



Centre for Economic Development

**BIG BUSINESS RELATIONS
WITH GOVERNMENT AND SOCIETY.
WORLD EXPERIENCE FOR UKRAINE**

Kyiv 2007

CONTENTS

| | |
|--|----|
| PREFACE..... | 3 |
| 1. INSTITUTIONAL BASICS OF RELATIONS BETWEEN THE GOVERNMENT, BIG BUSINESSES AND SOCIETY (METHODOLOGICAL APPROACHES)..... | 4 |
| 1.1. Why Is Institutionalisation Necessary?..... | 4 |
| 1.2. Industrial Society: Main Types of Formal Institutional Systems..... | 5 |
| 1.3. Post-industrial Society: An Impetus for Institutional Modernisation..... | 7 |
| 1.4. Ukrainian Practice..... | 13 |
| 2. BIG BUSINESS INTERESTS: LOBBYING SYSTEMS..... | 23 |
| 2.1. International Experience of Legal Lobbying System Development | 23 |
| 2.2. Ukrainian Practice. Conclusions and Recommendations..... | 27 |
| 3. BIG BUSINESS AND ITS NEW ROLE IN THE SOCIETY | 33 |
| 3.1. International Experience | 33 |
| 3.2. Ukrainian Practices. Conclusions and Recommendations | 42 |
| 4. SOCIALLY RESPONSIBLE BUSINESS | 49 |
| 4.1. International Experience | 49 |
| 4.2. Ukrainian Practices. Conclusions and Recommendations | 57 |
| 5. SHADOW PROCEEDS LEGALISATION AND CORROBORATION OF OWNERSHIP TITLE..... | 62 |
| 5.1. World Practices..... | 62 |
| 5.2. Ukrainian Practices. Conclusions and Recommendations | 65 |

PREFACE

The phenomenon of historically momentary emergence and an active, at times even aggressive, development of Ukrainian big private businesses, that special social stratum the size of which is in reverse dependence from its impact on the national economy and politics, is an important factor in the life of Ukrainian society.

The very nature of primary capital accumulation that sometimes went far onto criminal side; proactive participation in the establishment of a corrupt power vertical; massive abuse of the media and buying-off, or better said, direct keeping of the main political parties – all that conditioned public's overtly negative vision of biggest private owners tagged as 'oligarchs.'

That total negation has complicated the society its task of developing a constructive policy aimed at realization of a tremendous positive potential of national big businesses as:

- A driving force of a common national market;
- A stabilizing agent able to mitigate outcomes of incessant political, economic and social outbreaks proper for the green age our country, in general, and the democracy, in particular, are in;
- An agent enhancing economic and political competitiveness of Ukraine and providing it with tangibly real features of an international economic community participant;
- An influential customer requesting implementation of international economic standards to assure freedom of entrepreneurship, protection of ownership title and obligatoriness of performance of contractual terms and conditions.

In conditions of Ukrainian society's ever increasing activity after the Orange Revolution, the problem of big Ukrainian business' social legitimisation towards norms of relations with the Government and the public accepted in developed economies worldwide and of strategic changes in ways and procedures of these relations becomes more acute with each passing day. This is not a one-way lane, however: both the State and the public have to go their part of the way together with big businesses joining efforts to develop mutually beneficial forms to integrate the existing international standards.

High relevance of the issue compelled the authors to prepare this Analytical Report. The group aimed not only at finding specific solutions but rather at ascertaining new problems for Ukraine and drawing public attention to them. The materials of the Report have been structured to allow comparing facts of Ukrainian life with relevant historic experience of developing relations between big businesses, the government and the public in developed economies.

The system of relations between big business, the Government and the public described hereto is barely through its primal phase of development. Many aspects of Ukraine's future will depend of social and economic dynamics of the coming years and the role the big Ukrainian businesses will take in assuring such dynamics. The Centre for Economic Development plans to go on with its continuous monitoring of big business and its social roles development processes. We would welcome cooperation in the area with not only our colleagues from the expert and analytical community, but also with agents of the researched process: big business and government representatives and politicians. The wise saying, "He who own information is best fit" seems highly relevant here.

