

## THE ECONOMIC CODE OF UKRAINE

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Pursuant to the Constitution of Ukraine, Economic Code of Ukraine ( 254к/96-BP ) shall set forth legal foundations for economic activities (business) based on versatility of economic entities belonging to different property categories.

Economic code of Ukraine shall aim at ensuring growth of economic activity carried out by economic entities, entrepreneurship development, and, with this in view, at ensuring higher efficacy of social production, its socially-oriented nature in compliance with the Constitution of Ukraine ( 254к/96-BP ), establishing social economic order in the economic system of Ukraine, promotion of its harmonization with other economic systems.

### **Section I** **MAIN PRINCIPLES OF ECONOMIC ACTIVITY**

#### **Chapter 1** **GENERAL PROVISIONS**

##### **Article 1.** Regulated subject

1. This Code shall set forth the main principles of economic activity in Ukraine and regulate economic relations arising between economic entities, these entities and other participants of economic relations in the process of organization and carrying out of economic activities.

##### **Article 2.** Participants of economic relations

1. Participants of economic relations are economic entities, consumers, public bodies and local self-government bodies with economic authority, as well as citizens, social and other organizations who are either founders of economic entities or have organizational and economic authority in relation to these entities on the basis of property relations.

##### **Article 3.** Economic activity and economic relations

1. For the purpose of this Code, economic activity shall mean activity of economic entities in social production aimed at manufacturing and sale of goods, performing works or rendering services on commercial basis at certain price.

2. Economic activity carried out for achievement of economic and social results and for profit-making shall be regarded as entrepreneurship, entrepreneurship subjects - as entrepreneurs. Economic activity can be carried out without the goal of profit-making (nonprofit economic activity).

3. Activity of non-economic entities aimed at creation and maintenance of material and technical conditions of their functioning involving or not involving economic entities shall be regarded as economic support of non-economic entities. .

4. Economic relations shall include economic-manufacturing, organizational-economic and intra-business relations.

5. Economic-manufacturing relations shall mean property and other relations arising between economic entities in the process of carrying out economic activity.

6. For the purpose of this Code, organizational-economic relations shall mean relations arising between economic entities and entities with organizational-economic authority in the process of managing economic activities.

7. Intra-business relations shall mean relations between structural units of economic entity and relations between economic entity and its structural units.

#### **Article 4.** Distinction between economic and other type of relations

1. This code shall not apply to:

property and private non-property relations regulated by the Civil Code of Ukraine( 435-15 );

land, mine, forest and water relations, relations in the sphere of use and protection of flora and fauna, natural reserves and atmospheric air ;

labor relations;

financial relations arising in the process of budget drafting and control at all levels and involving economic entities;

administrative and other managerial relations involving economic entities when public or local self-government body have no economic authority and do not exercise organizational-economic authority in relation to economic entity.

2. This Code shall set forth specifics of regulation of property relations between economic entities.

3. Economic relations arising in commercial shipping and not regulated by Commercial Maritime Code of Ukraine ( 176/95-BP ) shall be regulated by this Code.

#### **Article 5.** Constitutional principles of law-and-order in economic sphere

1. Economic law-and-order in Ukraine shall be based on optimal combination of market self-regulation of economic relations between economic entities and state regulation of macroeconomic processes pursuant to constitutional provision on the state's responsibility to citizens for its

activity and provision defining Ukraine as sovereign and independent, democratic, social and rule-of-law state.

2. Constitutional principals of economic law-and-order in Ukraine shall be as follows: Ukrainian people's property right to land, mineral resources, atmospheric air, water and other natural resources within the territory of Ukraine, natural resources of its continental shelf, exclusive (marine) economic zone exercised on the behalf of the Ukrainian people by public and local self-government bodies pursuant to the Constitution of Ukraine ( 254к/96-BP ); right of each citizen to use natural resources property rights to which belong to the people pursuant to the law; state protection of the rights of all entities holding property and economic rights, socially-oriented economy, prevention of using property in a way inflicting harm on human beings and society; right of each citizen to own, use and dispose of one's property, results of one's intellectual and/or creative work; equality of all entities holding property rights before the law, inviolability of private property rights, prevention of illegal deprivation of property rights; economic diversity, right of each citizen to carry out legal entrepreneurial activities, setting forth legal principles and guarantees for entrepreneurship solely by the law, prohibition of monopoly status abuse at the market, illegal limitation of competition and unfair competition, setting forth competition rule and anti-monopoly regulation standards solely by the law; ensuring environmental safety and maintenance of environmental balance in the territory of Ukraine; ensuring decent, safe and healthy work conditions, protection of consumer rights; mutually beneficial cooperation with other states; acknowledgement and implementation of the rule-of-law principle in Ukraine.

3. Economic entities and other participants of the relations in economic sphere shall carry out their activities in accordance with the established legal-economic procedure and applicable law.

#### **Article 6.** General principles of business practice

1. General principles of business practice in Ukraine shall be as follows:

ensuring economic diversity and equal protection of all economic entities by the state;

freedom of entrepreneurship within the limits set forth by the law;

free flow of capital, goods and services in the territory of Ukraine;

restriction of state regulation of economic processes in order to ensure socially-oriented economy, fair competition in business, environmental protection of the population, protection of consumer rights and social and state safety;

protection of domestic producers;

prohibition of illegal interference of public and local self-government bodies as well as their officials with economic relations.

#### **Article 7.** Legal regulation of economic activity

1. Economic relations shall be regulated by the Constitution of Ukraine ( 254к/96-BP ), this Code, laws of Ukraine and legal acts of the President of Ukraine and Cabinet of Ministers of Ukraine, legal acts of other public and local self-government bodies, as well as by other legal acts.

**Chapter 3**  
**CONTROL OF MONOPOLISM AND PROTECTION**

**OF ECONOMIC ENTITIES AND CONSUMERS FROM**

**UNFAIR COMPETITION**

**Article 25.** Business competition

1. The state shall support competition as contestation between economic entities that, by virtue of their own achievements, shall ensure certain economic benefits offering consumers and economic entities prospect of choice of the necessary goods; separate economic entities shall not determine sales conditions for the goods at the market.

2. Public and local self-government bodies regulating economic relations shall not adopt acts or carry out activities according privileges to economic entities of certain property category, or making certain categories of economic entities unequal, or violating competition rules in any other way. Should this requirement be infringed, public bodies authorized to control and monitor observance of antimonopoly-competition law, and economic subjects can contest such acts in accordance with the established procedure.

3. Authorized public and local self-government bodies shall analyze market situation and competition level at the market and take measures for regulation of competition of economic entities provisioned by the law.

4. The state shall protect commercial secrets of economic entities pursuant to this Code and other law.

**Article 26.** Restriction of competition

1. Decisions or acts of public or local self-government bodies aimed at restricting competition or such that can result in such restrictions shall be justified if intended for:

rendering social aid to certain economic entity on provision that such aid is provided without discriminating other economic entities;

rendering aid from the state budget for covering damages incurred in connection with natural disaster or any other emergencies at the goods or services markets specified in the appropriate law;

rendering aid, including creation of beneficial economic conditions to certain regions in order to compensate for socioeconomic losses incurred in connection with environmental pollution;

state regulation related to implementation of projects of national importance.

2. Terms and procedure of competition restriction shall be set forth by the law pursuant to this Code.

**Article 27.** Control of Economic Monopolism

1. Monopolistic position is dominating position of the economic entity allowing for independent or collective (with other entities) restriction of competition at certain market of goods (works, services).

2. Monopolistic position is position of economic entity whose share at the market of certain goods exceeds such permissible by the law.

3. Monopolistic position can mean position of economic entities at the market of certain goods in case of presence of other conditions provisioned

by the law.

4. In case of social need or in order to eliminate negative impact on competition, public bodies shall take anti-monopoly measures against the existing monopolistic units pursuant to the law as well as demonopolization measures provisioned by the appropriate state programs, save for natural monopolies.

5. Public and local self-government bodies shall not adopt or carry out acts aimed at economic advancement of the existing monopolistic economic entities and creation, without reasonable grounds thereto, of the new monopolistic units, as well as make decisions about solely centralized distribution of goods.

#### **Article 28. Natural Monopolies**

1. State of the goods markets when satisfaction of the market demand is more effective if competition is absent due to technological specifics of production (in connection with marked reduction of production expenses per unit, but higher production volumes) and goods (services) produced by economic entities cannot be replaced by other goods, and in connection with this demand at this market is less dependent on price changes for such goods than demand for other goods (services) shall be regarded as natural monopoly.

2. Natural monopoly entities - economic entities of any property category (monopolistic units) manufacturing (selling) goods at the market regarded as natural monopoly.

3. Natural monopoly law shall outline the scope of activity for natural monopoly entities as well as appoint public and local self-government bodies, as well as other authorities to regulate the activities of the above entities, as well as outline other issues related to regulation of relations arising at Ukrainian markets of goods regarded as natural monopoly and at the related markets where natural monopoly entities are present.

#### **Article 29. Abuse of monopolistic position at the market**

1. Abuse of monopolistic position at the market shall be defined as follows:

imposition of such contractual terms and conditions that make counteragents unequal, or additional conditions unrelated to the subject of the agreement, including hard sell of goods the counter-agent does not need;

restriction or suspension of manufacturing and withdrawal of the goods from the market for creation or backing of deficit at the market or setting of monopolistic prices;

other acts aimed at hindering market access (withdrawal) of economic entities;

setting of monopolistic high or discriminatory prices (rates) for the goods resulting in infringement of consumer rights or restriction of certain customers' rights;

setting of monopolistic low prices (rates) for the goods resulting in restriction of competition.

#### **Article 30. Unconventional agreements between economic entities**

1. Unconventional agreements between economic subjects - agreements or concerted actions aimed at:

setting (maintenance) of monopolistic prices (rates), discounts, extra charges (surcharges), markups;

distribution of markets by territory, sales/purchase volume, assortment, customer type or other criteria for further monopolization;

elimination of sellers, buyers and other economic entities from the market or limiting them access to it.

**Article 31.** Discrimination of economic entities

1. For the purpose of this Code, discrimination of economic entities by public bodies shall mean:

prohibition to create new companies or other entities in any economic sphere and imposition of restrictions for certain economic activities, manufacturing of certain goods for competition restriction;

forcing economic entities to enter into agreements prioritizing sales to certain consumers or join economic organizations and other associations;

decisions about centralized distribution of goods resulting in monopoly at the market;

prohibition of sales of the goods manufactured in one region of Ukraine to the other one;

tax and other benefits to certain entrepreneurs making their position privileged in comparison with other economic entities, which results in monopolization of the market of certain goods;

restriction of economic entities' rights to purchase and sell goods;

introduction of bans or restrictions regarding certain economic entities or business groups.

2. Discrimination of economic entities shall be prohibited. The law can set forth exceptions for protection of national security, defense and national interests.

**Article 32.** Unfair competitions

1. Unfair competition - any competition activity that is not in line with trade rules and other fair business practices.

2. Unfair competition is wrongful use of business reputation of the economic entity, creating obstacles to economic entities in the process of competition and winning illegal advantages in competition, unauthorized collection, disclosure and use of commercial secrets, and other acts under Part 1 of this Article.

3. Unfair competition shall imply legal liability for the persons whose acts negatively impact the competition in the territory of Ukraine, irrespective where these acts have taken place.

**Article 33.** Wrongful use of business reputation of economic entity

1. Wrongful use of business reputation of economic entity shall mean unauthorized use of symbols, commercial materials, packages; wrongful use of other manufacturer's goods; copying of the exterior of other manufacturer's product; comparative advertisement.

2. Unauthorized use of the title, commercial name, trademark or other symbols as well as commercial materials belonging to another person that

might result in customers' mixing the goods with the goods produced by economic entity owning the priority right for the use of the above shall be regarded as unlawful practices.

3. Use of the citizen's personal name in the commercial title shall be lawful if distinctive element is added to the name and prevents mixing it with activities of other economic entity.

4. Wrongful use of other manufacturer's goods is introduction of the goods produced by another manufacturer under one's name by unauthorized changing or elimination of the manufacturer's labels.

5. Copy of the exterior is reconstruction of the exterior of the goods manufactured by another economic entity and introduction of such goods without specifying the copier's name, which can result in mixing with the activities of other economic entity. Copying of the exterior of the goods or its part shall be lawful if such goods are to be used as intended.

6. Part 5 of this Article shall not apply to the goods protected by copyright.

7. Comparative advertising - advertising containing comparisons with the goods (works, services) or activities of another economic entity save for the cases set forth by the law.

**Article 34.** Creating obstacles to economic entities in the process of competition

1. Obstacles in the process of competition shall be as follows: defamation of economic entity, hard sell of goods (works, services), forcing to boycott economic entity or discrimination of the seller (customer), or to terminate the agreement with a competitor, corruption of the supplier's employee or buyer (customer).

2. Defamation of economic entity is distribution, in any form, of untrue, inaccurate or incomplete information about any person or activity of economic entity that could damage business reputation of economic entity.

3. Hard-sell approach to sales, work performance and service rendering is sales of goods, performance of works or rendering services implying sales of other goods, performance of works and rendering of services not needed by the customer or counter-agent.

4. Forcing to boycott economic entity is the competitor's forcing other person, directly or indirectly, to refuse entering into agreement with this economic entity.

5. Forcing supplier to discrimination of the customer is direct or indirect forcing the supplier to provide the customer's competitor certain advantages without reasonable grounds thereto.

6. Forcing economic entity to terminate agreement with the competitor of other economic entity is forcing economic entity-party to the agreement, for one's own benefit or for the benefit of third persons, to non-performance or negligence under the agreement with this competitor by providing or offering to this economic entity-party to the agreement, directly or indirectly, material benefits, compensation or other advantages.

7. Corruption of the supplier's employee is providing or offering by the competitor of the buyer (customer), directly or indirectly, valuables, financial or non-financial benefits for non-performance or negligence of official duties arising from or connected with the agreement between the supplier and the buyer on supplying, work performance, services, which could bring the buyer's (customer's) competitor certain advantages over the buyer

(customer).

8. Any person authorized to make decisions on supplies, work performance or service rendering on the behalf of the supplier, or can influence such decision or has any relation to it shall be regarded as the supplier's employee.

9. Corruption of the buyer's (customer's) employee is the providing or offering by the supplier's competitor, directly or indirectly, valuables, financial or non-financial benefits for non-performance or negligence of official duties arising from or connected with the agreement between the supplier and the buyer on supplying, work performance, services, which could bring the supplier's competitor certain advantages over the supplier.

10. Any person authorized to make decisions on purchase of goods, work performance or service rendering on the behalf of the buyer (customer), or can influence such decision or has any relation to it shall be regarded as the buyer's (customer's) employee.

**Article 35.** Winning illegal advantages in the competition

1. Winning illegal advantages in the competition is winning certain advantages over another economic entity by infringement of the law confirmed by the decision of the appropriate public body.

**Article 36.** Unauthorized collection, disclosure and use of commercial secrets

1. Data related to manufacturing, technology, management, financial and other activities of economic entity not regarded as state secret disclosure of which can hurt the interests of economic entity can be regarded as commercial secret. Contents and volume of the data representing commercial secret, ways of their protection shall be decided by economic entity pursuant to the law.

2. Unauthorized collection of data representing commercial secret is such illegal obtaining such data that inflicted or might have inflicted damages on economic entity.

3. Disclosure of commercial secret is unauthorized conveying to the third person the data that, pursuant to the law, make commercial secret by the person entrusted with these data in accordance with the established procedure or who had access to them in connection with performance of the duties on provision that this has or might have inflicted damages on economic entity.

4. Forcing to disclosure of commercial secret is forcing the person entrusted with the data that, pursuant to the law, make commercial secret or who had access to them in connection with performance of the duties to disclose them on provision that this has or might have inflicted damages on economic entity.

5. Wrongful use of commercial secret is unauthorized implementation, inclusion in the plan or entrepreneurship on the basis of unlawfully collected data that, pursuant to the law, make commercial secret.

6. Unauthorized collection, disclosure or use of the data regarded as commercial secret is punishable by the law.

**Article 37.** Liability for unfair competition

1. Acts regarded as unfair competition shall be punishable pursuant to this Code, or Administrative, Civil, or Criminal code in cases provisioned by

the law.

**Article 38.** Rules of Professional Ethics in Competition

1. With assistance of interested organizations, economic entities can develop professional ethics for competition in respective spheres of economy, as well as for some branches of economy. The rules of professional ethics in competition shall be approved by the Antimonopoly Committee of Ukraine.

2. Rules of professional ethics in competition can be used for drafting agreements, statutory and other documents of economic entities.

**Article 39.** Protection of Consumer Rights

1. The rights of the consumers staying in the territory of Ukraine at the time of purchase, order or use of the goods (works, services) for satisfaction of their needs shall be as follows:

state protection of the rights;

guaranteed consumption level;

appropriate quality of goods (works, services);

safety of goods (works, services);

necessary, accessible and true information about the number, quality and assortment of goods (works, services);

compensation of damages caused by the goods (works, services) of inappropriate quality as well as damages caused by health- and life-threatening goods (works, services) in cases provisioned by the law;

possibility to apply to the court or other authorized public bodies for protection of the violated rights or legitimate interests.

For protection of their rights and legitimate interests, citizens can voluntarily unite into consumer social organizations (consumer associations).

2. The State shall guarantee its citizens protection of their consumer interests, provide the opportunity of free choice of goods (works, services), acquisition of knowledge and qualifications necessary for independent decisions in the time of purchase and use of the goods (works, services) in accordance with their needs and it shall guarantee purchase or obtaining of goods (works, services) in any other legal way and in the amount ensuring consumption level sufficient for health and life maintenance.

3. Consumer rights, mechanism for protection of these rights, and relations between the consumers of goods (works, services) and manufacturers (executors, salespeople) shall be regulated by the Law on Protection of Consumer Rights and other related laws.

4. Should international treaty in force and ratified by Verkhovna Rada of Ukraine set forth the principles that differ from those set forth by the Ukrainian law on protection of consumer rights, principles of international treaty shall prevail.

**Article 40.** State Control of Observance of Antimonopoly-Competition Law

1. State control of observance of antimonopoly-competition law, protection of entrepreneurs and consumers from its violation shall be performed by the Antimonopoly Committee of Ukraine within the scope of its authority set forth by the law.

2. In order to prevent the monopoly of some economic entities at the market, creation, reorganization and liquidation of economic entities, acquisition of their assets, shares (securities, interests) of companies, as well as creation of associations of enterprises or transformation of public bodies into the above-mentioned associations in cases provisioned by the law shall require consent of the Antimonopoly Committee of Ukraine. Grounds for consent to concentration of economic entities shall be set forth by the law.

3. Should economic entities abuse monopolistic status at the market, Antimonopoly Committee of Ukraine shall be entitled to the right to make the decision about forced division of monopolistic structures. In this case, performance time shall not be less than 6 months.

4. Forced division shall not be performed in case of:

impossibility of organizational or territorial separation of enterprises or structural divisions;

close technical ties between enterprises or structural divisions on provision that internal turnover share in the total gross value of the company's (association's etc.) output amounts to less than thirty percent.

5. Reorganization of monopolistic unit subjected to forced division shall be performed at the discretion of the economic entity on provision of elimination of this unit's monopoly at the market.

6. Antimonopoly Committee of Ukraine and its territorial departments shall review, in accordance with the established procedure, unfair competition cases and other cases related to infringement of antimonopoly-competition law prescribed by the law.

7. Decisions of the Antimonopoly Committee of Ukraine and its territorial departments can be appealed in the court. Losses caused by illegal decisions of the Antimonopoly Committee of Ukraine or its territorial departments shall be compensated from the State Budget of Ukraine on the request of the interested persons in accordance with the established procedure.

#### **Article 41. Antimonopoly-Competition Law**

1. The law regulating relations arising in connection with unfair competition, restriction and prevention of monopolism in economic activity shall be made of this Code, the Law on Antimonopoly Committee of Ukraine ( 3659-12 ), and other regulations.

2. Provisions of this Chapter of the Code shall not apply to relations engaging economic entities and other participants of economic relations on provision that the result of their activity can be seen only outside Ukraine unless otherwise set forth by the enforced international agreement ratified by Verkhovna Rada of Ukraine.

3. The Law can outline specific features in regulation of relations connected with unfair competition and monopoly at the financial and stock exchanges.

### **Chapter 5**

#### **NON-COMMERCIAL ECONOMIC ACTIVITY**

#### **Article 52. Non-commercial economy**

1. Non-commercial economy - independent systemic economic activity carried out by economic entities that is aimed at reaching economic, social and other goals without profit-gaining.

2. By the decision of the appropriate public or local self-government body, non-commercial economic activity is to be carried out by state or communal economic entities operating in the branches (carrying out activities) where, pursuant to Article 12 of this Code, entrepreneurship is prohibited .

3. Public and local self-government bodies as well as their officials shall not carry out non-commercial activities.

**Article 53.** Organizational forms of carrying-out non-commercial activity

1. Non-commercial economic activity can be carried out by economic entities on the basis of property right or operative administration right in organization forms decided by the owner or appropriate state or local self-government body with regard to requirements set forth by this Code and other laws.

2. Procedure of creation, state registration, operation, reorganization and liquidation of economic entities carrying out non-commercial economic activity in certain form shall be set forth by this Code and other laws.

3. Should economic activity of citizens or legal person registered as non-commercial economic entity demonstrate the signs of entrepreneurial activity, the provisions of this Code and other laws regulating entrepreneurial activity shall apply.

**Article 54.** Regulation of non-commercial activity

1. Economic entities carrying out non-commercial economic activity shall be regulated by general provisions regulating economic activity with regard to specific features of operation by different economic entities set forth by this Code and other laws.

2. Concluding labor agreement (contract), economic entity carrying out non-commercial economic activity shall ensure decent and safe labor conditions, salary that is not lower than the minimum set forth by the law, as well as other social guarantees provisioned by the law.

**Chapter 7**  
**ENTERPRISE**

**Article 62.** Enterprise as organizational form of carrying out economic activity

1. Enterprise - independent economic entity created by the competent public or local self-government body, or other entities for satisfaction of social or personal needs by systematic carrying out of production, research and development, trade, or other activity pursuant to this Code and other laws.

2. Enterprises can be created both for entrepreneurial purposes and non-commercial economic activity.

3. Unless otherwise is provisioned by the law, enterprise shall operate on the basis of the Charter.

4. Enterprise is a legal person with its own property, balance, bank accounts, seal with its name and identification code.

5. Enterprise shall not include any other legal persons.

**Article 63.** Enterprise types and organizational forms

1. Depending on property category approved by the law, the following enterprise types can operate in Ukraine:

private enterprise operating on the basis of private property of citizens or economic entity (legal person);

enterprise operating on the basis of collective property (collective property enterprise);

communal enterprise operating on the basis of communal property of the territorial community;

state enterprise operating on the basis of the state property;

enterprise operating on the basis of mixed property (combining property of different property categories).

Other types of enterprises approved by the law also can operate in Ukraine.

2. Should foreign investment share in the charter fund amount to no less than 10 percent, such enterprise shall be regarded as enterprise with foreign investments. Enterprise with 100 percent foreign share in the charter fund shall be regarded as foreign enterprise.

3. Depending on foundation (creation) and charter fund formation mode, Ukrainian enterprises can be unitary and corporate.

4. Unitary enterprise is created by one founder who provides necessary property, forms charter fund undivided into shares (interests) pursuant to the law, adopts charter, distributes profits, directly or through the head appointed by the founder, manages enterprise and hires employees on the contractual basis, makes solutions regarding reorganization and liquidation. Unitary enterprises are state enterprises, communal enterprises founded on the basis of the property of citizens' association, religious organization, or private property of the founder.

5. Corporate enterprise is, as a rule, founded by two or more founders by their joint decision (agreement), operates on the basis of conglomeration of property and/or entrepreneurial or labor activity of the founders (participants), their joint management, on the basis of corporate law, including through the bodies founded by them, participation of founders (participants) in distribution of profits and risks. Corporate enterprises are mutual enterprises, enterprises founded as business company, and other enterprises, including those founded on the basis of private property of two or more persons.

6. Specific features of legal status of unitary and corporate enterprises shall be set forth by this Code and other regulations.

7. Depending on the number of employees and gross income from annual sales, enterprises can be regarded as small, middle or large businesses.

Small businesses (irrespective of property category) - enterprises where average number of employees per accounting (fiscal) year does not exceed fifty, while gross income from sales of goods (works, services) for this period does not exceed fifty thousand euro at the annual average rate of the

National Bank of Ukraine.

Large businesses are enterprises where the average number of employees per accounting (fiscal) year exceeds one thousand persons, while annual gross income from sales of goods (works, services) exceeds the amount equivalent to five million euro at the annual average rate of the National Bank of Ukraine.

All other enterprises shall be regarded as middle businesses.

8. Should there be dependence on other enterprise pursuant to Article 126 of this Code, the company shall be regarded as daughter enterprise.

9. Special requirements for enterprises with certain organizational form shall be set forth by the laws.

**Article 64.** Organizational structure of enterprise

1. Enterprise can be made of production structural units (plants, shops, departments, sections, brigades, bureaus, laboratories etc.) and also functional structural division of managerial bodies (administrations, departments, bureaus, services etc.).

2. Functions, rights and obligations of structural divisions of enterprise shall be set forth by the appropriate provisions adopted in accordance with the procedure set forth by the enterprise charter or other statutory document.

3. Enterprise shall be independent in determining its organizational structure, number of employees and making staff list.

4. Enterprise shall be entitled to the right to create branches, representative offices, departments and other detached divisions location of which is to be approved by the appropriate local self-government bodies in the manner prescribed by the law. Such detached divisions shall not have legal person status and shall operate on the basis of the provision about them adopted by the enterprise. Enterprises can open accounts in bank institutions through their detached divisions in the manner prescribed by the law.

*( Part 4 of Article 64 amended pursuant to the Law N 2424-IV ( 2424-15 ) dated 04.02.2005 )*

5. Activity of Ukraine-based detached divisions of enterprises located outside Ukraine shall be regulated by this Code and other laws.

**Article 65.** Enterprise management

1. Enterprise management shall be carried out pursuant to enterprise statutory documents on the basis of combination of the owner's right of practical use of property and participation in staff management.

2. The owner shall exercise his/her enterprise management right directly or through duly authorized bodies pursuant to enterprise charter or other statutory documents.

3. For enterprise economic activity management, the owner (owners) or duly authorized bodies shall appoint (choose) enterprise head.

4. Should enterprise head be hired, agreement (contract) shall be made setting forth work period, rights, obligations and responsibility, financial terms, release grounds and other conditions agreed by the parties.

5. Enterprise head shall act on the behalf of enterprise without the power of attorney, represent its interests in public and local self-government bodies, other organizations, in relations with legal persons and

citizens, appoint administration and make decisions on the issues related to enterprise operations within the limits and in the manner prescribed by the law.

6. Enterprise head can be released prematurely on the grounds specified in the agreement (contract) pursuant to the law.

7. At all enterprises using hired labor, the owner or duly authorized body and staff or its duly authorized body shall make labor contract regulating production, labor and social relations of the staff with enterprise management. Content requirements and execution procedure shall be set forth by the law on labor contracts ( 3356-12 ).

8. Enterprise staff shall include all the citizens participating in enterprise operations on the basis of labor agreement (contract) or other forms regulating labor relations of the employees and enterprise. Authority of the staff as for their participation in enterprise management shall be set forth by the charter or other statutory documents pursuant to this Code, law on certain types of enterprises, and staff law.

9. Socioeconomic decisions related to enterprise operations shall be made by its management through the involvement of the staff and its authorized bodies.

10. Specifics of managing certain types of enterprises (organizational forms) shall be set forth by this Code and the laws on such enterprises.

#### **Article 66. Enterprise property**

1. Enterprise property shall be made of production and non-production funds and other valuables value of which is registered in the separate balance sheet.

2. Enterprise property sources shall be as follows:

financial and material contributions of founders;

income from sales of goods, services and other economic activity ;

income from securities;

loans from bank and other lenders;

capital investment and budget allotments;

property acquired from other economic entities, organizations and citizens pursuant to the law;

other legal sources.

3. Integral property complex of the enterprise shall be measured by the property and can make the object of sales or other agreement on conditions and in the manner prescribed by this Code and the laws based on this Code.

4. Enterprise property rights shall be exercised in the manner prescribed by this Code and other laws of Ukraine.

5. Enterprise shall own and dispose of natural resources in the manner prescribed by the law and on commercial basis, save for cases when incentives are provisioned by the law.

6. Enterprise shall issue, sell and purchase securities in the manner prescribed by the law of Ukraine.

7. The State shall guarantee protection of enterprises' property rights. Confiscation of enterprise's property by the state shall take place only in cases provisioned by the law and shall be carried out in the manner prescribed by the law.

**Article 67.** Economic relations of enterprise with other enterprises, organizations and citizens

1. Enterprise's relations with other enterprises, organizations and citizens in all spheres of economy shall be regulated by agreements.

2. Enterprises shall freely choose the subject of the agreement, determining obligations and other terms of economic relations that are in line with applicable law of Ukraine.

