

WORLD TRADE ORGANIZATION

RESTRICTED

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ACCESSION OF UKRAINE

Additional Questions and Replies

Addendum

The Governmental Commission on Ukraine's Accession to the WTO has provided the replies reproduced hereunder to the questions submitted by delegations concerning document WT/ACC/UKR/24.

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LIST OF SERVICES

General Provisions - Horizontal Part

Question 1

The list in document WT/ACC/UKR/24 of areas in which licenses and permits are required is useful. However, the criteria for the issue of licenses still requires clarification so that it can be determined that these do not constitute market access restrictions. Could such information be provided?

Answer:

Generally, this is a formal procedure. In some (sensitive) sectors (banking and insurance activity), there is a separate, non-discriminatory procedure for obtaining a license.

Question 2

Could Ukraine confirm what effect the licensing of operations by the Ukrainian authorities of its citizens' activities might have on consumption abroad (mode 2)?

Answer:

Ukrainian citizens do not have to receive a license for consumption of services abroad.

Question 3

Is there any service regime in Ukraine that is not consistent with GATS Article 2 regarding MFN?

Answer:

See the table of exemption from the MFN Regime.

Question 4

Do 'foreign citizens' receive national treatment in the issuance of permits and licenses? Are there other aspects that have a discriminatory effect upon foreigners?

Answer:

Yes, foreign citizens receive national treatment in obtaining licenses.

Question 5

What is the basis for issuing permits? Are permits issued on a discretionary basis? e.g., with respect to the provision of environmental services such as those relating to 'surveying, and geodesic works, cartographic works and cadastre, and aerial photography', are permits issued on a non-discriminatory basis by the Main Department of Geodesy (etc.)?

Answer:

The procedure for obtaining licenses to conduct surveying, geodesic works, cartographic works and cadastre, and aerial photography is provided in the list of legislative and normative acts.

On Confirming Regulation on Terms, Conditions and Rules for Aerophotography, Topography Geodesy, Cartography, Cadastre Survey Performed by the Agents of Entrepreneurial Activity, on Terms, Conditions and Rules for License Granting Procedure and Control of their Observance. (□ KHTA - 2.07-01-93)

Order of the Main Department of Geodesy, Cartography and Cadastre at the Cabinet of Ministers of Ukraine of May 19, 1993 No. 24 Registered in the Ministry of Justice of Ukraine of July 22, 1993 No. 93

According to the Resolution of the Cabinet of Ministers of Ukraine of 13.01.93 No. 18 “On Making Changes and Amendments to the Resolution of the Council of Ministers of the Ukrainian Soviet Socialist Republic” of April 15 1992 No.99 which gives the Main Department of Geodesy, Cartography and Cadastre the right to grant licenses I order:

1. To confirm the Regulation on Terms, Conditions and Rules for Aerophotography, Topography Geodesy, Cartography, Cadastre Survey Performed by the Agents of Entrepreneurial Activity; on Terms, Conditions and Rules for License Granting Procedure and Control of their Observance which will be enclosed.
2. To adopt the above indicated Regulation by the Inspection of Derzhgeonaglad.
3. To authorize P.O. Romanishen the First Deputy to the Head of the Main Department to control the fulfilment of the Order.

Confirmed by the order of the
Ukrgeodezcartography of 19.05.93 No.24

Regulation on Terms, Conditions and Rules for Aerophotography, Topography Geodesy, Cartography, Cadastre Survey Performed by the Agents of Entrepreneurial Activity, on Terms, Conditions and Rules for License Granting Procedure and Control of their Observance. (□ KHTA - 2.07-01-93)

Agreed with Derzhcompidpriemnichtvo

Regulation provides general and specific conditions and rules for aerophotography, topography geodesy, cartography, cadastre survey, granting licenses (permits) to the agents of entrepreneurial activity for carrying out activity which are supposed to be licensed according to the current legislation of Ukraine. Regulation also provides control over the observance of these rules and determines the procedure of considering and executing documents by the Main Department of Geodesy, Cartography and Cadastre attached to the Cabinet of Ministers of Ukraine.

Regulation provides conditions, under which licenses of the agents of entrepreneurial activity can be cancelled, suspended or prolonged.

Taking into account specific conditions of performing indicated activity Resolution determines the list and format of documents submitted for the license granting purposes.

