

Minutes of the Meeting of Working Group Against Corporate Raiders

September 27, 2006, 4PM – 5:30PM
The Chamber's office

Participants: Mykhailo Tymoshenko, Baker & McKenzie; Natalie A.Jaresko, Horizon Capital, Oleg Samus, Bunge; Irina Nabukovska, Bunge; Oleksiy Didkovskiy, Shevchenko, Didkovskiy & Partners; Robert Reed, The Willard Group; Oles Kapets, Foyil Securities New Europe; Olena Kharenko, Commercial Law Center Project; Sigmund Ekhougen, Telenor Ukraine, Daniel Bibak, Sergiy Koziakov & Partners; Irina Nazarova, Sergiy Koziakov & Partners; Dmytro Shemelin, Grischenko & Partners; Vakhtang Mikadze, Ukrainian Legal Group; Adrian Opaitis, PriceWaterhouseCoopers; Mikhail Paliy, LLC "IGK-Ukraine Audit"; Grigoriy Zhovnerenko, Law Firm "Vasko & Nazarchuk", L.Elliott Oppriecht, IntellCOM; Jorge Zukoski, Oksana Panchuk, Ilona Zadvorna, Aleksandra Bakulina, Oksana Borovska, American Chamber of Commerce in Ukraine.

For the first meeting President of the Chamber Jorge Zukoski opened the meeting dedicated to the raider issue: currently the business in Ukraine is experiencing an increase in corporate raider actions as well as the Chamber Member Companies from different industry sectors experience such attacks. Raiders in many cases are perceived to use imperfect legislation and a corrupt legal and regulatory system to violate the tenets of private property, which is a cornerstone for the proper functioning of free market economies. This issue not only negatively impacts the Chamber Members but also harms the investment climate and image of the country among domestic and foreign investors. It was noted that:

- The Chamber is against corruption in the judiciary that enables these raider attacks to continue.
- The Chamber is against criminal methods used during raider attacks;
- The Chamber is against any unethical behavior of professionals who are involved in these cases;

Using a pragmatic and practical approach the Chamber's Policy Team offered to the Meeting's participants the following:

To discuss a draft plan addressing the problem on a very broad basis including:

1. Long-term objectives: changes in certain legislation and regulations to close widely used loopholes
2. Short-term objectives: working with law enforcement bodies, judges, legal professional associations, etc. to educate as well as providing regular updates on the raider situation in Ukraine to appropriate representatives of the international community via media channels.

At the meeting participants gave their view on the current situation and outlined the possible actions, which could be taken to solve the issue.

1) Firstly the attention was paid to the problem of **gaps in the current national legislation** and a need to propose the relevant amendments to legislative acts. Participants talked about the JSC Law, which is still on the agenda of the Parliament, contradictions between Economic & Civil Codes.

2) Then it was stressed that it is necessary to consider the “HR” problem as: **procedures of application of different laws and decisions by judges and other responsible State authorities**, as they are not punished even if they did illegal actions: this problem compare to the 1st one does not require to make changes in the legislation, which means a long-term time frame but rather means to work carefully with representatives of the executive power judicial branches of power.

Participants agreed that raider attacks hurt economy and damage investment climate, which is still not very attractive and needs further work for its improvement. In this context the importance of the public awareness and a wide public PR campaign was stressed. Participants agreed that it would be necessary to send appropriate signals via different communication channels to the general public, private sector and State authorities of Ukraine.

3) Special attention was paid to such important in this case issue as **a high-level corruption among judges**. In this context it was proposed:

- To provide support to the recently adopted Presidential Decree #361/2006 dated May 10, 2006 “On the Concept of Improvement of Legal Proceedings to Establish Fair Justice in Ukraine According to the European Standards” (*Про Концепцію вдосконалення судівництва для утвердження справедливого суду в Україні відповідно до європейських стандартів*)
- To support 2 Draft Laws: Draft Law “n Judiciary” and “Draft Law On Status of Judges” - these new legislation will be submitted for the Parliament consideration soon.

Members of the Chamber believe that in the current political situation the President of Ukraine can be an ally of the Chamber. It was also noted that the entire proceedings system, court decisions and ways of judges appointment are not transparent at all – all these facts cause problems and are connected directly to existed corruption.

4) Members also discussed **an ethic aspect** related to the lawyers’ activity and agreed that often raider attacks started from the unethical behavior of lawyers.

5) Members discussed problems related to the processes and mechanisms of creation of judicial institutions – High Judicial Council (*Вища Рада Юстиції*). The Members proposed to discuss the possible ways to improve the Council’s creation and activity. Discussing these points Members of the WG again underlined the importance of shaping relevant public’s opinion and intensive PR campaign.

To identify the relevant persons to address the issue during the advocacy campaign participants of the meeting noted the following:

President of Ukraine

Prime Minister of Ukraine / 1st Vice Prime Minister

Minister of Justice

State Commission for Securities and Stock Market.

Participants discussed such idea as establishment of a cross-government body (Commission) to monitor the situation and, all relevant news and developments.

Besides Members stated raider attacks demonstrate that raiders use illegal methods, which definitely should be punished appropriately.

Also it was stated that the State authorities operate often under the strong pressure of those business groups, which initiate and practice raiders attacks. Members discussed the possible names of the Working Group to be established to address the raider issue and prepare the White Paper and agreed that criminal nature should be clearly stated versus hostile attacks (which is considered as a legal practice related to the company's competitiveness).

Participants discussed and agreed that such complex issue will be successfully addressed combining efforts of different business membership organizations operating in Ukraine as soon as each of them has a clearly stated joint position of its Membership.

In conclusion participants agreed:

- To outline short-term and long-term activities and needed changes;
- To prepare a draft structure & content of the White Paper;
- To prepare a press release and consider plan for the future PR campaign
- To start the White Paper's preparation.

Jorge Zukoski asked participants to continue to e-mail their suggestions, ideas of different approaches, names of possible allies and supporters to finalize the action plan.