3. Enterprise shall have the right to sell all the goods in the territory of Ukraine and abroad on its own, unless otherwise is provisioned by the law.

*{ Part 3 of Article 67 amended pursuant to the Law N 3205-IV ( 3205-15 )  
dated 15.12.2005 }*

**Article 68.** Foreign economic activity of enterprise

1. Enterprise shall independently carry out foreign economic activity making a part of foreign economic activity of Ukraine, thus it is regulated by the laws of Ukraine and other regulations made on the basis of these laws.

2. Procedure for the use of enterprise funds in foreign currency shall be set forth by this Code and other laws.

3. Enterprise carrying out foreign economic activity may open its representative offices, branches and production divisions outside Ukraine. These units shall be financed from the funds of this enterprise.

**Article 69.** Social activity of enterprise

1. Decisions on the issues related to improving labor conditions, life standards and healthcare, guarantee of medical insurance for the employees and their family members and other social issues shall be made by the staff together with the owner or his/her authorized body pursuant to the law, statutory documents and labor contract.

2. Enterprise shall provide training for qualified professionals and specialists, as well as economic and professional education both in its own and other educational institutions on the basis of the appropriate agreements. Enterprise shall ensure benefits provisioned by the law to its employees in in-service training.

3. Pensioners and disabled who were employed at the enterprise prior to retirement, shall have the same access to healthcare, residential opportunities, vouchers to healthcare and preventive centers and to other social services and benefits provisioned by the enterprise charter as all other employees.

4. Enterprise owner and management bodies shall ensure decent and safe working conditions for all the employees. Enterprise shall be liable for damage to health and workability of its employees pursuant to the law.

5. Enterprise shall ensure favorable conditions for women and minors scheduling their work in the daytime; women who have small children and pregnant women should have easier work and safe working conditions and be entitled to other benefits provisioned by the law. Enterprises with harmful conditions shall create separate shops and sections for providing easier work

for women, minors and certain categories of employees.

6. Enterprise shall be independent in providing additional vacation, shortened working day and other benefits and shall have the right to reinforce employees of other enterprises, institutions and organizations providing services for it.

7. Enterprise shall have the right to provide supplementary pension, irrespective of the amount of the state pension, to the employee whose disability resulted from accident at work or professional disease. In case of employee's death on duty, enterprise owner, voluntarily or by court decision, shall provide assistance to this employee's family pursuant to the law.

8. Enterprise with the right to hire workforce shall allot certain number of workplaces for minors, physically disadvantaged people and other categories of citizens in need of social security pursuant to the law. Non-compliance with this requirement shall be punishable by the law.

#### **Article 70. Integration of enterprises**

1. Enterprises shall have the right to integrate their economic activity (manufacturing, commercial etc.) on their free will on conditions and in the manner prescribed by this Code and other laws.

2. Associations of enterprises on conditions and in the manner prescribed by this Code and other laws shall be created on approval of the Cabinet of Ministers of Ukraine or bodies authorized to manage state or communal enterprises.

3. Types of associations, their status and the main requirements as for their economic activity shall be set forth by this Code, while other issues related to their activity shall be regulated by the law of Ukraine.

#### **Article 71. Accounting and reporting of enterprise**

1. Accounting and reporting of enterprise shall be carried out pursuant to Article 19 of this Code and other regulations.

2. Data, the disclosure of which is not regulated by the law, shall be provided to state and local self-government bodies, other enterprises, institutions, organizations on contractual basis or in the manner prescribed by the enterprise statutory documents.

#### **Article 72. Enterprise law**

1. Ukrainian enterprises operate pursuant to Articles 62-71 of this Code, unless otherwise provided by this Code and other laws based on this Code.

2. Should international treaty Ukraine is party to and ratified by Verkhovna Rada of Ukraine set forth the rules that different from those set forth by the national enterprise law, rules set forth by international treaty shall prevail.

### **Chapter 10 COLLECTIVE ENTERPRISES**

#### **Article 93. Term "collective enterprise"**

1. Collective enterprise is corporate or unitary enterprise operating on the basis of collective property of the founder (founders).

2. Collective enterprises are producers' cooperatives, consumer cooperative societies, enterprises of social and religious organizations, other enterprises pursuant to the law.

**Article 94.** Economic activity of cooperatives

1. Cooperatives - voluntary associations of citizens intended for joint economic and social solutions can be created in different sectors of (manufacturing, consumer, residential etc.). Activity of different cooperatives shall be regulated by the law.

2. Economic activity of cooperatives shall be carried out pursuant to this Code and other laws.

Citizens can create producers' cooperatives (cooperative enterprises) for carrying out economic activity on entrepreneurial basis.

**Article 95.** Producers' cooperative

1. Producers' cooperative - voluntary association of citizens on the basis of membership for joint manufacturing or other economic activity on condition of their personal participation and conglomeration of property share contributions (fixed contributions), participation in enterprise management and distribution of profit between cooperative members respective to their participation in operations.

2. Producers' cooperatives can carry out processing, storage-sales, supply, or service or any other legal entrepreneurial activity.

3. Producers' cooperative shall be legal person and shall act on the basis of the charter.

4. The name of producers' cooperative shall contain the words "producers' cooperative" or "cooperative enterprise".

**Article 96.** Principles of activity of producers' cooperative

1. Producers' cooperatives shall be created and shall follow the principles below:

voluntary membership and withdrawal;

personal participation of cooperative member in enterprise operations;

openness and availability of membership for those accepting the cooperative charter, wishing to participate in its operations on conditions set forth by the charter;

democratic nature of management, equal rights of all members in decision-making;

distribution of profit between the members respective to their labor and fixed contribution in cooperative activities;

member control of work in the manner prescribed by the law.

**Article 97.** General conditions of producers' cooperative creation

1. Producers' cooperative can be founded by Ukrainian citizens, foreign citizens and stateless persons. Number of members of producers' cooperative shall be no less than three.

2. Decision about creation of producers' cooperative shall be made at the foundation meeting.

3. Producers' cooperative shall be regarded as founded and gain the status of legal person on the date of its state registration pursuant to this Code.

**Article 98.** Membership in producers' cooperative

1. Any citizen aged 16 and over who accepts the charter of cooperative and observes it, contributes property and labor can be a member of producers' cooperative.

2. Citizens can hold membership in producers' cooperative and other cooperatives at the same time.

3. Citizen can join cooperative by submitting written application. Cooperative member shall pay admission fee and make property contribution in the manner prescribed by the charter. Decision of the board (head) of cooperative on admission of the new member is to be approved by the general meeting. Procedure of decision-making and approval shall be set forth by the charter.

4. Membership in producers' cooperative shall be terminated in the following cases:

voluntary withdrawal;

suspension of labor participation in cooperative's activities;

exclusion from cooperative in cases and in the manner prescribed by the charter;

non-approval of the decision of the board (head) of cooperative by the general meeting of the members;

death of the member.

5. Procedure and property-related consequences of membership termination shall be set forth by this Code and cooperative charter.

6. Exclusion from the producers' cooperative (release of cooperative member from cooperative enterprise) can be appealed in the court.

**Article 99.** Rights and duties of the members of producers' cooperative

1. The main rights of the members of producers' cooperative shall be as follows:

participation in management, right to vote at the general meeting of cooperative members, right to elect and to be elected to management bodies;

access to services provided by cooperative;

receipt of cooperative payments and share of income based on the fixed contribution;

access to true and full information about financial and economic activity of the cooperative;

return of fixed contribution in case of withdrawal from cooperative in term and in the manner prescribed by the charter.

2. The main duties of the members of producers' cooperative shall be observance of the charter and execution of decisions of the management bodies.

3. Charter of producers' cooperative can prescribe other rights and duties of cooperative members.

**Article 100.** Property of producers' cooperative

1. Property of producers' cooperative shall make collective property of the cooperative. Producers' cooperative can own buildings, structures, property contributions of its members, goods manufactured by it, income from sales of these goods and other activity provisioned by the charter, as well as other legally purchased property.

2. Cooperative members can contribute the right to use land plot belonging to them in the manner prescribed by the land law. Cooperative might have to pay for the land plot contributed for its use, and the amount of such fee is to be set forth by the general meeting of members.

3. Cooperative shall create the funds for economic and other activities on the basis of its own property.

4. Based on the charter, property of the producers' cooperative shall be divided into share and indivisible fund. Indivisible fund shall be made from admission contributions and cooperative property (save for the land). Fixed contributions of the members shall not be included. Procedure of creation and size of the indivisible fund shall be set forth by the charter.

5. Size of fixed contributions shall be equal and/or proportional to the expected participation of the member in economic activity.

6. Financial resources of producers' cooperative shall be made of income from sales of goods (works, services), fixed and other contributions of its members, loans and other legal receipts.

**Article 101.** Management of producers' cooperative

1. Management of producers' cooperative shall be carried out on the basis of self-government, glasnost, member participation in making decisions on the issues related to cooperative's activity.

2. The highest managerial body of producers' cooperative shall be general meeting of its members. Another managerial bodies include the board (head) and audit commission (auditor).

3. Charter of producers' cooperative can provision supervisory council. Members of audit commission (auditor) shall not be board members (head of the board) or members of observation council.

**Article 102.** General meeting of the members of producers' cooperative

1. General meeting shall:

amend charter of cooperative;

elect head of cooperative by secret ballot, board members, audit commission members (auditor), observation council members;

approve development trends;

hear performance reports of managerial bodies;

determine types and sizes of funds, procedure of their creation and disposal;

adopt by-law, annual report and balance, procedure of income formation and distribution, decisions of the board (head) on acceptance of the new members;

decide on joining associations of enterprises (cooperatives), participation in foundation of other economic entities;

make decisions on reorganization and liquidation of cooperative.

2. General meeting shall be entitled to the right to make any other decisions related to activities specified in the charter of cooperative.

3. General meeting of cooperative members shall be held annually after the end of fiscal year. It can be called anytime by the decision of the board (head) or upon the request of no less than one third of the members unless otherwise specified in the charter.

4. General meeting shall have authority to make decisions on provision of presence of more than a half of producers' cooperative members. Decisions on the issues specified in Part 1 of this Article shall be made by the majority vote.

**Article 103.** Board of producers' cooperative

1. Board of producers' cooperative shall be created in the cooperative consisting of no less than 10 members.

2. Board of cooperative shall:

elaborate development trends and presents them for adoption of the general meeting;

call general meeting of members and control implementation of its decisions;

present for adoption of the general meeting decision on acceptance of the new members and membership termination;

ensures preservation of cooperative's property;

organize independent audit of cooperative's activity;

decide on member training, cooperation with national and international organizations;

delegate the executive director the right to make respective decisions on board competence if provisioned by the charter;

make decisions on other issues.

3. The board shall be headed by the head elected by the general meeting. Functions of the head and procedure of his/her release shall be set forth by the charter.

4. Board members can elect, from themselves, deputy head and secretary of the board pursuant to the charter.

5. Board members shall work mainly on non-commercial basis, but the charter can provision remuneration for this work.

6. Periodicity of board meetings shall be set forth by the charter. Decisions shall be made by the majority vote on provision that no less than two-thirds of board members are present at the meeting.

7. Should producers' cooperative consist of less than 10 members, functions and authority of the board shall be exercised by the general meeting and the head of cooperative pursuant to the charter.

**Article 104.** Executive director of producers' cooperative

1. Board of producers' cooperative may hire executive director for operational management of the enterprise activities. Executive director shall not be a member of cooperative.

2. Executive director shall work under contract with the board and shall fulfill functions pursuant to the charter.

3. Executive director shall be liable for his activity to cooperative.

4. Should the position of executive director be absent, activity of cooperative shall be managed by its head.

**Article 105.** Observation council of producers' cooperative

1. Should the number of cooperative members exceed fifty, it is possible to create observation council to control the performance of the executive director.

2. Observation council members shall be elected by the general meeting from all the members, the number of members being 3-5. Member of observation council cannot be the board or audit commission member at the same time.

3. Procedure of election of observation council members, its head as well as its operations procedure shall be set forth by the charter.

**Article 106.** Audit commission (auditor) of producers' cooperative

1. Audit commission and auditor (in cooperative consisting of less than ten members) are elected for control of financial and economic activity of producers' cooperative.

2. Audit commission (audit) shall be elected by the general meeting from all the members pursuant to the charter. Board or observation council members shall not be elected to audit commission.

3. Audit commission (audit) shall be accountable to the general meeting of the members.

**Article 107.** Economic activity of producers' cooperative

1. Pursuant to its charter, producers' cooperative shall independently determine the main trends of economic activity, plan and organize it.

2. Producers' cooperative shall sell its goods or render services at the prices and rates set forth independently or on agreement, and, in cases provisioned by the law, - at prices and rates set forth by the state.

3. Relations of producers' cooperative with other enterprises, institutions, organizations and citizens in all sectors of economy shall be established by agreement.

4. Income of producers' cooperative shall be made from the receipts from economic activity after coverage of material and alike expenses and expenses for salaries for hired workforce. Income shall be spent on taxes and other

compulsory payments, repayment of loans, coverage of losses, deductions to cooperative funds, cooperative payments, payment of income on shares etc.

5. Cooperative payments - part of income of producers' cooperative distributed between its members with regard to labor and other contribution to cooperative's activity. Calculation and payment of income on shares shall be made on the basis of fiscal year results from the remaining income with regard to fund deductions. By decision of the general meeting of the members, payment of income on shares can be performed in cash, in the form of goods, in securities etc.

6. Procedure of disposal of income shall be set forth by the charter pursuant to the law.

7. Producers' cooperative shall carry out independent foreign economic activity in compliance with the law. Procedure of disposal of cooperative funds in foreign currency shall be set forth by the law and charter.

8. In case of membership termination or transmission of the rights to shares, property relations of cooperative member with the cooperative shall be regulated by civil law.

**Article 108.** Property liability of producers' cooperative

1. For its obligations, producers' cooperative shall be liable with all its property. Members of producers' cooperative shall bear cooperative subsidiary (supplementary) liability for cooperative obligations with their property in the amount that is no less than their fixed contribution unless higher amount is provisioned by the law or charter. Producers' cooperative shall not be liable for its members' obligations.

2. Producers' cooperative can insure its property and property rights by the decision of the general meeting of the members unless otherwise provisioned by the law.

**Article 109.** Termination of activity of producers' cooperative

1. By the decision of the general meeting of its members, producers' cooperative may be reorganized in enterprises of different property category in the manner prescribed by the charter pursuant to this Code.

2. Producers' cooperative shall be liquidated in accordance with the general procedure of economic entity liquidation provisioned by this Code with regard to the following:

liquidation of producers' cooperative shall be carried out by liquidation commission appointed by the general meeting; in case of liquidation by court decision - by liquidation commission formed pursuant to this decision;

disposal of land of producers' cooperative liquidated shall be carried out in the manner and on conditions provisioned by the land law. Cooperative property left after settlements with the budget and lenders shall be distributed between its members proportionally with their shares.

**Article 110.** Other issues related to the activity of producers' cooperative

1. Other issues related to the activity of producers' cooperative shall be regulated by this Code and other laws.

**Article 111.** Consumer cooperation. Consumer cooperative societies

1. Consumer cooperation in Ukraine - system of self-governed organizations of citizens (consumer societies, their alliances, associations) as well as enterprises and institutions of these organizations making independent organizational form of cooperative movement.

2. Primary unit of consumer cooperation is consumer society - self-governed organization of citizens who unite for joint economic activity aimed at collectively organized satisfaction of their economic and social interests on the basis of free will, property and mutual assistance. Each member of consumer society has his/her own share in its property.

3. Consumer society shall be regarded as legal person acting on the basis of the charter.

4. Consumer societies can voluntarily unite into associations and other legally founded organizations, consolidated unite of consumer societies of Ukraine and shall have the right to free withdrawal from them.

5. Property of consumer cooperation shall be made from the property of consumer societies, alliances (associations) and their joint property making one of the forms of collective property. Owning, use and disposal of property of consumer cooperation shall be carried out by its bodies pursuant to statutory documents of societies, alliances (associations).

Consumer cooperation property right objects can be jointly owned by consumer societies, alliances (associations). Their property share shall be set forth by the agreement.

6. Legal principles of organization and activity of consumer cooperation shall be set forth by the law.

7. For achieving the goals specified in the charter, consumer societies, their alliances (associations) can create enterprises, institutions and other economic entities pursuant to this Code and other laws.

8. Consumer cooperative societies - unitary or corporate enterprises founded by consumer society (societies) or alliance (association) of consumer societies pursuant to this Code and other laws for achieving goals specified in the charters of these societies, alliances (associations).

**Article 112.** Enterprises of citizens' associations and religious organizations

1. Enterprise of citizens' associations and religious organizations - unitary enterprise founded on the basis of property of the citizens' association (social organization, political party) or property of religious organization for carrying out economic activity aimed at achieving statutory goals.

2. Property right of citizens' associations shall be exercised by their highest statutory bodies in the manner prescribed by the law and statutory documents. Property rights of religious organizations shall be exercised by their managerial bodies in compliance with the law.

3. Founder of enterprise of citizens' association - respective citizens' association with the status of legal person and also association (alliance) of social organizations provided the right to found enterprises is provisioned by its charter. Political parties and legal persons created by them, shall not found enterprises save for mass media, enterprises selling social and political literature and other promotional and propaganda goods with their own symbols, organizing exhibitions, lectures, festivals and other sociopolitical events.

4. Religious organizations shall have the right to found publishing, printing, manufacturing, renovation-construction, agricultural and other enterprises necessary for support of activity of these organizations.

5. Enterprise of citizens' associations or religious organizations shall act on the basis of the charter and shall be regarded as legal person carrying out its activity on the basis of the right of operational management or economic management pursuant to this Code.

6. Restriction as for foundations and activities of certain types of enterprises of citizens' associations or religious organizations shall be set forth by the law.

### **Section III**

#### **PROPERTY BASIS OF ECONOMIC ACTIVITY**

#### **Chapter 14**

##### **PROPERTY OF ECONOMIC ENTITIES**

**Article 133.** Legal status of property of economic entities

1. Basis of legal status of property of economic entities on which their economic activity is based shall be property right and other material rights - right of economic management and right of operational management.

Economic activity can be carried out on the basis of other material rights (right to own property, right of property disposal etc.) provisioned by the Civil Code of Ukraine ( 435-15 ).

( Part 1 of Article 133 amended pursuant to the Law N 2424-IV ( 2424-15 ) dated 04.02.2005 )

2. Property of economic entities can be regulated on the basis of another right pursuant to terms and conditions of the agreement with property owner.

( Part 3 of Article 133 was excluded pursuant to the Law N 2424-IV ( 2424-15 ) dated 04.02.2005 )

4. The state shall ensure equal protection of property rights of all economic entities.

**Article 134.** Property right - the main material right in economic sphere

1. Economic entity carrying out economic activity on the basis of property right shall, at its own disposal, unilaterally or jointly with other entities, own, use and dispose of the property belonging to it (them), including the right to transfer property to other persons for disposal on the basis of property right, economic or operational management right, or other forms of legal status of the property provisioned by this Code.

2. Property used for economic activity can be jointly owned by two or more owners.

3. Legal status of property and legal forms of exercising property right in economic sector shall be set forth by this Code and law.

**Article 135.** Organizational-statutory authority of the owner

1. Property owner shall have the right to, on his/her own or jointly with other owners and on the basis of property belonging to him/her (them),

found economic organizations or carry out economic activity in other organizational-legal forms of carrying out legal economic activity determining goal and subject of economic activity, structure of the founded economic entity, staff and competence of its managerial bodies, procedure of property disposal and other issues related to management of economic entity at his own disposal, as well as making decisions on closure of operations of the entities founded by him/her pursuant to the law.

2. The owner shall have the right, personally or through duly authorized bodies and with the goal of carrying out economic activity, to found economic organizations by assigning property belonging to him on the basis of property right, right of economic management, and for carrying out non-profit economic activity - on the basis of operational management right, to determine goal and subject of activity for such organizations, staff and competence of their managerial bodies, procedure of decision-making, property available and procedure of its disposal, determine other terms and conditions of carrying out economic activity in the statutory documents of economic organization approved by the owner (authorized body), and to exercise, directly or through duly authorized bodies, other managerial authority regarding organization founded by him/her within the limits set forth by the law, and close its operations pursuant to this Code and other laws.

3. The owner shall have the right to exercise organizational-statutory authority also on the basis of corporate rights s/he is entitled to pursuant to this code and other laws.

4. State and communal enterprises can be united by the decision of the owner (authorized body) into state (communal) economic associations provisioned by this Code.

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#### **Article 136. Economic management right**

1. Economic management right - material right of economic entity owning, using and disposing of property assigned to it by the owner (authorized body) with some restriction of management of certain types of property on the agreement of the owner in cases provisioned by this code and other laws.

2. Owner of the property assigned to economic entity on the basis of economic management right shall control disposal and preservation of property belonging to him/her directly or through authorized body without interference with operational-economic activity of enterprise.

3. As for protection of economic management right, here shall apply provisions of the law set forth for property right protection. Economic entity carrying out economic activity on the basis of economic management right shall be entitled to the right of protection of its property rights also from the owner.

#### **Article 137. Operational management right**

1. For the purpose of this Code, operative management right shall be material right of economic entity owning, using and disposing of property assigned to it by the owner (authorized body) for carrying out non-profit economic activities with regard to restrictions set forth by this Code and other laws as well as property owner (authorized body).

2. Owner of the property assigned to economic entity on the basis of operational management right, shall control the use and preservation of property transferred for operational management, directly or through duly authorized body, and shall have the right to confiscate excessive property from economic entity, as well as property that is either unused or used for purposes other than intended.

3. Operational management right shall be protected by the law pursuant to provisions on property right protection.

( Article 138 was excluded pursuant to the Law N 2424-IV ( 2424-15 ) dated 04.02.2005 )

**Article 139.** Property in economic sector

1. For the purpose of this Code, property shall mean conglomerate of objects and other valuable (including intangible assets) that have value, that are manufactured or used in the activities of economic entities and that are shown on their balance sheet or registered in other legal ways of property accounting of these entities.

2. Depending on economic status the property gains in the process of economic activity, tangible assets can belong to the capital assets, operating assets, resources, or goods.

3. Production and non-production capital assets are buildings, constructions, machines and installations, equipment, tools, production stock and devices, organizational stock and other durable property regarded as capital assets by the law.

4. Operating assets are raw materials, fuels, materials, low-cost objects and short-life objects, other production and non-production property regarded as operating assets by the law.

5. In the property of economic entities, resources are money in the form of national and foreign currency intended for maintenance of trade relations of these entities with other entities, and financial relations pursuant to the law.

6. In the property of economic entities, goods are manufactured products (stock), works performed and services rendered.

7. Securities shall make special type of property of economic entities.

**Article 140.** Sources of property of economic entities

1. Sources of property of economic entities shall be as follows:

financial and material contributions of the founders;

income from sales of goods (works, services);

income from securities;

capital investment and budget allotments;

proceeds from sales (lease) of property objects (complexes) belonging to them, purchase of property from other entities;

loans from banks and other lenders;

non-returnable and charity contributions, donations from organizations and citizens;

other legal sources.

2. Legal status of property of economic entities shall be set forth by this Code and other laws with regard to property types specified in Article

139 of this Code.

**Article 141.** Specific features of legal status of state property in economic sector

1. State property in economic sector is integrated property complexes of state enterprises or their structural divisions, real estate, other individually specified property of state enterprises, stocks (shares) of the state in the property of economic entities of different property category, as well as property assigned to state institutions and organizations for carrying out necessary economic activity, and property transferred free of charge to self-governed institutions and organizations or leased for carrying out economic activity. The state shall exercise its ownership right also for property of Ukrainian nation specified in Part 1 of Article 148 of this Code through authorized state bodies.

2. Pursuant to the law, state property objects shall be managed by the Cabinet of Ministers of Ukraine and central and local state bodies authorized by the Cabinet of Ministers of Ukraine. In cases provisioned by the law, state property can be managed by other entities.

3. Cabinet of Ministers of Ukraine shall make the list of the state property transferred to territorial communities (communal property) free of charge. Transfer of state economic objects to communal property shall be performed in the manner prescribed by the law.

4. State enterprises carrying out activities only allowable for state enterprises, institutions and organizations shall not be transferred to communal property.

5. Types of property that can be owned solely by the state and transfer of which to non-state economic entities is prohibited, as well as additional restrictions as for disposal of certain types of property belonging to capital assets of the state enterprises, institutions and organizations shall be set forth by the law.

6. Transfer of the state property belonging to capital assets by economic entity shall be carried out in the manner prescribed by the Cabinet of Ministers of Ukraine. Sale of the state property belonging to capital assets by economic entity shall be carried out only by tender.

*{ Part 6 was added to Article 141 pursuant to the Law N 549-V ( 549-16 )  
dated 09.01.2007 }*

**Article 142.** Income (revenue) of economic entity

1. Income (revenue of economic entity is indicator of financial results of its economic activity calculated by deduction of gross and depreciation expenses from gross income for certain period .

2. Contents of gross income and gross expenses shall be set forth by the law. For taxation purposes, the law can set forth special procedure for calculation of income as subject to taxation.

3. Procedure for disposal of economic entity income (revenue) shall be set forth by the owner (owners) or duly authorized body pursuant to the law and statutory documents. Procedure for disposal of income of state enterprises and economic societies with more than 50% of state shares (stock) in charter capital is set forth in Article 75 of this Code (Part 3 of Article 42 amended pursuant to the law N 2505-IV ( 2505-15 ) dated 25.03.2005 )

4. The state can influence economic entity's choice of direction and amounts of income (revenue) disposal through regulations, taxes, tax benefits and economic sanctions pursuant to the law.

**Article 143.** Securities as property of economic entities

1. Economic entity shall be entitled to the right to issue its own securities, sell them to citizens and legal persons, as well as to sell securities of other entities. Types of securities, terms and procedures of their issue, sales and purchase by economic entities shall be set forth by this Code and other laws.

**Article 144.** Grounds for property rights and duties of economic entities

1. Property rights and duties of economic entities can arise from:

agreements provisioned by the law and agreements not provisioned by the law, but in compliance with it;

acts of state and local self-government bodies, their officials in cases provisioned by the law;

creation or purchase of property on legal grounds;

inflicting damage on other person, purchase or storage of property at the expense of other person without reasonable grounds;

infringement of the law in the process of carrying out economic activity;

other circumstances when property rights and obligations can arise pursuant to the law.

2. Right to property subjected to state registration shall arise on the date of registration of this property or respective rights to it unless otherwise is provisioned by the law.

**Article 145.** Property status and registration of property of economic entity

1. Property status of economic entity shall be defined by conglomerate of property rights and duties shown on balance sheet pursuant to the law.

2. Change of legal status of property belonging to economic entity shall be performed by the owner's (owners') decision in the manner prescribed by this Code and other laws made on its basis, save for the cases when such change is prohibited by the law.

3. Legal status of property belonging to economic entity founded on the basis of state (communal) property can be changed by privatization of property of the state (communal) enterprise pursuant to the law.

4. Legal status of property belonging to economic entity founded on the basis of state (communal) property can be changed by leasing integrated property complex of the enterprise or property complex of its structural division.

5. The law can also set forth other grounds for changing legal status of property belonging to economic entity.

6. Economic entities shall make financial reports on the basis of the accounting data and in the format prescribed by the law, make an inventory of their property to ensure authenticity of accounting data and reports, submit financial reports pursuant to the law and statutory documents.

**Article 146.** Privatization of state and communal enterprises

1. Property of integrated property complex of the state (communal) enterprise or its subdivisions - integrated property complexes and operating as independent enterprises, as well as constructions in progress and stocks (shares) of the state in property of other economic entities can be alienated for the benefit of citizens or private legal persons and privatized by these persons pursuant to the law.

2. Privatization of the state (communal) enterprises shall be carried out within the frameworks of the state privatization program setting forth goals, priorities and terms of privatization and in compliance with the law.

3. Privatization of the state (communal) enterprises or their property shall be carried out in the following way:

sale of the objects to be privatized at auction, by tender or in any other ways ensuring competition of buyers;

buyout of the leased integrated property complex of the state (communal) enterprise in cases and in the manner prescribed by the law;

buyout of the property of the state (communal) enterprise in other cases provisioned by the law.

4. Each citizen of Ukraine shall be entitled to the right to purchase state property in the process of privatization and in the manner prescribed by the law.

5. General conditions and procedure of privatization of the state (communal) enterprises or their property shall be set forth by the law.

6. For some sectors of economy, the law can set forth specific features of privatization of property of state enterprises.

7. In the process of privatization of the state (communal) enterprise, the rights of its employees shall be guaranteed.

**Article 147.** Guarantees and protection of property rights of economic entities

1. Property rights of economic entities shall be protected by the law.

2. Confiscation of economic entity's property by the state shall be permitted only in cases, on the grounds and in the manner prescribed by the law.

3. Losses incurred by economic entity whose property rights were infringed by the citizens or legal persons, as well as state or local self-government bodies shall be compensated pursuant to the law.

4. Property right and other material rights of economic entity shall be protected in the manner prescribed by Article 20 of this Code.

