

What is different in Ukraine today compared to 1991? “Everything”



Bate Toms, Senior Partner, B.C. Toms & Co, Attorneys at Law, (Kiev and London) and the first western law firm in Ukraine, describes how, in the 14 years that he has been in Ukraine, the country has developed in all important areas – and why this period is witnessing the greatest degree of optimism for investing

At what levels are investment flows from Russia to Ukraine?

They appear to be relatively high compared to other countries, and they should continue to be so. The only sector which may be different – and not necessarily less – is the oil & gas sector. Some of the participants may have their relationships a little interrupted and may have to re-orient themselves somewhat.

What differentiates Ukraine today from the euphoria that was seen in 1991?

Everything. The basic difference is that in 91/92, there was a lot of euphoria, but it wasn't based on having much of the infrastructure in place that is required for a market economy. For example, the Soviet production-based accounting and tax systems were unsuitable.

Ukraine had not been an independent country since 1240 except for two limited interludes, and since 1919 it had been a province of the Soviet Union, with all the important decisions made in Moscow. There had been relatively little prior direct contact by Ukraine with the outside world. When it came to organising Ukraine as a country, this therefore took a lot of work in all spheres. For example, a national bank and banking system had to be organised from a branch of the Soviet central bank. Many people forget that Ukraine had, in large measure, to be created from the ground up beginning in 1991.

14 years on, Ukraine has developed in all important areas. In particular, the legal system has improved, with a proper court system and a new, reasonably good civil code. There are still some improvements to be made, but it compares very favourably with Russia and other countries of the former Soviet Union. People in business in Ukraine generally know what they are doing and are well-organised.

What positive changes do you expect from the new Administration?

It is probably fair to say that the previous regime was not concerned about the needs of western companies and investors in Ukraine in the same way that the current regime is expected to be. The changes range from a proposal to no longer require visas for people from the EU, the US and Canada, to facilitating the participation by Ukrainians in the employee stock options plans of multinationals. The new regime is concerned to promote development across national boundaries – whether by Ukrainians abroad or by foreigners coming into Ukraine – as well as further integration into Europe.

In some sectors, for example, minerals and oil and gas, there is a greater desire to have everything done by tender. This is something that the new Prime-Minister Tymoshenko had emphasised when she was Minister of Energy, and will probably result in greater investment in that sector in Ukraine and greater revenues to the state, provided that the reasonable expectations of investors in exploration are protected so that they can move to production without having to re-tender.

Is this a busy time for lawyers in Ukraine?

It is a busy time in Ukraine generally – but not just because of the changes that the government is implementing, although they may facilitate foreign investment. The main dynamic seems to be the much greater interest in the country after the Presidential election and the widespread optimism. There is now much more confidence that Ukraine is a country where the rule of law should apply, and is therefore a country where foreign investment should be relatively safe.

We have many times as many people contacting our law firm following the election as before. This seems to be driven in equal measure by the desire to get into Ukraine now that the investment risk is perceived to be much less than it was, and by the fear that, if they do not, they will fall behind their competitors.

You have been in Ukraine for 14 years. Does this feel like a golden era?

Every period has had its moments, but I would say that the period now is one in which people, both in Ukraine and abroad, are the most optimistic about investing in Ukraine and one during which it is realistic for the country finally to realise its potential. The business and political foundations for such development are in place. The potential is enormous.

For example, with a highly educated population, especially in the cities, and wage rates in the countryside comparable to China, Ukraine is a suitable location for software and other high tech companies as well as textile, garment and other factories.

In many manufacturing areas, such as steel and wood products, Ukraine is already a world leader and should be increasingly so in the future. For example, some of our western multinational clients in the agricultural sector say that Ukraine has the richest soil in the world and that the country should be able to increase its agricultural productivity five-fold. If Ukraine does that, and can sell its production freely in Europe and elsewhere, then it could become much richer overnight. In the longer term, as food becomes scarcer, which seems bound to happen with the rising world population, Ukraine should be seen to be increasingly important. 