future.

In general, the creation of security over future assets and receivables requires careful drafting of the pledge agreement to ensure that the security interest is enforceable and that the pledged assets or receivables can be identified in the future.

7. What are the steps to be taken by the lenders to enforce their security interest, in case the borrower becomes insolvent, is technically insolvent and/or commences composition process?

That would depend on the type of security interest that has been established.

If the security interest is a mortgage or a pledge, the lender can either take possession of the collateral or sell it in accordance with the procedures established by the agreement and the law. The law provides for specific procedures and timelines for taking possession and sale of the pledged assets. Note that during insolvency proceedings the claims of a creditor secured by pledge or mortgage

can only be satisfied out of the value of respective collateral. Once the insolvency proceedings commence the collateral can only be sold within the supervision of respective court dealing with the case.

In all other cases, for example when security interest is constituted pursuant to a suretyship or guarantee, respective creditor's claims will be considered together with all other (unsecured) creditors and, in case of their satisfaction, such creditor will receive a payment directly from the debtor.

If the borrower enters into a composition process, the lender may be required to participate in the process and negotiate with other creditors to reach a compromise agreement. If a compromise agreement is reached, the lender will receive a share of the proceeds from the sale of the borrower's assets. If a compromise agreement cannot be reached, the lender may be entitled to file a claim in the bankruptcy proceedings.

In any case, the lender must follow the procedures established by the law to enforce its security interest.

8. Is security trustee concept enforceable in your jurisdiction? If not, is an alternative mechanism, such as a parallel debt, available?

The Civil Code of Ukraine does not provide for a distinct concept of a security trustee, however in the recent years steps have been taken to approximate Ukrainian legislation to the commonly spread legal practices in this regard. The concept of 'trust ownership' has been introduced, however, court precedents enforcing it remains quite scarce.

A parallel debt structure can be used as an alternative mechanism to a security trustee. In this structure, the borrower creates a parallel debt to the lenders that is equal to the amount of the debt owed to them.

The parallel debt is secured by the same collateral as the original debt and is treated as a separate debt owed to the lenders. This structure allows the lenders to take enforcement actions on their own behalf without the need for a security trustee.

More often in project financings in Ukraine the lenders act as co-pledgees within the same mortgage or pledge agreement; further relations between them in case of enforcement should then be governed by a separate intercreditor agreement (usually governed by foreign law).

C. Incentives and Restrictions

9. What are the main incentives and exemptions for project financing in your jurisdiction?

Ukraine offers various incentives and exemptions to support investment projects with significant investments. Some of these incentives are provided under the Law of Ukraine "On State Support for Investment Projects with Significant Investments in Ukraine" and related regulations. Investment projects that meet the criteria established by the Law can benefit from the following incentives:

- **Stable legislation guarantees:** Investment projects can receive state guarantees on stable legislation for 15 years and compensation for losses caused by state bodies.
- **State support:** Investment projects can receive state support of up to 30% of the amount of significant investments in the form of exemptions and other benefits.
- **Tax incentives:** Investment projects can benefit from a corporate income tax exemption for 5 (five) years from the moment of filing the application (except for projects in the sphere of extraction for further processing and/or enrichment of minerals). They can also

be exempted from land tax and receive reduced rates of rent payments for land of state and communal property.

- Customs and Value Added Tax (“VAT”) exemptions: Investment projects can benefit from exemptions from customs duties and VAT payments for the import of new equipment and components, subject to certain conditions.
- Infrastructure support: Investment projects can benefit from the construction of related infrastructure (such as highways, communication lines, and utilities) necessary for the realization of the project.
- Land use rights: Investment projects can benefit from a simplified procedure for granting the right to use (lease) of land plots of state or communal property with the pre-emptive right for acquisition of such a land plot to the property after the expiration of a special investment agreement.

Network connection assistance: If an investment project requires connection to the networks of heat, gas, water and electricity supply, utilities, etc., the state may assist the investor with significant investments in the process of such connection within the framework of a special investment agreement.

It is important to note that the availability and applicability of these incentives and exemptions may vary depending on the specific project and circumstances, and investors should consult with legal and financial advisors to determine the most advantageous financing structure and incentives for their project.

10. Are there any incentives or exemptions specifically applicable to foreign investors?

Please refer to the answer to question 9.

11. Are there any restrictions for borrowing bank loans and shareholder loans from abroad and/or in a foreign currency?

Legal entities that are residents of Ukraine may receive loans from non-residents in foreign currency, including revolving financial assistance, under contracts. Any operations under cross-border loans (including disbursements and repayments) are subject to initial notification of the loan agreement to the National Bank of Ukraine through the local bank, and notification about subsequent major amendments. Each loan agreement should be serviced through authorized bank, which is indicated in the extract from the National Bank of Ukraine’s automated information system “Loan agreements with non-residents.”