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1. INSTITUTIONAL BASICS OF RELATIONS BETWEEN THE GOVERNMENT, BIG BUSINESS AND SOCIETY (METHODOLOGICAL APPROACHES)

This Section of the Analytical Overview presents general methodological approaches that may help to understand the historical logic behind the development of relations between the Government, big businesses, and the society. The logical scheme has been formulated based on numerous researches by various authors: Western analysts, Ukrainian, and Russian experts.

Parallel to that, the historical logic of development of specific relations between the Government, big business and the society in Ukraine has been tracked. The comparison of the two analysis lines made it possible to formulate systemic approaches towards institutional modernization in that area in Ukraine with due regard to global trends and country specifics.

The forthcoming sections of this Economic Review highlight real institutions and specific features of their operation in individual segments of relations between the Government, big business and the public, both worldwide and in Ukraine.

1.1. Why Is Institutionalisation Necessary?

One may regard any society as a totality of fragmented social strata having more or less autonomous interests (groups of interests), and public policy as an outcome of agreement of these groups of interests between one another. Quoting from already widely popular notion by Geoffrey Berry, a group of interests in structured representation is a formally (or informally) ‘organised body of individuals who share some goals and who attempt to influence public policy’¹.

The subject matter of our analysis concerns organized bodies of individuals who are not political parties. The building of political parties and mechanisms of their action make entirely other domain with its individual specifics. Unlike political parties, these types of organized bodies of individuals do not set for themselves the aim of winning the power; their aim rather consists in promoting their own interests and assuring influence on the process of forming public policy distanced from them. In some countries however, these non-political formations result more powerful in terms of their influence on public policy than the existing political parties.

Analysts identify two models in the historical development of relations between the Government, big business and society:

The first model implies regulation of relations through *an informal institutional system*, i.e. the system of personal relations (customs, traditions, business and contractual practices etc.) established in the society;

The second model concerns regulation of relations through *a formal institutional system*, that is, with legislation and via institutions specially established to serve the purpose.

The first model of relations between the Government, big business and the society attains particular prominence at early stages of big business formation. It is through that mechanism of individual agreements that clubby corporate interests of individual companies are implemented. The formal institutional system in the form of legal levers and specialised institutions is only minimal throughout that period.

However, the process of business development provides conditions for changes in the content and model of its relations with the Government and society. On one hand, the Government and society come to an understanding of the considerable country-making role the big business plays and hence, of the need to cater for its interest when making most important national-level decisions. On the other hand, representatives of big business are cognizant of the fact that safety and efficiency of their business pursuits are directly dependent from the attitude of the Government and the society to them. Natural laws of market economy development together with economic viability and political consideration requirements compel businesses and the Government to seek consensus and to take measures to secure

¹ <http://www.infousa.ru/government/dmpaper9.htm>

the balance of interests. It seems only logical for the big business to expand the range of its interests that already actively go beyond narrow corporate targets in favour of social objectives.

Personal agreements start losing their weight as a tuning tool in relations between the Government and the big business at this stage being gradually replaced by the formal institutional system the existence of which becomes prerequisite to stable development of the economy and the society, in general. The informal institutional system generates too big an area of uncertainty as it is based on shaky personal agreements; this disallows for a rational coordination of groups of interest existing within the society.

The international experience of formal institutional systems development in the field of government and business relations shows their susceptibility to historical transformations: basic institutional systems were formed throughout the industrial epoch. The institutional modernization of those basic systems has been due to a transition from industrial to post-industrial society and deepening globalisation processes.