1. General provisions

1.1 Regulation was developed on the basis of the Law of Ukraine “On Entrepreneurial Activity” of 07.02.1991 taking into account changes and amendments to this Law of 15.10.1992 according to the Resolution of the Council of Ministers of the Ukrainian Soviet Socialist Republic of 15.04.1991

No. 99 “On the Procedure of Granting Agents of Entrepreneurial Activity Special Permissions (Licenses) for Carrying out Certain Types of Activity and on the Amount of Charges for the State Registration of the Agents of Entrepreneurial Activity” with changes and amendments introduced by the Resolution of the cabinet of Ministers of Ukraine of 13.01.1993 No. 18.

1.2 Licensing is performed for the purposes of state control over the types of activity indicated in this Regulation, over the fulfilment of works according to the requirements of normative and technical acts of the Main Department of Geodesy, Cartography and Cadastre attached to the Cabinet of Ministers of Ukraine; for the purposes of providing established procedure for registering, keeping and utilizing materials and information on the fulfilled works for state cartography, preventing duplication of works, protection of the state and consumers from non-qualitative topography geodesic, engineering geodesic and cartographic products.

1.3 License gives the right to the agents of entrepreneurial activity to exercise without any restrictions all types of activity indicated in it at the territory of Ukraine.

1.4 Special permits (licenses) to the agents of entrepreneurial activity for topography geodesy, cartography works, cadastre surveys and aerophotography are granted by the Main Department of Geodesy, Cartography and Cadastre at the Cabinet of Ministers of Ukraine in person of the Head of the Main Department and its Deputies.

1.5 Inspection of the State Geodesic Supervision is responsible for considering license applications of the agents of entrepreneurial activity.

1.6 Regulation is compulsory for all agents of entrepreneurial activity and also for foreign legal and natural persons which are performing aerophotography, topography geodesy, cartography works, cadastre surveys in the territory of Ukraine.

2. License granting procedure

2.1 To receive a license agents of entrepreneurial activity shall submit to the Inspection of the State Geodesic Supervision documents the list of which is determined by the resolution of the Council of Ministers of the Ukrainian Soviet Socialist Republic of April 15, 1991 No. 99 and also by this Regulation.

2.2 Application for receiving a license can be submitted for all types of activity provided by the resolution of the cabinet of Ministers of Ukraine of January 13, 1993 No. 18.

2.3 Application and other documents are considered by the officers of the State Geodesic Supervision which analyze abilities of the applicator for carrying out works observing current requirements of the normative and technical acts.

2.4 Estimation criteria which determine the possibility of granting a license, its suspension or cancellation are based on the normative and technical acts of the Main Department of Geodesy, Cartography and Cadastre at the Cabinet of Ministers of Ukraine.

2.5 If the positive decision is made Main Department of Geodesy, Cartography and Cadastre at the Cabinet of Ministers of Ukraine grant a license for a period not less than 3 years (Annex 1).

3. License registration procedure

3.1 To receive a license the following documents shall be submitted to the Inspection of the State Geodesic Supervision:

by the legal person:

- application (Annex 2);
- copies of the documents of association;
- staff reference (Annex 3);
- reference on technical provision of works (Annex 4).

by the citizen:

- application (Annex 2);
- copy of the document certifying the level of education;
- copy of the labor book.

3.2 When granting a license to the agents of entrepreneurial activity there are no restrictions on territorial location of the potential works.

3.3 Main Department of Geodesy, Cartography and Cadastre at the Cabinet of Ministers of Ukraine shall consider documents during the period not longer than 30 days after which applicator is either granted a license or given a reasonable refusal.

3.4 Payment for the license is made by the agent of entrepreneurial activity when a decision on granting a license is made.

3.5 Inspection of the State Geodesic Supervision of Ukraine shall register granted licenses.

4. Specific terms, conditions and rules for the fulfilment of works

4.1 Aerophotography, topography geodesy, cartography and cadastre surveys in the territory of Ukraine are performed by the agents of entrepreneurial activity who had undergone state registration in the executive committees of the Radas of People's Deputies at the place of their activity and had received a license.

Agents of entrepreneurial activity shall observe following terms, conditions and rules in their activity:

- to have a special education of the engineer (technician) and land-surveyor, astronomer land-surveyor, aerophotography land-surveyor, mine-surveyor, cartographer, topographer and certain experience in the professional work; citizen must have length of service as an engineer for the period not less than 3 years, as a technician - 5 years;
- to have a special equipment and machinery which would allow him to apply different methods: from remote-controlling (space and aerospace) to direct location measurement to produce cartographic materials of a different scale which can be presented in graphic and digital form (Annex 4);
- to have a meteorological equipment and machinery which are used by the entrepreneur according to the procedure determined by the current legislation;
- not to violate requirements of all current normative and technical acts of the Main Department of Geodesy, Cartography and Cadastre at the Cabinet of Ministers of Ukraine;
- to register the beginning of the works, to submit report documents to the body which has registered works, to submit information on the fulfilled works for the examination to the Inspection of the State Geodesic Supervision of Ukraine.