Before conducting foreign exchange transactions under the agreement through this bank, the legal entity should contact the bank chosen by them if the National Bank is informed about the agreement for the first time or to change the resident bank in which the account for money settlements (payments) under the agreement is opened, as well as to make changes to the information about the agreement contained in the Information System.

In terms of shareholder loans, Ukrainian law allows for the provision of such loans by foreign shareholders, subject to certain restrictions. For example, the amount of the loan cannot exceed the amount of the shareholder’s equity investment in the borrower, and the loan must be provided on an arm’s length basis.

Cross-border loans are also subject to some other restrictions, for example, the interest rate thereunder shall align with the market rates. As at July 2024 the following types of loan operations are permitted:

- transfers by resident borrowers abroad of funds to fulfil obligations under cross-border credits and loans, which are:
 - o provided with the participation of international finance organisations (“IFO”) (by way of a guarantee or suretyship);
 - o provided with the participation (by way of lending, insurance, guarantee or suretyship) of a foreign export credit agency or a foreign state through an institution authorized by it or through a foreign legal entity which has among its participants a foreign state or a foreign bank (provided that the foreign state is a participant (shareholder) of such bank) (“qualified foreign loans”);
- in all other cases transfers by resident borrowers abroad of funds to fulfil obligations under cross-border credits and loans are subject to the following restrictions:
 - o a loan has been credited to the borrower’s bank account at a Ukrainian bank after June 20, 2023;
 - o interest payments (including fees, charges and other payables) shall not exceed 12% per annum;
 - o for a loan with a tenor of up to 3 (three) years, transfer of funds by a borrower to repay principal, interest and other amounts payable may be made solely out of its own foreign currency funds. This means that these provisions are mainly aimed at the borrowers who export goods.

Additionally, the NBU encourages the attraction of long-term financing, particularly:

- for a loan with a tenor of more than 3 (three) years, a borrower may purchase foreign currency during the first 3 (three) years from the date of initial

receipt of the loan principal in order- to pay interest, default interest, fees and charges, and starting from the fourth anniversary – in order to repay the principal too.

- prepayment of foreign loans is permitted by local banks acting as borrowers, guarantors or sureties provided that funds repaid will be injected by foreign lender / creditor into the share capital of such bank; in all other cases prepayment of cross-border loans is mostly not permitted except in cases where loan or a portion thereof have been extended, guaranteed, insured or otherwise covered by the IFOs or foreign export credit agencies or other financial institutions whose shareholders include any foreign state or a development bank which, in turn, is fully or partially owned by foreign state. An additional requirement is that all transactions/payments/ settlements (including the provision/ receipt/repayment of any portion of the credit/loan) under such agreement are conducted exclusively after June 20, 2023.

Since July 2024 the regulator has permitted payments under letters of credit, guarantees and counter-guarantees issued / confirmed by Ukrainian banks starting from 24 February 2022 to the benefit of foreign lenders as security for the performance of payment obligations by local borrowers under the qualified foreign loans or suretyship agreements. Transfer of funds by local entities to foreign lenders / creditors under guarantees or suretyships issued as security for the payment obligations of local borrowers under qualified foreign loans has also been permitted. In addition, the residents may also make payments under the recourse claims - compensation of amounts paid by foreign guarantors or insurers under the guarantees or insurances issued to the benefit of foreign

or local lenders as security for the payment obligations of local borrowers under qualified foreign loans.

Overall, while it is possible to borrow bank loans and shareholder loans from abroad and/or in a foreign currency in Ukraine, there are restrictions and requirements that must be followed in order to do so.

12. Are there any restrictions for foreign investments in your jurisdiction?

Foreign investments in Ukraine are generally allowed and welcome. However, there are certain restrictions and limitations that apply to certain types of activities and industries, including strategic industries, such as defense, aerospace, and telecommunications.

On top of that, investments in objects whose creation and use do not meet the requirements of sanitary and hygienic, radiation, environmental, architectural and other standards established by the legislation of Ukraine, as well as violates the rights and interests of citizens, legal entities, and the state that is protected by law, are prohibited

In addition, foreign investors may face certain restrictions related to land ownership, natural resources, and other areas. For example, foreign natural persons are generally not allowed to acquire agricultural land in Ukraine, and foreign legal entities are required to obtain a special permit to acquire ownership or use rights over agricultural land. However, the legislation on land ownership evolves and these restrictions are expected to be gradually relaxed. For instance, starting from January 1, 2024 Ukrainian legal entities have the right to acquire up to 10,000 ha of agricultural land into ownership.

Furthermore, foreign investors may face certain restrictions related to the

registration and operation of their businesses in Ukraine, including licensing requirements and limitations on foreign ownership in certain sectors. It is therefore advisable for foreign investors to seek legal advice before investing in Ukraine.