1.2. Industrial Society: Main Types of Formal Institutional Systems

Institutional systems in the domain of “Government-Business-Society” were formed in the era of industrial society with a view of the powerful group of social interests represented by industry employees united in trade unions. Therefore, the most developed institutional systems called upon agreeing public interests were formed within the system of collective labour law that time. Those institutional systems were in the form of a tripartite system that regulated relations between the three agents: the Government, employer associations and trade unions. That process started unfolding in leading industrial nations on the brink of 19th-20th centuries. A great role of a catalyst contributing to worldwide spread of systems of agreement of interests of the State, employers and employees played the International Labour Organisation established in 1919.²

Analysts named the two basic institutional models that formed in that area worldwide per their main features: the pluralist model and the corporatist model.³ Differences between those developed under the influence of specific conditions in which institutions in each given country were formed.

Pluralist Model

The pluralist model of most developed kind was formed in the UK and the U.S.A.

This model is based on the British-American tradition that evolved within the context of the following cultural and historical particularities:

- a) Individualism as the predominant type of social and economic behaviour of the majority of population. The majority of economically active residents of the UK and particularly, the U.S.A., is personal success-oriented and demonstrates a high level of readiness to taking serious risks related to reaching success and high level of individual material well-being.
- b) Competition is regarded as a prerequisite to, and a driving force of, any progress. Business ethics and system of regulation are based on provision of freely competitive environment for all economic agents, and the competition itself is deemed the basic factor of economic development.
- c) In spite of the growing attention towards business’ social responsibility observed within the past two decades, profits are still viewed as the key business success indicator that outweighs all other considerations.
- d) The State is traditionally regarded as an outside force the role of which consists in developing (by joint efforts with entrepreneurs) regulation rules, resolving conflicts that are beyond normal capacities of the business community itself, and national business support on international markets. Any intervention by the State in the role of an economic agent is unconditionally not welcomed.

² http://www.niisp.gov.ua/nydanna/panorama/issue.php?s=epo13&issue=2004_2, V. A. Mikheyev, *Social Partnership Basics: Theory and Politics*. – M., 2001

³ http://www.hse.ru/temp/2006/files/200604/04-06/20060406_zudin.doc; <http://www.m-economy.ru/art.php3?artid=21193>; [http://politex.info/index2.php?option=com_content&task=view&id=61&Itemid=40&...;](http://politex.info/index2.php?option=com_content&task=view&id=61&Itemid=40&...) <http://www.infousa.ru/government/dmpaper9.htm>

- e) There is a clear-cut trend towards business self-regulation. A strong and independent Judiciary in the majority of cases allows making necessary political decisions without addressing either the Executive or the Legislature. Traditional freedoms of press, speech and assembly allow making any proposal motioned by an organised body of individuals the public domain.

The pluralist model is based on a philosophy that represents society as a wholesome system the components of which are interdependent because of coordination links that totally rule out the dominant role of any of them. The State acts in interests of the system in general providing for its stability and keeping it in relative balance. It is actually equidistant from the key groups of interests including those of financial and industrial groups (FIGs.)

The main components of the pluralist model of interaction between the Government and big business are:

Acknowledging existence of the multitude of ever-changing groups of interests and pressure groups within which business is regarded as just one of the interest or pressure groups;

Interests are represented before the Government either on an individual basis or via associated institutions at entrepreneurs' discretion. Business associations have no authority to take any actions which might limit powers of their members;

The system of exerting pressure on the Government operates based on principles of competitiveness and competition over influence on the Government between pressure groups, on one hand, and between business associations -- for enrolment of new members, on the other;

The State acts as an independent arbitrator between the pressure groups; it reserves for itself the title to power-driven distribution of resources to match its decisions reflecting the current balance between pressure groups inside the society.

Certain differences in countries employing the pluralist model of Government-business relations do exist, though. E.g., they in the US avoid fixing the monopolist title to represent a given group of interest to a certain organisation as this is regarded as a distortion of competition. There is a variety of organisations competing for such role inside the country. Meanwhile, there is a system of representation of groups of interests in the UK, the British Trade Union Congress representing employees, and the Confederation of British Industry – employers. However, there is no mandatory responsibility for interest group representatives to act solely via the mentioned associations in place.