## **Chapter 15** **USE OF NATURAL RESOURCES**

### **IN ECONOMIC SECTOR**

**Article 148.** Specific features of legal regime of the use of natural resources in economic sector

1. Pursuant to the Constitution of Ukraine ( 254к/96-BP ) land, mineral resources, atmospheric air, water and other natural resources within the

territory of Ukraine, natural resources of its continental shelf, exclusive (marine) economic zone shall make the property of the Ukrainian nation. On the behalf of the Ukrainian nation, property right shall be exercised by state and local self-government bodies authority of which is set forth by the Constitution of Ukraine ( 254к/96-BP .

2. Each citizen shall be entitled to the right to use natural property of Ukrainian nation in compliance with the law.

3. Land shall be the main national wealth under special protection of the state. Property right to land shall be guaranteed. This right shall be acquired and exercised by the citizens, legal persons and the state pursuant to the Land Code of Ukraine ( 2768-14 ) and other laws.

4. Legal regime of the used of certain natural resources (land, waters, forests, mineral resources, atmospheric air, fauna) shall be set forth by the law.

5. Natural resources can be provided to economic entities for their use or sold by them only in cases and in the manner prescribed by the law.

**Article 149.** Use of natural resources by economic entities

1. Economic entities shall used natural resources in their economic activity for general and special purposes pursuant to this Code and other laws.

2. Cabinet of Ministers of Ukraine shall ensure state registration of natural resources belonging to the state, managed by the Autonomous Republic of Crimean and those that are in communal property and can be used for carrying out economic activity.

**Article 150.** Use of natural resources on the basis of property right

1. Economic entities can acquire property rights for land with drainless water bodies, forest zones, common mineral resources, including for farming, and agricultural enterprises - for economic activity.

*( Part 1 of Article 150 amended pursuant to the law N 2454-IV ( 2454-15 ) dated 03.03.2005 )*

2. Procedure of acquisition of property rights shall be set forth solely by the law with regard to guarantees of effective use of the land by economic entities, prevention of its mismanagement and damage.

**Article 151.** Use of natural resources on the basis of the right to use

1. Land and other natural resources may be provided to economic entities for carrying out economic activity on the basis of special permissions (decisions) of the authorized bodies (including for a fee or on other terms).

2. The procedure of providing natural resources for use to citizens and legal persons for carrying out economic activity shall be set forth by land, water, forest and other special laws.

**Article 152.** Rights of economic entities as for the use of natural resources

1. Carrying out economic activity, economic entity shall have the right to:

take advantage of useful properties of natural resources provided;

use local mineral resources, water bodies, forest resources located within the land plot provided for economic purposes in the manner prescribed

by the law;

receive income from economic activity connected with the use of natural resources;

receive short- and long-term soft loans for implementation of measures aimed at effective use, restoration and protection of natural resources and have the right for additional benefits if the above measures are implemented;

request compensation of damages inflicted on natural resources belonging to it by other entities and elimination of hindrances in carrying out economic activity connected with the use of natural resources.

**Article 153.** Duties of economic entities as for the use of natural resources

1. Carrying out economic activity, economic entity shall:

use natural resources as intended and specified at the time of their provision (purchase) for the use in carrying out economic activity;

use natural resources sparingly and efficiently, apply new production technologies;

take measures aimed at timely restoration and prevention of damage, contamination, littering and exhaustion of natural resources, maintain their quality in the process of carrying out economic activity;

make timely payment for the use of natural resources;

carry out economic activity without infringement of the rights of other owners and users of natural resources;

compensate damages inflicted on owners or primary users of natural resources.

2. The law can set forth other duties of economic entity as for the use of natural resources in economic activity.

## **Chapter 17** **SECURITIES IN ECONOMIC ACTIVITY**

**Article 163.** Securities and their types

1. Economic entities may issue and sell securities as well as purchase securities issued by other economic entities within the scope of their competence and in the manner prescribed by the law.

Security is a document of the set form with appropriate requisites confirming financial or other material right, determining relations between economic entity-issuer and its owner and provisioning fulfillment of obligations pursuant to the terms of its issue as well as the possibility to transfer the rights arising from this document to other persons.

2. Equity, debt and other securities can be issued and can circulate in Ukraine. The following types of securities are used in economic sector in cases provisioned by the law: stocks, sovereign and public bonds, local bonds, bonds of enterprises, treasury bonds, savings (deposit) certificates, debt securities, certificates of real estate funds (REF certificates), mortgage certificates (fixed-income and participation certificates), other types of securities provisioned by this Code and other laws.

*{ Part 2 of Article 163 amended pursuant to the laws N 3201-IV ( 3201-15 ) dated 15.12.2005, N 3480-IV ( 3480-15 ) dated 23.02.2006 }*

3. Securities can be registered or to bearer. Registered securities shall be transferred by full endorsement (endorsement confirming transfer of the rights under this security to another person) unless otherwise provisioned by the law or it is indicated that they are non-transferrable. Securities to bearer shall circulate freely.

Procedure of security registration in a book-entry form shall be set forth by the law.

4. Legal status of securities shall be set forth by this Code and other laws.

**Article 164.** Terms and procedure of issuing securities by economic entities

1. Economic entity-legal person shall have the right to issue stocks and bonds on its behalf and sell them to citizens and legal persons in cases and in the manner prescribed by the law.

2. Economic entity shall acquire the right to issue stocks and bonds on the day of registration of this issue in the appropriate state body.

3. Economic entity shall be prohibited from issuing stocks and bonds for covering losses related to its economic activity.

4. Economic entities specializing in managing assets of co-investment institutes shall have the right to issue investment certificates.

*{ Part 4 of Article 164 amended pursuant to the law N 3480-IV ( 3480-15 ) dated 23.02.2006 }*

5. Bank institutions accepting funds from legal persons and citizens for depositing shall issue to them written certificates confirming their right to receive the deposit and interest on it after the end of the set term (savings (deposit) certificates).

*{ Part 5 of Article 164 pursuant to the law N 3480-IV ( 3480-15 ) dated 23.02.2006 }*

6. Financial institutions who have created real estate fund and use funds of natural and legal persons for administration with the aim of financing construction of residential premises shall have the right to issue real estate fund certificates.

*( Part 6 was added to Article 164 pursuant to the law N 3201-IV ( 3201-15 ) dated 15.12.2005 )*

7. Economic entities shall have the right ,in the manner prescribed by the law, to issue promissory notes - debt securities confirming single liability of the promissory note maker or his/her order to the third person to pay the quoted amount to the holder of promissory note on payment date. *{ Part 7 of Article 164 amended pursuant to the law N 3480-IV ( 3480-15 ) dated 23.02.2006 }*

8. Securities (or their forms) shall be manufactured only at the state enterprises licensed by the Ministry of Finance of Ukraine and protected.

9. Specific features of issuing securities in a book-entry form shall be set forth by the law.

**Article 165.** Purchase of securities by economic entities

1. Economic entities can purchase stocks and other securities specified in this Code and pay for them from the proceeds at their disposal after

payment of taxes and loan interests unless otherwise provisioned by the law.

2. Securities shall be paid for in UAH, and in cases provisioned by the law and terms of issue - in foreign currency. Irrespective of currency used for purchase of securities, their value shall be quoted in UAH.

3. Securities shall be sold by their issuers, owners and security traders - intermediaries in the field of issuing and circulation of securities. Types and procedure for carrying out this activity shall be set forth by this Code and other laws.

#### **Article 166.** State regulation at the securities market

1. Securities market shall be regulated by the state for implementation of the uniform state policy in the field of issuing and circulation of securities, creation of conditions for effective mobilization and placement of financial resources of economic entities with regard to interests of the society and protection of the rights of the stock market players.

2. State regulation of the securities market shall be performed by the State Security and Stock Market Commission whose status, organizational procedure and scope of activity shall be set forth by the law.

3. Other state bodies shall control the activities of the securities market players within their scope of competence set forth by the law.

4. Forms of state regulation of the securities market, procedure of carrying out professional activity at the securities market by economic entities and liability of these entities for infringement of the rules of this activity shall be set forth by this Code and other laws made on its basis.

### **Chapter 18** **CORPORATE RIGHTS AND CORPORATE RELATIONS**

*{Name of the Chapter 18 of Section III amended pursuant to the law N 483-V ( 483-16 ) dated 15.12.2006 }*

#### **Article 167.** Contents of corporate rights and corporate relations

*{ Name of Article 167 amended pursuant to the law N 483-V ( 483-16 ) dated 15.12.2006 }*

1. Corporate rights are rights of the person having his/her share in the charter fund (property) of economic organization including authority to participate in management of economic organization, receipt of certain part of profit (dividends) of this organization and assets in case of its liquidation pursuant to the law, and other authority provisioned by the law and statutory documents.

2. Holding corporate rights shall not mean entrepreneurship. The law can set forth certain restrictions for some persons regarding holding and/or exercising corporate rights.

3. Corporate relations are relations arising, changing, or terminated in connection with corporate rights. {Article 167 was supplemented with Part 3 pursuant to the law N 483-V ( 483-16 ) dated 15.12.2006 }

#### **Article 168.** Exercising corporate rights of the state

1. Corporate rights of the state shall be exercised by central executive bodies specified by the law and duly authorized persons in the manner

prescribed by the Cabinet of Ministers of Ukraine.

2. Central executive bodies and authorized persons shall:

exercise authority as for participation in management of economic organization proportionally to the share (interest) of the state in the charter fund of this organization;

keep the register of corporate rights of the state;

evaluate corporate rights of the state;

monitor efficacy of work of economic organization as for enforcement of corporate rights of the state.

3. State corporate rights management authority shall be exercised directly by the appropriate executive bodies if:

the state owns 100% of shares (stocks) in the charter fund of economic organization;

economic entity in relation to which the state corporate rights are to be exercised shall participate in the state and regional programs financed from the State Budget of Ukraine;

competition for position of authorized person did not take place due to absence of candidates, or because offers of the candidates were not in compliance with the requirements;

or in other cases provisioned by the law.

In all other cases, state corporate rights management shall be carried with participation of authorized person.

4. Terms of delegation of authority and task regarding state corporate rights management, including legal liability of authorized persons, shall make a compulsory part of the respective decision of the Cabinet of Ministers of Ukraine and agreement with authorized person.

5. Management of corporate rights of territorial communities shall be carried out pursuant to the provisions of this Article unless otherwise provisioned by the law.

**Article 169.** Evaluation of corporate rights of the state

1. Corporate rights of the state and assets of economic entities in the charter fund of which the state has its share shall be evaluated by the procedure approved by the Cabinet of Ministers of Ukraine pursuant to the law.

**Article 170.** Definition of "authorized person for state corporate rights management"

1. Authorized person for state corporate rights management is a citizen or legal person chosen on a competitive basis with whom the respective central executive body shall make the contract of agency for state corporate rights management.

2. Procedure of competition for the position of the authorized person for state corporate rights management shall be set forth by the Cabinet of Ministers of Ukraine.

**Article 171.** State corporate rights register

1. In order to take measures related to state corporate rights management, coordinate the activity of executive bodies in this sector and provide the necessary data to other state bodies, central executive body authorized by the Cabinet of Ministers of Ukraine shall introduce and maintain the state corporate rights register.

**Article 172.** Law of corporate rights of the state

1. Relations connected with state corporate rights management shall be regulated by this Code and other laws and regulations based on this Code.

**Section IV**  
**ECONOMIC OBLIGATIONS**

**Chapter 19**  
**GENERAL PROVISIONS ON ECONOMIC OBLIGATIONS**

**Article 173.** Economic obligation

1. Economic obligation is such obligation that arises between economic entity and other participant (participants) of relations in economic sector on the grounds prescribed by this Code when one party (obliged party, including debtor) is obliged to perform certain act of economic or managerial-economic nature for the benefit of other party (perform works, transfer property, make payment, provide information etc.) or abstain from certain acts, while the other party (for whose benefit the obligation is to be fulfilled, including lender) shall have the right to request from the obliged party to fulfill its obligation.

2. The main types of economic obligations are property-economic obligations and organizational-economic obligations. .

3. On mutual agreement, the parties can particularize or generalize economic obligation in the process of its fulfillment unless otherwise provisioned by the law.

**Article 174.** Grounds for economic obligations

1. Economic obligations can arise:

directly from the law or any other regulatory act regulating economic activity;

from economic activity management act;

from economic agreement and other contracts provisioned by the law, as well as from agreements non-provisioned by the law but in compliance with it;

as a result of damage inflicted on economic entity or by economic entity, purchase or storage of property of economic entity or by economic entity at the expense of other person without reasonable grounds thereto;

as a result of creation of intellectual property objects and other acts of economic entities, and also as a result of events leading to legal consequences in economic sphere pursuant to the law.

**Article 175.** Property-economic obligations

1. Property-economic obligations - civil-legal obligations arising between the parties of economic relations in the process of carrying out economic activity when one party is to perform certain economic act for the

benefit of the other party or abstain from certain acts, while the party for whose benefit the act obligation is to be fulfilled shall have the right to request from the obliged party to fulfill its obligation.

Property obligations arising between the participants of economic relations shall be regulated by the Civil Code of Ukraine ( 435-15 ) with regard to specific features prescribed by this Code.

2. Parties to property-economic obligations can be economic entities specified in Article 55 of this Code, non-economic entities - legal persons as well as state and local self-government bodies with economic competence. Should property-economic obligation arise between economic entities or between economic entities and non-economic entities-legal persons, the obliged party and the party for the benefit of which obligation is to be fulfilled shall be debtor and lender respectively.

3. Property obligations arising between economic entities and non-economic entities-citizens shall not be regarded as economic and shall be regulated by other legislative acts.

4. In cases provisioned by this Code and other laws, economic entities can voluntarily assume property obligations for the benefit of other participants of economic relations (charity etc.). Such obligations shall not make ground for requesting their compulsory fulfillment.

#### **Article 176.** Organizational-economic obligations

1. Organizational-economic obligations - economic obligations arising between economic entity and entity with organizational-economic authority in the process of managing economic activity when the obliged party is to perform certain managerial-economic (organizational) act for the benefit of the other party or abstain from certain act, while the party for whose benefit such act is to be performed shall have the right to request fulfillment of the obligation from the obliged party.

2. Organizational-economic obligations can arise:

between economic entity and owner-founder of this entity, or state or local self-government body with economic competence in relation to this entity;

between economic entities collectively organizing association of enterprises or economic society and managing bodies of these associations and societies;

between economic entities on provision that one of them is daughter company of the other;

in other cases provisioned by this Code, other legal acts or statutory documents of economic entities.

3. Organizational-economic obligations can arise from the agreement and make the agreement.

4. Economic entities shall have the right to carry out economic activity jointly for reaching common goal without creation of separate economic entity and on the terms set forth by joint venture agreement. Should the parties to joint venture agreement authorize one of them to manage joint economic activity, this party might be obliged to manage joint ventures. This party shall perform organizational-administrative functions on the basis of the power of attorney signed by the other parties.

#### **Article 177.** Social-communal obligations of economic entities

1. By the decision of local council, economic entities shall, at their own expense and pursuant to the law, create special jobs for physically disadvantaged people and organize their professional training.

2. According to Part 4 of Article 175 of this Code, economic entities can, irrespective of statutory goal of their activity, assume obligation of rendering social assistance in solving issues related to social development of inhabited localities in their area, construction and support of socio-cultural objects and utilities and render other economic assistance aimed at solving local problems. Economic entities shall have the right to participate in creation of the respective funds of local councils unless otherwise provisioned by the law and in carrying out works for integrated economic and social development of the territories.

**Article 178.** Public obligations of economic entities

1. Economic entity that, pursuant to the law and its statutory documents, is obliged to carry out works, render services or sell goods to everyone requesting them on legal grounds shall not refuse to carry out works, render services or sell goods if this is possible or prefer one customer to another, save for the cases provisioned by the law.

2. Economic entity deviating from its public obligations shall compensate to other party losses incurred in connection with this in the manner prescribed by the law.

3. In cases provisioned by the law, the Cabinet of Ministers of Ukraine can impose rules, binding public obligations, including price setting and regulation. Terms of obligations that are not in compliance with these rules or set prices, shall be invalid.

**Chapter 20**  
**ECONOMIC AGREEMENTS**

**Article 179.** General terms of making agreements giving rise to economic obligations

1. Property-economic obligations arising between economic entities or economic entities and non-economic entities-legal persons on the basis of economic agreements shall be regarded as economic-contractual obligations.

2. Cabinet of Ministers of Ukraine, its authorized executive bodies can recommend economic entities provisional terms of economic agreements (sample agreement) and, in cases provisioned by the law – adopt standard agreements.

3. Conclusion of economic agreement shall be compulsory for the parties if it is based on the state order fulfillment of which is a duty of economic entity in cases provisioned by the law or if the law directly binds certain categories of economic entities or state or local self-government bodies to make agreements.

4. Concluding economic agreement, the parties can decide on its content on the basis of:

free will when the parties have the right to agree, at their discretion, any terms and conditions that are in compliance with the law;

sample agreement recommended by the ruling body to be used for making agreements when the parties have the right to amend certain terms and condition of the sample agreement or supplement it on mutual agreement;

standard agreement adopted by the Cabinet of Ministers of Ukraine or, in cases provisioned by the law, by other state body when the parties are obliged to accept the content of this agreement, but have the right to elaborate its terms;

deed of accession offered by one party for the other potential parties when these parties cannot change the content of the agreement once they join it.

5. Content of the agreement made on the basis of the state order shall be in compliance with this order.

6. Economic entities supplying electricity, communications, railway and transport services to customers specified in Part 1 of this Article and, in cases provisioned by the law, other entities shall make agreements with all the users of their goods (services). The law can offer binding terms and conditions of such agreements.

7. Economic agreements shall be made by the rules set forth by the Civil Code of Ukraine (435-`5) with regard to specific features provisioned by this Code, other regulatory acts as for certain types of agreements.

#### **Article 180.** Essential terms of economic agreements

1. Content of economic agreement shall be made from terms and conditions agreed by its parties and aimed at setting forth, change or termination of economic obligations both agreed by the parties and those accepted as binding pursuant to the law.

2. Economic agreement shall be regarded as concluded if the parties have reached agreement on all essential terms and conditions in the form and manner prescribed by the law. Essential terms are terms regarded as such by the law or necessary for certain types of agreements as well as the terms to be agreed on the request of one of the parties.

3. Concluding economic agreement, the parties shall, in any case, agree subject, price and term of the agreement.

4. In economic agreement, provisions on the subject of the agreement shall specify the name (classification, assortment) and number of goods (works, services) as well as quality standards. Quality standards of the subject of the agreement shall be set forth in compliance with binding regulatory documents specified in Article 15 of this Code if available, otherwise - by agreement including provisions protecting interests of end-users of goods and services.

5. In economic agreement, the price shall be set forth in the manner prescribed by this Code, other laws and acts of the Cabinet of Ministers of Ukraine. On agreement of the parties, economic agreement can provision extra charges for goods (works, services) of higher quality or shorter-term performance.

6. Should the price agreed by the parties and quoted in economic agreement be regarded as such that is not in compliance with antimonopoly-competition law, antimonopoly authority shall have the right to request the parties to amend terms and conditions related to the price.

7. Term of economic agreement shall be the term during which economic obligations that have arisen in connection with this agreement remain in force. Terms and conditions of the agreement shall not apply to obligations that have arisen prior to conclusion of the agreement unless otherwise provisioned by the agreement. Expiration of the agreement shall not free the parties from liability for its infringement when in force.

**Article 181.** General procedure for concluding economic agreements

1. Generally, economic agreement shall represent one document signed and sealed by the parties. It is permitted to conclude economic agreements in simplified way, or by correspondence, fax, telegram, phoned telegram etc., and also by confirmation of acceptance of orders unless special requirements as for the form and procedure of making of certain types of agreements are set forth by the law.

2. Draft agreement can be proposed by any party. Should draft agreement be executed as one document, it shall be given to other party in duplicate.

3. Should the party that has received the draft agreement agree on its terms and conditions, it shall execute the agreement pursuant to Part 1 of this Article and return one copy of the agreement to the other party or send answer to the letter, facsimile etc. within twenty days upon receipt of the draft agreement.

4. Should the party that has received the draft agreement disagree on some of its terms and conditions, it shall make protocol of discrepancies, which is indicated in the agreement, and send two copies of this protocol together with the signed agreement to the other party within twenty days.

5. The party that has received protocol of discrepancies to the agreement shall review it within twenty days and, within the same period of time, take measures for solving all the issues with the other party and include to the agreement all the agreed proposals. Unsettled disputes shall be passed to the court within the same period of time on provision that the other party gives its consent thereto.

6. Should the parties agree on all or some terms and conditions listed on the protocol of discrepancies, such agreement shall be confirmed in writing (dispute settlement protocol, letters, telegrams, teletype etc.).

7. Should the party that has received protocol of discrepancies as for the terms and conditions of the agreement based on the state order or such that is binding pursuant to the law, or the party-provider under the agreement and declared monopolist at the certain marked of goods (works, services) in the manner prescribed by the law that has received protocol of discrepancies fail to bring to court the unsettled disputes within twenty days, propositions of the other party shall be regarded as accepted.

8. Should the parties fail to agree on all the essential terms of economic agreement, such agreement shall be regarded as such that has not been concluded (null and void). Should one of the parties have committed acts aimed at implementation of the agreement, legal consequences of such acts shall be regulated by the Civil Code of Ukraine ( 435-15 ).

**Article 182.** Specific features of concluding preliminary agreements

1. Under the preliminary agreement, economic entity shall, within certain time, but no later than within one year from the date of conclusion of the preliminary agreement, conclude the principal economic agreement on terms and conditions set forth by the preliminary agreement.

2. The preliminary agreement shall contain terms and conditions allowing to determine the object and other essential terms of the principal agreement. General procedure for concluding economic agreements shall not apply to preliminary agreements.

3. Should the party that has entered the preliminary agreement and received draft agreement from the other party, deviate from conclusion of the principal agreement, the other party shall have the right to request

conclusion of such agreement in the court.

4. Obligation to conclude principal agreement prescribed by the preliminary agreement shall be terminated should one of the parties fail to send the draft agreement to the other party before the deadline for the principle agreement.

5. Relations arising in the process of concluding preliminary agreements shall be regulated by the Civil Code of Ukraine ( 435-15 ) with regard to specific features provisioned by this Code.

6. Agreement of intent (protocol of intentions) shall not be regarded as a preliminary agreement and shall not cause legal consequences.

**Article 183.** Specific features of concluding economic agreements on the basis of the state order

1. Agreements on the basis of the state order shall be made between economic entities specified by the law - entities responsible for execution of the state order and state clients authorized to make agreements on the behalf of the state (state contracts) specifying economic obligations of the parties and regulating relations between the client and executor as for execution of the state order.

2. Guarantor of the fulfillment of the state clients' obligations shall the state represented by the Cabinet of Ministers of Ukraine.

3. Agreement on the basis of the state order (state contract) shall be concluded in the manner prescribed by Article 181 of this Code with regard to specific features provisioned by the law. State agreement shall be made by signing the single document by the parties.

4. Deviation from concluding the agreement on the basis of the state order shall be regarded as violation of economic law and punishable under this Code and other laws. Disputes arising from conclusion of the agreement on the basis of the state order, including deviation from making such agreement by one or both parties, shall be settled in the court.

5. Executor of the state order shall be freed from the obligation to conclude the state agreement on terms and conditions set forth by the state order should such state order be declared invalid in the court.

**Article 184.** Specific features of concluding economic agreements on the free will of the parties, sample and standard agreements

1. In the process of concluding economic agreement on the free will of the parties, draft agreement can be elaborated on the initiative of one of the parties within the term agreed between the parties.

2. Economic agreement made on the free will of the parties can be concluded in a simplified way or in the form of single document in compliance with general procedure for conclusion of the agreements set forth by Article 181 of this Code.

3. Economic agreements based on sample and standard agreements shall be concluded with regard to terms and conditions set forth by Article 179 of this Code - by making a single document executed pursuant to Article 181 of this Code and in compliance with the rules set forth by regulatory acts on sample and standard agreements.

**Article 185.** Specific features of making economic agreements at stock exchanges, fairs and public sales

1. Conclusion of economic agreements at stock exchanges, wholesale fairs and public sales shall be regulated by the general rules for agreements on the free will of the parties with regard to regulatory acts applicable for stock exchanges, fairs and public sales.

**Article 186.** Conclusion of organizational-economic agreements

1. Agreement regulating organizational-economic obligations can be concluded by the participants of economic relations on both the free will of the parties and on the basis of sample agreements on provision that conclusion of such agreements is provisioned by the respective regulatory acts. Simplified conclusion of organizational-economic shall be prohibited.

**Article 187.** Conclusion of economic agreements by court decision

1. Dispute arising in the process of conclusion of economic agreements on the basis of the state order or agreements that are compulsory by the law, and in other cases prescribed by the law shall be settled in the court. Other pre-agreement disputes can be settled in the court on provision that this is prescribed by the agreement or if the parties are obliged to conclude certain economic agreement on the basis of preliminary agreement.

2. Effective date of the court decision on pre-agreement disputes shall be the date of conclusion of the respective economic agreement unless otherwise provisioned by the court decision.

**Article 188.** Procedure for amendment and termination of economic agreements

1. Unilateral amendment and termination of economic agreements shall be prohibited unless otherwise provisioned by the law or agreement.

2. The party wishing to amend or terminate the agreement shall notify the other party thereof.

3. The party that has received notification about amendment or termination of the agreement shall inform the other party about it decision within twenty days upon the receipt of such notification.

4. Should the parties fail to agree on amendments (termination) to the agreement or should the decision of the party notified fail to arrive on time, postage time taken into consideration, the interested party shall have the right to pass disputes to the court.

5. Should the agreement be amended or terminated by court decision, such agreement shall be regarded as amended or terminated on the effective date of the court decision unless other effective date is provisioned by court decision.

**Chapter 21**  
**PRICES AND PRICING IN ECONOMIC SECTOR**

**Article 189.** Prices in economic obligations

1. For the purpose of this Code, price (rate) shall be the form of monetary value of the goods (works, services) sold by economic entities.

2. Price shall make on of the key terms of economic agreement. In the agreement, price shall be quoted in Hryvnya. In international agreements (contracts), prices may be quoted in foreign currencies on agreement on the parties.

3. In their economic activity, economic entities can use free prices, fixed state prices and regulated prices - overall price levels or limit deviations from the fixed state prices.

4. Export/import-related settlements with international counter-agents shall be based on contract (foreign trade) prices calculated with regard to world market prices and terms as well as indicative prices.

#### **Article 190.** Free prices

1. Free prices shall be set for all types of products (works, services) save for those for which state prices have been set.

2. Free prices shall be set by economic entities independently, on the agreement of the parties; in intercompany relations - by the decision of economic entity.

#### **Article 191.** State prices and tariffs

1. Fixed and regulated state prices shall be set for the resources governing general live and dynamics of prices, as well as for goods and services of high social importance for the population. List of the above resources, goods and services shall be adopted by the Cabinet of Ministers of Ukraine.

2. Pursuant to the law, state prices shall be also set for the goods (services) of economic entities - natural monopolists. List of goods (services) manufactured/rendered by the above entities shall be adopted by the Cabinet of Ministers of Ukraine.

3. State prices shall be set for imported goods purchased with the funds of the State Budget of Ukraine.

4. The law may provision tariffs for goods and services manufactured/rendered by public utility companies.

5. State regulation of prices shall be performed by setting fixed state prices and tariffs, overall price levels, overall trade markup and suppliers' commission, overall profitability standard, or by introducing compulsory declaration of price change.

6. When setting fixed prices preventing economic entities from earning profit, executive and local self-government authorities shall grant these entities the allowance pursuant to the law.

#### **Article 192.** Price and pricing legislation

1. Pricing policy, procedure of setting and use of prices, authority of power bodies and local self-government bodies as for price setting, regulation and price and pricing control shall be set forth by the law on prices and pricing ( 507-12 ) and other legal acts.

### **Chapter 22**

## **FULFILLMENT OF ECONOMIC OBLIGATIONS**

### **TERMINATION OF OBLIGATIONS**

#### **Article 193.** General terms of fulfillment of economic obligations

1. Economic entities and other participants of economic relations shall fulfill economic obligations in a due way pursuant to the law, other legal acts and agreements. Should the above be absent, they shall be fulfilled in

accordance with the requirements set under certain circumstances.

Appropriate provisions of the Civil Code of Ukraine ( 435-15 ) with regard to peculiarities set forth by this Code shall apply to fulfillment of economic agreements.

2. Each party shall take all the possible measures for due performance with regard to the interests of the other party and satisfaction of general economic interest. Breach of obligations shall be the ground for imposition of economic sanctions provisioned by this Code, other laws, or agreement.

3. Imposition of economic sanctions against the entity that has breached obligations shall not free such entity from responsibility to fulfill obligations in a due way unless otherwise provisioned by the law, agreement and save for the cases when the rightful party has refused to accept performance.

4. The rightful party shall be entitled to the right to not accept performance in part unless otherwise provisioned by the law, other regulations, agreement, or specified in relation to obligation.