5. Control over observance of the specific terms, conditions and rules of the activity

5.1 When carrying out activity under the license, during the license validity period, Main Department of Geodesy, Cartography and Cadastre at the Cabinet of Ministers of Ukraine controls observance of the requirements of normative and technical acts in this field, and also terms, conditions and rules provided by this Regulation.

5.2 According to the results of entrepreneur's examination the act with the list of examined works, their correspondence to the granted license, current normative acts and technical description, and also conclusion with the estimation of the fulfilled works quality is drawn up.

Act is executed in duplicate and signed by the examiner and the entrepreneur (Head of the enterprise)

5.3 If agents of entrepreneurial activity have violated specific terms, conditions and rules of Aerophotography, Topography Geodesy, Cartography, Cadastre Survey Main Department of Geodesy, Cartography and Cadastre at the Cabinet of Ministers of Ukraine on the basis of the act gives written instruction on elimination of the determined violations or suspends the license for the established period or until the moment when this violations are eliminated.

5.4 Prolongation of the license is performed by the Main Department of Geodesy, Cartography and Cadastre at the Cabinet of Ministers of Ukraine according to the established procedure of its granting.

Question 6

Are there quantitative restrictions, either discriminatory or non-discriminatory, affecting the issuance of permits and licenses? Are there economic needs tests or public convenience and necessity tests that must be met before a permit or license can be issued for a particular service, e.g. the provision of transportation services to the general public?

Answer:

Generally, obtaining a license is a formal procedure. In some (sensitive) sectors (banking and insurance activity), there is a separate, non-discriminatory procedure for obtaining a license. This procedure is not discriminatory. There are no quantitative restrictions or discriminatory provisions, which could influence the issuance of permissions and licenses. There is no test for economic necessity or public comfort and need, which would be required to issue a permission or a license for a separate service, except noted in the list of exemptions from RNB schedule of Ukraine on services. Transport services are rendered to the public on a non-discriminatory basis.

Question 7

Paragraph 3(c) at page 3 of the Schedule states that : "An employment permit is not required for: directors of joint ventures and foreign agents of economic activity operating in Ukraine". Canada requests that this be clarified or amended, as appropriate, to ensure it covers intra-corporate transferees (managers, specialists and executives) and business visitors. There should be no requirement for an employment permit for those in this category.

Answer:

The general regime as to the key personnel will be provided in the horizontal part of the draft of the Ukrainian services schedule, where the above mentioned regime is foreseen.

Question 8

What is the current level of the fee and what are the "expenditures related to this procedure" that are used to set the amount of the fee? Are such fees published?

Answer:

For the preparation of each permit on employment and extension of this term a fee in the amount of one minimum per month wage is charged. This sum goes to the reimbursement of expenses, connected with conduct of this (chancery) work. The payment is conducted by the employee in Ukrainian hryvnias or FCC according to the official exchange rate.

Question 9

The current visa regime appears to make it difficult to obtain temporary entry for business and professional people unless they have a work permit. How will Ukraine liberalise temporary entry requirements for professional and business people?

Answer:

The general procedure of entry of foreigners into the territory of Ukraine and their departure is provided by the points 11, 12 and 24 of the Rules of Entry into the Territory of Ukraine for Foreigners, their Departure from Ukraine and Transit Movement on the Territory, confirmed by the Regulation of the Cabinet of Ministers of Ukraine No. 1074 of 29 December 1996. It was described in the horizontal part of the Document WT/ACC/UKR/24. There are no restrictions for “key personnel” at the current moment, as mentioned in the draft of Ukrainian services schedule.

Specific Commitments Sector

Professional Services

Question 10

Does Ukraine also intend to cover important professional services, such as bookkeeping, architectural, engineering, veterinary services, in any future offer?

Answer:

Yes.

Question 11

Citizenship requirements appear to be extensive with respect to legal and auditing services. These are restrictions which effectively exclude foreign service suppliers from establishing in Ukraine. Would Ukraine consider replacing the nationality requirement by a more limited sectoral coverage of Ukraine's commitments, for example by offering more limited commitments on giving legal advice in home country law and international law, thereby opening up at least some of the market?