Corporatist Model

The corporatist model is used by countries of the continental Europe. It has been particularly prominent in smaller nations where well-structured groups of interests (associations, unions etc.) and powerful socialist-democratic parties exist: Sweden, Norway, the Netherlands etc.

The corporatist model of Government-business interaction formed within the context of the following cultural and historic particularities:

- a) In spite of a certain increase of attention towards promotion of individual contributions observed throughout a couple of past decades, business ethics clearly prioritises cooperative capacities.
- b) The majority of economically active population of the continental Europe is characteristically oriented onto guaranteeing the achieved life standard, aversion of potential shocks or losses and on attempts of eliminating any setbacks in business.
- c) The established business ethics regards profit-making efforts as a condition far from being the topmost entrepreneurial target; social responsibility is deemed extremely important – enough to prompt changes in entrepreneurial practices whenever necessary.
- d) Competition is seen as a precondition for development and progress which, though important, nevertheless, does not rule out a possibility and necessity of its limitation in certain cases to secure interests of economy in general.
- e) The State is seen as an important economic agent that assures development and enforcement of generally applicable rules of the game and is also a force bestowed with considerable social responsibility.
- f) Court procedures are seen as an extreme measure of conflict mitigation.

The philosophy behind the model is based on an idea that corporations⁴, being a new type of civic society, in some respects/certain environment play for the State. From here the tasks of corporation are shaped: to influence governmental decisions and to identify internal rules of the game for its members.

The main components of the corporatist model of Government-business interaction are:

A stable structured representation of interest groups before the Government. Relations between groups of interests and political system are implemented mostly via associations;

Associations obtain from the State guaranteed right to monopolistic representation of a certain group of interest in exchange of responsibility to assist the State in the field of public administration.

The countries using the corporatist model developed powerful centralized trade unions and employer associations bestowed with considerable authority in respect of their members. In some countries, the State has some substantial impact over their activities.

The described mechanisms of action of the pluralist and the corporatist models have never existed in their pure state in reality. Territorial limits of the corporatist and the pluralist model application are rather frequently diluted in practice. Individual components of both models are rather frequent to coexist, though.

One might find numerous examples of these models cross-penetration on traditional territories of their operation; e.g., governments sometimes resort to corporatist models of relations with entrepreneurs, particularly in crisis situations, even in the US and the UK where the classic variant of pluralist model otherwise dominates. Nevertheless, economy liberalization advocates in these countries are rather critical about establishing partner relations with trade unions deeming these a risk for the freely competitive environment. Such partnerships are generally viewed as illicit efforts of winning a limitless influence owing to one's specific interests⁵.

Opposite to that, weak social democracies of the continental Europe with their voters less so steady in their predilections and in-depth discrepancies felt by their social strata in their approaches towards solving military and security issues face considerable difficulties with supporting corporatist agreements. The Government has to build its relations with big businesses taking into account existence of alternative groups of interests – in other words, to use certain components of the pluralist model.

This coexistence of the two models is particularly characteristic for post-Socialist nations that have imported the existing experience from various countries at different phases of their development.

1.3. Post-industrial Society: An Impetus for Institutional Modernisation

In 1940ies-70ies, the world saw an active accumulation of new social forms of public organisation. The developed nations transited the phase of the so-called 'global development/welfare society' linked with an increased impact of human factor on economic growth. The service industry and sciences started their fast-paced growth within national economies. In 1970ies, it gave grounds to analysts to start speaking on countries' transition to the next historic phase of development, the one of post-industrial society. That statement was initially accepted with prejudice; still, an outburst of information technologies finally convinced the analysts in the correctness of their idea of the history of the world to make another yet qualitative leap. In the late 20th – early 21st century, another trend added to the above mentioned ones, the one prompted by enhancing of globalisation processes.