After the full-scale Russian invasion in Ukraine in 2022, investments from Russia and Belarus are no longer tolerated. As a result, any investment proposals from Russian or Belarusian companies will be rejected by the Ukrainian authorities. This policy reflects the Ukrainian government's commitment to defend its sovereignty and territorial integrity, and to promote economic ties with countries that respect Ukraine's independence and territorial integrity.

Starting from July 2024 the regulator has permitted payment of dividends to foreign shareholder / participant with the purpose of making further payments on international debt securities admitted to trading on foreign stock exchanges (Eurobonds) subject to certain conditions.

13. Is there any minimum equity requirement, under the legislation or in practice, for project financings in your jurisdiction?

There is no specific minimum equity requirement for project financings in Ukraine under the legislation. However, in practice, lenders may require a certain level of equity contribution from the borrower as a condition for providing financing. This equity contribution can vary depending on the size and risk profile of the project, as well as the overall financial strength of the borrower. The equity contribution is usually determined based on the project's capital expenditure, and may range from 30% to 50% of the total project cost. It is also common for lenders to require that the equity contribution be provided by the sponsor or a group of sponsors, rather than the borrower itself.

As to the minimum amount of the authorized capital, for joint-stock companies it is 200 amounts of the minimum wage (based on the amount of the minimum wage effective on the day of creation (registration) of the joint-stock company), i.e., approximately USD 435,500 as at the beginning of 2024. No limit applies to authorized capital of other types of companies, and their capital can be as high as 1 Hryvnia.

In terms of payment of dividends it has to be noted that as at March 2024 payment of dividends to a foreign shareholder's foreign bank account is prohibited. However, dividends can be paid to a foreign shareholder's local bank account. Transferring hard currency to a foreign shareholder's overseas bank account is not allowed. It is reported though that relaxation of dividend payments is on the list of the regulator's top priorities which are likely to be introduced in the coming years.

Starting from July 2024 the regulator has permitted payment of dividends to foreign shareholder / participant with the purpose of making further payments on international debt securities admitted to trading on foreign stock exchanges (Eurobonds) subject to certain conditions.

14. Please explain the registration and filing requirements which are applicable for project finance documents to be valid and enforceable in your jurisdiction.

In Ukraine, there are certain registration and filing requirements that must be met in order for project finance documents to be valid and enforceable. These requirements may vary depending on the type of document and the underlying asset or transaction.

Unless otherwise agreed by the parties, pledge agreements become effective upon

execution by the parties (or notarisation, if agreed by the parties or required by law). Note, however, that pledges over certain assets require mandatory notarisation (e.g., vehicles). Although perfection of pledges is not strictly required by law, it is necessary in order for the security interest to be valid and effective against third parties and rank in priority to the claims of other creditors.

Mortgages are subject to mandatory registration at the State Register of Title to Immovable Property. Encumbrances which are subject to state registration (as well as the title to real estate itself) shall be valid from the time of such registration. In practice, mortgages are registered simultaneously with notarisation of the underlying mortgage agreement (usually on the day of signing).

In addition, the registration of the security interest should be accompanied by payment of a state fee. The amount of the fee depends on the value of the collateral, and the fee must be paid within 10 (ten) days of registration.

Other project finance documents, such as loan agreements, joint venture agreements or shareholder agreements, do not need to be registered or filed with any government authority. However, parties may choose to have these agreements notarized in order to provide greater certainty and evidentiary weight.

D. Insurance

15. Can local insurance policies be governed by a foreign law?

In general, local insurance policies must comply with the laws and regulations of the jurisdiction where they are issued.

In Ukraine, the statute provides that foreign law may be chosen to govern insurance contracts if the contract has a foreign element, such as the nationality

or residence of one of the parties, the location of the subject matter insured, or the place of performance. However, the choice of foreign law cannot conflict with mandatory provisions of Ukrainian law, and local regulatory requirements for insurance policies must still be complied with.

16. Can insurance proceeds under the insurance and reinsurance policies be assigned to the benefit of the lenders?

Assuming that the policy is issued by a local insurer (and reinsured by a foreign reinsurance company), there are no restrictions from insurance legislation standpoint for a local insurer to transfer an insurance indemnity in favour of a foreign designated beneficiary, provided that all supporting documents are presented to the insurer and the bank processing the payment. Depending on the type of policy and loss occurred the required documents might consist of: the insurance policy, certificates from state bodies confirming natural hazards, a loss adjuster's report, the insurer's decision to pay under the policy, the relevant lender's bank account details, etc. Since, the currency control rules applicable in Ukraine often prevent an insurer from transferring indemnification abroad, the parties to reinsurance policies may opt for such indemnification to be paid outside of Ukraine.

If the policy is not issued by a local insurer and reinsured by a foreign reinsurance company, the payment procedure shall be regulated by the FX rules applicable in the home jurisdiction of the insurer.