Answer:

In accordance with the Article 5 of the Ukrainian Law "On Audit Activity" a citizen of Ukraine who has a qualification certificate to conduct audit activity in Ukraine can be an auditor. An auditing company is determined as an organization which has a license to conduct audit activity in Ukrainian territory. An auditor is the Head of this company.

The total size of founders' share (participants, shareholders) in the authorized capital of auditing company can not exceed 30 % if they are not auditors.

The Article 6 of this Law also establishes that auditing companies can be created on the basis of any forms of ownership.

For time being, the Ministry of Justice of Ukraine has no information on possible changes in the Law of Ukraine "On Audit Activity".

See also Response to Question No. 12.

Question 12

Can foreign lawyers provide legal services?

Answer:

In accordance with Articles 3 and 4 of the Ukrainian Law "On Entrepreneurship" both Ukrainian citizens and citizens of other countries can be as agents of entrepreneurial activity. Citizens of foreign countries have the right to offer legal services in Ukraine after receiving of special permit /license/ in the Ministry of Justice of Ukraine to conduct legal practice.

Entrepreneurs who have the above-mentioned license can offer consultations and explanations on legal issues, compose applications, claims and other documents of legal character. They can represent interests of citizens, enterprises and organizations per their procuracionem in the Court, local authorities and other state bodies for civil and economic cases and cases on administrative infringements. They also can conduct legal service of enterprises, organizations and institutions and legal service of their foreign economic activity, etc.

To receive a license to provide legal services the documents that confirm appropriate legal education, registration of a citizen as an agent of entrepreneurial activity and payment for issuance of a license shall be submitted to the Ministry of Justice of Ukraine

In accordance with the Article 2 of the Ukrainian Law "On the Bar" only a citizen of Ukraine who has higher legal education, length of service as lawyer or assistant to lawyer not less than two years, has passed a qualification examination, has received a certificate with the right to conduct legal activity and has sworn "The Oath of the Ukrainian Lawyer" can be as a lawyer in Ukraine.

In addition to offering the above-mentioned legal services, protection of citizens in criminal cases is an exclusive competence of lawyers.

Also, according to the Article 3 of Ukrainian Law "On Notary" only citizens of Ukraine who have higher legal education (University, Academy or Institute), have spent six-months internship in a notary's office or with a notary who is engaged in a private notarial practice, have passed qualification examination, and have received a certificate with the right to conduct notarial activity can be as a notary.

First of all, it is necessary to have perfect knowledge of almost all fields of Ukrainian legislation and practice to make notarial actions. Such requirements are stipulated for a notary's qualification.

To conduct intermediary activity with privatization securities in the Ukraine it is necessary to receive a special permit (license) according to the Article 4 of the Ukrainian Law "On Entrepreneurship".

Article 17 of the Ukrainian Law "On citizenship" determines requirements related to acceptance of the Ukrainian citizenship.

Question 13

If so, what are they allowed to do?

Answer:

See Response to Question No. 12.

Question 14

What are the requirements for foreign lawyers in order to practice legal activities?

Answer:

See Response to Question No. 12

Question 15

What are the procedures for foreign lawyers to be able to obtain the qualification to provide legal services?

Answer:

See Response to Question No. 12.

Question 16

With respect to issuing permission or a license, can Ukraine ensure the obligations under GATS Articles 2 (MFN), and 6 (reasonable, objective and impartial administration of measures)?

Answer:

See Response to Question No. 12.

Question 17

Could Ukraine explain the scope of activities that are allowed, as well as the requirements, with regard to:

- a) **general legal activity;**
- b) **attorney activity;**
- c) **notarial activity; and**
- d) **agency?**

Answer:

See the list of the mentioned services in the draft of the Ukrainian services schedule and response to Question No. 12.

Question 18

It is stated that "only a Ukrainian citizen may be an attorney". What are the requirements to become a citizen? Are there any exceptional measures that allow a non-Ukrainian citizen to become an attorney?

Answer:

Requirements to become a citizen of Ukraine are stipulated by article 17 of the Law of Ukraine “On Citizenship”.

Article 17. “On Admission to Become a Citizen of Ukraine”.

Foreign citizens and stateless persons can, upon their request, become citizens of Ukraine.