⁴ The notion is used in a wider sense of any kind of an associated structure that unites representatives of a group of interests.

⁵ Bartle I. Transnational economic and technological forces, institutions and policy change: the reform of telecommunication and electricity in Germany, France and Britain. – Paper presented in the workshop: National regulatory reform in an internationalised environment. Joint Sessions of Workshop, Grenoble France, 6-11 April, 2001

The qualitative leap from the industrial towards post-industrial society and the globalisation trend marked off a crisis of traditional models of Government-Employer Associations-Trade Unions relations⁶ In view of analysts, the crisis of traditional tripartite models has been due to the following:

Firstly, the transition from the industrial towards post-industrial society was accompanied by changes in the social structure of society that led to alterations in the structure of groups of interests and their influence. That prompted a slump in trade unions' role of representatives of industrial employees. New associations representing interests of service industry, scholar etc. employees started to emerge;

Secondly, the scope of employee interests expanded; parallel to labour regulation issues, employees were interested in obtaining guaranteed social services;

New groups of interests related to issues of stable society development that have never been part of the basic models before: socially responsible business-making, social development of society, environmental protection, women's rights, fight against corruption etc. emerged;

Thirdly, a group of interests fuelled by enhancement of global trends developed. A global market appeared accompanied by big international companies the operations of which went beyond borders of only one country.

Consequently, a rather simple pattern of relations that had regulated only the system of collective labour relations within one given country ceased to reflect the wholeness and the scale of the Government-big business-society relations.

The developed nations started a process of institutional modernisation of the system that regulated relations between the three agents. Judging from outputs of numerous researches, one might outline two trends within the process:

The first trend is about transformation of basic models regulating relations within the broader 'Government-Employer Associations-Trade Unions' scheme. Institutional renovations in that area covered the following:

In mid-20th century, the tripartite system started to upgrade assuming a shape of social partnership system. Agreements between the agents now related to not only collective labour law, but also issues of provision of social welfare services to employees.

In conditions of worldwide transformation, the pluralist model has started increasing its appeal. The stationary corporatist model is no longer able to comply with growing complexity and dynamics of changes in interest group memberships.⁷

The second trend in institutional modernisation lies within the overall context of changes in the system of governance management within a democracy. The establishment of a 'social-political governance system' becomes a dominating trend in modern democracies. This form of governance has been highlighted in the ideas formulated by leading scholars (R. Dahl, A. Etzioni, F. Kaufmann, G. Mayjohn, V. Oestrom, G. Kuman et al⁸). The researchers assume that the key distinguishing features of the form are co-regulation, co-production, co-management of government and private sector representatives at all levels. Professionals have started speaking of a transition from 'government' towards 'governance/political co-governance systems'⁹ where decisions are developed and made with participation of representatives of the most influential groups of interests. A separate Government-big business format providing the business and the government with a possibility of direct contact assumes increasingly more solid positions in relations of the Government with groups of interests.

A trail of crises and clashes has finally compelled the Government and big businesses to recognise the fact of them having common interests – *those of assuring stable public development and of economy adaptation to global processes – able to consolidate their actions*. Having reached an immense economic power and strong political influence, big businesses became one of the main agents of the co-governance

⁶ http://www.hse.ru/temp/2006/files/20060404-06/20060406_zudin.doc

⁷ Wolfgang Streek. From National Corporatism to Transitional Pluralism. Notre Dame, Indiana; Kellogg Institute, 1991

⁸ http://politax.info/index2.php?option=com_content&task=view&id=61&Itemid=40&...

⁹ Rhodes, R.A.W. (1997), Understanding Governance. (Buckingham: Open University press); Puerre J (2000). Debating Governance: Authority, Steering and the Democracy; Oxford: Oxford University Press

system (policy development and control over its implementation) at all levels from individual nation to regional to the global one. Its activity was due to big international companies' material dependence not only from the nature of policies implemented by the government in one specific country, but also from the whole system of international relations in general.