Note that, although security assignments are not expressly prohibited, local insurers are usually reluctant to enter into such agreements in respect of the reinsurance claim due to the fact that it is not clear that such security assignments are permitted under Ukrainian law..

17. What are the other complications, concerns or other issues in relation to the insurance provisions under the project financing documentation, if any?

Currency restrictions: following enactment of the martial law in Ukraine, Ukrainian entities and individuals are limited in their ability to purchase foreign currency and make cross-border payments outside of Ukraine. Ukrainian insurers are allowed, subject to applicable terms and limitations, to carry out payment of insurance premium under most reinsurance contracts concluded with non-resident reinsurers. Payment of insurance indemnification abroad may be protracted. Please seek a specific advice.

As a matter of law, foreign licensed insurance companies are allowed to perform insurance activities in Ukraine, only for (i) insuring of: aircrafts, watercrafts (seagoing vessels, inland navigation vessels and other self-propelled or non-self-propelled floating structures), transported property (including cargo and baggage), liability arising from the use of the aircraft or watercraft (including carrier liability); (ii) reinsurance. The following requirements apply to foreign insurers carrying out activities in Ukraine:

- (a) a country of incorporation of a foreign entity:
 - (i) has not been subject to any warnings from international bodies regarding its compliance with international standards in the area of preventing and combating money laundering, terrorist financing and proliferation of weapons of mass destruction. For instance, is not added to the FATF's list of a high-risk jurisdictions which are subject to a Call for Action and Increased Monitoring. Those lists are often externally referred to as the "black list", and "grey list" respectively;

- (ii) is not recognized as an offshore jurisdiction pursuant to the laws of Ukraine;
 - (iii) does not commit an act of armed aggression against Ukraine; and
 - (iv) has adopted necessary legislation to regulate reinsurance and insurance activities;
- (b) there is a treaty on preventing tax evasion and avoiding double taxation between Ukraine and a country where the foreign reinsurer is incorporated; and
- (c) a foreign entity holds all necessary licenses, permits and approvals and duly authorized to conduct reinsurance activity in the country of its incorporation.

Foreign licensed insurance companies may operate in Ukraine that fulfil all of the above requirements, and are otherwise in compliance with the laws of Ukraine, may operate in Ukraine (within the said types of insurance activities) without opening a representative office in the territory of Ukraine, without obtaining a license from the regulator to carry out insurance activities, and regardless of the territory of the insured event.

With effect from July 2024, a Ukrainian insurer is expressly entitled to pay the reinsurance premium and other amounts under the reinsurance agreement to foreign entity providing that the reinsurance involves the protection against loss of, or damage to, the property located in Ukraine or loss (whether full or partial) of income from such property resulting from the armed aggression of the Russian Federation against Ukraine, including acts of war, hostilities, warfare, terrorist acts and sabotage.

In addition, in order for a local insurer to pay a reinsurance premium overseas, such

insurer must be added to the list of insurers that have the right to carry out reinsurance operations with non-resident reinsurers, and shall meet the following requirements, both as at the date of application for inclusion in the List of Approved Insurers and during the listing period:

- its ownership structure must be transparent and meet other requirements specified in the Regulation on requirements for the ownership structure of financial service providers, approved by the Resolution of the Board of the National Bank of Ukraine No. 30 dated April 14, 2021;
- the insurer must comply with the criteria of solvency and capital adequacy and the requirements to riskiness of operations as of the last calendar day of the month preceding the date of submission of the application for inclusion in the List of Approved Insurers, as well as the last calendar day of each month during the period of being listed;
- the business reputation of the insurer, its owners of significant participation and managers, the chief accountant, key persons, must be impeccable in accordance with NBU Resolution No. 199, of 29 December 2023; and
- within one year prior to the date of submission of the application and during the period of being listed, no measures of influence were applied to the insurer, except for a written warning, for violating the requirements of the anti-money laundering legislation sanctions.

Foreign licensed insurance companies are permitted to establish branches subject to compliance with the requirements mentioned above and subject to fulfilment of the following additional requirements:

- the legislation of the country where the foreign licensed insurance company is registered does not contain provisions that may impede/restrict the interaction of the regulator and supervisory/controlling authorities of such state and/or prevent the regulator from exercising its supervisory powers over such a branch;
- the amount of the authorised capital (*prypysnyi kapital*) of such branch is not less than 32 million hryvnas – for non-life insurers, or UAH 48 million - for life insurers, re-insurers, and insurers which carry out some other types of insurance (part 3 of article 40 of the Law of Ukraine «On insurance»);
- issuance of a written irrevocable obligation by the foreign insurance parent company to unconditionally fulfil the obligations arising from the activities of its branch in Ukraine;

Foreign licensed insurance companies must operate in Ukraine in the form and manner prescribed by Law of Ukraine “On Insurance” and regulatory legal acts of the NBU

Insurance payments (payout or premium) originating from Ukraine are considered as Ukraine sourced income for non-residents of Ukraine; and basically such payments are subject to withholding tax.