The terms and conditions to become citizens of Ukraine shall be as follows:

- 1) renunciation of foreign citizenship;

This rule shall not cover the persons that have arrived in Ukraine for permanent residence and are desirous to become the citizens of Ukraine on condition they had been born or they proved that at least one of their parents, either a grandfather or a grandmother, had been born on its territory, and do not have foreign citizenship.

(this item has been modified in consistence with the Law No. 2949 of 01.28.93)

- 2) permanent residence in the Ukraine’s territory during the five previous years.
(item 2 part 2 article 17 is provided in edition of Law No. 2949)
- 3) knowledge of the Ukrainian language to an extent sufficient for verbal communication;
- 4) available legal sources of existence;
- 5) acknowledgement and implementation of Ukrainian Constitution.

The requirements above may not be considered only under exceptional circumstances pursuant to the Presidential decision with regard to certain persons that have granted great services to the Ukrainian state.

The simplified procedure of granting the citizenship of Ukraine can be applied to women that have got married to the citizens of Ukraine, upon their request, provided that they renounce their foreign citizenship.

The following persons shall not be admitted to become citizens of Ukraine:

- 1) those who committed a crime against the mankind or were exercising genocide, committed acts of violence against the national sovereignty of Ukraine;
- 2) sentenced to imprisonment for grave crime.

Question 19

In the 1st mode, it is stated "through commercial representation". Could Ukraine explain about it?

Answer:

The legislation of Ukraine does not determine “Commercial representation” as a way of offering accounting services.

Question 20

What is the legal nature of the term “firm”?

Answer:

The Article 2 of the Ukrainian Law “On Enterprises in Ukraine” determines kinds of entrepreneurship due to ownership forms established by the Ukrainian Law “On ownership”. That is legislation does not determine conception of “firm”.

Question 21

It is stated that the “total number of a firm's auditors must be at least 30%”. With regard to other members of a firm, are there any restrictions?

Answer:

See Response to Question No. 11.

Question 22

The requirement that only Ukrainian citizens may be auditors does not seem to be appropriate. Are there any other requirements?

Answer:

See Response to Question No. 11.

Question 23

We are interested in determining what specific commitments Ukraine is prepared to make with respect to foreign legal consultants (advisory services on foreign and public international law).

Answer:

Currently Ukraine does not have a special normative act which regulates activity of foreign advisers. As to the obligations, see the Draft schedule of Ukraine on specific commitments in the services sector.

In accordance with instruction of the Cabinet of Ministers of Ukraine dated 16 February 1995 No. 83-p; the conclusion of agreements on invitation of foreign advisers is conducted only in concord with Golovderzhsluzhba (*the Main State Service*).

Question 24

We note that only Ukrainian citizens are permitted to provide certain types of legal and auditing services. Does Ukraine intend to liberalise access by extending recognition to suppliers of professional services? Is so, when would this happen?

Answer:

See Response to Question No. 11.

Professional Services-Taxes

Question 25

Does the Ukraine have plans to introduce regulation in this field?

Answer:

According to the Article 3 of the Ukrainian Law "On Entrepreneurship" entrepreneurs have the right to make decisions without limitations and conduct any activity independently if it does not contradict legislation. The legislation of Ukraine determines peculiarities of regulation for some types of Entrepreneurship.

The Supreme Rada of Ukraine, with presentation of the Cabinet of Ministers of Ukraine, determines the list of activities which are under licensing and the list of activities where entrepreneurship are not applied because of increased requirements to work safely and the necessity to centralize management functions.

At present, direct licensing in the field of tax services is not provided, but services on application of tax legislation (calculation procedure, tax payment, rights and obligations of taxpayers, etc.) can be conducted as services referred to in legal practice which is licensed due to the Article 4 of the above-mentioned Law.

Question 26

We understand that there are no restrictions affecting this sector as it has not yet been regulated. Would this imply that once this sector is regulated, there could be restrictions? If so, we would appreciate information on when this sector will be regulated as it will not be possible to obtain a clear picture of Ukraine's services regime and of any possible concessions until that time.

Answer:

In its draft of the services schedule Ukraine undertakes obligations not to apply restrictions in the noted sector.

Communication Services

Question 27

In the context of telecommunications services, could Ukraine explain what is meant by the phrase "Bypass of public network is not permitted" under mode I, cross-border supply? Is this intended to mean that call-back services are prohibited, or are other services covered?

Answer:

Because of the State monopoly on the primary network it is impossible to conduct services in this way.

Question 28

As it is not permitted to bypass the "public network", does this mean that, as long as the lines are leased from the monopoly, supply of all public voice telephony services is permitted?