That new role of the big business required:

FIGs' organisational consolidation around social targets. Bigger FIGs need not to seek assistance from associations to resolve their internal corporate issues. Associations are rather necessary as a vehicle for joining efforts of individual FIGs in the domain of public interests. Associations allow enhancing pressure on the Government, elaborating common policies for business environment and control their members' behaviour in this area.

The assuming by big FIGs of voluntary responsibilities in excess of existing legal requirements. Such responsibilities concern the requirement of making business in line with public targets. Here, the importance of an informal institutional system for regulation of relations between the Government and the big business increases again as also increases the role of ethical 'codes of business conduct' of sorts that define behaviour of individual FIGs.

The role of organised bodies of non-political figures representing the most powerful groups of interests rises immensely in a democracy based on co-governance principles. While these organised bodies of individuals have been exerting pressure on governmental strategic policies formation mostly via political party activities before, now they affect the process directly. For that purpose, a specialised institutional system (of standing and ad hoc consulting and advisory bodies) has been set up in developed nations to speed up the process of big business proposals motioning in governmental bodies and make it more flexible and steady one. The State creates a system for stimulating big business actions aimed at implementation of publicly important targets and tasks (charity, sponsorship.)

An erosion of bureaucratic procedures' role and scope in the promotion of big business proposals towards respective bodies of power is observed.. The importance of non-governmental locations (roundtable discussions, conferences, summits etc.) serving to assist mutual rapprochement and development of common strategic positions in government and business representatives grows.

In the same time, the modern institutional modernisation does involve certain risks related to an asymmetric status of partners willing to participate in the co-governance system. The dominant position of big FIGs makes the model imbalanced and politically vulnerable. The group of big business interests may well suppress all other interest groups within the society; therefore, a set of checks and balances was developed in the developed countries in parallel with initiative development by big businesses to neutralise their negative energy. Those checks and balances comprised the following:

Firstly, there emerged a clear-cut intention to secure separation of the Government from big business in order to rule out any possibility of monopoly impact on the process of government policy development or power changeover by the big business;

Secondly, publicity and transparency became mandatory requirements to Government-big business relations;

Thirdly, the State enhanced its supervision over the spending of funds from private companies funnelled to support influence on the government policy-making process and to meet socially important targets.