Reinsurance obligations arise out of mandatory criteria and standards of capital adequacy and the solvency and liquidity of the insurer. The insurer is obliged to form technical reserves for all liabilities under insurance (reinsurance) contracts, evaluate the size of the formed technical reserves and the methods applied, as well as assumptions for their calculation, including using statistical data, in the manner prescribed by the regulatory acts of the NBU (article 43 of the Law of Ukraine “On Insurance”. The insurer, following entering into a reinsurance agreement, remains fully responsible before a policyholder.

In practice, most of the local insurers reinsure their risks with international reinsurers due to the lack of insurance reserves.

E. Financing of Public-Private Partnership (PPP) Projects

18. Is PPP a permitted method of developing projects, and if so, have any PPP projects been developed to date in your jurisdiction?

Public-private partnership (“PPP”) is a long-term cooperation between the state and private companies, with the aim of creating, updating and further effective management of public facilities and socially significant services traditionally provided by the state.

Yes, PPP is a permitted method of developing projects in Ukraine. In fact, the Ukrainian government has been actively promoting PPP projects in various sectors, including transportation, energy, healthcare, and infrastructure.

The Ukraine PPP statutes establish the organizational and legal framework of the interaction of public partners with private partners and the basic principles of the public-private partnership on a contractual basis, while Resolution No. 384 regulates each step of the tender procedure. The Concession law regulates the implementation of concession projects. Furthermore, please note that Article 5 of the PPP Law states that PPPs may be concluded as concession agreements

Procurement procedures provide for 3 (three) options:

- Competitive tendering;
- Competitive dialogue; or
- Direct negotiations

All 3 (three) procedures for the selection of a private partner are available only for a concessionary PPP, while for a non-concessionary PPP only one procedure is used - a competitive tendering.

In the event of only one application in the bidding, the PPP contract may be concluded between the state partner with this applicant by agreeing with him on the essential terms of the contract, provided that such applicant meets the main qualification requirements for the participants of the competition, unless otherwise specified laws regulating relations that arise in the process of concluding public-private partnership contracts.

It is common practice when the procuring authority conducts a pre-bid conference where potential bidders can get additional information on PPP project.

The state partner controls the PPP contract implementation but cannot, however, interfere with the economic activities of the private partner or third parties.

Private partners shall provide the public partners with information on the contract performance as specified in the PPP contract, the public partner shall keep this information confidential.

Officers of the public partners monitor the PPP contract performance in accordance with their authority under the law and the PPP contract.

There is no explicit legislative provision stating that PPP implementation must be prioritized against other government investment priorities. At the same time, state targeted programs, the purpose of which is to promote the implementation of state policy in priority areas of state development, in accordance with the Law of Ukraine "On State Targeted Programs", can be implemented by use of the PPP mechanism.

Several PPP projects have been developed in Ukraine in recent years, including concession of seaports: Chernomorsk, Izmail Sea Port, Reni Port and others, concession of airports, construction of

industrial parks, concession of railway stations, construction of highways and bridges, etc. Please review the full list here <https://pppagency.me.gov.ua/projects/>

19. Are direct agreements between the public authorities and the Lenders permissible under the local law, and if so, commonly seen in the Project Finance market in your jurisdiction?

Direct agreements between public authorities and lenders are generally permissible under law of Ukraine.

In Ukraine, direct agreements are commonly seen in project financings, including those involving PPPs.

The statute provides grounds for replacement of a private partner in PPP:

- if initiated by the state partner upon material breach of the PPP contract by the private partner;
- if initiated by the creditor (financier) upon foreclosure of security (the property rights of the private partner under the PPP contract); whether after an event of material default or on other grounds in the financing documents.

The replacement shall be made in accordance with the stipulated procedure.

20. Please indicate the types of host government supports (including treasury guarantee, debt assumption etc.) available in your jurisdiction.

In Ukraine, there are various types of host government support available for project financing. Some of the commonly used types include:

- Treasury guarantees: The Ukrainian government may provide guarantees for debt raised by project companies, typically covering repayment of principal and interest.

- **Fiscal incentives:** The Ukrainian government may offer fiscal incentives in the form of tax breaks, exemptions or reductions for qualifying projects.
- **Paying to a private partner the payments provided for in the agreement concluded under the public-private partnership, in particular the fee for operational readiness;**
- **Infrastructure development support:** the Ukrainian government may provide infrastructure development support such as land grants, construction subsidies, supplying a private partner with goods (works, services) necessary for the public-private partnership implementation, acquiring by the state partner a certain amount of goods (works, services) produced (performed, provided) by the private partner pursuant to the agreement concluded under the PPP.