5. The party under obligation shall be entitled to the right to fulfill the obligation ahead of schedule unless otherwise provisioned by the law, other regulations, agreement, or specified in relation to obligation.

6. The party under obligation shall be entitled to the right to refuse fulfillment of obligations on provision of negligence of the other party in relation to obligations to be fulfilled for the above purpose.

7. Unilateral refusal to fulfill obligations shall be prohibited save for the cases provisioned by the law, as well as refusal or delay caused by negligence of the other party.

8. Accepting performance, the rightful party shall issue written notification about complete or partial fulfillment of such obligation on the request of the party under obligation.

**Article 194.** Fulfillment of economic obligation by the third party

1. Fulfillment of economic obligation can be, fully or partially, delegated to the third person that is not the party to this obligation. The rightful party shall accept performance by the third party - performer unless the law, economic agreement or nature of obligation require its fulfillment by the party under obligation.

2. Negligence by the third party shall not free the parties from the responsibility to fulfill obligations in a due way save for the cases provisioned by Part 3 of Article 193 of this Code.

**Article 195.** Delegation of rights in relation to economic obligations

1. Unless otherwise provisioned by the law, the rightful economic entity may delegate to the other party, on the agreement of the latter, its legal, charter or agreement rights to receive property from the third party in order to solve certain property management issues or delegate rights for exercising economic-managerial authority. Delegation of such rights can be limited by certain term.

2. Act of assignment shall enter in force on the day of receipt of notification thereof by the party under obligation, act of delegation of economic-managerial authority - on the day of its official publication.

3. Transfer (delegation) of rights shall oblige the entity to whom additional authority was transferred (delegated) to make solutions on

respective economic issues and bear responsibility for consequences of its decisions.

**Article 196.** Fulfillment of economic obligation provisioning several rightful entities or several entities under obligation

1. Should economic obligation provision several rightful entities or several entities under obligation, each rightful entity shall be entitled to the right to request fulfillment, while each entity under obligation shall fulfill its set share of obligation.

2. If so provisioned by the law or agreement, obligation shall be fulfilled jointly. Joint fulfillment of obligations shall be regulated by the appropriate provisions of the Civil Code of Ukraine 435-15 ), unless otherwise provisioned by the law.

**Article 197.** Place of fulfillment of economic obligation

1. Economic obligation shall be fulfilled in the location set forth by the law, economic agreement or in the location implied by the nature of obligation.

2. Should the location not be specified, obligation shall be fulfilled:

for obligations related to transfer of the rights for building, land plot or other real estate - at the location of the building, land plot or other real estate;

for financial obligations - at the location (residence) of the rightful party at the time when obligation arose, or at its new location (residence) on provision that the rightful party has timely notified thereof the party under obligation; (Paragraph 3 of Part 2 of Article 197 amended pursuant to the Law N 2452-IV ( 2452-15 ) dated 03.03.2005 )

for other obligations - at the location (residence) of the party under obligation unless otherwise provisioned by the law. (Paragraph 4 of Part 2 of Article 197 amended pursuant to the Law N 2452N 2452-IV ( 2452-15 ) dated 03.03.2005 )

3. Should the rightful party be absent, evade from accepting performance or in case of any other performance delay, the party under financial obligation shall have the right to transfer required funds or securities to depository of the notary office that shall notify the rightful party accordingly. Transfer of the funds (securities) to the depository of the notary office shall be regarded as fulfillment of obligation.

**Article 198.** Fulfillment of financial obligations

1. Payments under financial obligations arising in economic relations shall be made via bank transfer or in cash through the banks unless otherwise is provisioned by the law.

2. Financial obligations of the participants of economic relations shall be quoted and covered in Hryvnya. Financial obligations may be quoted in foreign currency only in cases when economic entities are entitled to the right to make settlements in foreign currency pursuant to the law. Fulfillment of obligations quoted in foreign currency shall be performed pursuant to the law.

3. Interest on financial obligations of the participants of economic relations shall apply in cases, amounts and in accordance with the procedure set forth by the law or agreement.

**Article 199.** Ensuring fulfillment of economic obligations

1. Fulfillment of economic obligations shall be ensured by measures aimed at protection of rights and responsibility of the participants of economic relations provisioned by this Code and other laws. On agreement of the parties, it is possible to use legal guarantees of fulfillment of economic obligations commonly used in economic relations or such that are in line with the law.

Relations ensuring fulfillment of obligations of the participants of economic relations shall be regulated by the respective provisions of the Civil Code of Ukraine ( 435-15 ).

2. Obligations of state economic entities can be ensured by the state guarantee in cases and in accordance with the procedure set forth by the law.

**Article 200.** Bank guarantee ensuring fulfillment of economic obligations

1. Guarantee is a specific way of ensuring fulfillment of economic obligations by written confirmation (guarantee letter) by the bank, other credit institution, insurance company (bank guarantee) to meet the requirements of the rightful party by paying the full amount quoted in written confirmation should the third party (party under obligation) fail to fulfill certain obligation, or should other circumstances specified in the respective confirmation arise.

2. Obligation under bank guarantee shall be fulfilled only upon written request of the rightful party.

3. In relation to the rightful party, the guarantor may lay only those claims that are specified in the guarantee letter. The party under obligation shall not raise objections against the guarantor it might have raised against the rightful party if its agreement with the guarantor does not include the guarantor's obligation to include the warning regarding such objections into the guarantee letter.

4. Relations connected to bank guarantee that are not regulated by this Code shall be regulated by the respective provisions of the Civil Code of Ukraine ( 435-15 ).

**Article 201.** General economic (public) performance guarantees

1. In order to neutralize unfavorable consequences of economic crimes, the law may provision the obligation of commercial banks, insurance companies, joint stock companies and other economic entities receiving funds or securities from the citizens and legal persons to transfer part of their funds for creation of the uniform insurance public mortgage fund.

**Article 202.** General terms of termination of economic obligations

1. Economic obligation shall be terminated by its due fulfillment; crediting counterclaim of the same nature or insurance obligation; merging of the rightful person and person under obligation; on agreement of the parties; impossibility of performance and in other cases provisioned by this Code or other laws.

2. Economic obligation shall also be suspended in case of its termination or invalidation by the court.

3. Relations arising in the process of termination of economic obligations shall be regulated by the respective provisions of the Civil Code of Ukraine ( 435-15 ) with regard to peculiarities provisioned by this Code.

**Article 203.** Termination of economic obligation by fulfillment or crediting

1. Economic obligation the conditions of which were met in a due way shall be terminated should performance be accepted by the rightful party.

2. Should the party under obligation duly fulfill one of two or several obligations between which it had the right to choose (alternative obligation), such economic obligation shall be terminated by fulfillment.

3. Economic obligation shall be terminated by crediting of the counterclaim of the same nature the term of which is due or the term of which is not specified or is due when claimed. Application of one party shall suffice for crediting.

4. Economic obligation can be terminated by crediting of insurance obligation unless otherwise provisioned by the law or main or insurance obligation.

5. Claims for which limitation of action applies by the request of the other party and is overdue and in other cases provisioned by the law.

**Article 204.** Termination of economic obligation by agreement of the parties or in case of merger of the parties

1. Economic obligation may be terminated on agreement of the parties, particularly by the agreement on substitution of this obligation with the other executed by the same parties provided such substitution is in line with the compulsory act on the basis of which the previous obligation has arisen.

2. Economic obligation shall be terminated in case of merger of the rightful party and the party under obligation and shall arise again should such merger be terminated.

**Article 205.** Termination of economic obligation in case of impossibility of performance

1. Economic obligation shall be terminated by impossibility of performance should there arise circumstances under which neither of the parties could be held responsible unless otherwise provisioned by the law.

2. In case of full or partial impossibility of performance, the party under obligation, in order to avoid unfavorable property and other consequences for both parties, shall immediately notify the rightful party that shall take the necessary measures for minimization of the above consequences. Such notification shall not free the party under obligation from responsibility for non-performance pursuant to the law.

3. Economic obligation shall be terminated by performance impossibility in case of liquidation of economic entity, save for cases of succession under this obligation.

4. Should economic entity fail to satisfy the creditors' requirements due to lack of property, such entity may be declared bankrupt by the court. Terms, procedure and consequences of declaring bankruptcy of economic entities shall be set forth by this Code and other laws. Liquidation of economic entity-bankrupt shall make grounds for termination of obligations to which this entity is the party.

**Article 206.** Termination of economic obligation

1. Economic obligation can be terminated by the parties pursuant to the rules set forth by Article 188 of this Code.

2. State contract may be terminated in case of change or cancellation of the state order provisioning termination of contract from the moment the parties under obligation have been notified accordingly. Consequences of state contract termination for its parties shall be determined pursuant to the law.

**Article 207.** Invalidity of economic obligation

1. Economic obligation that is not in line with the law, or assumed for the purpose knowingly contradicting interests of the state or society, or agreed by the participants of economic relations with the breach of economic competence (special legal standing) by at least one of them may, on the request of one of the parties or the competent state body, be fully or partially invalidated by the court.

2. Worthless condition of economic obligation that, independently or in combination with other conditions, violates rights and legal interests of other parties or third persons may also be invalidated. Conditions of standard and affiliation agreements may be regarded worthless on provision that they:

exclude or limit responsibility of manufacturer, contractor (service provider) or not impose any obligations on the party under obligation;

allow unilateral refusal from obligation by the contractor or unilateral change of conditions by the contractor;

request from the recipients of goods (services) disproportionately large sanction payment in case of their repudiation of the contract and do not provision the same sanction for the contractor.

3. Fulfillment of economic obligation invalidated by court, fully or partially, shall be fully or partially terminated from the day of enforcement of the court decision as such that is regarded as invalid from the moment it has arisen. Should the nature of obligation allow for termination only in the future, such obligation shall be deemed invalid and terminated for the future.

**Article 208.** Consequences of invalidation of economic obligation

1. Should economic obligation be invalidated as such that has been assumed with the goal knowingly contradicting state and social interests and should both parties have intentions and have fulfilled it, all profits earned in connection with this obligations shall be collected for the benefit of the state; if only one party has fulfilled such obligation, all other party's gains and profits related to this obligation as well as everything it owes to the first party to compensate for the gains shall be confiscated for the state benefit. Should only one party have intentions, everything gained by it shall be returned to the other party, while the gains of the latter or owed to it as compensation for the performance shall be confiscated fro the state benefit by court decision.

2. Should obligation be invalidated for other reasons, each party shall return to the other one everything that was gained in connection with this obligation; should it be impossible to return the gains in kind - compensate in cash unless other consequences of invalidation of obligation are provisioned by the law.

**Section V**  
**LIABILITY FOR ECONOMIC OFFENCES**

**Chapter 24**  
**GENERAL PRINCIPLES OF LIABILITY OF THE PARTICIPANTS**

**OF ECONOMIC RELATIONS**

**Article 216.** Economic and legal liability of the participants of economic relations

1. Participants of economic relations shall bear economic and legal responsibility for economic offences and subjected to sanctions on the grounds and in accordance with the procedure set forth by this Code, other laws, and agreement.

2. Imposition of economic sanctions shall guarantee protection of the rights and legal interests of the citizens, organizations, and the state, including compensation for the losses incurred in connection with the offence to the participants of economic relations and ensure law and order in economic sector.

3. Economic and legal liability shall be based on the principles under which:

the damaged party shall be entitled to the right for compensation for the losses irrespective of whether the agreement contains such provision; liability of the manufacturer (seller) for poor quality of goods set forth by the law shall also apply irrespective of being specified in the agreement;

payment of penalty for the breach of obligation and compensation for losses shall not free the offender from fulfillment of the assumed obligation without the consent thereto by the other party;

provisions on absence or restriction of liability of the manufacturer (seller) of the goods shall not be allowed in economic agreement.

**Article 217.** Economic sanctions as legal means of economic liability

1. Economic sanctions are means of influencing the person who has committed economic offence resulting in unfavorable economic or legal consequences.

2. Economic sanctions shall be as follows: compensation for losses, penalty, operative-economic sanctions.

3. Apart from those specified in Part 2 of this Article, administrative-economic sanctions shall also apply to economic entities for violation of good business practices.

4. Economic sanctions shall be imposed in accordance with the established procedure on the initiative of the participants of economic relations, while administrative-economic sanctions - by authorized state or local self-government bodies.

**Article 218.** Grounds for economic-legal liability

1. Economic offence committed by the participant of economic relations shall be regarded as the ground for economic-legal liability.

2. Participant of economic relations shall be held liable for non-performance or negligence in relation to economic obligation, or violation of good business practices unless it is proved that the offender has taken all

the possible measures for prevention of economic offence. Unless otherwise provisioned by the law, economic entity that has breached economic obligation shall bear economic-legal liability unless it is proved that /\*=proper performance was impossible due to force-majeure, or extraordinary and irreversible circumstances under the existing conditions. Breach of obligation by the offender's counter-agents, absence of the goods necessary for fulfillment of obligation at the market, absence of the required funds [in case of debtor] shall not be regarded as such circumstances.

**Article 219.** Limits of economic-legal liability. Downsizing and release from liability

1. For non-performance or negligence as well as for violation of good business practices, the offender shall be liable with allodium as well as property transferred for economic management of operative administration unless otherwise provisioned by this Code and other laws.

2. Founders of economic entity shall not be liable for the obligations of this entity save for the cases provisioned by the law or charter documents on foundation of such entity.

3. Should offence be caused by wrongful acts (failure to act) of the other party under obligation, the court shall have the right to reduce the liability amount or release the defendant from liability.

4. The parties of obligation may foresee certain circumstances that, due to their extraordinary nature, shall make the ground for the release of the parties from economic liability in case of the breach of obligation due to such circumstances; the parties shall develop the procedure of recording the occurrence of such circumstances.

**Article 220.** Debtor's delay

1. Debtor who has delayed fulfillment of economic obligation shall be liable to the creditor (creditors) for the losses incurred in connection with such delay and for impossibility of performance that has accidentally occurred after the delay .

2. Should the debtor's delay cause a loss of creditor's interest for the performance, the latter may refuse to accept performance and request compensation for the losses.

3. The debtor shall not be regarded as such that has delayed fulfillment of obligation unless it cannot be fulfilled due to such debtor's delay.

**Article 221.** Creditor's delay

1. Creditor shall be regarded as such that has delayed the fulfillment of economic obligation if she has refused to accept due performance by the debtor or has failed to act pursuant to the law, other legal acts or obligation, due to which the debtor was unable to fulfill his/her obligation to the creditor.

2. Creditor's delay shall entitle the debtor to the right to compensation for the losses incurred in connection with the delay unless the creditor proves that such delay was not deliberate or was not caused by his/her negligence or negligence of the persons to whom fulfillment of obligation was delegated pursuant to the law or power of attorney granted by the creditor.

3. Should the creditor fail to comply with Part 1 of this Article, fulfillment of obligation may be postponed for the period of the creditor's

delay on agreement of the parties.

**Article 222.** Pre-trial procedure of realization of economic-legal liability

1. Participants of economic relations who have breached property rights or legal interests of other entities shall renew them before claims have been laid or filed at the court.

2. Should it be necessary to compensate for the losses or impose other sanctions, economic entity or other legal person-participant of economic relations whose rights or legal interests have been violated shall be entitled to the right to make written claim aimed at direct settlement with the offender unless otherwise provisioned by the law.

3. Such claim shall include:

full name and postal details of the claimant and person (persons) to whom the claim is addressed;

date and reference number of the claim;

grounds for the claim;

proofs of these grounds;

claimant's demands with reference to legal acts;

amount of claim and its calculation if applicable;

claimant's bank details;

list of the documents enclosed.

4. Enclosed documents confirming the claimant's demands shall be originals or duly notarized copies. Documents the other party also has in possession may not be enclosed.

5. The claim shall be signed by the authorized officer of the claimant or its representative and sent to the addressee by registered letter or letter with declared value, or handed to the addressee against receipt.

6. The claim shall be considered within one month from the date of its receipt unless otherwise provisioned by this Code or other legal acts. Grounded demands of the claimant shall be satisfied by the person to whom the claim is addressed. (Part 6 of Article 222 amended pursuant to the Law N 2705-IV ( 2705-15 ) dated 23.06.2005 )

7. Considering the claim, the parties, if necessary, shall check calculations, perform examination or take other measures to ensure pre-trial dispute settlement.

8. The claimant shall be notified about the result of claim consideration in writing. Response to claim shall be signed by the authorized official or representative of the recipient and sent to the claimant by registered letter or letter with declared value, or handed to him/her against receipt.

*( Part 9 of Article 222 was excluded pursuant to the Law N 2705-IV ( 2705-15 ) dated 23.06.2005 )*

**Article 223.** Terms of realization of economic-legal liability

1. In court trial for economic offence, standard and reduced limitation periods provisioned by the Civil Code of Ukraine (435-15) shall be used unless otherwise provisioned by this Code.

2. Terms of imposition of administrative-economic sanctions against economic entities shall be set forth by this Code.

## **Chapter 25**

### **COMPENSATION FOR LOSSES IN ECONOMIC SECTOR**

#### **Article 224.** Compensation for losses

1. Participant of economic relations who has breached economic obligation or set requirements as for business operations shall compensate for the losses to the subject whose rights or legal interests have been violated.

2. Losses shall mean expenses of the rightful party, loss or damage of its property, profit that would have been received in case of due performance or compliance with good business practices by the other party .

#### **Article 225.** Content and size of compensation for losses

1. Losses to be compensated by the person who has committed economic offence shall include:

value of the lost, damaged, or destroyed property calculated pursuant to the law;

additional expenses (penalties paid to other entities, value of additional works and materials used etc.) of the party that has incurred losses secondary to breach of obligation by the other party;

lost profit (lost benefit) the damaged party could have gained in case of due performance by the other party;

material compensation for moral damage in cases provisioned by the law.

2. The law may provision limited liability for non-performance or negligence in relation to some economic obligations.

3. Unless otherwise provisioned by the law, amount of loss shall be calculated on the basis of the prices used at location on the date of the debtor's voluntary satisfaction of the request of the damaged party on, in case when the request hasn't been met voluntarily - on the day of filing the court action on compensation for losses.

4. Under some circumstances, the court may satisfy the request for compensation for losses on the basis of the pieces valid on the day of the court decision.

5. On mutual agreement, the parties of economic obligation shall be entitled to the right to agree the amount of losses to be compensated in the form of lump sum or interest rates depending on the amount of unfulfilled obligation or term of the delay in advance. Agreement on obligation provisioning limitation of liability by the parties shall be prohibited should the amount of liability for certain type of obligation be set forth by the law.

6. Cabinet of Ministers of Ukraine shall adopt methods of calculation of losses in economic sector.

7. Content of losses to be compensated in intracompany relations shall be determined by the respective economic entities - economic organizations with regard to their specifics.

**Article 226.** Terms and procedure for compensation for losses

1. Participant of economic relations who has committed economic offense shall take necessary measures aimed at prevention of losses in economic activities of other participants of economic relations or their minimization; should losses be incurred by other entities, the offender shall compensate for these losses voluntarily and in full on the request of these entities unless the law or agreement between the parties provisions other amount of losses.

2. The party that has breached its obligation or is sure to breach it on performance date shall immediately notify thereof the other party, otherwise it shall lose the right to blame the other party for not taking measures for prevention of losses and the right to demand to reduce the amount of losses.

3. The party under obligation shall be deprived of the right to compensation for losses if it has been timely warned by the other party about possible non-performance and could prevent losses by its acts, but failed to do so, save for the cases when otherwise provisioned by the law or agreement.

4. Losses caused by justified refusal to fulfill obligation in the future by the party under obligation shall not be compensated.

5. Should the party under obligation fail to transfer individually specified object (unascertained objects) to the rightful party, the latter shall be entitled to the right to request confiscation of this object (objects) from the party under obligation or compensation for losses.

6. Should the party under obligation fail to carry out certain work (render services), the rightful party shall be entitled to the right to carry out this work independently or delegate it (service rendering) to third persons unless otherwise provisioned by the law or obligation and request compensation for losses incurred in connection with non-performance.

7. Compensation for losses incurred in connection with negligence shall not free the party under obligation from fulfillment of this obligation in kind, save for the cases specified in Part 3 of Article 193 of this Code.

**Article 227.** Joint compensation for losses

1. Should losses be caused by several participants of economic relations simultaneously, each of them shall compensate for losses to the entity that has incurred them pursuant to the Article 196 of this Code.

**Article 228.** Recourse as for compensation for losses

1. Participant of economic relations that has paid compensation shall be entitled to the right to seek third party redress. Should there be grounds thereto, state (communal) enterprises shall take measures to ensure redress from other economic entities or guilty employees pursuant to labor law.

**Article 229.** Compensation for losses in case of breach of financial obligations

1. Breach of financial obligation shall not free the participant of economic relations from responsibility due to impossibility of performance and shall compensate for the losses incurred in connection with non-performance and pay fine set forth by this Code and other laws.

2. Calculation of the amount of losses shall be performed in currency used by the parties for settlements unless otherwise provisioned by the law.

3. In case of request for compensation in foreign currency, creditor shall quote the equivalent amount in Hryvnya at the official rate of the National Bank of Ukraine on the day of the request.

## **Chapter 26**

### **PENAL AND OPERATIVE-ECONOMIC SANCTIONS**

#### **Articel 230.** Penal sanctions

1. For the purpose of this Code, penal sanctions shall be economic sanctions in the form of the amount of money (forfeit, fine, interest) the participant of economic relations shall pay in case of breach of good business practices, non-performance and negligence.

2. Penal sanctions shall apply to economic entities specified in Article 2 of this Code.

#### **Article 231.** Penalty amount

1. For some obligations, penalty amount shall be set forth by the law and shall not be a subject to change by the parties.

2. Should there be a breach of economic obligation in which at least one party belongs to public sector, or should this breach be related to implementation of the state contract, or should fulfillment of obligation be financed from the State Budget of Ukraine or state loan, penal sanctions shall apply, unless otherwise provisioned by the law or agreement, and the amount of such penalty shall be as follows:

breach of obligation related to quality (completeness) of goods (works, services) shall be punished by the fine amounting to twenty percent of the cost of low-quality (incomplete) goods (works, services);

breach of term shall be punished by the fine amounting to 0,1 percent of the cost of goods (works, services) to which it applies for each day of delay; for the delay exceeding thirty days, additional fine amounting to 7 percent of the above cost shall apply .

3. The law can set forth penal sanctions for breach of certain other economic obligations specified in Part 2 of this Article.

4. Should penalty amount not be set forth by the law, the fine shall apply in the amount set forth by the agreement. This amount can be set forth by the law on percentage-of-unfulfilled part of obligation basis, or as certain amount of money, or on percentage-of-obligation value basis irrespective of the degree to which this obligation has been fulfilled, or as certain percent of the cost of goods (works, services).

5. Should the parties fail to agree on setting forth penalty amount for the breach of obligation, dispute shall be settled in court upon request of the interested party filed pursuant to this Code.

6. Penalty amount for breach of financial obligations shall be set forth in percentage the extent of which shall be determined by the rate of the National Bank of Ukraine for all the period of using finances of the other party unless other extent is provisioned by the law or agreement.

7. Amount of penalties applicable in economic relations for breach of obligations shall be set forth by the respective economic entity - economic

organization.

**Article 232.** Procedure for application of penalty sanctions

1. Should penalty sanctions apply for non-performance or negligence, only losses uncovered by this penalty shall be compensated.

2. The law or agreement can provision cases when:

only penalty shall apply;

losses shall be compensated in full apart from penalty;

either penalty or compensation for losses shall apply depending on the creditor's choice.

3. Penalty for economic offence can be requested by the participant of economic relations whose rights or legal interests have been violated and, in cases provisioned by the law, - duly authorized body with proper economic competence.

4. Interest for improper use of the other party's finances shall be charged until the date of repayment to the creditor unless otherwise provisioned by the law or agreement.

5. In case of financial obligation, the debtor shall not pay interest for the creditor's delay.

6. Penalty calculation for delay shall be terminated after six months from estimated deadline unless otherwise provisioned by the law or agreement.

7. In cases provisioned by the law, penalty for breach of economic obligations, shall be collected by the court for the benefit of the state.

**Article 233.** Penalty reduction

1. Should penalty due be superfluously high in comparison with the creditor's losses, the court shall be entitled to the right to reduce the amount of penalty taking into consideration the following: percentage of completion by the debtor; property status of the parties of obligation; other, apart from property, relevant interests of the parties.

2. Should breach of obligation cause no losses to the participants of economic relations, the court, taking into consideration the debtor's interests, reduce the amount of penalty due.

**Article 234.** Obligation of the debtor who has paid penalty to fulfill obligation in kind

1. Payment of penalty for non-performance or negligence shall not free the debtor from fulfillment of obligation in kind, save for the cases specified in Part 3 of Article 193 of this Code.

**Article 235.** Operative-economic sanctions

1. Operative-economic sanctions - measures of operative influence on the offender aimed at termination or prevention of repeated breach of obligation taken by the parties unilaterally shall apply to economic entities and other participants of economic relations for the breach of economic obligations.

2. Only operative-economic sanctions provisioned by the agreement shall apply to the entity guilty of breach of economic obligations.

3. Operative-economic sanctions shall apply irrespective of the degree of guilt of the entity that has breached economic obligations.

**Article 236.** Types of operative-economic sanctions

1. As for economic agreements, the parties can provision the following types of operative-economic sanctions:

1) unilateral refusal to perform by the rightful party followed by liability release - provided obligation was breached by the other party ;

Refusal to pay for negligently fulfilled obligation or such that has been fulfilled prematurely without consent thereto of the other party;

Delay of shipping of goods or work performance due to the payer's delay with issuing the letter of credit, suspension of bank loan granting etc.

2) refusal of the rightful party to accept further fulfillment of obligation breached by the other party, or unilateral return for the part fulfilled by the creditor (direct debiting the debtor's account for the amount paid for low-quality goods etc.);

3) unilateral setting forth of additional guarantees of performance for the future by the party that has breached obligation: change of payment procedure for goods (works, services), switching to pre-payment for goods (works, services) or payment after quality check etc.;

4) refusal to continue economic relations with the party breaching obligations.

2. List of operative-economic sanctions provided in Part 1 of this Article shall not be limited to those listed, and the Parties can provision other operative-economic sanctions in their agreements.

**Article 237.** Grounds and procedure for application of operative-economic sanctions

1. The ground for application of operative-economic sanctions shall be factual breach of economic obligation by the other party. Operative-economic sanctions shall be applied by the party affected by the offence out-of-court and without raising claim against the offender.

2. Procedure for applying operative-economic sanctions by the parties shall be set forth by the agreement. Should the party disagree with operative-economic sanction applied, this interested party can apply to court for cancellation of such sanction and compensation for losses incurred in connection with such sanction.

3. Operative-economic sanctions can apply simultaneously with compensation for losses and penalties.

**Chapter 27**  
**ADMINISTRATIVE-ECONOMIC SANCTIONS**

**Article 238.** Application of administrative-economic sanctions against economic entities

1. Administrative-economic sanctions, or organizational-legal or property measures aimed at suspension of the offence committed by economic entity and liquidation of its consequences, shall be applied by duly authorized public or local self-government bodies to economic entities for

the breach of good business practices set forth by the law.

2. Types of administrative-economic sanctions, terms and procedure of their application shall be set forth by this Code and other legal acts. Administrative-economic sanctions shall be set forth solely by the law.

**Article 239.** Types of administrative-economic sanctions

1. Public and local self-government bodies shall apply the following administrative-economic sanctions to economic entities within the scope of their authority and pursuant to the law:

profit (revenue) withholding;

administrative-economic fine;

levying charges (compulsory payments);

*{ Paragraph 5 of Part 1 of Article 239 was excluded pursuant to the law N 3541-IV ( 3541-15 ) dated 15.03.2006 }*

anti-dumping measures;

termination of export-import operations;

individual licensing;

suspension of license (patent) for certain types of economic activity carried out by economic entity;

revocation of license (patent) for certain types of economic activity carried out by economic entity;

restriction or closure of operations of economic entity;

cancellation of state registration and liquidation of economic entity;

other administrative-economic sanctions provisioned by this Code and other laws.

**Article 240.** Profit (revenue) withholding without compensation

1. Profit (revenue) earned by economic entity as a result of breach of good business practices set forth by the law, or at the expense of the amount of hidden (reduced) profit (revenue) or amount of tax unpaid for hidden taxable object shall be withheld to the respective budget in accordance with the procedure set forth by the law.

Besides, the fine shall apply to such economic entity in cases and in accordance with the procedure set forth by the law, but the amount of this fine shall not exceed double amount withheld, however should the offence be repeated within a year after this sanctions has been applied, the amount of the fine shall triple.

2. List of offences for which sanctions specified in this Article shall apply to economic entities, as well as procedure of their application shall be set forth by the law.

**Article 241.** Fine as administrative-economic sanction

1. Administrative-economic fine - amount of money to be paid by economic entity to the respective budget in case of the breach of the established good

business practices.

2. Offences for which the fine shall apply to economic entities, as well as the amount and procedure of its application shall be set forth by the laws regulating tax and other relations violated.

