

# **KPMG: Legal uncertainty in the Crimea and implications for private investors**

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The recent dramatic changes in the Crimea have raised a number of issues and concerns for businesses in the peninsula. The key priorities for Ukrainian and foreign investors are to determine how to operate their business going forward and how to secure assets located in the territory of the Crimea and the city of Sevastopol (collectively, the Crimea).

## **Legal status of the Crimea**

The Crimea is a disputed territory for Ukraine and Russia and its legal status is not yet defined:

- From Ukraine's perspective, the Crimea remains Ukrainian territory. Ukrainian laws and regulations that guaranty protection and enforcement of proprietary rights must apply. Currently there is a Draft Law of Ukraine No. 4473-1 (yet to be adopted) on the legal status of the Crimea as a temporarily occupied territory which will define specific issues concerning the property in the Crimea.
- From Russia's perspective, according to the Federal Constitutional Law, the Crimea is Russian territory where the laws and regulations of the Russian Federation should apply. Until 1 January 2015, there is a transitional period during which economic, financial, credit and other legal issues continue to be governed by existing (i.e. Ukrainian) laws and regulations in part not contradicting the Russian laws or until respective Russian laws are adopted.

## **Immovable property and security interests**

- The title documents issued by Ukrainian state authorities before Russia's annexation of the Crimea shall be valid in the territory of the Crimea. To secure the existing and duly registered proprietary rights of legal entities and individuals in the Crimea, the Crimea was disconnected from Ukraine's State Registry of Proprietary Rights to Immovable Property and other all-Ukrainian public registries. This precluded illegal entries on registration, modification or deregistration in the security registries related to immovable and movable assets from the territory of the Crimea.
- Registration of the title to immovable assets located in the Crimea can be performed by state registrars of certain other regions (oblasts) of continental Ukraine.

## **Nationalization of private property**

- There is a risk of nationalization of privately-owned assets, including real estate and land plots, in the Crimea. Ukraine currently cannot (physically) secure the property of legal entities and individuals. Ukraine will provide guarantees to legal entities and individuals as to compensation for losses caused by the Russian Federation to their property.
- There is uncertainty as to whether and how Russia will provide adequate compensation related to the value of expropriated assets and compensation related to other losses in case of nationalization.
- In case of nationalization of private property, private investors may seek protection under Ukraine-Russia intergovernmental agreements on protection of mutual investments in which case the investors have the right to apply to international arbitration courts for protection of their rights.

## **Other key implications affecting business in the Crimea**

There are other important implications that affect businesses in the Crimea, which are to be considered, i.e.:

- Dual currency regime – until 1 January 2016 Ukrainian currency can be used for cash and wire settlements along with the Russian currency in the territory of the Crimea.
- Regulatory regime – licenses, certificates and permits issued earlier by Ukrainian authorities can be used during the transitional period (i.e. until 1 January 2015) as a basis for conducting business in the Crimea.
- Labor law issues – dismissal of staff, work permits, salary payments are not clearly regulated yet.
- Tax matters – the Russian Federation confirmed that until 31 December 2014 the current Ukrainian Tax Code can be used in the Crimea.
- Judicial matters – from March 24th courts in the Crimea have started to apply the laws of the Russian Federation, although the judges have no adequate Russian Law expertise and appropriate qualification.

### **Evaluating various strategies in the Crimea**

Currently Ukrainian and foreign private investors who have assets in the Crimea have to evaluate available strategies concerning conducting, transferring, restructuring or winding up of their businesses fully or partly in the Crimea. Under any scenario, it is vital to ensure the title to the assets located in the Crimea and preserve their value so as to be able to enforce investor rights in courts, if necessary.

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The situation in the Crimea is rather fluid. We are monitoring it on a daily basis and will update you on any significant changes affecting your business.

KPMG has extensive legal expertise in Ukraine and Russia. Our Legal professionals in Ukraine are able to work together with our Russian colleagues to develop highly efficient legal solutions for Ukrainian and foreign investors in the Crimea.

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