The availability of government support for project financing in Ukraine is subject to the relevant laws and regulations, and the terms and conditions of such support are typically negotiated on a case-by-case basis.

21. Are political risk events usually under the responsibility of the public party or the private party under the PPP agreements?

The allocation of political risk events between the public and private parties under PPP agreements in Ukraine may vary and depend on the terms of each specific contract. In general, political risk events are typically addressed in the PPP agreement, and the allocation of risks may be negotiated and agreed between the parties. The risks may be allocated to the party best able to manage and mitigate the

risk, or to the party that is better suited to bear the risk based on its expertise, access to financing, and risk appetite. In some cases, political risk events may be shared between the public and private parties, and in other cases, the risks may be covered by insurance or other risk management mechanisms.

Evidently, it is quite difficult to purchase new policies to cover military risks during active hostilities, even if the region (district of a separate oblast, for example) has not been the object of aggression. If a policy covering war risks had been purchased before February 24, 2022, or such coverage is incorporated into existing one, then it is necessary to analyze in detail the relevant provisions. Specialised political/war risk insurance policies in a similar fashion contain a list of insurance events and a number of exclusions. That is, not every loss, even caused by warfare, is guaranteed to be reimbursed. For example, the policy may cover only the direct material damage, and does not cover the seizure of the enterprise, or other deprivation of use of the insured property.

Several PVI instruments are available to projects located in Ukraine as at the beginning of 2024. IFC has launched USD 2 billion response package in financing and guarantees to support Ukrainian private sector. DFC, the U.S. development finance institution, has committed to provide debt financing and credit risk coverage for Ukrainian private projects. Aon, one of the world's largest insurance brokers, in collaboration with DFC, announced an unprecedented USD 350 million insurance program for war risks in Ukraine, aimed at securing foreign investments during the ongoing conflict⁶³. Since the start of the Russian invasion in February 2022, MIGA has actively provided insurance in Ukraine, issuing over USD 215 million in

63 <https://www.kmu.gov.ua/news/minekonomiky-dfc-rozshyryla-instrumenty-strakhuvannia-vid-voiennykh-ryzykiv-ta-oholosyla-pro-novi-uhody>

PRI guarantees⁶⁴. It was also reported that the UK was to contribute £20 million to a newly established support fund, created with the support of MIGA, to assist Ukraine in recovering from war-related damages, supporting the reconstruction of critical infrastructure, and enhancing economic stability⁶⁵. In addition, the EBRD, the EIB and other development banks and institutions have committed to provide financing and support for Ukraine.

22. Are investors and lenders usually protected against a change in law passing subsequent to the signing of the relevant concession agreement?

In Ukraine, investors and lenders may be protected through a stabilization clause.

The Government guarantees the stability of the conditions for investment activities, observance of the rights and legitimate interests of its entities. Terms of contracts concluded between investment entities remain in force for the entire duration of these contracts, and in cases where after their conclusion by law (except for tax, customs, and currency legislation, as well as legislation on licensing of certain economic activity types) conditions that worsen the position of the entities or limit their rights are set up, if these entities have not agreed to change the contract term. The Government guarantees the protection of investments, as well as foreign investments, regardless of ownership. Investment protection is provided by the legislation of Ukraine, as well as international treaties of Ukraine. Investors, including foreign ones, are provided with equal treatment that excludes the application of discriminatory measures that could hinder the investment management, use, and liquidation, as

well as the conditions and procedure for the export of invested valuables and investment results.

However, the availability of protection depends on the area of the investment. For example, the Government of Ukraine has taken various steps to ensure that the Ukrainian electricity market is attractive to foreign investors. The most important step is the stabilisation clause, which is an undertaking by the state to preserve the favourable legal framework for renewable energy and to refrain from introducing changes that would be disadvantageous to renewable energy producers, except where changes are required in the interests of defence, national security, tax regime, public order and environment protection.

However, the effectiveness of stabilization clauses in Ukraine has been the subject of some debate, as the Ukrainian government has been known to challenge such clauses in the past. As such, investors and lenders need to carefully negotiate and draft stabilization clauses to ensure that they are enforceable and provide the desired level of protection.

23. Is force majeure specifically regulated under the local legislation?

Yes, force majeure is specifically regulated under Ukrainian legislation. The Civil Code of Ukraine defines force majeure as extraordinary and unavoidable circumstances that cannot be foreseen or prevented by reasonable measures. Examples of force majeure events are natural disasters, military actions, strikes, epidemics, and other events beyond the control of the parties.

64 <https://www.miga.org/migas-ukraine-response>, <https://www.miga.org/press-release/miga-expands-insurance-support-ukraine>

65 <https://www.kmu.gov.ua/en/news/velykobrytaniia-pratsiuvatyme-razom-z-iebrri-nad-proektom-strakhuvannia-voiennykh-ryzykiv-v-ukraini>

Under Ukrainian law, force majeure events may excuse a party's non-performance of its contractual obligations, provided that such events render performance impossible. The affected party must notify the other party of the force majeure event as soon as possible, and must take reasonable steps to mitigate the impact of the event on its performance.