3. Administrative-economic fine can apply in cases provisioned by the law simultaneously with other administrative-economic sanctions specified in Article 239 of this Code.

**Article 242.** Collection of charges (compulsory payments)

1. Should economic entity breach accounting or reporting rules regarding compulsory payments, or should it fail to make such payments or make it in part, the amount due shall be withheld and transferred to the respective budget. Besides, in cases provisioned by the law, economic entity shall pay fine amounting up to fifty percent of the amount of the amount due (compulsory payment).

*{ Article 243 was excluded pursuant to the Law N 3541-IV ( 3541-15 ) dated  
15.03.2006 }*

**Article 244.** Implementation of anti-dumping measures

1. Should some participants of economic relations carry out foreign economic activity related to gaining illegal advantages at the Ukrainian market (dumping import, subsidized import and other activities defined by the law as unfair competition), which has hurt the economy of Ukraine or posed threat of such damage, anti-dumping, compensational or special measures shall apply to such entities pursuant to the law.

2. Procedure for calculation of the amount of damage (threat of damage) to the Ukrainian economy and implementation of measures specified in this Article shall be set forth by the Cabinet of Ministers of Ukraine pursuant to the law.

**Article 245.** Suspension of export-import operations. Individual licensing.

1. Should economic entities carrying out foreign economic activities be found guilty of unfair competition, placement of currency valuables on the accounts and deposits outside Ukraine with infringement of procedure set forth by the law and in other cases, when acts of these economic entities hurt Ukrainian economy, export-import operations of such economic entities shall be suspended on conditions and pursuant to the procedure set forth by the law.

2. For the breach of the rules of carrying out foreign economic activity as for antimonopoly measures, prohibition of unfair competition and other rules under Part 1 of this Article setting certain restrictions or blocks regarding foreign economic activity individual licensing might apply. Procedures and terms for individual licensing shall be set forth by the law.

**Article 246.** Restriction and closure of operations of economic entity

1. Any economic activity posing threat to life and health of people, or such that is hazardous for the environment shall be prohibited.

2. Should environmental requirements be violated in the process of carrying out economic activities, operations of economic entity guilty of the above might be restricted or suspended by the Cabinet of Ministers of Ukraine, Council of Ministers of the Autonomous Republic of Crimea and other

authorized bodies in accordance with the established procedure.

3. Trade, catering and service enterprises with several records of selling low-quality goods or those that systemically violate trade and service rendering rules or storage and transportation standards set forth by the law shall be subjected not only to economic and administrative-economic sanctions provisioned by this Code, but also to special administrative-economic sanctions provisioned by Customer Protection Law ( 1023-12 ) including withdrawal of low-quality goods and closure of operations of the above entities pursuant to the Law.

4. In cases and in accordance with the procedure set forth by the law, state authorities for customer rights protection shall be entitled to the right of making binding decisions on discontinuance of manufacturing of goods (works, services), shipment and sales of goods not meeting the requirements set forth by the law.

**Article 247.** Cancellation of the state registration of economic entity for violating the law

1. Should economic entity carry out economic activity violating the law or provisions of statutory documents, administrative-economic sanction in the form of cancellation of the state registration and further liquidation of such entity shall apply.

2. Cancellation of the state registration of economic entity shall be performed by the decision of the court making grounds for liquidation of this entity pursuant to Article 59 of this Code.

**Article 248.** Procedure for liquidation of economic entity for violating the law

1. Liquidation of economic subjects in connection with cancellation of its state registration for violating the law shall be performed in accordance with the procedure set forth by Articles 60 and 61 of this Code.

**Article 249.** Guarantees of the rights of economic entities in case of illegal imposition of administrative-economic sanctions

1. Economic entity shall have the right to appeal the decision of any state or local self-government body as for imposition of administrative-economic sanctions.

2. Should any state or local self-government authority adopt act that is not in line with the law and interferes with the rights or legal interests of economic entity, the latter, according to Article 20 of this Code, shall have the right to apply to the court for declaring such act invalid.

3. Losses incurred by economic entity in connection with illegal imposition of administrative-economic sanctions against it shall be compensated in accordance with the procedure set forth by this Code and other laws.

**Article 250.** Terms of imposition of administrative-economic sanctions

1. Administrative-economic sanctions may apply to economic entity for the period of six months from detection of the offence, but no later than one year after the breach of good business practices set forth by the law by this entity, save for the cases provisioned by the law.

**Chapter 28**  
**LIABILITY OF ECONOMIC ENTITIES**

**FOR THE BREACH OF ANTIMONOPOLY-COMPETITION LAW**

**Article 251.** Fines for the breach of antimonopoly-competition law

1. Antimonopoly Committee of Ukraine shall impose fines upon economic entities-legal persons for:

acts specified in Articles 29, 30 and 32 of this Code, evasion from implementation or untimely implementation of the decisions of the Antimonopoly Committee of Ukraine or its territorial departments regarding discontinuance of breaching antimonopoly-competition law, restoration of primary state or change of agreements contradicting antimonopoly-competition law;

creation, reorganization (merger or accession), liquidation of economic entities, joining association by one or several economic entities, purchase or acquisition in any other way, acceptance for management (use) of shares (stocks) and assets (property) in the form of integrated property complexes of enterprises or their structural divisions, and also renting of integrated property complexes of enterprises or their structural divisions without consent thereto by the Antimonopoly Committee of Ukraine or its departments in cases when such consent is required by the law;

failure to submit or delay with submission of the data required by the law, or submission of misleading information to the Antimonopoly Committee of Ukraine and its territorial departments.

2. Should legal persons that are not economic entities commit acts regarded by this Code as unfair competition, the fine in the amount set forth by the law shall be imposed by the Antimonopoly Committee of Ukraine or its territorial departments.

**Article 252.** Administrative liability of citizens-entrepreneurs and official

1. Officials of the state bodies, local self-government bodies, enterprises, institutions, organizations, as well as citizens registered as entrepreneurs shall bear administrative responsibility pursuant to the law for:

acts specified in Articles 29-32 of this Code;

failure to submit or delay with submission of the data required by the law, or submission of misleading information to the Antimonopoly Committee of Ukraine and its territorial departments;

evasion from implementation or untimely implementation of the decisions of the Antimonopoly Committee of Ukraine and its territorial departments .

2. Should citizens registered as entrepreneurs commit acts regarded by this Code as unfair competition or committing these acts for the benefit of the third persons, administrative sanctions shall apply pursuant to the law.

3. Fines for the breach of antimonopoly-competition law shall be imposed by the court.

**Article 253.** Withdrawal of illegal income

1. Income (revenue) illegally earned by economic entity by violation of Articles 29, 30 and 32 of this Code shall be withdrawn by court decision and transferred to the State Budget of Ukraine.

**Article 254.** Recall of goods with misused labels and copies of goods manufactured by other entity

1. In case of misuse of labels, commercial materials, package or in case of copying goods specified in Article 33 of this Code, interested persons can apply to the Antimonopoly Committee of Ukraine or its territorial departments to recall, by court decision, the goods with misused labels or copies of the goods manufactured by other entity from both the manufacturer and the seller.

2. Recalling of the goods with misused labels and copies of the goods manufactured by other entity shall apply in case when confusion with the activity of the other entity cannot be eliminated in any other way.

3. Procedure for further use of the recalled goods shall be set forth by the Cabinet of Ministers of Ukraine.

**Article 255.** Compensation for losses

1. Losses incurred in connection with the abuse of the monopolistic status, agreed anti-competition acts, discrimination of economic entities by the state and local self-government bodies, as well as losses incurred in connection with acts regarded by this Code as unfair competition shall be compensated upon submitting claim in accordance with the established procedure.

**Article 256.** Denial of false, inaccurate or incomplete information

1. Should the fact of defamation of economic entity be proved, the Antimonopoly Committee of Ukraine or its territorial departments shall have the right to adopt the decision on denial of false, inaccurate and incomplete information spread by the offender at the expense of the latter and in term and in a mode set forth by the law.

**Article 257.** Procedural principles of Antimonopoly Committee of Ukraine and its territorial departments for reviewing unfair competition cases

1. Cases related to the breach of antimonopoly-competition law shall be reviewed by the Antimonopoly Committee of Ukraine and its territorial departments in accordance with the procedure set forth by the law.

## **Section VI**

### **SPECIAL FEATURES OF LEGAL REGULATION**

#### **IN SOME SECTORS OF ECONOMY**

##### **Chapter 29**

##### **SECTORS AND BUSINESS ACTIVITIES**

**Article 258.** General conditions determining special features of regulating economic relations

1. Specific features of legal regulation of economic relations shall be defined with regard to social production sector where they develop, specific features of the economy sector, type of economic activity, economic form of the result of economic activity, space where economic relations develop (internal or external market), peculiarities of entities between which economic relations develop.

2. Legal regulation of economic relations shall be performed with regard to existing social division of labor and economic sectors.

3. Special features of legal regulation of foreign economic relations shall be set forth by Section VII of this Code.

**Article 259.** Types of economic activity and their classification

1. Business activity shall exist in case of pooling of resources (equipment, technology, raw and other materials, workforce) for creation of enterprise manufacturing certain goods or rendering certain services. Separate business activity can include one simple process or a number of processes each belonging to the respective classification category.

2. Legal regulation of economic activity and state management of economy shall be performed with regard to special features of some business activities carried out by economic entities.

3. Category of economic entity shall be determined on the basis of main, secondary and auxiliary business activities.

4. In order to furnish state economy management system with accounting and statistical data satisfying the needs of the participants of economic relations for objective data on status and trends of socioeconomic development, economic and financial relations at interstate, state, regional and sector levels and in order to implement international standards of accounting and reporting and introduction of international system of accounting and statistics, Cabinet of Ministers of Ukraine shall adopt measures aimed at the development of the national statistics of Ukraine and state system for classification of technical-economic and social data.

5. Business Activity Classification (BAC) adopted by the central executive body on standardization and regarded as state standard shall make a part of the state system of classification and encoding of technical-economic and social data .

6. BAC objects - all types of business (economic) activities carried out by economic entities.

**Article 260.** Economic sectors and their classification

1. Economic sector is made of all units of production performing mainly the same or similar production activity.

2. General classification of economic sector shall contribute a part of the uniform system of classification and encoding of technical-economic and statistical data used by economic entities and other participants of economic relations, as well as state and local self-government authorities in the process of managing economic activity.

3. Request to economic sectors classification shall be set forth by the law.

**Article 261.** Material production sectors

1. Material production shall include sectors characterized by business activities aimed at creation, restoration or finding material benefits (goods, energy, natural resources) and continuation of production in turnover sector (sales) by transportation, storage, sorting and packing of goods, or other activity types.

2. All other activities shall make non-material production sector (non-production sector).

## **Article 262.** Manufacturing-technical and consumer goods

1. Material production sectors shall produce material benefits intended for further use both in production sector as means of production (manufacturing-technical goods) and for personal consumption (consumer goods).

2. Should manufactured goods be suitable for both production and personal consumption, economic form of such goods shall be determined depending on their intended use.

3. Turnover of manufacturing-technical and consumer goods in economic sector shall be regulated by this Code and other legal acts adopted on its basis and by Civil Code of Ukraine ( 435-15 ) in cases unregulated by this Code.

4. Special features of legal regulation of economic activity related to sales of manufacturing-technical and consumer goods shall be set forth by this Code and other legal acts that are in line with this Code.

## **Chapter 30**

### **SPECIAL FEATURES OF LEGAL REGULATION OF**

### **ECONOMIC AND TRADE ACTIVITY**

## **Article 263.** Economic and trade activity

1. Economic and trade activity is activity carried out by economic entities in sales turnover aimed at sales of manufacturing-technical and consumer goods as well as support activity for these sales by rendering respective services.

2. Depending on the market (internal or external) where sales turnover takes place, economic and trade activity can be regarded as either internal or foreign trade.

3. Economic and trade activity can be carried out by economic entities in the following form: maintenance supply and sales; energy supply; procurement; wholesale; retail and public catering; lease of production means; commercial brokerage and other activities supporting sales of goods (services).

4. Economic and trade activity shall be regulated by economic supply agreements, agricultural procurement, energy supply, sales, lease, swap (barter), leasing and other contracts.

Paragraph 1. Delivery

## **Article 264.** Maintenance supply and sales

1. Maintenance supply and sales of manufacturing-technical and consumer goods both manufactured by economic entities or purchased from other economic entities shall be performed by economic entities by delivery and, in cases provisioned by this Code, on the bases of sales agreement.

2. The Law can provision special features for delivery of some types of manufacturing-technical and consumer goods as well as special procedure for delivery of goods for special state needs. { Part 2 of Article 264 amended pursuant to the Law N 3205-IV ( 3205-15 ) dated 15.12.2005 }

3. Main standards for conclusion and implementation of contracts of delivery shall be set forth by this Code and other legislative acts.

**Article 265.** Contract of delivery

1. Under the contract of delivery, one party - supplier shall supply (deliver) goods to the other party - buyer within the agreed terms, while the buyer shall accept the goods delivered and pay certain amount for them.

2. Contract of delivery shall be made at the discretion of the parties or in accordance with the state order.

3. Parties to the contract of delivery - economic subjects specified in Clauses 1 and 2 of Part 2 of Article 55 of this Code.

4. Terms and conditions of contracts of delivery shall be agreed by the parties in accordance with International Rules for the Interpretation of Trade Terms INCOTERMS( 988\_007 ).

5. Delivery of goods without the contract of delivery shall take place only in cases and in accordance with the procedure set forth by the law.

6. Sales of goods by economic entities to non-economic entities shall be carried out in accordance with sales agreement rules. To delivery issues unregulated by this Code respective provisions of the Civil Code of Ukraine ( 435-15 ) on sales agreements shall apply.

**Article 266.** Object, amount and assortment of delivery

1. Object of delivery shall be unascertained goods, goods with the title specified in standards, specifications, sample documents, price lists or trade reference books. Object of delivery can also products or goods with individual characteristics.

2. Total amount of goods to be delivered, their grade, group, subgroup, type, trademark, type, size ratio (assortment, mix, nomenclature) shall be determined by specification on agreement of the parties unless otherwise provisioned by the law.

**Article 267.** Delivery terms and procedure

1. Contract of delivery can be made for one-year term, or for the term exceeding one year (long-term contract) or for other term specified by the agreement between the parties. Should term of the contract not be specified, it shall be regarded as one-year contract.

2. Delivery terms shall be specified in the agreement by the parties with regard to the need for rhythmical and uninterrupted supply of goods to the customers unless otherwise provisioned by the law.

3. Should long-term agreement specify the amount of delivery for one year only or for a shorter term, such agreement shall provision the procedure for delivery terms agreement for the following periods until the expiry date of the contract. Should such procedure be absent, the contract shall be regarded as concluded for one year.

4. Should the parties provision delivery in lots, the term (period) of delivery for manufacturing-technical goods shall be, as a rule, a quarter, for consumer goods - a month. In the contract, the parties may agree the delivery schedule (month, decade, day etc.).

5. On the agreement of the parties, contract of delivery may provision the procedure of shipment by any mode of transport and selection of goods by

the buyer.

6. The contract may provision shipment of goods by the (manufacturer) who is not the supplier and receipt of the goods by the consignee who is not a buyer, as well as payment for the goods by the payer who is not a buyer.

7. The contract may provision the procedure for the delivery of certain amount of goods not received by the buyer within the set term.

**Article 268.** Quality of the delivered goods

1. Quality of the delivered goods shall conform to the standards, specifications and other technical documents setting for the quality requirements or to the samples (etalons) unless higher quality standards are specified by the parties.

2. Numbers and indexes of quality standards, specifications or other documents shall be specified in the agreement. Should the above documents not be published in the official sources, their copies shall be enclosed to the contract by the supplier on the buyer's request.

3. Should quality terms and conditions not be specified in the contract, quality shall be determined with regard to the goal of the agreement or regular quality standard that applies to the object of the agreement, or with regard to general quality criteria.

4. The supplier shall confirm quality of goods to be delivered by the appropriate shipping document sent together with the goods unless otherwise provisioned in the contract.

5. Should the quality of the goods delivered be lower than required by the standard, specifications or not in conformity with the sample (etalon), the buyer shall have the right to refuse to accept and pay for such goods, and in case when payment for the goods has already been made - request return of the payment.

6. Should it be possible to eradicate the defects of the goods delivered without returning them to the shipper, the buyer shall have the right to request the shipper to eradicate the defects at location or eradicate these defects by his own means at the shipper's expense.

7. Should the goods delivered be in conformity with standards and specifications, but of lower grade than has been agreed, the buyer shall have the right to accept the goods at the price set for the goods of the respective grade, or refuse to accept such goods and pay for them.

8. Should the buyer (consignee) refuse to accept goods not being in conformity with quality standards, technical specifications, samples (etalons) or terms and conditions of the contract, the shipper (manufacturer) shall expose of the goods within ten days, while for short-life goods this term shall be 24 hours from the moment of the receipt of the buyer's (consignee's) notification on refusal to accept the goods. Should the shipper (manufacturer) fail to dispose of the goods within the set term, the buyer (consignee) shall have the right to sell them at location or return to the manufacturer. Short-life goods are to be sold at location in any case.

**Article 269.** Goods quality guarantee. Claims related to the defects of the delivered goods

1. Terms and procedure for establishing the defects of the delivered goods that could not be found at acceptance by the buyer and for presenting claims regarding the defects to the shipper shall be set forth by the law with regard to this Code.

2. Standards, specifications or contract for durable goods with long shelf-life may provision longer terms for establishing the defects (warranty period) by the buyer in accordance with the established procedure. In the contract, the parties may agree longer warranty period than provisioned by standards or specifications.

3. Warranty period of exploitation shall be calculated from the date of commissioning, but no later than within one year after the receipt of the goods by the buyer (consumer). As for consumer goods sold in retail -from the date of purchase unless otherwise provisioned by the standards, specifications, or contract.

4. Warranty period and shelf-life of the goods shall be calculated from the date of manufacture.

5. The supplier (manufacturer) shall guarantee the quality in general. Warranty period for component and spare parts shall be equal to warranty period for the major product unless otherwise provisioned by the contract or standards (technical specifications) for the major product.

6. The supplier (manufacturer) shall eradicate the defects established within the warranty period at his expense or replace the product unless it is proved that defect is due to operational imperfection or breach of storage regulations by the buyer (consumer). After eradication of the defects of the product for which the warranty term is set, this term shall be prolonged for the period of time this product was out of operation due to the defect, and should the product be replaced, the warranty term will be calculated from the replacement date.

7. Should the quality of goods delivered not conform to the requirements, the buyer (consumer) shall have the right to impose a fine on the manufacturer (shipper) in the amount provisioned by Article 231 of this Code unless other amount is provisioned by the law or contract.

8. Claims regarding delivery of goods of inappropriate quality may be presented within six months after the date of establishment of the defects by the buyer in accordance with the established procedure.

#### **Article 270.** Completeness of the delivered goods

1. The goods shall be delivered in complete set in conformity with standards, specifications or price lists. The contract may provision delivery with supplementary devices (parts) or without separate devices (parts) not needed by the consumer, but included in the set.

2. Should completeness not be specified by standards, specifications or price lists, it shall be determined by the contract if necessary.

3. Should the goods delivered be incomplete, the shipper (manufacturer) shall, on the request of the buyer (consignee), complete them within twenty days after the receipt of the request or replace by the complete goods within the same term unless other term is provisioned by the parties. Besides, before completing the goods or their replacement, the buyer (consignee) shall have the right to refuse make payment for it and in cases when the payment has already been made - request its return in accordance with the established procedure. Should the shipper (manufacturer) fail to complete or replace the goods within the set term, the buyer shall have the right to refuse to accept such goods.

4. Acceptance of incomplete goods by the buyer shall not free the shipper (manufacturer) from liability.

#### **Article 271.** Provision on Delivery and Special Terms for Delivery

1. Pursuant to this Code and other laws, the Cabinet of Ministers of Ukraine shall adopt Provision on Delivery of Manufacturing-Technical and Consumer Goods and Special Terms for Delivery of Some Types of Goods.

Paragraph 2. Agricultural procurement contracts

**Article 272.** Contracts for delivery of agricultural products

1. State procurement of agricultural goods shall be regulated by contracts for delivery of agricultural products made on the basis of the state order for the delivery of agricultural products for the state.

2. Under the contract for delivery of agricultural products, agricultural producer (hereinafter referred to as the producer) shall supply to procurement (collecting) or processing enterprise or organization (hereinafter referred to as the contractor) his produce in accordance with the term, quantity and assortment requirements set forth by the agreement, while the contractor shall provide assistance to the producer, accept products and pay for them.

3. Contracts for delivery of agricultural products shall specify:

product type (assortment), state standard or specification number, maximum permissible content of hazardous substances;

amount of products accepted by the contractor directly from the producer;

unit price, total amount of the agreement, delivery procedure and terms and conditions, acceptance terms;

contractor's obligations regarding assistance in organization of production of agricultural goods and its transportation to receiving stations and enterprises;

mutual property liability of the parties in case of non-performance;

other terms and conditions provisioned by Standard Contract for Delivery of Agricultural Products adopted in accordance with the procedure set forth by the Cabinet of Ministers of Ukraine.

**Article 273.** Specific features of implementation of contracts for delivery of agricultural products

1. No later than fifteen days before the beginning of procurement, the producer shall inform the contractor about the amount and terms of delivery of agricultural produce to be sold and agree schedule of its delivery.

2. The contractor shall accept all the products delivered by the producer on conditions provisioned by the contract. Non-standard short-life products that can be used fresh or processed and standard short-life products and delivered in the amount exceeding that specified by the contract shall be accepted by the contractor at prices and on conditions agreed by the parties.

3. Contract for delivery of agricultural products may specify amounts of agricultural products to be accepted by the contractor directly from the producer and products to be delivered to trading enterprises directly by the producer. The rest of the products shall be accepted by the contractor on conditions at receiving stations specified in the contract and located within the producer's administrative district.

4. Containers and necessary packaging materials shall be supplied in the amount, in accordance with the procedure and in terms set forth by the

contract.

5. Other special features of implementation of contracts for delivery of agricultural products shall be set forth by the Provision on Delivery of Manufacturing-Technical and Consumer Goods approved by the Cabinet of Ministers of Ukraine.

**Article 274.** Liability under the contract for delivery of agricultural goods

1. For the failure to deliver agricultural products within the terms set forth by the contract the producer shall pay the contractor forfeit penalty in the amount quoted in the contract unless otherwise other amount is set forth by the law.

2. For failure to accept agricultural products directly from the from the producer and refusal to accept the products delivered by the producer within the term and in accordance with the procedure agreed by the parties, the contractor shall pay the producer the fine amounting to five percent of the value of the unaccepted goods including markups and discounts and also compensate for losses incurred by the producer and in full for the short-life goods.

3. Should the producer fail to prepare products for delivery and acceptance in due time and should he fail to notify the contractor accordingly, the producer shall compensate for the contractor's losses.

4. Contract for delivery of agricultural products may also provision sanctions for non-performance or negligence pursuant to this Code.

Paragraph 3. Energy supply

**Article 275.** Energy supply agreement

1. Under energy supply agreement, energy supplying enterprise (hereinafter referred to as energy supplier) shall supply electrical energy, steam, hot and overheated water (hereinafter referred to as energy) to the consumer (user) who is to pay for the supplied energy, comply with the schedule of its use and secure safe exploitation of energy supply equipment.

2. Energy supply without energy supply agreement shall be prohibited.

3. Object of energy supply agreement shall be forms of energy named in accordance with state standards and specifications.

4. Energy producers and suppliers with monopolistic status, particularly natural monopoly entities, shall make energy supply agreement on the request of consumers possessing technical means for receiving energy. Disputes arising in connection with conclusion of this agreement shall be regulated pursuant to this Code.

5. Energy supply enterprises, save for state and communal, may supply energy to any consumer, including through public power supply network, on conditions set forth by the appropriate agreements.

**Article 276.** Energy amount and quality. Terms, prices and settlement procedure under energy supply agreement

1. The total amount of energy supplied shall be determined on agreement of the parties. Should energy be intended for the state priority needs (limit), energy supplier shall have no right to reduce this limit without the user's consent thereto.

{ Part 1 of Article 276 amended pursuant to the Law N 3205-IV ( 3205-15 )  
dated 15.12.2005 }

2. The user's proposals as for energy amounts, forms and terms of supply shall be regarded as priority provided energy supplier has sufficient production capacity.

3. Energy quality standards shall be agreed by the parties on the basis of the state standards or specifications by approval of the list (value) of standards meeting which shall be contractual obligation.

4. Energy supply terms shall be determined by the parties in the agreement on the basis of the need for its regular and uninterrupted supply to the user. The main accounting period for energy supply shall be decade with daily correction of amounts. The parties may agree daily energy supply on hourly basis as well as schedule and duration of maximal and minimal voltage.

5. Amount of energy previously unsupplied due to energy supplier's fault shall be compensated on the user's request. Should energy not be used by the user or not received for heating purposes in connection with unfavorable weather conditions, compensation for the unsupplied energy shall be performed on agreement of the parties.

6. Settlements under energy supply agreements shall be made on the basis of the prices (rates) set forth pursuant to the law.

7. Payment for energy shall be made, as a rule, in the form of prepayment. Parties may agree on planned payments followed by bank transfer or payment for energy supplied.

8. Should the user possess his own energy source and supply energy through energy supplier's network, settlements can be made for the balance of mutually supplied energy.

#### **Article 277.** Energy use rules

1. Users shall use energy with regard to energy use rules for certain energy form adopted by the Cabinet of Ministers of Ukraine.

2. The rules may provision standard agreements for the supply of certain energy forms.

3. The user shall have the right to supply energy to secondary users connected to his network (sub-users). In this case, sub-users shall make energy supply agreement with the user, have rights and be liable as a user, while the user shall have the rights and be liable as energy supplier.

4. The user shall send the list of sub-users to energy supplier authorized to monitor energy networks and sub-users' devices and the right to monitor sub-users' adherence to energy use rules.

5. Liability for the breach of energy use rules shall be set forth by the law.

#### Paragraph 4. Exchange trade

#### **Article 278.** Trade and exchange activities

1. Trade and exchange activities shall aim at organization and regulation of trade by rendering assistance to economic entities carrying out trade operations by specially created economic organization - commodity exchange.

2. Legal conditions for creation and operations of commodity exchanges and the main rules of trade and exchange operations shall be set forth by the Code, law and other regulations adopted on the basis of this Code.

**Article 279.** Commodity exchange

1. Commodity exchange shall be a special economic entity rendering services in concluding exchange agreements, determining demand and supply of goods, prices, studying and regulating goods turnover and facilitating trade operations connected with it.

2. Commodity exchange shall be legal person acting on the principles of self-government and economic independence, owning property, having independent balance, accounts in the banks and seal with its name.

3. Commodity exchange shall be created on the basis of voluntary unification of the interested economic entities. State and self-government bodies as well as state and public enterprises, institutions and organizations fully or partially financed from the State Budget of Ukraine shall not become founders and members of the commodity exchange.

4. Commodity exchange shall be founded by concluding the agreement determining the procedure of its foundation, founders, their obligations and terms of equity, admission and periodic contributions. Founders shall pay equity contribution.

5. Commodity exchange shall act on the basis of the charter adopted by its founders.

6. State registration of commodity exchange shall be performed pursuant to Article 58 of this Code.

7. Commodity exchange shall not be involved in commercial brokerage and shall not seek profit.

8. Commodity exchange shall operate on the principle of equality of traders, public trade auctions, free (market) prices.

**Article 280.** Rights and duties of commodity exchange

1. Commodity exchange shall have the right to:

set forth exchange trade and exchange arbitration rules binding for all the traders;

set forth admission and periodic contributions for commodity exchange members, amount of payments for services rendered by commodity exchange;

set forth and collect payments for registration of agreements at the commodity exchange pursuant to the charter as well as sanctions for breach of commodity exchange charter and rules;

create commodity exchange divisions and adopt provisions regulating their activities;

create arbitration commissions for settlement of disputes arising from trade contracts;

work out its own standards and standard contracts with regard to the state standards;

enter into agreements with other exchanges, have their representatives at exchanges, including those outside Ukraine;

publish commodity exchange newsletters, reference books and other reference and commercial publications;

make decisions on other issues pursuant to the law.

2. Commodity exchange shall be obliged to:

create conditions for exchange trade;

regulate operations;

regulate prices for goods traded at the commodity exchange;

render organizational, informational and other services to commodity exchange members and visitors;

ensure collection, processing and distribution of market conditions.

**Article 281.** Exchange trade rules. Exchange trading.

1. Exchange trade rules shall be worked out in accordance to the law and shall be the main document regulating exchange operations procedure, exchange trade and dispute settlement.

2. Exchange trade rules shall be adopted by the general meeting of commodity exchange members or authority duly authorized by them.

3. Exchange trading shall be public and open trading in the trade halls of commodity exchange with participation of exchange members responsible for goods that can be traded at the exchange in accordance with the procedure set forth by exchange trade rules .