Answer:

Connected with the State monopoly on the primary network, supply of all public telephony services to the supplies is not permitted.

Question 29

In the context of mobile communications, what is meant by the "establishment of associations or joint ventures"?

Answer:

In the context of mobile communications, “establishment of associations or joint ventures” is possible provided the form of property (the control packet of shares) of the existing main enterprise is preserved.

Question 30

In the column of limitations on market access and in the 1st mode, it is stated "bypass of public network is not permitted". Could Ukraine explain about it?

Answer:

This is explained by the impossibility of private companies to own the primary networks in Ukraine.

Question 31

In the sector of private-leased circuit services and in the 3rd mode, it is stated "exclusive monopoly of state communication enterprises". Do such enterprises provide only special circuit services? What is the scope of the services provided by this enterprise?

Answer:

The whole complex of services for lease of primary channels can be conducted by the State enterprise only. Non-state owned enterprises can participate in the local primary network with certain restrictions.

Question 32

In the electronic mail services sector and in the 1st mode, it is stated "bypass of national network is not permitted". What actually is the "national network"? Is there a difference between this and the "public network" mentioned above?

Answer:

No, it is the same.

Question 33

We understand that with regard to sectors i) to n), legislation has not been completed. Could Ukraine explain about the current situation and its prospect for completion?

Answer:

The Draft Laws “On Operators” and “On Frequency Regulation” are being developed.

Question 34

It is not clear what the market access restriction "only general network may be used" means.

Answer:

It is an error. Only the general network of post may not be used. There are no other restrictions.

Question 35

What scope is there for general liberalisation in this sector? Does Ukraine intend to commit itself to the regulatory principles set out in the reference paper developed within the Negotiating Group on Basic Telecommunications?

Answer:

Connected with the fact, that Ukraine does not participate in the Negotiating Group on Basic Telecommunications, no conclusions can be made at the current stage.

Question 36

Clarification of the exact scope of the restrictions in this area would be appreciated

Answer:

General commitments in the telecommunications sector see the Draft schedule of Ukraine on specific commitments in the services sector.

Question 37

It would appear that the State's exclusive rights on the fixed network in basic telecommunications prevents companies from engaging in resale. Could Ukraine confirm if this is the case?

Answer:

The State's exclusive rights on the fixed network in basic telecommunications do not prevent companies from engaging in the resale.

Question 38

As the aim of article 24 of the Communications Act is to facilitate demonopolisation of communications, has a timetable been set for the removal of the State's exclusive rights on the primary network (except local) and satellite telephone service?

Answer:

No.

Construction Services

Question 39

Could Ukraine clarify the terms under which joint ventures are remitted in this sector? Is there any ceiling on the percentage of foreign ownership - and if there is not a limit are there any restrictions on the establishment of subsidiaries by foreign companies?

Answer:

Activity of joint ventures in Ukraine is regulated by the Laws of Ukraine "On Property", "On Business", "On Enterprises in Ukraine", "On Regime of Foreign Investments" and other legal and legislative acts.

The above Laws of Ukraine stipulate for joint activity in the sphere of construction, all conditions provided for other branches of economy, and there are no peculiarities for activity in the sphere of construction.

In accordance with the Law of Ukraine "On Regime of Foreign Investments", there is no restriction on the upper limit for foreign-owned shares in the sphere of construction, and there is no restriction on foreign companies establishing branches.

Question 40

We seek an explanation of the term "unlimited construction" for cross-border supply in the general building construction subsector.

Answer:

The term “unlimited construction” for cross-border supply in the general building construction does not exist. As to the general commitments, see the Draft schedule of Ukraine on specific commitments in the services sector.

Financial Services-Insurance

Question 41

With respect to insurance, we appreciate Ukraine's intention to undertake broad national treatment guarantees. However, market access in the form of establishment of a commercial presence is fairly limited through minority participation in local firms. Moreover, activities of brokers are restricted to national insurers. Is Ukraine willing to consider granting better market access commitments, allowing for 100 % foreign ownership, as well as direct branching?

Answer:

Not in the nearest future.

Question 42

We note that insurance activity in Ukraine may only be conducted by Ukrainian insurers and that foreign participation in the insurance industry is limited to 20% of shares in Ukrainian insurance companies. When and how will Ukraine improve market access for foreign suppliers in this sector?

Answer:

Since 1 January 1997, the foreign participation may be up to 49%.