It should be noted that the occurrence of a force majeure event does not automatically terminate the contract, but may suspend its performance for the duration of the force majeure event. If the force majeure event continues for a prolonged period of time, the parties may be entitled to terminate the contract based on the provisions of the contract or on the grounds of material breach of contract.

It is an established rule of business customs and statutory law that a person is released from liability for breach of contract if he/she proves that a breach was caused due to accident or force majeure. Article 14-1 of Law of Ukraine 'On Chambers of Commerce and Industry of Ukraine' (dubbed by Regulation on certification of force majeure by the Chambers of Commerce and Industry of Ukraine) provides for the list of such circumstances: war or threat of war, armed conflict or serious threat of such conflict, hostile attacks, blockades (including the closure of ducts), a ban on exports or imports, military embargoes, mobilization, armed forces actions, riots (including elements of hybrid aggression), acts of terrorism, sabotage, piracy, invasion, curfew, requisition (seizure), fire, explosion, flood, illegal actions of third parties (illegal seizure of an enterprise), quarantine, etc.

The list of statutory force majeure grounds coincides in many respects with the situations invoked by martial law or during other special periods (see the table).

Lack of funds, short supply of services or commodities, exchange rate volatility is generally not considered force majeure. Therefore, the behavior of the markets should greatly impress the judges before they allow any exception to this rule. Theoretically, this may be an objective impossibility to make a payment as a result, if the bank does not work, in particular, due to the lack of electricity supply in the region, destruction of equipment, unauthorized interference with the operation of the bank's computer networks or the bank is closed in connection with the risk of physical seizure or destruction of branches - in case of blocking the relevant settlement by the enemy; legislative restriction of payments, in particular cross-border currency transfers - as currently introduced by the National Bank of Ukraine; bankruptcy of a systemically important bank or large clearing house member of an organized commodity market, such as electricity, fuel; The physical inability of a director or accountant to make a payment if they are under occupation or shelling without access to a client-bank system and unable to move to a safe place where there is an operating bank.

Certification of force majeure

The Ukrainian Chamber of Commerce and Industry ("**CCI**") and its regional divisions are authorized to issue a certificate of force majeure, which is sufficient evidence under the Ukrainian law. A breaching party must apply to the CCI for a certificate and, establish, to the contemplation of the CCI expert, the causal link between the force majeure and non-performance of the contract.

With the extreme situation caused by the initiation of the war, the CCI has published on its website a general official letter certifying force majeure of Russia's aggression against Ukraine – from February 24, 2022 until the end. Thus,

the procedure for the martial law period had been simplified: a business no longer needs to apply to the CCI with a bundle of documents to certify force majeure on each contract. The only thing one must do is to establish the respective causal link with the non-performance of the agreement.

Moreover, the contract may contain a provision, if force majeure lasts more than a certain period (for example, 90, or 180 days), the contract may be terminated at the initiative of one of the parties.

24. What are the general environmental and social requirements in project financings?

In project financings, environmental and social requirements are often included in project financing agreements, and they aim to ensure that the project is developed and operated in a manner that is consistent with sustainable development principles.

There are no environmental requirements in private project financings as such, however the restrictions or obligations might be applicable to the operating project (e.g., plant or factory) itself.

The environmental and social requirements are those mostly dictated by lenders.

However, for PPP obligatory projects assessments conducted when identifying and preparing a PPP:

- Socio-economic analysis
- Fiscal affordability assessment
- Risks assessment
- Comparative assessment of PPP v. non-PPP procurement
- Financial viability assessment
- Environmental impact assessment
- Social impact assessment
- Market sounding for private sector interest
- Market sounding for technological solutions

The procuring authority entity does not provide or facilitate obtaining of the environmental permits, such as emission permit, permit for felling green areas etc.

Instead, the procuring authority, as the investor in the construction (site owner), must procure an environmental impact assessment as a prerequisite to commence the construction works.

Article 4 (2) of the Law on Concession puts a burden of the environmental impact assessment (EIA) on a concessionaire (private partner) after the concession contract has been signed.

This norm conflicts with Article 2 (3) of the Law of Ukraine on Environmental Impact Assessment, which stipulates that state authorities, local self-government bodies (i.e., public partner) are the subjects of the EIA whenever such public partner is a customer of the planned activity. Their role under the concession contract can be designated as a customer (procuree of the public service).

F. Jurisdiction, Waiver of Immunity

25. Are submission to a foreign law and the waiver of immunity provisions enforceable?

As a matter of principle, Ukrainian law permits the parties to a contract to freely select the law which shall govern their agreement, provided that (i) such agreement is an “international contract”, and (ii) such selection is made in good faith, i.e., without the intention of avoiding application of any mandatory provisions of Ukrainian law which would have otherwise applied to such agreement.