4. Exchange operations shall be carried out solely by exchange members or brokers - persons registered at the exchange pursuant to exchange charter for executing exchange operations-related orders of exchange members represented by them .

**Article 282.** Exchange trading halt

1. Exchange trading halt shall take place by the decision of the general meeting of exchange members as well as by court decision in cases provisioned by the law.

Paragraph 5. Lease and leasing

**Article 283.** Lease in economic sector

1. Under lease agreement, one party (leaseholder) shall transfer to another party (lessee), on commercial basis and for certain period of time, property for business operations .

2. Under lease agreement, the lessee shall receive specified manufacturing-technical property (or integrated property complex) that shall not loose consumer value in the process of exploitation (non-consumer object).

3. Lease objects shall be as follows:

state and public enterprises or their structural divisions as integrated property complexes, or economic objects with full production cycle (goods, works, services), separate land plot on which the object is located and independent utilities and energy supply system;

real estate (buildings, constructions, premises);

other specified manufacturing-technical property owned by economic entities.

4. Lease of structural divisions of state and public enterprises shall not damage production-economic and technological integrity of enterprise.

5. The law may provide the list of state and public enterprises, integrated property complexes lease of which shall be prohibited.

6. Lease relations shall be regulated by the respective provisions of the Civil Code of Ukraine (435-15) with regard to special features provisioned by this Code.

**Article 284.** Lease agreement terms and conditions

1. Key terms and conditions of lease agreement shall be: lease object (composition and value of property with regard to adjustments); term of agreement; lease payment with regard to adjustments; procedure for the disposal of depreciation allowance; restoration of the leased property and terms and conditions of its return or buy-out.

2. Lease object appraisal shall be performed on the basis of reinstatement value. Terms and conditions of lease agreement shall remain valid for the whole term of agreement and also in case if after its execution the rules adopted pursuant to the law create unfavorable conditions for the lessee.

3. Reorganization of leaseholder shall not make the ground for change of terms and conditions or termination of the agreement.

4. Lease agreement term shall be agreed by the parties. Should any party fail to submit application regarding termination or amendment of lease agreement within one month after its expiration, it shall be regarded renewed for the same term and on the same conditions.

**Article 285.** Main rights and duties of the lessee

1. Lessee shall enjoy the preemptive right for renewal of lease agreement.

2. Lessee may be obliged to use the lease object as intended, or carry out the same type of activity that was carried out by enterprise whose property is leased.

3. Lessee shall preserve leased property pursuant to the agreement avoiding it damage or destruction and make lease payment timely and in full.

4. Should leased property be alienated, damaged, or destroyed, lessee shall compensate the total amount of damages to leaseholder.

**Article 286.** Lease payment

1. Lease payment - fixed payment the lessee pays to the leaseholder irrespective of consequences of his economic activity. Amount of the lease payment may be changed by agreement of the parties and also in cases provisioned by the law.

2. Should economic terms and conditions of the agreement change due to circumstances that cannot be controlled by the lessee or should there be marked deterioration of the condition of the lease object, lessee shall have the right to request reduction of lease payment.

3. Lease payment shall be quoted in monetary terms. Depending of specialization of the lessee's activity and on agreement of the parties, lease payment may be paid in kind or in kind and cash.

4. Lease payment terms shall be set forth in the agreement.

**Article 287.** State and public property lease

1. Leaseholders of state and public property shall be:

1) State Property Fund of Ukraine, its regional departments - for integrated property complexes of enterprises, their structural divisions and real estate owned by the state and other property in cases provisioned by the law;

2) bodies authorized by the Supreme Council of the Autonomous Republic of Crimea or local councils to manage property - for property owned by the Autonomous Republic of Crimea and public property;

3) state (public) property - separate specified property, and, with permission of leaseholders specified in Part 2 of this Article - for integrated property complexes, their structural divisions and real estate.

2. Organizational and property relations connected with leasing of integrated property complexes owned by the state as well as integrated property complexes owned by public enterprise shall be regulated by the law pursuant to this Code.

3. Lease enterprise shall be created pursuant to Article 115 of this Code. Charter of economic entity created on the basis of leased property shall be in conformity with lease agreement.

**Article 288.** Sublease of the state and public property

1. Lessee shall have the right to sublease some object unless otherwise provisioned by the law.

2. Sublease of integrated property complexes shall be prohibited.

**Article 289.** Buyout (privatization) of lease object

1. Lessee shall have the right to buy out the lease object if provisioned so by the lease agreement.

2. Terms and conditions of buyout of the leased state (public) property (integrated property complex) shall be set forth pursuant to the law.

3. Lessee shall have the right to waive the right to buy out the leased object anytime.

4. Privatization of integrated property complexes shall be performed in cases and in accordance with the procedure set forth by the law.

**Article 290.** Lease of land in economic sector

1. Relations arising from lease of land as means of production shall be regulated by the Land Code of Ukraine ( 2768-14 ) and other laws.

2. Lease of the land plot without written, duly notarized and registered agreement shall be prohibited.

3. Amount of payment for the use of land plot owned by the state or public enterprise shall not be lower than set forth by the law. Cases of remission of payment for the use of land plot or payment reduction shall be

set forth by the law.

**Article 291.** Lease agreement termination

1. Unilateral termination of lease agreement shall be prohibited.

2. Lease agreement shall be terminated in case of:

its expiration;

lease object buyout (privatization);

liquidation of economic entity-lessee ;

destruction of lease object.

3. Lease agreement may be terminated on agreement of the parties. On the request of one of the parties, lease agreement may be prematurely terminated on the grounds provisioned by the Civil Code of Ukraine ( 435-15 ) for termination of lease agreement in accordance with the procedure set forth by Article 188 of this Code.

4. Legal consequences of lease agreement termination shall be determined on the basis of conditions of lease agreement regulation by the Civil Code of Ukraine ( 435-15 ).

**Article 292.** Leasing in economic sector

1. Leasing is economic activity aimed at investment of private or invited funds when one of the parties (lessor) shall transfer, under the agreement and for the set term, property owned by the lessor or acquired (economic management) by the order or on agreement of the lessor from the respective property provider (seller) for exclusive use to the other party (lessee) on condition that the lessee shall make periodic leasing payments.

2. Depending on peculiarities of leasing operations, leasing can be of two types - financial or operational. By the form, leasing can be leaseback, share leasing, international leasing etc.

3. Leasing object - real estate and movable assets making capital assets, allowed to be traded at the market and to which no leasing restrictions apply.

4. Property specified in Part 1 of this Article owned by the state or public enterprise may become leasing object only on agreement with the body managing this property and in accordance with the law.

5. Leasing of land plots, other natural objects, as well as integrated property complexes owned by the state or public enterprises and their structural divisions shall be prohibited.

6. Transfer of the title to leasing object shall not be the ground for leasing agreement termination.

7. Legal regulation of leasing shall be performed pursuant to this Code and other laws.

Paragraph 6. Other types of economic and trade activities

**Article 293.** Swap (barter) in economic sector

1. Under swap (barter) agreement, each party shall transfer certain goods to the other party for full economic or operational management in

exchange for other goods.

2. Party to the agreement shall be regarded as the seller of the goods offered for exchange and buyer of the goods received in exchange.

3. On agreement of the parties, surcharge for more expensive goods exchanged for cheaper goods shall be possible unless otherwise provisioned by the law.

4. Property regarded by the law as capital assets, owned by the state or public enterprise shall not be swap (barter) object should other party of the swap (barter) agreement be neither state or public enterprise. The law may provision other specific features of barter (goods exchange) operations related to purchase and disposal of certain property as well as specific features of such operations in certain sectors of economy.

5. Swap (barter) agreements shall be regulated by the rules applying to sales agreement, procurement, contracts for delivery of agricultural goods parts of which could be found in swap (barter) agreements if in conformity with the law and reflects the nature of relations between the parties.

#### **Article 294.** Warehouse storage

1. Goods warehouse - organization storing goods and rendering related services on commercial basis.

2. Goods warehouse shall be regarded as general use warehouse should the law, other regulations or permission (license) issued to economic entity state that it should accept goods from any owner.

3. Warehouse storage shall be regulated by the contract of bailment.

4. Relations arising from storage of goods under the contract of bailment shall be regulated by the respective provisions of the Civil Code of Ukraine ( 435-15 ).

### **Chapter 31 COMMERCIAL BROKERAGE (AGENCY RELATIONS)**

#### **IN ECONOMIC SECTOR**

##### **Article 295.** Agency

1. Commercial brokerage (agency) - entrepreneurial activity when commercial agent renders services to economic entities carrying out economic activity by agency on the behalf, for the benefits, under control and at the expense of the entity represented by the agent.

2. Any economic entity (citizen or legal person) authorized by the contract of agency to render broker services can be commercial agent.

3. Entrepreneurs acting for the benefit of other persons by on their own behalf shall not be regarded as commercial agents.

4. Commercial agent shall not enter into agreements for his/her benefit on the behalf of the person s/he represents.

5. The law may impose restrictions or prohibit commercial brokerage in some sectors of economy.

##### **Article 296.** Grounds for agency development

1. Agency relations develop when:

economic entity authorizes commercial agent to carry out certain activity on the basis of the agreement;

economic entity represented by the commercial agent approves the agreement executed for the benefit of this entity by the agent without the authority to execute it or with abuse of such authority.

**Article 297.** Agency agreement object

1. Under agency agreement, one party (commercial agent) shall render services to the other party (entity represented by the agent) for making agreements or facilitate them (rendering of factual services) on the behalf of this entity and at its expense.

2. Agency agreement shall specify scope of activities, nature and procedure of intermediary services to be rendered by commercial agent, rights and duties of the parties, conditions and amount of the agent's fee, term of the agreement, sanctions applicable in case of breach of the agreement by the parties and other conditions agreed by the parties.

3. The agreement shall specify territory within which commercial agent carries out the activities specified in the agreement. Should territory not be specified in the agreement, this shall mean that the agent is authorized to act within the territory of Ukraine.

4. Agency agreement shall be made in writing. The agreement shall specify commercial agent's authority (representation) confirmation form.

**Article 298.** Approval of the agreement executed by commercial agent without authorization to execute it or with authority abuse

1. Commercial agent shall inform the entity s/he represents about each case of agreement making and about each agreement made for the benefit of this entity.

2. Agreement made on the behalf of the entity represented by the commercial agent without the authority to make it or with authority abuse shall be regarded as approved by the above entity unless this entity denies the acts of the commercial agent in the presence of the third person. Approval of the agreement by the entity represented by the commercial agent shall make it valid from the date of its execution.

**Article 299.** Non-monopolistic and monopolistic agency relations

1. Entity represented by the commercial agent shall have the right to hire other commercial agents notifying each of them thereof, while commercial agent shall have the right to represent other economic entities provided interests of entities represented by such agent are not contradictory in issues the agent is hired to solve.

2. In case of monopolistic agency, commercial agent representing economic entity shall not represent other economic entities within the limits specified by agency agreement.

**Article 300.** Transfer of the rights of commercial agent

1. Commercial agent shall personally perform acts s/he is authorized to perform by the entity s/he represents.

2. Unless otherwise provisioned by agency agreement, commercial agent shall not transfer rights to be exercised for the benefit of the entity s/he

represents to third persons at his/her discretion.

**Article 301.** Mutual settlements in agency relations

1. Under agency agreement, commercial agent shall receive agent's fee for intermediary operations for the benefit of the entity represented by him/her in the amount quoted in the agreement.

2. Agent's fee shall be paid to commercial agent after payment of the third party under the agreement made through his/her intermediary unless otherwise provisioned by the agreement between the parties.

3. The parties may agree additional fee for the commercial agent provided the latter commits to guarantee implementation of the agreement made by him/her for the benefit of the entity represented.

4. Entity represented by commercial agent shall calculate agent's fee with regard to amounts and terms specified in the agreement between the parties.

5. For his/her accounting, commercial agent shall have the right to request accounting records for all agreements for which his/her agency fee is due.

6. Conditions of agency fee payment to commercial agent for the agreements made after expiration of the agreement and other conditions related to settlements between the parties shall be specified in the agreement.

**Article 302.** Obligation of non-disclosure of confidential information in agency relations

1. Commercial agent shall not disclose confidential information received from the entity s/he represents without consent thereto of this entity; s/he shall not use it for his/her own benefit or for the benefit of third persons contrary to interest of the entity represented both in the process of carrying out activity for the benefit of this entity and after termination of agency relations with this entity.

2. Parties to agency agreement may conclude separate agreement on protection of confidential information of the entity represented by commercial agent (confidentiality agreement).

3. Commercial agent shall be liable for disclosure of confidential information pursuant to the law and agreement.

**Article 303.** Liability for the breach of agency agreement

1. Commercial agent shall be fully liable for damages incurred by the entity represented in connection with non-performance or negligence under the agreement unless otherwise provisioned by agency agreement.

2. Unless otherwise provisioned by the agreement, commercial agent shall not guarantee the entity represented by him/her fulfillment of obligations by third persons under agreement made through his intermediary.

3. Should the entity represented by commercial agent breach the agreement, the latter shall have the right to remuneration in the amount quoted in agency agreement and compensation for losses incurred in connection with non-performance or negligence of the second party.

**Article 304.** Termination of agency agreement

1. Agency agreement shall be terminated on the agreement of the parties and also in the following cases: revocation of authority of commercial agent by the entity represented by this agent or refusal of commercial agent to provide services under agreement made without the set term; elimination of the other party due to closure of operations or death; rise of other circumstances terminating the authority of commercial agent or entity represented by him/her.

2. Should authority of commercial agent be revoked, entity represented by this agent shall notify the latter about termination of the agreement no later than one month prior to the date of termination unless otherwise provisioned by the agreement.

3. Should circumstances that have caused termination of authority of commercial agent be eliminated (end), this authority may be renewed on agreement of the parties.

**Article 305.** Law on commercial agency in economic sector

1. Relations arising in the process of commercial agency (agency) in economic sector shall be regulated by this Code, other regulations on special features of agency in certain sectors of economy made on the basis of this Code.

2. Agency relations unregulated by legal acts specified in this Article, respective provisions of the Civil Code of Ukraine (435-15) regulating commercial mandate relations shall apply.

**Chapter 32**

**LEGAL REGULATION OF CARGO HAULING**

**Article 306.** Cargo hauling as business activity

1. for the purpose of this Code, cargo hauling shall mean business activity connected with transportation of manufacturing-technical and consumer goods by rail, road vehicles, sea and air and also via pipelines.

2. Entities entering cargo hauling relations - shippers, consignors and consignees.

3. Cargo shall be hauled by railway transport, road freight transport, sea cargo transport and internal cargo fleet, air cargo transport, pipelines, space transport and other transport.

4. Freight forwarding shall be auxiliary business activity related to cargo hauling.

5. General terms and conditions of cargo hauling and special conditions for transportation of special cargo types (explosives, weapons, poisonous, combustible, radioactive and other hazardous substances) shall be set forth by this Code and transport codes, transport charters and other legal acts made with regard to this Code.

6. Relations arising in passenger and luggage transportation shall be regulated by the Civil Code of Ukraine ( 435-15 ) and other legal acts.

**Article 307.** Contract for carriage of goods

1. Under the contract for carriage of goods, one party (shipper) shall deliver cargo entrusted to it by another party (consignor) to destination within the term set forth by the law to the person authorized to receive this cargo (consignee), while payment for transportation of goods shall be made by

the consignor.

2. Contract for carriage of goods shall be made in writing. Execution of contract for carriage of goods shall be confirmed by shipment document (waybill, consignment note etc.) pursuant to the law. Shippers shall provide shipment document forms to the consignors in accordance with the rules for respective cargo hauling type.

3. Should there be a need for regular cargo hauling during certain period of time, consignor and shipper may conclude long-term agreement under which the shipper shall accept and consignor shall provide cargo in the amount agreed by the party within the set term.

4. Depending on the mode of transport intended for regular cargo hauling, the following long-term agreements shall be made: long-term - for railway and sea transport, navigational - for river transport (internal fleet), special - for air transport, one-year - for road transport. Procedure for conclusion of long-term agreements shall be set forth by the respective transport codes, transport charters or hauling rules.

5. Conditions of cargo hauling by some modes of transport as well as liability of economic entities for cargo hauling shall be set forth by transport codes, transport charters and other legal acts. The parties may agree on other conditions of hauling that are in line with applicable law as well as additional liability for negligence under the agreement.

#### **Article 308.** Acceptance of cargo for hauling

1. Cargo for hauling shall be accepted by the shippers depending on mode of transport and cargo in public or non-public places.

2. Shipper's liability for cargo safety shall begin from the moment of cargo acceptance for hauling.

3. Consignor shall prepare cargo for hauling with regard to the need to ensure transportability and safety in the process of hauling and shall have the right to insure cargo in accordance with the established procedure.

4. Should special documents (certificates) confirming quality and other features of cargo to be hauled be required by the law or agreement, the consignor shall submit all these documents to the shipper together with the cargo.

5. Shipper shall issue duly executed document on acceptance of cargo for hauling to the consignor at the departure point.

#### **Article 309.** Change of shipping conditions

1. Consignor shall have the right, in accordance with the procedure set forth by transport codes or charters, to have cargo delivered for shipment returned prior to its departure, change the consignee's name in the shipping document (prior to its issue to the addressee), dispose of cargo not accepted by the consignee or in case of impossibility of its delivery to consignee.

2. Should hauling be interrupted or terminated for reasons the shipper is unable to influence, the shipper shall inform the consignor accordingly and receive orders regarding the cargo.

#### **Article 310.** Receipt of cargo at the point of destination

1. The shipper shall inform the consignee about the arrival of cargo by sending notification to the latter's address.

2. Consignee shall accept cargo intended for him, but shall have the right to refuse to accept damaged or spoiled cargo should it be established that quality change shall make its full or partial exploitation for original purpose impossible.

3. Shipper's liability for cargo shall expire from the moment of its delivery to the consignee. Should consignee fail to claim the cargo that has arrived within the set period of time or refuse to accept it, shipper shall have the right to store cargo at the expense and risk of consignor by notifying the latter in writing.

4. Should consignee fail to claim cargo within a month after the receipt of the shipper's notification, such cargo shall be deemed unclaimed and disposed of in accordance with the procedure set forth by the law.

**Article 311.** Payment for cargo hauling

1. Payment for cargo hauling and other related works shall be calculated on the basis of prices set pursuant to the law.

**Article 312.** Agreement on intermodal cargo hauling

1. Under agreement on intermodal cargo hauling, cargo is hauled from consignor to consignee by two or more shippers operating different transport modes, but with one shipping document.

2. Agreements on intermodal cargo hauling shall be regulated by the provisions of Article 307 of this Code unless otherwise provisioned by transport codes or charters.

3. Relations between the shippers operating under the agreement on intermodal cargo hauling and work conditions of terminals shall be regulated by node agreement.

**Article 313.** Shipper's liability for delivery delay

1. Shipper shall deliver cargo to destination point within the term set forth by transport codes, charters or rules. Should cargo delivery term not be set, the parties shall have the right to set it in the agreement.

2. Shipper shall be free from liability for delivery delay should it be due to the fault of other persons or caused by circumstances.

3. Amount of fines due for delivery delay shall be set forth by the law.

4. Payment of fine for delivery delay shall not free the shipper from liability for the loss, shortage or damage of cargo caused by this delay.

**Article 314.** Shipper's liability for the loss, shortage or damage of cargo

1. Shipper shall be liable for the loss, shortage or damage of cargo accepted for hauling unless proofs are presented confirming that this loss, shortage or damage have been caused without any default on his/her part.

2. Transport codes or charters may provision cases when responsibility for presenting proofs of the shipper's guilt for the loss, shortage or damage of cargo shall be borne by the consignee or consignor.

3. Shipper shall be liable for damages caused to cargo during transportation:

in case of loss or shortage of cargo - in the amount of lost/missed cargo value;

in case of cargo damage - in the amount by which its value has been reduced;

in case of loss of cargo with declared value - in the amount of declared value unless it is proved that it is lower than the factual value.

4. Should the quality of damaged cargo change to the extent that it cannot be used as intended, consignee shall have the right to refuse it and request compensation for losses.

5. Should cargo for the loss of shortage of which the shipper has paid be later found, the consignee (consignor) shall have the right to claim this cargo after return of compensation paid by the shipper for its loss or shortage.

**Article 315.** Settlement of disputes related to cargo hauling

1. Before institution of cargo haul agreement-related proceedings against the shipper, it is possible to present claims to the shipper. ( Part 1 of Article 315 amended pursuant to the Law N 2705-IV ( 2705-15 ) dated 23.06.2005 )

2. Claims can be presented within six months, claims for fine and bonus payment - within forty-five days.

3. Shipper shall review the claim presented and notify the claimant regarding its satisfaction or rejection within three months; for intermodal hauling claim - within six months. Claims related to fine or bonus payments shall be reviewed for forty-five days. (Part 3 of Article 315 pursuant to the Law N 2705-IV ( 2705-15 ) dated 23.06.2005 )

4. Should the claim be rejected or reply deadline set forth by Part 3 of this Article be missed, the claimant shall have the right to institute court proceedings within six months from the date of receipt of the reply or deadline set for the reply.

5. Shipper may initiate proceedings against consignor and consignee within six months.

6. As for disputes arising from international cargo shipments, procedure for initiation of proceedings and limitation period shall be set forth by transport codes or charters, or international agreements ratified by Verkhovna Rada of Ukraine.

**Article 316.** Freight forwarding agreement

1. Under freight forwarding agreement, one party (forwarding agent) shall, for the fee and at the expense of the other party (customer), render or organize rendering of cargo hauling services provisioned by the agreement.

Freight forwarding agreement may oblige the forwarding agent to organize cargo hauling by transport mode and en-route selected by the forwarding agent or customer, conclude cargo hauling agreement on his/her own behalf or on the behalf of the customer, ensure shipment and delivery of cargo and fulfillment of other shipment-related obligations.

Freight forwarding agreement may provision additional services necessary for cargo delivery (check of amount and condition of cargo, loading-unloading, payment of customs duty, charges and fees due from the customer, storage of cargo before its collection at the point of destination, receipt

of documents necessary for export-import, custom clearance etc.).

2. Under freight forwarding agreement, payment shall be made on the basis of the rates set forth pursuant to Article 21 of this Code.

### **Chapter 33** **MAJOR CONSTRUCTION**

#### **Article 317.** Contracting relations in major construction

1. Construction of production facilities and other buildings, preparation of construction sites, equipment works, finishing works, applied and experimental research carried out by economic entities for other entities or upon their request shall be carried out on contractual terms.

2. Works specified in Part 1 of this Article shall be carried out under work and labor contracts: for major construction (including subcontracting); for design and development work; for geological and geodesic work necessary for major construction; other contracts. General terms and conditions of work and labor contracts shall be designed with regard to the provisions of the Civil Code of Ukraine (435-15) on work and labor contracts unless otherwise provisioned by this Code.

3. Economic relations in major construction procurement shall be regulated by respective work and labor contracts unless otherwise provisioned by the law or agreement between the parties. If agreed by the parties, construction deliveries shall be made in accordance with delivery agreements.

#### **Article 318.** Major construction contract

1. Under major construction contract one party (contractor) shall indigenously fulfill the request of the other party (customer) by constructing and commissioning the object specified in the agreement within the set term and in accordance with design and estimate documents, or by performing construction and other works under the agreement, while the customer shall submit to the contractor approved design and estimate documents, provide construction site, accept finished objects and pay for them.

2. Under this Article, construction contract shall be made for construction, expansion, reconstruction and conversion of objects; construction of objects when all design, equipment supply, commissioning and other works are to be performed, fully or partially, by the contractor; performance of certain parts of construction, assembly, special, project designing and other works related to construction.

3. Delivery of materials, technological, power-generating, electrotechnical and other equipment shall be responsibility of the contractor unless otherwise provisioned by the law or contract.

4. Content of construction contract made on the basis of the state order shall correspond to this order.

5. Major construction contract shall include: names of the parties; place and date of execution; object of the agreement (name of the object, volume and type of project works; dates of beginning and finishing of construction and work performance; rights and obligations of the parties; cost and financing procedure for construction of the object (works); procedure for procurement and project support; procedure of monitoring of quality of works and materials by the customer; object (works) acceptance procedure; procedure of settlements for works performed, provisions on defects and warranty periods; risk insurance, financial guarantees; liability

of the parties (compensation for losses); dispute settlements, grounds and conditions for amendments and termination of the agreement.

**Article 319.** General contractor and subcontractor

1. Major construction contract may be concluded by the customer with one, two or more contractors.

2. Upon the customer's request, contractor shall have the right to invite subcontractors as third parties on conditions of subcontract agreement, but they shall bear responsibility to the customer for the results of their work. In this case, the contractor shall act as general contractor for the customer and customer for subcontractors.

3. Construction contract for equipment installation may be concluded by the customer with either the general contractor or equipment suppliers. If agreed by the general contractor, agreements for installation and other specialized works may be concluded by the customer with respective specialized companies.

**Article 320.** Rights of the customer

1. Without interfering with economic activity of the contractor, the customer shall have the right to monitor volume, cost and quality of design and estimate works performed. S/he shall have the right to monitor the progress of any construction or installation works, as well as the quality of the materials used.

2. Should the contractor be late with the commencement of works or perform works so slowly that their completion in a due time becomes impossible, the customer shall have the right to request termination of the contract and compensation for losses.

3. Should the customer's breach of the agreement make commencement or continuation of contractor's work impossible or very complicated, the contractor shall have the right to refuse to commence works or suspend them.

4. Defects of work or materials used that have occurred due to the contractor's fault shall be eliminated by the contractor by his/her expense.

**Article 321.** Settlements under major construction agreement

1. Cost of works (contract price) or the way of its calculation shall be agreed by the parties in the contract.

2. Cost of works under construction agreement (compensation for contractor's expenses and remuneration) may be calculated by drafting rough, but relatively fixed estimate. Estimate shall be deemed fixed unless otherwise provisioned by the agreement. Fixed estimate may be amended only on the agreement of the parties.

3. Should there be a need to oversubscribe estimated amount, the contractor shall notify the customer accordingly in a due time. Should the contractor fail to notify the customer about the need to oversubscribe estimated amount, s/he shall perform works without requesting compensation for additional losses.

4. The contractor shall not request oversubscription of the fixed estimate and the customer shall not request its downsizing. Should there be marked increase of the cost of materials and equipment to be provided by the contractor as well as services rendered to the contractor by third persons after conclusion of the contract, the contractor shall have the right to request to increase estimated cost of works, and should the customer refuse, the contractor shall have the right to terminate contract in accordance with

the established procedure.

5. Should the contract contain no provisions on prepayment for the works performed or completion of work stages, the customer shall pay the contractor the amount quoted in the contract after final acceptance of construction object provided the works have been performed timely and in a due way, or, on the agreement of the customer - ahead of time.

6. The contractor shall have the right to request advance payment provided the contract contains provision on this advance payment and the amount of it is quoted.

7. In case of temporary shut-down of construction due to circumstances uncontrollable by the parties, the customer shall pay the contractor for the works performed before such shut-down and compensate the contractor for losses connected with such shut-down.

**Article 322.** Liability for the breach of major construction agreement

1. The party guilty of non-performance or negligence under major construction contract shall pay the fine and compensate to the other party for losses (expenses, destruction of damage of its property, unearned profit) in the amount due after payment of the fine unless otherwise provisioned by the law.

2. Defects found at acceptance of works (object) shall be eliminated by the contractor at his/her own expense within the agreed term. Should the contractor delay elimination of defects, the contractor shall be liable under the contract.

3. Time limit for making claims arising from negligence under the major construction contract shall be calculated from the acceptance day and shall be as follows:

one year - for defects of non-major constructions, and if it was impossible to find the defects during the usual acceptance procedure - two years;

three years - for defects of major constructions, and if it was impossible to find the defects during the usual acceptance procedure - ten years;

thirty years - for compensation for losses incurred by the customer due to illegal acts of the contractor that have led to destructions or accidents.

4. Should construction contract or law provision warranty and defects were detected within the warranty period, time limit for making claims shall begin from the date of detection of defects.

**Article 323.** Terms and conditions of making and implementation of major construction contracts

1. Major construction contracts (subcontracts) shall be made and implemented under general conditions of making and implementation of major construction contracts adopted by the Cabinet of Ministers of Ukraine pursuant to the law.

2. Major construction contracts with foreign economic entities shall be made and implemented in accordance with the procedure set forth by this Code, interstate agreements, and special conditions of making and implementation of major construction contracts adopted in accordance with the procedure set forth by the Cabinet of Ministers of Ukraine.

**Article 324.** Contract for design and research works

1. Under the contract for design and research works, the contractor shall draft project documents upon the request of the customer or carry out project and research work specified in the contract and the customer shall pay for this work.

2. Relations arising in the process of design and research work shall be regulated by the provisions of Article 318 of this Code.

3. Contractor shall be responsible for project defects, including those detected in the process of its implementation and exploitation of the object constructed under the project.

4. Should project defects be found, the contractor shall redo the project free of charge and compensate for losses incurred in connection with project defects. .