Financial Services - Banking

Question 43

Minimum capital requirement imposed on banks with foreign participation are discriminatory. Does Ukraine have any plans to reduce these discriminatory capital requirements?

Answer:

The requirements on minimal capital established for the banks with foreign capital are not discriminative. Ukraine would like to invite to its territory only strong foreign banks and banks with foreign capital. At the same time, a system of measures on increasing of charter funds is being developed and ownership of capital of the national bank system with the purpose of strengthening of its competitiveness with the bank system of developed countries is under way.

Question 44

Could Ukraine clarify the meaning of its market access commitment for deposit taking: does the limitation to "subsidiaries which are residents of Ukraine" exclude foreign participation, or is it simply meant to indicate that local incorporation is required (and thus to exclude direct branching, as it is indicated in Ukraine's replies to additional question, dated 1 May 1996)? In that context clarification would also be useful of the national treatment limitation.

Answer:

For execution of the provisions mentioned in the question of the EC, legalisation of foreign agents of a financial sphere is necessary with the purpose of adjustment of their activity with requirements of the current legislation of Ukraine. The form of presence of foreign financial and banking companies shall be determined by the national legislation of Ukraine that does not provide for the possibility of branches establishing for financial and banking companies.

Question 45

With respect to loans, regulation No 329 of 23 December 1996 is listed as a national treatment limitation. Can Ukraine explain the discriminatory nature of this regulation?

Answer:

This Decree is not discriminative. It's main content is directed to the protection of foreign creditors from possible losses. At the same time, the proposals of the National Bank of Ukraine on simplification of the procedure of granting credits by non-residents to the residents of Ukraine have been submitted to the Government.

Question 46

Payment and money transmission services can only "be performed by banks who are Ukrainian residents". Read together with (the corresponding national treatment limitation, this seems to completely exclude activities of foreign service suppliers. Is this indeed the case?

Answer:

Foreign service companies can grant proper services through correspondent accounts of banks resident of Ukraine, and also through correspondent accounts of the banks non-resident in the banks resident of Ukraine.

Question 47

The provision of guarantees and commitments seem to be exclusively reserved to the Ukrainian State, or at least to residents of Ukraine (see the national treatment limitation). Is there any intention to extend these provisions?

Answer:

Ukraine grants Governmental Guarantees exclusively under the State Programs. The financial and banking establishments have the right to grant loan guarantees within their competence. There are no prohibitions on granting guarantees to residents of Ukraine by non-residents of Ukraine without physical presence at the territory of Ukraine.

Question 48

Trading for own account or for account of customers is largely excluded for non-residents. Does this also exclude the establishment of subsidiaries with foreign participation ?

Answer:

There are no restrictions on this matter.

Question 49

Access to money broking is scheduled as "not permitted" but, under national treatment, Ukraine indicates ways of possible participation of foreign capital in such activities. Could this be clarified?

Answer:

This matter is not regulated by the Ukrainian legislation.

Question 50

As regards asset management, does Ukraine intend to extend any form of market access to foreign service suppliers, who are currently excluded entirely from this sector?

Answer:

Yes.

Question 51

Compared with Ukraine's replies to additional questions, dated 1 May 1996, certain restrictions appear to be applied, but have not been scheduled in the latest document. Could Ukraine indicate whether it intends to maintain such restrictive measures, in particular the 15 % limit on foreign capital in Ukraine's banking sector, and the 35% limitation on foreign share holding in bank subsidiaries?

Answer:

In the nearest future - yes.

Question 52

What is the criteria concerning the "first rate bank"?

Answer:

At present, under preparation of regulatory acts, the National Bank of Ukraine and central banks of other countries do not use the concept "first-class bank", and use instead generally accepted world rating systems.

Question 53

It is stated that "availability of agreements on the supervision of banking activity between the National Bank of Ukraine and the central banks of other countries". Could Ukraine explain about the "agreements"?

Answer:

Normally, the agreements between the National Bank of Ukraine and the central banks of other countries provide cooperation in conducting of payments and subscribe to the Basel Convention on transparency of the banking systems and laundering of “dirty money”.

Question 54

With respect to the 49% limit on the participation in the registered fund of a Ukrainian insurer, we wish to ascertain whether Ukraine will be liberalising in this area. We look forward to receiving from the Ukraine information on banking and financial services in light of the 10 April 1996 changes to procedures for licensing banking activity and registering banks (footnote 6, page 13).

Answer:

No further liberalization is foreseen in insurance activity in the nearest future (participation of foreign part is restricted to 49% only since 1 January 1997, before this time this share constituted 20%).