The matter of immunity usually applies to the Ukrainian State and state entities; it is complex and is not expressly regulated by the laws of Ukraine. On the one hand, the legal system of Ukraine seems to accept

and consistently apply the principle *par in parem non habet imperium*, by virtue of which one state could not be subject to the jurisdiction of another. On the other hand, the Supreme Court of Ukraine has ruled that restrictive immunity applies in Ukraine by virtue of the international customary law. At that, the laws allow the State of Ukraine to participate in civil relations and foreign economic activity, as well as to choose foreign law as the governing law of the contracts and to submit disputes to international arbitration.

The state is liable for its obligations with its property, except for property which is unrecoverable as a matter of law. In other words, by virtue of law certain property owned by the state cannot be subject to foreclosure towards the obligations of the state, for example, water and other natural resources, continental shelf, exclusive maritime zone, property transferred into operating control and economic management of corporate entities, land, property withdrawn from civil circulation, or which is under a moratorium.

It is worth noting that the enforcement of submission to a foreign law and waiver of immunity provisions may be subject to the terms of any relevant bilateral or multilateral treaties to which Ukraine is a party.

26. Can financing documents provide for arbitration clauses?

Financing agreements in Ukraine are typically governed by Ukrainian law where the parties are Ukrainian. If the financing agreement involves a foreign party, it can be governed by the law chosen by the parties. In practice, foreign law will typically be chosen by the parties.

Ukrainian law will apply if it is chosen by the parties and where the rules of the Ukrainian private international law is so

direct (in the absence of the parties' choice). In that case, the parties' agreement to refer their disputes to arbitration is effective and enforceable in accordance with Article II of the New York Convention.

Where there is no foreign element present in a relationship, including where all of the parties are Ukrainian, the parties are not free to choose a foreign law. Mandatory rules of Ukrainian law will apply irrespective of the parties' choice of law.

G. Trends and Projections

27. What are the main current trends in project financings in your jurisdiction?

A full-scale Russia's invasion of Ukraine has badly impacted the economy and led to suspension of infrastructure and energy projects, not to mention that a severe damage has been caused to social, energy and transportation infrastructure of Ukraine.

However, even during the wartime, a number of social projects such as the construction of child hospitals or residential properties for displaced are being financed by international financial institutions.

The war and high political violence risk remain to be the biggest obstacle for the international investors and financial institutions to finance the projects in Ukraine, even if the projects are located in the Western part of Ukraine and remain untouched by the war. Therefore, most of the construction or renovation projects are structured through the participation of sovereign which either acts as direct borrower or issues the sovereign guarantee in order to cover the political violence risk for the financiers and investors. It is therefore anticipated that all projects during the war time will be driven or supported by the state until the war ends.

28. Are any significant development or change expected in the near future in the project finance market?

There is a growing interest of international donors, international financial institutions, development banks and equity funds in the future recovery and reconstruction in Ukraine after the war is over.

For instance, BlackRock FMA is providing advisory support for the Ministry of Economy to design an investment framework with a goal of creating opportunities for both public and private investors to participate in the future reconstruction and recovery of the Ukrainian economy. It is expected that Black Rock will manage an up to USD 25 billion investment fund for reconstructing the Ukrainian infrastructure destroyed or damaged during the war.

BlackRock and JPMorgan are establishing a USD 1.5 billion fund in Luxembourg to support Ukraine's restoration and reconstruction. The fund will focus on rebuilding critical infrastructure and aiding economic recovery efforts in the war-affected regions of Ukraine. The aim is to establish one of the largest public-private partnerships in history, comparable to Germany's KfW set up after World War II or the Climate Finance Partnership formed between BlackRock and various governments in 2021⁶⁶.

Given the foregoing, it is expected that a massive financing for the Ukrainian energy, housing, healthcare and infrastructure projects will be unleashed by international financial institutions and donors once the war is over.

29. What are the alternative reference interest rates which are being commonly used in your jurisdiction during the LIBOR transition period?

In order to depart from LIBOR and apply new benchmarks, the National Bank of Ukraine has advised that Ukrainian banks and non-banking financial institutions to refrain from concluding agreements and using financial instruments that reference LIBOR and switch instead to benchmarks that have been published on the official websites of central banks, including the Federal Reserve System, the European Central Bank, and international institutions⁶⁷.

66 <https://www.bloomberg.com/news/articles/2024-03-14/private-investors-to-power-a-15-billion-pot-to-rebuild-ukraine>

67 <https://bank.gov.ua/ua/news/all/vidhid-vid-vikoristannya-indikatoriv-libor-na-svitovih-finansovih-rinkah-vidbudetsya-pislya-31-grudnya-2021-roku>