5. Claim for compensation for losses incurred in connection with project defects may be filed within ten years; should losses be caused by illegal acts of the contractor that led to destruction, emergencies, or collapse - within thirty years from the date of acceptance of the constructed object.

## **Chapter 34** **LEGAL REGULATION OF INNOVATIVE ACTIVITY**

### **Article 325.** Innovative activity

1. Innovative activity in economic sector is activity of the participants of economic relations based on disposal of investment for implementation of long-term scientific-technical programs with long recoupment period and introduction of the new scientific-technical achievements in production and other spheres of social life.

### **Article 326.** Investment into innovative activity

1. Investments in economic sector - long-term contributions of different types of property, intellectual values and property rights to economic entities with the aim of earning profit (revenue) or achievement of other social goal.

2. Forms of investments into innovative activity shall be:

state (public) investments by state or local self-government bodies at the expense of budget funds or other funds in accordance with the law;

commercial investments by economic entities at the expense of their own or loaned funds with the aim of business development;

social investments into social objects and other non-production objects;

foreign investments by foreign legal persons or foreigners, as well as other states;

joint investment by Ukrainian economic entities together with foreign legal or natural persons.

3. General conditions of investment disposal in Ukraine shall be set forth by the law.

### **Article 327.** Types of innovative activity

1. Innovative activity envisages into scientific research and developments aimed at qualitative changes of productive forces and progressive inter-branch structural changes, development and implementation of the new products and technology.

2. Trends of innovative activity shall be as follows:

scientific research and developments aimed at creation of intellectual property objects and scientific-technical products;

development, mastering, production and distribution of the principally new techniques and technology;

development and implementation of the new resource-saving technology intended for improvement of social and environmental situation;

technical re-equipment, reconstruction, expansion, and construction of the new enterprises taking place for the first time as management of methods of manufacturing of the new products and new technology implementation.

3. Investments for restoration of capital assets and increase of inventories shall be made as capital investment.

**Article 328.** State regulation of innovative activity

1. The state shall regulate innovative activity by:

regarding innovative activity as one of the key elements of investment and structural industrial policy; development and ensuring implementation of innovative programs and specific projects;

creation of economic, legal and organizational conditions for state regulation of investment activity;

creation and support of innovation activity infrastructure development.

2. The state shall monitor innovative activity of economic entities and other participants of economic relations, its compliance with the law and state innovation programs. The law may have provisions regarding sectors of entities carrying out innovative activity where foreign investment shall be restricted or prohibited.

**Article 329.** State guarantees of innovative activity

1. To economic entities carrying out innovative activity, the state shall guarantee the following:

support of innovative programs and projects aimed at implementation of economic and social policy of the state;

support of creation and development of entities maintaining infrastructure of innovative activities;

security and protection of intellectual property, protection against unfair competition in innovative sector;

free access to the data about the priorities of the state economic and social policy, innovative needs and results of research-and-development activity, save for the cases provisioned by the law;

support as for training, refresher training and professional development for the staff of entities carrying out innovative activities.

**Article 330.** State examination of innovative projects

1. Innovative projects funded from the State Budget of Ukraine or local budgets, as well as projects ordered by state or local self-government bodies shall be subjected to compulsory state examination pursuant to the law. Innovative projects funded from other sources shall be subjected to compulsory state examination for compliance with environmental, town-planning and sanitary standards.

2. If necessary, examination of some innovative projects of key importance for the national economy shall be performed by the decision of the Cabinet of Ministers of Ukraine.

**Article 331.** Contract for development and transfer of R&D products

1. Under the contract for development and transfer of R&D products, one party (contractor) shall carry out R&D and research-engineering works (hereinafter referred to as RDREW) on the request of the other party (customer), and the customer shall accept works performed (products) and pay for them.

2. Modified R&D products may be the object of the contract for transfer of R&D products.

3. R&D products shall mean completed R&D, project, engineering, technological works and services, creation of prototype models or product batches necessary for RDREW in accordance with the requirements agreed with the customers. These works/services shall be performed/rendered by economic entities (R&D, engineering, project engineering and technological institutions as well as R&D and engineering divisions of enterprises, institutions, organizations etc.)

4. The agreement may be concluded for the whole range of works, from research to introduction of R&D products and their further technical maintenance (service).

5. Should R&D product be a result of innovative work, the contract shall be made for its transfer, including services for its introduction and management.

6. Contracts for development and transfer of R&D products for solving the priority needs of the state and those involving foreign economic entities shall be concluded and implemented in accordance with the procedure set forth by the Cabinet of Minister of Ukraine pursuant to the law.

*{ Part 6 of Article 331 amended pursuant to the Law N 3205-IV ( 3205-15 )  
dated 15.12.2005 }*

**Article 332.** Law on innovative activity

1. Relations arising in the process of carrying out innovative activity shall be regulated by this Code and other legal acts. Relations unregulated by this Code shall be regulated by the respective provisions of the Civil Code of Ukraine ( 435-15 ).

**Chapter 35**  
**SPECIFIC FEATURES OF LEGAL REGULATION**

**OF FINANCIAL ACTIVITY**

Paragraph 1. Finances and banking

**Article 333.** Financial activity of economic entities

1. Finances of economic entities shall make independent element of the national financial and credit system with individual turnover providing for coverage of production expenses (goods, works, services) and earning profit.

2. Financial activity of economic entities shall include monetary and other financial intermediation, insurance and support activities in financial and insurance sector.

3. Financial intermediation is the activity connected with receipt and redistribution of finances, save for the cases provisioned by the law. Financial intermediation shall be performed by banks and other financial and credit organizations.

4. Insurance in economic sector is activity aimed for coverage of long- and short-term risks of economic entities with the use of savings via financial and credit system, or without the use of savings.

5. Support activities in finances and insurance shall be non-state management of financial markets, stock exchange operations with securities, other activities (intermediation in lending, financial consulting, activity connected with foreign currency, cargo insurance, appraisal of insurance risk and expenses, other support activities).

**Article 334.** Legal status of banks

1. Bank system of Ukraine is made of the National Bank of Ukraine and other banks, as well as branches of international banks founded and operating in the territory of Ukraine in accordance with the law.

*{ Part 1 of Article 334 amended pursuant to the Law N 358-V ( 358-16 ) dated 16.11.2006 }*

2. Banks are financial institutions with the following functions - attraction of funds of natural and legal persons and investment of these funds on its behalf, on their own terms and at their own risks; opening and maintenance of bank accounts of natural and legal persons.

3. Banks are legal persons. Banks can be general and specialized - savings, investment, mortgage, settlement (clearing).

4. Officials of the state and local self-government bodies shall not participate in bank management unless otherwise provisioned by the law.

5. Banks shall not be responsible for liabilities of the state and the state shall not be held responsible for liabilities of the banks, save for the cases provisioned by the law and cases when the state shall assume such liability pursuant to the law.

6. Bank operations shall be regulated by this Code, law on banks and banking (2121-14), and other laws.

7. Economic entity shall not use the word "bank" in its name without registration as the bank at the National Bank of Ukraine, save for the cases provisioned by the law.

**Article 335.** National Bank of Ukraine. Council of the National Bank of Ukraine.

1. National Bank of Ukraine is the central bank of the state the main function of which is ensuring stability of the Ukrainian currency - Hryvnya.

2. Legal status of the National Bank of Ukraine shall be set forth by the Law on the National Bank of Ukraine( 679-14 ).

3. Development of the main principles of the monetary policy and monitoring of its implementation shall be performed by the Council of the National Bank of Ukraine. Legal status of the Council of the National Bank of Ukraine shall be set forth by the law.

**Article 336.** Forms of incorporation of the banks

1. Banks shall be founded as open joint stock companies or banks for cooperation.

*{ Part 1 of Article 336 in the wording of the Law N 133-V ( 133-16 ) dated 14.09.2006 }*

2. Bank share cab be owned by legal and natural persons, residents and non-residents, as well as the state represented by the Cabinet of Ministers of Ukraine or its authorized bodies. Bank shares shall not be owned by legal persons where the bank owns the large package of shares, citizens associations, religious and charity organizations.

3. Use of budget funds intended for other purposes for bank charter fund formation, loaned funds and those loaned on mortgage shall be prohibited as well as increasing the amount of the fund for loss coverage.

4. Banks shall have the right to create bank associations the types of which shall be set forth by the law as well as to join industrial and financial groups. Banks shall hold membership in only one association.

5. Terms and procedure of foundation, state registration, licensing and reorganization of the bank, requirements as for charter, formation of charter and other funds as well as bank operations shall be set forth by the law on the bank and banking ( 2121-14 ). Provisions of the laws on economic entities and cooperation that are in line with this Code and the above law shall apply to the banks .

**Article 337.** State banks

1. State bank shall be founded by the decision of the Cabinet of Ministers of Ukraine on the basis of the state property.

2. State bank charter shall be adopted by the resolution of the Cabinet of Ministers of Ukraine.

3. The name of the state bank shall contain the word "state".

4. The state shall exercise the owner's authority in relation to its shares (stocks) in the charter fund of the state bank through bank management authorities.

5. Should the state make decision on full carve-out of its shares, the bank shall loose the status of the state bank.

**Article 338.** Banks for cooperations

1. Bank for cooperations - the bank founded by economic entities and other persons on territorial principle, on the basis of voluntary membership and consolidation of shares for joint financial activity. Local and central banks for cooperations can be founded pursuant to the law.

2. Charter fund of the bank for cooperations shall be divided into shares.

3. Irrespective of his/her share, each shareholder of the bank for cooperations shall have one vote.

**Article 339.** Bank operations

1. Financial intermediation shall be carried out as bank operations. The main types of bank operations shall be deposits, settlements, loans, factoring and leasing.

2. The list of bank operations shall be provided by the law on banks and banking ( 2121-14 ).

3. Bank operations shall be carried out in the accordance with the procedure set forth by the National Bank of Ukraine.

**Article 340.** Deposit operations of the banks

1. Deposit operations shall mean attraction of funds for deposits and placement of savings (deposit) certificates.

2. Deposits shall be made from cash and non-cash funds in Hryvnya or foreign currency placed, by legal and natural persons (clients) on their bank accounts on contractual basis and for certain period of time, or without specification of the period and shall be returned to the client in accordance with the law and contractual terms. Deposit agreement shall be made in writing.

**Article 341.** Settlement operations of the banks

1. Settlement operations of the banks shall secure mutual settlements between the participants of economic relations and other financial settlements.

2. Economic entities shall keep money on respective bank accounts for settlements.

3. Non-cash settlements can be performed in the form of bank order, payment request, request-order, debt securities, checks, bank cards and other debit and credit payment instruments used in international banking.

4. In non-cash settlements, all payments shall be made through the banks by wiring respective amounts from the payer's account to the receiver's account, or by recording mutual obligations and financial claims. Payments shall be made from the funds available at the payer's account. Should it be necessary, the bank may issue loan for settlement to the payer.

5. Banks shall ensure settlements pursuant to the law and client's requirements on contractual basis. The contract shall contain details of the parties, terms and conditions of opening and closing of accounts, services rendered by the bank, obligations of the parties and liability for non-performance, and also terms and conditions for termination of the contract.

**Article 342.** Bank accounts

1. Accounts of legal person that is a client of the bank shall be opened at the banks located in places where this person is registered or in any bank in the territory of Ukraine on the agreement of the parties. The procedure for opening accounts at the banks located outside Ukraine shall be set forth by the law.

2. Economic entities with independent balance may open accounts for settlements for goods, works performed and services rendered, as well as for payment of salaries, taxes, charges (compulsory payments) and other

settlements connected with financial support of their operations.

3. Economic entity shall have the right to open savings accounts for all types of operations at all banks of Ukraine and other states at its choice and on the agreement of these banks in accordance with the procedure set forth by the National Bank of Ukraine.

4. Legal persons and citizens registered as entrepreneurs shall open savings and transaction accounts at any bank of Ukraine at their choice and on the agreement of these banks in accordance with the procedure set forth by the National Bank of Ukraine. ( Part 4 of Article 342 amended pursuant to the Law N 2424-IV ( 2424-15 ) dated 04.02.2005 )

5. For economic entities receiving funds from the State Budget of Ukraine or local budgets for special purposes, accounts shall be opened in accordance with the law.

6. Bank account opening procedure, forms of settlement and settlement procedure shall be set forth by the law on banks and banking ( 2121-14 ), other laws, and regulations of the National Bank of Ukraine.

#### **Article 343.** Liability for settlement delay

1. Payers and payees shall ensure timely settlements and review of claims unrelated to the banks.

2. The payer shall pay the payee the fine for payment delay in the amount agreed by the parties that shall not exceed double discount rate of the National Bank of Ukraine valid during the period for which the fine is due.

3. Should the bank delay crediting the client's account, it shall pay the fine in the amount specified in the cash settlement agreement; should there be no such agreement, - in the amount set forth by the law.

4. The payer shall independently calculate the fine for the delay and order the bank to wire this amount from the account.

#### **Article 344.** International settlement operations

1. International settlement operations shall be carried out on the basis of cash claims and liabilities arising in the process of foreign economic activity between the states, economic entities, other legal and natural persons residing in different states.

2. International settlements involve exporters, importers, and banks entering relations connected with the flow of negotiable instruments of title and payment management.

3. International settlements shall be regulated by international law, bank traditions and rules, terms and conditions of international contracts, currency law of the participating states.

4. General terms and conditions of settlements with foreign states shall be set forth by international agreements. Settlement and account management procedure shall be set forth by agreements made by authorized banks.

5. International settlements shall be carried out through correspondent banks (banks that have agreed on payments and settlements by mutual order).

6. International settlements shall require the following commercial documents: consignment, waybill, pro forma invoice, insurance documents (insurance policy, certificate), document confirming property rights and other commercial documents. Financial documents required for international

settlements - promissory note, bill of exchange, bill of debt, check and other documents used for receiving payment.

**Article 345.** Loan operations of the banks

1. Loan operations shall mean investment of the attracted funds of legal and natural persons (borrowers) on conditions, on the behalf and at the risk of the bank. Loan operations - bank operations regarded as such by the law on banks and banking( 2121-14 ).

2. Credit relations shall be regulated by loan agreement between the creditor and borrower made in writing. Loan agreement shall include the goal, amount and term of loan, procedure of its granting and repayment, types of borrower's guarantee, interest rates, loan payment procedure, obligations, rights and liability of the parties as for loan granting and repayment.

**Article 346.** Granting loans to economic entities

1. In order to receive bank loan, the borrowers shall submit the following documents:

application specifying nature of loan agreement, purpose, amount and term of loan;

technical and economic feasibility of loan and calculation of economic effect;

other necessary documents.

2. In order to minimize risks, the bank shall issue a loan to the borrower given there is a solvent guarantor-economic entity, bank guarantee, or on mortgage or on other securities used in banking. With this in view, the bank shall have the right to carry out preliminary study of economic activity of the borrower, his/her solvency and predict the risk of non-repayment.

3. Loans shall be issued at interest the rate of which shall be no lower than interest rate on loans taken by the bank and interest rate paid on deposits. Issuing interest-free loans shall be prohibited save for the cases provisioned by the law.

**Article 347.** Forms and types of bank loans

1. Loans used in economic sector can be bank, commercial, leasing, mortgage etc.

2. Loans issued by the banks shall differ by:

terms (short-term - up to one year, middle-term - up to three years, long-term - over three years);

guarantee;

risk level;

methods of issuing;

repayment terms;

other conditions of issuing, using, and repayment.

**Article 348.** Bank control over the use of loan

1. The bank shall control performance under loan agreement, intended use, timely and full repayment in accordance with the procedure set forth by the law.

2. Should the borrower fail to fulfill his/her obligations under the loan agreement, the bank shall have the right to suspend loan payments in accordance with the agreement.

**Article 349.** Loan resources

1. Banks shall carry out loan operations within the limits of loan resources formed in the process of their activity. They can borrow resources from each other on contractual basis, attract and invest funds in the form of deposits, holdings and carry out mutual operations provisioned by their charters.

2. Should there be lack of resources for loan operations and fulfillment of obligations, the banks may borrow resources from the National Bank of Ukraine. Loan resources of the National Bank of Ukraine - finances of charter and other funds that can be used as loan resources pursuant to the law.

3. General terms and conditions of disposal of loan resources shall be set forth by this Code and other laws.

**Article 350.** Factoring services of the banks

1. Bank's acquisition of receivables for goods delivered or services rendering with assuming the risk of fulfillment of this obligation and acceptance of payments (factoring) is bank operation carried out for commission and under agreement.

2. Under factoring agreement the bank shall be obliged to wire funds to the client for commission, and the client shall turn over to the bank cash claim to the third person arising from the client's relations with this third person.

3. Factoring operations of the banks can be accompanied by rendering additional consulting and informational services to the clients.

4. Factoring agreement shall be valid irrespective of the agreement between the client and his/her debtor on prohibition or restriction on cash claim turn-over.

5. General conditions and procedure for factoring operations shall be set forth by the Civil Code of Ukraine ( 435-15 ), this Code, law on banks and banking( 2121-14 ), other laws and regulations of the National Bank of Ukraine.

**Article 351.** Leasing operations of the banks

1. Banks shall have the right to purchase, at their own expense, means of production for leasing them in compliance with the requirements specified in Article 292 of this code.

2. General conditions and procedure for leasing operations shall be regulated by the law on banks and banking ( 2121-14 ), other legal acts and regulations of the National Bank of Ukraine.

Paragraph 2. Insurance

**Article 352.** Insurance in economic sector

1. Insurance is the activity of specially authorized state organizations and economic entities (insurers) connected with rendering insurance services to legal and natural persons (insurants) aimed at protection of their property interest in case of occurrence of insurance events provisioned by the law at the expense of monetary funds formed from insurance payments paid by insurants.

2. Insurance can be provided on the basis of the agreement between the insurer and insurant (voluntary insurance) or pursuant to the law (compulsory insurance).

3. For ensuring insurance protection of their property interests, economic entities may found mutual insurance associations in accordance with the procedure and on terms set forth by the law.

**Article 353. Insurance entities in economic sector**

1. Insurance entities, or insurers, carry out insurance activities on provision that they have been granted license for certain type of insurance. Insurer shall have the right to provide only those kinds of insurance that are specified in its license.

2. Object of the insurer's direct activity shall be solely insurance, reinsurance, and financial activity connected with formation and investment of insurance reserves and their management. It shall be possible to carry out these activities by rendering services to other insurers under joint venture agreements.

3. Under this Code, insurants shall be participants of economic relations who have made insurance contract with the insurers or are regarded as insurants pursuant to the law.

**Article 354. Insurance contract**

1. Under insurance contract, insurer shall pay insurance compensation to the insurant or other person named by the insurant in the insurance contract in case of occurrence of insurance event, and insurant shall make insurance payments in due time and fulfill other conditions of the contract.

2. State body authorized to monitor insurance activity shall set additional requirements to insurance contracts in accordance with the law.

3. In the process of making insurance contract, the insurer shall have the right to request from the insurant the document on his/her financial status confirmed by the auditor (audit company).

4. Insurance contract may result in issuance of insurance document (policy, certificate) representing insurance contract.

**Article 355. Law on insurance in economic sector**

1. Insurance objects, compulsory insurance types as well as general conditions of insurance, insurance requirements and procedure for the state monitoring of insurance activity shall be regulated by the Civil Code of Ukraine ( 435-15 ), this Code, insurance law ( 85/96-BP) and other legal acts.

Paragraph 3. Intermediation in operations with securities. Stock exchange.

**Article 356. Intermediation connected with issue and turnaround of securities**

1. Intermediation connected with issue and turnaround of securities - entrepreneurial activity of economic entities (hereinafter referred to as security brokers) engaged solely in operations with securities or allowed to carry out such activity.

*{ Part 2 of Article 356 was excluded pursuant to the Law N 3480-IV ( 3480-15 ) dated 23.02.2006 }*

3. The law may provision other types of intermediary activities with securities (management of securities etc.).

**Article 357.** Licensing of intermediary activity connected with issue and turnaround of securities

1. Intermediary activity connected with issue and turnaround of securities shall be licensed in accordance with the established procedure.

2. Entities whose only activity is intermediation connected with issue and turnaround of securities may carry out some types of activities related with turnaround of securities (consulting to holders etc.).

**Article 358.** Conditions under which intermediary activity connected with issue and turnaround of securities shall be prohibited

1. License for any type of intermediary activity connected with issue and turnaround of securities shall not be granted to security broker directly or indirectly owning other security broker's property the value of which exceeds the amount allowed by the law.

2. Security broker possessing the license for any intermediary activity connected with issue and turnaround of securities shall not own other broker's property the value of which exceeds the amount allowed by the law, either directly or indirectly.

3. Security broker shall not trade:

own securities;

securities of the issuer in which s/he owns property the value of which exceeds five percent of the charter fund.

**Article 359.** Making agreements concerning securities

1. By accepting the power of attorney for purchase or sale of securities, security broker shall inform the person who has given this power of attorney and at whose expense s/he acts about stock market value rate.

2. Security broker shall submit to the stock exchange the data about all the agreements concerning securities made by him/her within the term and in accordance with the procedure set forth by stock exchange rules.

3. Special requirements for agreements concerning securities shall be set forth by the law.

4. Special features of accounting and operations with securities shall be provisioned by the law.

**Article 360.** Stock exchange

1. In order to ensure security market functioning, stock exchange shall be founded. Procedure for founding and operation of the stock exchange shall be set forth by the law.

{ Part 1 of Article 360 worded pursuant to the Law N 3480-IV ( 3480-15 )  
dated 23.02.2006 }

2. Stock exchange shall be founded by the founders - security brokers in accordance with the procedure set forth by the law.

3. Stock exchange activity shall be aimed solely at making agreements on sales and purchase of securities and their derivatives. Stock exchange shall not carry out operations with securities on its own behalf and on the instructions of the clients, as well as carry out depository functions.

4. Stock exchange shall become legal person on the date of its state registration pursuant to the law.

**Article 361.** Special conditions for termination of stock exchange operations

1. Stock exchange operations shall be terminated on provision that during certain period of time set forth by the law the number of its members remains lower than minimum set forth by the law.

2. Stock exchange operations shall be terminated in accordance with the procedure for termination of operations of economic entities unless otherwise provisioned by the law.

Paragraph 4. Audit

**Article 362.** Auditing

1. Auditing is activity of citizens and organizations aimed at performing audit, organizational and methodological support of audit and rendering of other audit services.

2. Auditing shall be regulated by this Code, law on auditing ( 3125-12 ) and other regulations drafted on the basis of the above.

**Article 363.** Audit and state financial audit

1. Audit is checking of financial statements, accounting, original documents and other information on financial and economic activities of economic entities aimed at determining authenticity of their statements, accounting, its completeness and compliance with the law and set standards.

2. Audit shall be performed by independent persons (auditors), auditor organizations as economic entities authorized to perform it.

3. State financial audit is a form of the state financial monitoring aimed at checking and analysis of the factual situation as for legal and efficient use of the state or public funds and property, other state assets, correctness of accounting and authenticity of financial reporting, as well as internal control system functioning .

4. State financial audit shall be performed by the Accounts Chamber and bodies of the State Supervision and Auditing Service pursuant to the law .

5. Audit and state financial audit can be performed on the initiative of economic entities as well as in cases provisioned by the law (compulsory audit).

( Article 363 in the wording of the Law N 3202-IV ( 3202-15 ) dated  
15.12.2005 )

**Article 364.** Auditor and audit company

1. Auditor is a natural person possessing certificate confirming his/her qualifications to perform audit in the territory of Ukraine. ( Part 1 of Article 364 in the wording of the Law N 2738-IV ( 2738-15 ) dated 06.07.2005 )

2. Auditor shall have the right to unite with other auditors and create association pursuant to the law.

3. Audit company is economic organization founded pursuant to the law.

4. Conditions and procedure for performing audit, rights and obligations of auditors and audit companies shall be set forth by the law and other regulations.

#### **Article 365. Audit Chamber of Ukraine**

1. Audit Chamber of Ukraine - self-governed body that performs certification of entities intending to carry out audit, adopts training programs for auditors and audit standards, registers audit companies and auditors.

2. Legal status and operating procedures of Audit Chamber of Ukraine shall be set forth by the law on auditing ( 3125-12 ) and other regulations adopted on its basis.

### **Chapter 36 USE OF THE RIGHTS**

#### **OF OTHER ECONOMIC ENTITIES**

#### **IN ENTREPRENEURSHIP (COMMERCIAL CONCESSION)**

#### **Article 366. Commercial concession agreement**

1. Under commercial concession agreement, one party (right holder) shall concede to the other party (user) the right to exercise the scope of rights in business activities for the set term or without such, while the user shall respect terms and conditions for exercising the rights conceded and pay the agreed remuneration to the right holder.

2. Commercial concession agreement shall provision exercising the scope of rights conceded to the user, use of business reputation and commercial experience of the right holder within certain scope and in the certain territory or without territorial specifications for some spheres of business activities.

#### **Article 367. Form and registration of the commercial concession agreement**

1. Commercial concession agreement shall be made in writing and presented as a single document. Non-compliance with this requirement shall make the agreement invalid.

2. Commercial concession agreement shall require state registration by the body that has registered economic entity acting as right holder under the agreement. Should the right holder be registered as economic entity outside Ukraine, registration of commercial concession agreement shall be performed by the body that has registered economic entity acting as the user.

3. In relations with the third parties, parties to commercial concession agreement shall have the right to refer to the agreement only from the date of its state registration. Unregistered agreement shall deprive the parties

of the right to refer to it in case of dispute.

4. Other requirements regarding commercial concession agreement shall be set forth by the law.

**Article 368.** Commercial subconcession

1. Commercial concession agreement may provision the user's right to allow other persons to exercise the scope of rights conceded to him/her, in full or in part, on conditions of commercial subconcession agreed with the right holder or specified in commercial concession agreement.

2. Should commercial concession agreement be deemed invalid, commercial subconcession agreements made on its basis shall be also deemed invalid.

**Article 369.** Remuneration under commercial concession agreement

1. Remuneration under commercial concession agreement may be paid by the user to the right holder in the form of one-time periodic payments or in other form provisioned by the agreement.

**Article 370.** Rights of the right holder

1. The right holder shall:

pass to the user technical and commercial documents and provide other information necessary to the user of exercising of the rights conceded to him/her under commercial concession agreement and instruct the user and his/her staff on the issues related to exercising of these rights;

submit to the user duly executed licenses (permissions) provisioned by the law.

2. Unless otherwise provisioned by commercial concession agreement, the right holder shall:

ensure registration of commercial concession agreement;

provide regular technical and consultative assistance to the user, including assistance in training and advanced training for the staff;

control the quality of goods (works, services) manufactured (performed or rendered) by the user on the basis of commercial concession agreement.

**Article 371.** User's obligations

1. With regard to the nature and specific features of activity carried out by the user under commercial concession agreement, the user shall:

carrying out activities under the agreement, use right holder's trademark and other symbols as specified in the agreement;

ensure conformity of the quality of the goods manufactured under the agreement, works performed or services rendered to the quality of alike goods (works, services) manufactured (performed, rendered) by the right holder;

comply with right holder's instructions and guidelines aimed at ensuring conformity of the nature, ways and conditions of exercising the scope of rights conceded to right holder's standards of exercising these rights;

render additional services to customers (clients) they would have been rendered when buying (ordering) goods (works, services) directly from the right holder;

openly inform customers (clients) about the use of right holder's trademark and other symbols under commercial concession agreement;

not disclose right holder's commercial secrets and other confidential information provided;

pay remuneration quoted in the agreement.

**Article 372.** Restriction of the parties' rights under commercial concession agreement

1. Commercial concession agreement may provision restriction of the parties' rights such as:

the right holder shall not concede similar rights to other persons operating in the territory of the user or abstain from carrying out similar activities in this territory;

the user shall not enter competition with the right holder in the territory for which commercial concession agreement for business activity carried out by the user exercising the rights conceded by the right holder applies;

the user shall refuse to apply for similar rights under commercial concession agreement from the right holder's competitors (potential competitors);

the user shall agree with the right holder place for the construction of production facilities to be used for exercising the rights conceded under the agreement, as well as their exterior and interior design.

2. Restricting conditions may be deemed invalid should they not be in conformity with the law.

**Article 373.** Liability of the right holder for the claims addressed to the user

1. The right holder shall bear subsidiary liability for the claims addressed to the user of commercial concession should the goods (works, services) sold (performed, rendered) by the user not conform to the standards.

2. As for the claims made to the user as manufacturer of products (goods) of the right holder, the latter shall be liable jointly with the user.

**Article 374.** Amending and termination of commercial concession agreement

1. Commercial concession agreement may be amended pursuant to provisions of Article 188 of this Code.

2. V In their relations with third persons, parties to the commercial concession agreement shall have the right to refer to amendments to the agreement only starting from the date of the state registration of such amendments pursuant to Article 367 of this Code unless they present proofs that the third party did or needed to know about the amendment earlier.

3. Each of the parties to commercial concession agreement made for undetermined period of time shall have the right to terminate this agreement anytime by notifying the other party accordingly six months before the desired date unless longer period is provisioned by the agreement.