Instruction on licensing banking activity will be submitted in the complete set of legislative and normative acts.

Question 55

We note that foreign banks are not permitted to set up branch networks and that foreign ownership of subsidiaries is limited to 35%. Will Ukraine remove the restrictions on branch establishment and raise the foreign equity limit of subsidiaries to a level above 50%? When does Ukraine intend to liberalise this sector?

Answer:

The current legislation of Ukraine does not provide a revocation of the provisions on prohibition to establish branches for the foreign banks and shares of the foreign companies in branches. Amendments to the legislation are possible under condition of strengthening the National Bank sector. However, this depends on the tendency of macro-economical development of the country.

Question 56

We note that the participation of foreign capital in the banking system of Ukraine cannot be more than 15 per cent of the aggregate value of statutory funds of commercial banks registered in Ukraine? Is Ukraine prepared to provide national treatment in this area?

Answer:

Ukraine is ready to provide national treatment in this sphere.

Transport Services

Question 57

Could Ukraine clarify the system for charting port fees in Ukrainian ports? Are fees charged on a non-discriminatory basis between Ukrainian vessels and vessels flagged in third countries?

Answer:

In accordance with Article 84 of the Commercial Navigation Code of Ukraine, the resolution of the Cabinet of Ministers of Ukraine of 18 April 96 No. 442 approved the Provision on Port Dues

(ship's, channel, light, berth, anchor and sanitary dues) established for vessels (sailing structures) that sail under the State Ukrainian Flag as well as under foreign flags. The amount of fees shall depend on the vessel's size that is calculated in cubic meters and equals a sum of three values, indicated in a certificate of measurement or a document that replaces it: the biggest length of a vessel, the highest board of a vessel.

Fees are charged on a non-discriminatory basis between Ukrainian vessels and vessels flagged in third countries .

Question 58

Could Ukraine clarify the conditions for establishment in the road haulage sector - for straightforward road haulage and multi-modal operations?

Answer:

Road transport in a two-way connection and by transit into third countries shall be provided in accordance with bilateral intergovernmental Agreements on International Road Transportation of Passengers and Cargo.

Question 59

Does Ukraine intend to continue applying the discriminatory 15% charge on foreign airlines where a Ukrainian carrier does not operate on the same route?

Answer:

Charging state fees from foreign air companies for operation of airlines on a non-parity basis is a world-wide practice. Thus, "Ukrainian Airlines" state air company, carrying out a one-way operation of the Kiev-Delhi airlines, paid a compensation to the Indian side in the amount of 40 USD per each carried passenger.

The compensation procedure of the above mentioned in the Resolution of the Cabinet of Ministers of Ukraine of 28 September 1993 No. 819 "On Creation of the State Specialised Fund For Financing National Expenditures on Aircraft Activity and Ukraine's Participation in International Organisations" does not contradict the ICAO document (DOC 8632-C/968) "ICAO's Policy on Taxation in International Air Transport". In the explanation of the resolution of the ICAO Board of 14 December 1993 on Taxes Related To Sale or Use of International Air Transport, it is stated in item 2.5 that: "But all taxes and fees that are directly or indirectly allocated for financing the costs of aircraft facilities, shall be considered reasonable and shall not be a subject of this resolution".

Taking into account the above mentioned, a 15% fee cannot be considered as discriminatory.

Question 60

Could Ukraine give more information about the MFN limitation concerning Ukraine and the EU countries? Could Ukraine also provide the text of this arrangement?

Answer:

The text of Agreement on Partnership and Co-operation with EU was submitted to the WTO Secretariat.

Question 61

In sector a) passenger and cargo transportation and in the 3rd mode, it is stated that "commercial presence is prohibited". What is the purpose of this restriction?

Answer:

Restrictions are justified by the policy of the Ukrainian Government in Rail Transport that is an exclusive property of the state. Ukrainian law does not provide for privatisation and creation of a competitive environment in the field of rail transport.

Question 62

What is the purpose of the limitations listed on page 23 with regard to a) passenger transportation, and b) cargo transportation?

Answer:

See Response to Question No. 61.

Question 63

We note that road haulage companies are limited to 49% foreign ownership. What is Ukraine planning to do to liberalise foreign equity opportunities in the road transport services sector?

Answer:

Restrictions of 49% foreign property in companies, including transport companies, are a result of the need to ensure state interests and protect domestic carrier during the transitional economic period.