4. Premature termination of commercial concession agreement made for the set or undetermined period of time shall be subjected to state registration

pursuant to Article 367 of this Code.

5. Should the right holder or user be declared insolvent (bankrupt), commercial concession agreement shall be terminated.

**Article 375.** Consequences of changing trademark or other right holder's symbol

1. Should there be change in trademark or other right holder's symbol the rights for which were conceded under commercial concession agreement, this agreement shall remain valid in relation to the new right holder's symbols unless the user requests termination of the agreement.

2. Should commercial concession agreement remain valid, the user shall have the right to reduce the amount of the right holder's remuneration accordingly.

3. Should the right conceded under this agreement be terminated during the period of validity of commercial concession agreement, this agreement shall remain valid, save for provisions related to the right terminated, and the user shall have the right to request respective reduction of the amount of the right holder's remuneration unless otherwise provisioned by the agreement.

**Article 376.** Legal regulation of commercial concession

1. Relations arising from exercising the rights of other economic entities in business shall be regulated by this Code and other laws.

## **Section VII FOREIGN ECONOMIC ACTIVITY**

### **Chapter 37 GENERAL PROVISIONS**

**Article 377.** Definition of foreign economic activity

1. Foreign economic activity of economic entities - economic activity requiring crossing of the customs border of Ukraine by property specified in Part 1 of Article 139 of this Code or by workforce.

2. Foreign economic activity shall be carried out with regard to principles of freedom of its entities to enter foreign economic relations, ability to carry out foreign economic activity in any legal form and equality of all entities carrying out foreign economic activity before the law.

3. General conditions and procedure for carrying out foreign economic activity by economic entities shall be set forth by this Code, the law on foreign economic activity ( 959-12 ) and other regulations.

**Article 378.** Entities carrying out foreign economic activity

1. Entities carrying out foreign economic activity shall be:

economic entities specified in Clauses 1 and 2 of Part 2 of Article 55 of this Code.

( Paragraph 3 of Part 1 of Article 378 was excluded pursuant to the Law N 2424-IV ( 2424-15 ) dated 04.02.2005 )

2. Foreign economic activity can also be carried out by foreign economic organizations with legal person status founded in Ukraine pursuant to the law by state or local self-government bodies.

3. The state shall guarantee equal protection of all entities carrying out foreign economic activity.

**Article 379.** Types of foreign economic activity and foreign economic operations

1. All entities carrying out foreign economic activity shall have the right to perform any foreign economic operations unless otherwise provisioned by the law.

2. Types of foreign economic activity, list of foreign economic operations to be performed in the territory of Ukraine, conditions and procedure for carrying them out by entities carrying out foreign economic activity, as well as the list of goods (works, services) export and import of which is prohibited shall be set forth by the law.

**Article 380.** State regulation of foreign economic activity

1. State regulation of foreign economic activity shall aim at protection of economic interests of Ukraine, rights and legal interests of economic subjects carrying out foreign economic activity, creation of equal conditions for the development of all types of entrepreneurship in the field of foreign economic relations and disposal of revenues and investments by economic entities carrying out foreign economic activity, stimulation of competition and restriction of monopolism of economic entities in the field of foreign economics.

**2. State and local self-government bodies shall not interfere with operations of the entities carrying out foreign economic activity, save for the cases provisioned by the law.**

3. List and authority of state bodies regulating foreign economic activity, as well as the forms of its state regulation and monitoring shall be set forth by this Code, law on foreign economic activity (959-12), and other laws.

**Article 381.** Licensing and quota arrangements for foreign economic operations

1. Cabinet of Ministers of Ukraine may adopt the list of goods (works, services), export and import of which shall be allowed only if appropriate license is available.

2. Export-import operations licensing procedure and license types shall be set forth by the law.

3. Quota assignment procedure in relation to foreign economic operations shall apply in cases provisioned by the law, valid international treaties Ukraine is a party to and in the form of restriction of the total amount and/or total customs value of the goods to be imported (exported) within certain period of time. Quota assignment procedure for the above operations as well as quota types shall be set forth by the law.

4. Information about introduction of licensing or quota assignments shall be published in official printed media in accordance with the procedure set forth by the law.

**Article 382.** Foreign economic agreements (contracts)

1. Entities carrying out foreign economic activity shall have the right to make any foreign economic agreements (contracts), save for those prohibited by the Ukrainian law.

2. Foreign economic agreement (contract) shall be made in writing unless otherwise provisioned by the law or valid international treaty ratified by Verkhovna Rada of Ukraine.

3. Form of foreign economic agreement (contract) shall be determined by the law of the country it is made it. Place where the agreement (contract) is to be executed shall be agreed in accordance with the law of Ukraine.

4. Form of foreign economic agreements (contracts) related to land plots, constructions and other real estate located in the territory of Ukraine shall be determined pursuant to the laws of Ukraine.

5. Rights and obligations of the parties to foreign economic agreement (contract) shall be determined by the law of the country where it is to be executed unless otherwise agreed by the parties. Should the parties fail to agree the procedure for determining applicable law, this procedure shall be set forth by the law on foreign economic activity ( 959-12 ).

6. Foreign economic agreement (contract) may be declared invalid in court should it not be in conformity with the law of Ukraine or requirements of the international treaties ratified by Verkhovna Rada of Ukraine.

7. The law may provision special procedure for making, implementation and termination of some types of foreign economic agreements (contracts).

**Article 383.** State registration of foreign economic agreements (contracts)

1. In order to secure compliance of foreign economic agreement (contracts) with applicable law of Ukraine, Cabinet of Ministers of Ukraine may introduce their state registration.

2. Types of foreign economic agreements (contracts) subjected to the state registration as well as its procedure shall be set forth by the law on foreign economic activity ( 959-12 ) and other regulations adopted pursuant to this law.

3. Fulfillment of obligations arising from foreign economic agreements (contracts) unregistered pursuant to the law shall be punishable by legal sanctions applicable to economic entities that have committed this offence.

**Article 384.** Customs regulation of foreign economic activity

1. Customs regulation of foreign economic activity shall be performed by the state.

2. Customs regulation of foreign economic activity shall be performed in accordance with the Customs Code of Ukraine ( 92-15 ), law on foreign economic activity ( 959-12 ), other laws, Uniform customs rate ( 2097-12 ) and valid international treaties ratified by Verkhovna Rada of Ukraine.

3. In the territory of special (free) economic zones customs control shall be regulated by special laws and valid international treaties ratified by Verkhovna Rada of Ukraine setting special legal regime for the above zones pursuant to Section VIII of this Code.

**Article 385.** Taxation principles in foreign economic activity

1. Taxation of entities carrying out foreign economic activity shall be based on the following principles:

setting tax rates with regard to the need for ensuring and maintenance of self-supporting status of entities carrying out foreign economic activity as well as ensuring self-supporting payment balance of Ukraine;

guarantee of stability of types and amount of taxes, methods of calculation of taxes and charges (compulsory payments) and foreign currency status in the territory of Ukraine;

equality of entities carrying out foreign economic activity in setting tax rates;

stimulation of exports of domestic goods.

2. Tax benefits shall be granted in accordance with the law, as a rule, to those entities carrying out foreign economic activity that export scientific and high tech products on regular basis whose annual export exceeds import and whose amount of export is no less than five percent of the amount of goods sold in the fiscal year.

3. Tax rates shall be set and cancelled pursuant to tax law.

**Article 386.** Foreign currency accounts of entities carrying out foreign economic activity

1. Entities carrying out foreign economic activity shall have the right to open any legal foreign currency accounts at the banks located in the territory of other states.

2. Procedure for opening foreign currency accounts at foreign banks shall be regulated by the law of the country in the territory of which the bank is located. Should economic entity carrying out foreign economic activity open foreign currency account at a foreign bank, this entity shall notify thereof the National Bank of Ukraine no later than within three days after opening the account. Violation of this requirement shall be regarded as administrative-economic offence and punishable pursuant to the law.

3. Opening of foreign currency account in a foreign bank by economic entity carrying out foreign economic activity in the charter fund of which the state has its share shall be made on agreement with the State Property Fund of Ukraine.

4. Entities carrying out foreign economic activity shall notify tax authorities about the use of their foreign currency accounts in accordance with the procedure set forth by the law.

5. Procedure for settlements in foreign currency shall be set forth by the law.

**Article 387.** Foreign currency earnings from foreign economic activity

1. After payment of taxes and charges (compulsory payments) provisioned by the law, entities carrying out foreign economic activity shall dispose of foreign currency earnings independently, save for the cases provisioned by the law pursuant to this Code.

2. The law may introduce compulsory division of foreign currency earnings from foreign economic operations between the entities carrying out foreign economic activity and authorized persons of the state foreign currency funds, as well as procedure and amounts of deductions in foreign currency. Information about introduction of this regime shall be published in the official bulletin of the Cabinet of Ministers of Ukraine no later than

two months prior its introduction.

**Article 388.** Receiving loans from foreign financial institutions

1. Entities carrying out foreign economic activity may receive loans in foreign currency from international financial institutions on contractual basis. Terms and conditions of such contract shall be in line with the applicable law of Ukraine.

2. Entities carrying out foreign economic activity in the charter fund of which the state has its share may conclude loan agreements with foreign financial institutions only on agreement of the State Property Fund of Ukraine.

3. Types of property not to be mortgaged for receiving foreign currency loan from foreign financial institutions shall be set forth by the law.

**Article 389.** State protection of rights and legal interests of entities carrying out foreign economic activity

1. The state shall protect entities carrying out foreign economic activity outside Ukraine in accordance with international law standards. Such protection shall be ensured through diplomatic and consular missions, state trade missions representing interests of Ukraine and in another way provisioned by the law.

2. In case of discrimination or unfriendly acts of the other states, customs unions or economic groups restricting rights and legal interests of Ukrainian entities carrying out foreign economic activity, the state shall take necessary measures.

3. The law may provision special measures for protection of the national manufacturer from dumping import and special measures as for import that might inflict great harm on national manufacturers. The law may also have provisions regarding goods and services export, import and transit of which trough the territory of Ukraine shall be prohibited.

4. Unfair competition against entities carrying out foreign economic activity or their foreign counteragents shall be punishable by sanctions pursuant to the law on foreign economic activity ( 959-12 ) and other laws.

**Chapter 38**  
**FOREIGN INVESTMENTS**

**Article 390.** Foreign investors

1. Foreign investors are the following entities carrying out investment activity in the territory of Ukraine:

legal persons incorporated under the law of foreign states;

foreigners and apatrids without permanent registration in the territory of Ukraine;

international state and non-governmental organizations;

other states;

other foreign entities carrying out investment activity pursuant to the law.

**Article 391.** Types of foreign investments

1. Foreign investors shall have the right to make investments in the territory of Ukraine in foreign currency regarded as convertible by the National Bank of Ukraine, as well as in any movables or real estate and property rights connected with them; other valuables (property) regarded as foreign investments by the law.

2. Any type of foreign investments may be prohibited or restricted only pursuant to the law.

**Article 392.** Ways of making foreign investment

1. Foreign investors shall make all kinds of investments specified in Article 391 of this Code in the following ways:

shareholding in economic organizations created in cooperation with the national legal or natural persons or by purchase of share in operating economic entities;

creation of foreign enterprises in the territory of Ukraine, as well as branches and other structural divisions of foreign legal persons, or by purchase of operating enterprises;

direct purchase of movable assets or real estate if not prohibited by the law of Ukraine, or purchase of shares or other securities;

direct or indirect (through Ukrainian natural or legal persons) of rights to use land and natural resources in the territory of Ukraine;

economic activity on the basis of product distribution agreements;

purchase of other property rights;

other legal ways.

2. Only the law may prohibit or restrict any ways of foreign investing.

3. Relations arising in connection with foreign investor's purchase of the right to use land and other natural resources of Ukraine shall be regulated by land and other law Ukraine respectively.

**Article 393.** Appraisal of foreign investments

1. Appraisal of foreign investments, including contributions to charter fund of enterprise with foreign investments, shall be made in foreign currency and in Hryvnya on agreement of the parties and based on the prices operating at international markets or at Ukrainian market. Foreign currency shall be converted in Hryvnya at the rate set by the National Bank of Ukraine.

**Article 394.** Legal regulation of foreign investments

1. As for foreign investments, national regime of investment activity shall be introduced in Ukraine, save for the cases provisioned by this Code, other laws or valid international treaties ratified by Verkhovna Rada of Ukraine.

2. Taxation of foreign investors and enterprises with foreign investments shall be regulated by the tax law of Ukraine.

3. State programs for attraction of foreign investments into the key sectors of economy and social spheres may provision additional benefits for

economic entities carrying out these activities.

4. Issues of national security of Ukraine taken into consideration, the law may restrict or prohibit activity of foreign investors and enterprises with foreign investments in some sectors of economy or within certain territories of Ukraine.

**Article 395.** State registration of foreign investments

1. State registration of foreign investments shall be performed by the Council of Ministers of the Autonomous Republic of Crimea, Kiev and Sevastopol City State Administrations within three business days after factual investment in accordance with the procedure set forth by the Cabinet of Ministers of Ukraine.

2. Refusal to perform state registration of foreign investment shall be possible only in case of breach of the law of Ukraine on foreign investments. Refusal to perform state registration of foreign investments may be appealed in the court.

3. Unregistered foreign investments shall not give right for obtaining benefits and guarantees provisioned for foreign investments and enterprises with foreign investments by this Code and other laws.

**Article 396.** Activity of economic entities with foreign investments in Ukraine

1. Economic entities with foreign investments carrying out their activities as enterprises with foreign investments (Article 116 of this Code), foreign enterprise (Article 117 of this Code) and in other forms allowed by the law can be founded in Ukraine.

*( Part 1 of Article 396 amended pursuant to the Law N 2424-IV ( 2424-15 ) dated 04.02.2005 )*

2. Procedure for foundation of enterprise with foreign investments and foreign enterprises shall be regulated by this Code, other laws adopted pursuant to it. Special features of foundation of banking, insurance and other financial institutions with foreign investments shall be set forth by the appropriate laws.

**Article 397.** Guarantees for foreign investments

1. In order to ensure stability of legal regulation of foreign investments, the following will be guaranteed to foreign investors:

state guarantees of protection of foreign investments in case of amendment of the law on foreign investments;

guarantees against forceful seizure and against illegal acts of state bodies and their officials;

compensation for losses to foreign investors;

guarantees in case of closure of investment operations;

guarantees of repatriation of profit and disposal of earnings from foreign investments;

other guarantees for investment activity.

2. Should the law on legal regulation of foreign investments be amended, state guarantees provisioned by the law valid at the time when the investment was made shall apply on the request of foreign investor in cases and in

accordance with the procedure set forth by the law.

3. Foreign investments in Ukraine shall not be subjected to nationalization.

4. State bodies and their official shall not requisition foreign investments, save for the cases of taking rescue measures in case of natural disasters, accidents, epidemics, epizooties. Investments can be requisitioned only on the basis of the decision of bodies authorized thereto by the Cabinet of Ministers of Ukraine and in accordance with the procedure set forth by the law.

5. Foreign investors shall have the right to request compensation for losses incurred in connection with illegal acts or lack of action of the state or local self-government bodies and their officials. Losses of foreign investors shall be compensated on the basis of valid market prices or on the basis of sound estimates confirmed by independent auditor (audit company).

6. Compensation for losses to be paid to foreign investor shall be adequate, effective and determined at the moment of implementation of the decision on compensation for losses. Under this decision, the amount of compensation shall be immediately paid in the currency of investments or in other currency acceptable by foreign investor pursuant to currency law. The law may provision interest on compensation.

7. Compensation for losses to foreign investors shall be performed in accordance with the procedure set forth by the law.

**Article 398.** Guarantees of repatriation of profit and disposal of earnings from foreign investments

1. After payment of taxes and fees (compulsory payments), foreign investors shall be guaranteed unimpeded immediate repatriation of their earnings, profits and other funds in foreign currencies legally earned from investment.

2. Procedure of repatriation of the above funds shall be set forth by the National Bank of Ukraine. Earnings of foreign investor or other funds earned from investment in Ukraine in national or foreign currency may be reinvested in Ukraine in accordance with the procedure set forth by the law.

**Article 399.** Guarantees to foreign investors in case of termination of investment activity

1. Should investment activity be terminated in the territory of Ukraine, foreign investor shall have the right to return his/her investments no later than within six months after termination of this activity, as well as earnings on these investments in cash or in kind unless otherwise provisioned by the law or agreement.

**Article 400.** Law on foreign investments

1. Relations arising from foreign investments in Ukraine shall be regulated by this Code, law on legal regulation of foreign investments ( 93/96-BP ), other legal acts and enforced international treaties ratified by Verkhovna Rada of Ukraine. Should the rules provisioned by international treaty differ from those provisioned by the Ukrainian law on foreign investments, the provisions of international treaty shall prevail.

**Section VIII**  
**SPECIAL REGIMES OF CARRYING OUT ECONOMIC ACTIVITY**

**Chapter 39**  
**SPECIAL (FREE) ECONOMIC ZONES**

**Article 401.** Definition of the special (free) economic zone

1. Special (free) economic zone is a part of the Ukrainian territory where special legal regime of economic activity and special procedure for application and implementation of the Ukrainian law shall apply. Beneficial customs, tax, foreign exchange and other conditions for national and foreign investors can be introduced in the territory of the special (free) economic zone.

2. Special (free) economic zones shall be created with the aim of attracting investments and their effective application, activation, in cooperation with foreign investors, of entrepreneurship aimed at increasing export of goods, delivery of high quality goods and services to internal market, implementation of new technology, development of market infrastructure, more effective use of natural, material and human resources, acceleration of socioeconomic development of Ukraine.

**Article 402.** Territory and status of the special (free) economic zone

1. Territory and status of the special (free) economic zone, including the term for which it is created shall be determined by the separate law for each special (free) economic zone.

**Article 403.** Types of special (free) economic zones

1. Special (free) economic zone of different functional types can be created in Ukraine: free customs zones and ports, export and transit zones, customs warehouses, technoparks, technopolices, integrated production zones, tourist and recreation zones, insurance and bank zones etc. Some economic zones can combine functions of different types of the above mentioned special (free) economic zones.

**Article 404.** State guarantees for investments into special (free) economic zones

1. System of the state guarantees for investments provisioned by the law on investment activity and foreign investments shall apply to all economic entities carrying out investment activity in the special (free) economic zone. The state shall guarantee economic entities operating in the special (free) economic zone the right to expatriation of profit and investments outside this zone and outside Ukraine pursuant to the law.

**Article 405.** Law applied in the territory of the special (free) economic zone

1. Law of Ukraine with due account for peculiarities provisioned by this Code, law on general principles of creation and operation of the special (free) economic zones ( 2673-12 ), as well as the law on creation of each special (free) economic zone drafted on the basis of this Code shall apply in the territory of the special (free) economic zone.

## **Chapter 40**

### **CONCESSIONS**

#### **Article 406.** Concession activity in Ukraine

1. Concession is granting the right for creation (construction) and/or management (exploitation) of concession object on provision of assuming respective obligations, property liability and entrepreneurial risk to national or foreign economic entities (concessionaires) by authorized body of state or local self-government body with the goal of satisfaction of social needs. This right shall be granted on commercial basis, under concession agreement and for the set period of time.

2. Economic sectors where concession activity shall be allowed, state or public property objects that can be concessioned, as well as business activities for which concession is prohibited shall be defined by the law.

#### **Article 407.** Principles of concession activity

1. Concession activity in Ukraine shall be based on the following principles:

combination of the state regulation of concession activity and its operating on the basis of concession agreement;

selection of concessionaires by tender;

integrated exploitation and payment for concession object; partial financing of concession objects intended for social purposes by the state and local self-government bodies;

mutual benefits for the parties to concession agreement, distribution of risks between the parties to concession agreement;

state guarantees for concessionaires' investments;

stability of terms and conditions of concession agreements;

guarantee of rights and legal interests of consumers of the goods (services) provided by concessionaires.

#### **Article 408.** Concession agreement

1. Concession activity shall be carried out on the basis of concession agreements made in accordance with the law of Ukraine with concessionaires, including foreign investors, by the Cabinet of Ministers of Ukraine or its authorized state body, or local self-government bodies defined by the law.

2. Term of concession agreement shall be set forth by the parties to the agreement depending on the nature and conditions of concession. This term shall be no less than ten years and shall not exceed fifty years.

3. Cabinet of Ministers of Ukraine may adopt standard concession agreements for some types of concession activity.

4. Requirements for concession agreements, procedure of their conclusion and other issues related to legal regulations of concession activity shall be set forth by the law on concessions ( 997-14 ) and other laws.

#### **Article 409.** Closure of operations of enterprise to be concessioned

1. Closure of operations of the state or public enterprise the property of which is to be concessioned shall be performed by liquidation of such

enterprise with suspension of the right of economic management of property secured to this state or public property.

2. Concession agreement shall provision maximal employment of Ukrainian citizens, including those released in connection with liquidation of the state or public enterprise the property of which was concessioned, in concession activities.

**Article 410.** Law on concessions

1. Relations connected with concession activities shall be regulated by this Code, law on concessions ( 997-14), other legal acts drafted on the basis of the Code and the law.

2. Special laws may provision specific features of concession activities in some economic sectors.

**Chapter 41**

**OTHER TYPES OF SPECIAL REGIMES**

**OF ECONOMIC ACTIVITY**

**Article 411.** Exclusive (sea-bed) economic area of Ukraine

1. Marine areas adjacent to the territorial sea of Ukraine, including areas around islands belonging to Ukraine, shall make the exclusive (sea-bed) economic area of Ukraine.

2. The width of the exclusive (sea-bed) economic area of Ukraine amounts up to two hundred sea miles counted from the same base line as the territorial sea of Ukraine.

3. In order to secure sovereign rights of Ukraine for exploration, exploitation, preservation of living resources and their management in the exclusive (sea-bed) economic area, the state shall take measures (including examination, inspection, arrest and court proceedings) aimed at ensuring adherence to the law of Ukraine by economic entities.

4. In its exclusive (sea-bed) economic area, Ukraine shall have the exclusive right to create as well as allow and regulate construction, exploitation and use of artificial islands, installations and constructions for marine scientific research, exploration and development of natural resources, and for fulfillment of other economic goals pursuant to the law of Ukraine.

5. Regime of economic activity in the exclusive (sea-bed) economic area shall be defined by the law on the exclusive (sea-bed) economic area of Ukraine (162/95-BP) with due account to this Code.

**Article 412.** Specific features of economic activity at the state border of Ukraine

1. Economic activity at the state border of Ukraine (navigation, use of water bodies for timber floating and other types of water management, creation of hydraulic works, performance of other works in internal waters of Ukraine, exploitation of land, forests, fauna, geological survey and other economic activity) shall be carried out with regard to specific features of the state border regime pursuant to the law of Ukraine and valid international agreements ratified by Verkhovna Rada of Ukraine.

2. Conditions of carrying out economic activity at the state border of Ukraine shall be defined by the appropriate state bodies of Ukraine with

regard to local conditions pursuant to the law.

3. In cases and in accordance with the procedure set forth by the law, border service in some areas may be temporarily restricted or terminated by the decision of the Cabinet of Ministers of Ukraine, or quarantine for people, animals, cargo, seeds and seedlings and other animal and vegetable products crossing the border of Ukraine may be introduced.

**Article 413.** Specific features of carrying out economic activity in sanitary protection and other protected zones as well as in the territories and objects under special protection

1. Economic activity in sanitary protection and water protection zones, protective sanitary zones and other protected zones shall be carried out with regard to legal regime of such zones defined by the law.

2. Economic activity in territories and objects of natural reserve fund of Ukraine, resort, recreational and other territories and objects under special protection shall be carried out in accordance with the requirements of legal regime set forth by the law and other legal acts.

3. The law shall provision additional requirements to economic activity and social guarantees for people working in the territories contaminated due to Chernobyl accident.

**Article 414.** Special economic regime in some sectors of economy

1. For stabilization or accelerated development of some sectors of economy, Cabinet of Ministers of Ukraine may initiate special economic regime.

2. Only non-commercial (non-profit) economic activity shall be allowed in the Armed Forces of Ukraine.

3. Economic activity in the Armed Forces of Ukraine - specific activity of military units, institutions, establishments and organizations of the Armed Forces of Ukraine connected with everyday life support envisaging subsidiary holding, manufacturing of products, performance of works and rendering services, lease of military movable assets and real estate (save for arms, ammunition, military and special vehicles) within the frameworks and in accordance with the procedure set forth by the law.

4. Relations connected with carrying out economic activity in the Armed Forces of Ukraine shall be regulated by this Code and other laws.

**Article 415.** Special features of carrying out economic activity in the priority development territory

1. On the proposal of the appropriate local self-government body, the law may define territory with unfavorable socioeconomic conditions within the city or rayon limits where special regime for investment activity shall be introduced, on the grounds and in accordance with the established procedure, for creation of the new workplaces (priority development territory) .

2. Procedure for carrying out economic activity in the priority development territory shall be set forth by the law.

**Article 416.** Procedure for carrying out economic activity under emergency or environmental emergency conditions

1. Under emergency conditions o special legal regime of work of state and local self-government bodies, enterprises, institutions, organization provisioned by the Constitution of Ukraine ( 254к/96-BP ) allowing for temporary restrictions in exercising constitutional rights and freedoms of

natural and legal persons and imposing additional duties, economic activity shall be carried out with regard to restrictions and obligations introduced by the respective Presidential Decree on introducing the state of emergency in Ukraine or in its separate regions made in accordance with the Constitution of Ukraine ( 254к/96-BP ).

2. Authority of the state and local self-government bodies as for the participants of economic relations, measures taken under emergency conditions as well as liability for the breach of emergency state regime shall be defined by the law on the state of emergency ( 1550-14 ).

3. Provisions of this Article regarding carrying out economic activity shall also apply in case of declaring environmental emergency in some regions.

**Article 417.** Procedure for carrying out economic activity under martial law

1. In the period of martial law imposed in the territory of Ukraine or in separate regions, legal regime of economic activity shall be defined on the basis of the law on defense of Ukraine ( 1932-12 ), other legal acts on securing defensive capacity of the state, and the law on martial law ( 1647-14 ).

**Article 418.** Guarantees for the participants of economic relations under special economic regime

1. Introduction of special economic regimes not provisioned by this Code setting forth restrictions of the rights of economic entities shall be prohibited.

2. The state shall guarantee economic entities and other participants of economic relations the right to apply to the court for protection of their property and other rights from illegal restriction under any special economic regime provisioned by this Code.

## **Section IX FINAL PROVISIONS**

1. This Code shall enter into force on January 1, 2004.

2. The following laws shall expire on January 1, 2004 :

The Law of Ukraine "On Entrepreneurship" ( 698-12 ) (Ukrainian SSR Verkhovna Rada Herald, 1991, N 14, p. 168) with amendments except for Article 4;

Law of Ukraine "On Enterprises in Ukraine" ( 887-12 ) (Ukrainian SSR Verkhovna Rada Herald, 1991, N 24, p. 272) with amendments.

3. The Cabinet of Ministers of Ukraine shall:

1) within three months from the day of publication of Economic Code of Ukraine, present to Verkhovna Rada of Ukraine:

list of legal acts (their provisions) to be declared expired and the list of legal acts to be amended in connection with enforcing this Code;

if necessary, proposals for clarification of the procedure of enforcing some provisions of this Code;

2) approve regulations provisioned by this Code;

3) ensure revision and harmonization with this Code or declare expiration of regulations of the Cabinet of Ministers of Ukraine and regulations of ministries and other central executive bodies;

4) pursuant to this Code, define economic entities belonging to the state sector;

5) present to Verkhovna Rada draft law for creating a list of activities where entrepreneurship shall be prohibited and economic activities to be carried out solely by the state enterprises, institutions and organizations;

6) ensure creation and maintenance of the State Corporate Rights Register pursuant to this Code.

4. Establish that Economic Code of Ukraine shall apply to economic relations that have arisen after enforcement of its provisions pursuant to this Section.

As for economic relations that have arisen prior to enforcement of the respective provisions of Economic of Ukraine, the above provisions shall apply to those rights and obligations that continue to exist or have appeared after enforcement of these provisions.

5. Provisions of the Economic Code of Ukraine as for liability for breach of the good business practices and for the breach of economic obligations shall apply only if these offences have been committed after enforcement of the above provisions, save for the cases when other liability is provisioned for the breach of economic obligations, by the agreement made before the term specified in Part 1 of this Section.

Provisions of the Economic code of Ukraine as for liability for the offences specified in paragraph 1 of this Part committed prior to enforcement of the respective provisions of this Code on liability of the participants of economic relations shall apply should they mitigate liability for the above offences.

6. Establish that limitation periods provisioned by the Economic Code of Ukraine shall apply to economic relations specified in paragraph 2 of Part 4 of this Section in the following order:

special limitation periods set forth by the law applicable prior to enforcement of this Code, should the above periods exceed those set forth by this Code;

extended special limitation periods as consistent with the periods set forth by this Code, should limitation periods that were applicable before be shorter in comparison with those set forth by this Code.

President of Ukraine

L. KUCHMA

Kyiv, January 16, 2003

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