Pic. 1.1. LOGIC OF INSTITUTIONAL TRANSFORMATION OF GOVERNMENT-BIG BUSINESS-SOCIETY RELATIONS

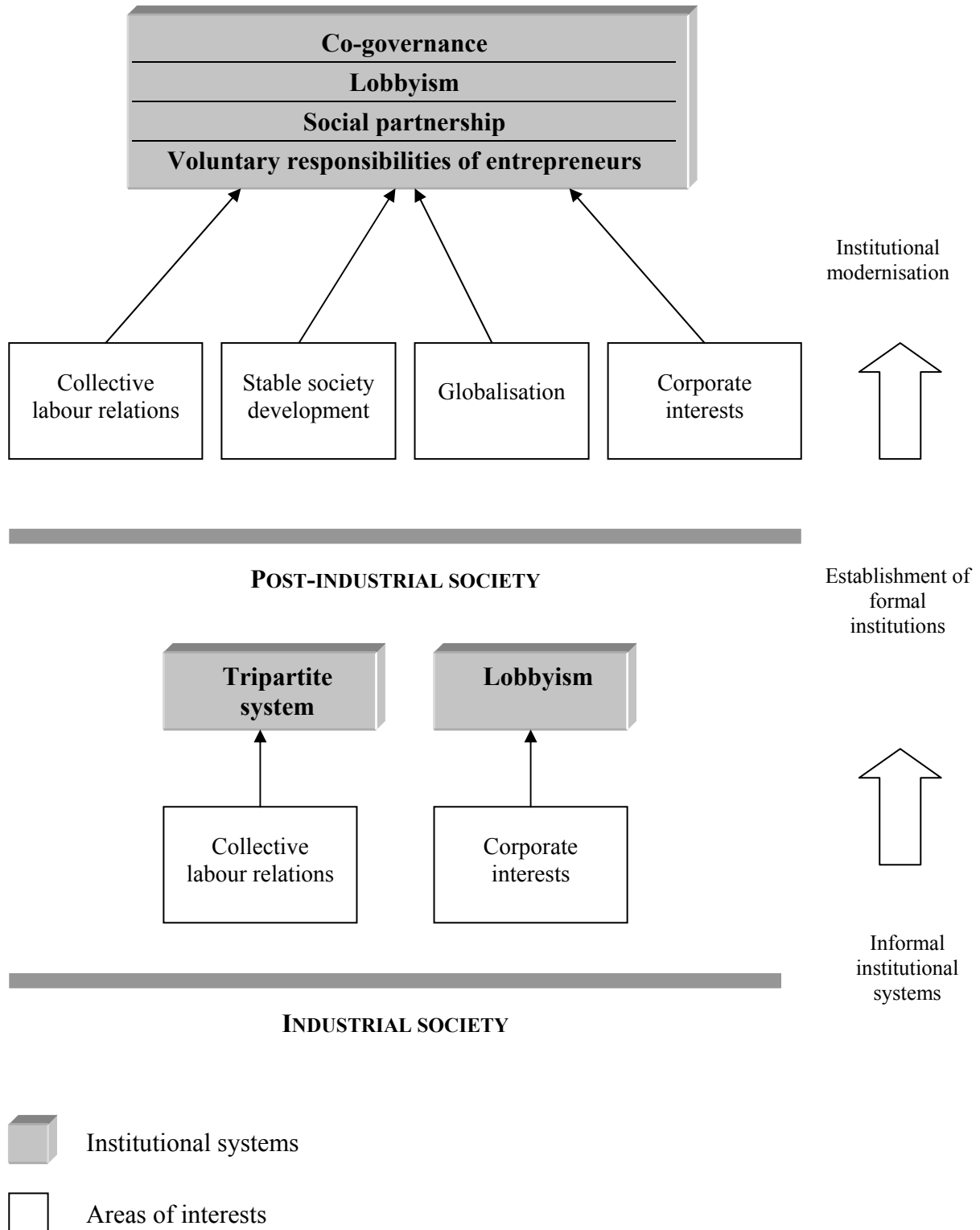


Table 1.1

Characteristic Features of Basic Institutional Models

| | Characteristic feature | Institutional model | |
|---|--------------------------------|---|--|
| | | Pluralist | Corporatist |
| 1 | Regulation area | Collective labour relations | |
| 2 | Partners | <ul style="list-style-type: none"> ➤ State ➤ Big business (employer associations) ➤ Working collectives (trade unions) | |
| 3 | Institutional system | Tripartite system/Social partnership | |
| 4 | Philosophy | <p>Dynamic totality of groups of interests within the wholesome societal system.</p> <p>The State is an arbitrator acting to assure stability of the system in general.</p> | <p>Groups of interest are structured in associations</p> <p>Associations are a form of civic union between members</p> <p>The State and selected associations are partners</p> |
| 5 | Structured groups of interests | No mandatory representation of groups of interests via associations | Representation of groups of interests via associations is mandatory |
| 6 | Interaction with the State | Free competition to win representation of groups of interests before the State | The State grants the monopoly title to represent groups of interests to individual associations |
| 7 | Countries using the model | U.S.A., UK | Countries of the continental Europe |

Institutional Modernisation

| | Blocks of changes | Change trends |
|---|---|--|
| 1 | Expansion of regulation areas | <ul style="list-style-type: none"> ➤ Collective labour relations ➤ Corporate interests ➤ <i>Stable societal development</i> ➤ <i>Globalisation</i> |
| 2 | Development of new institutional systems | <ul style="list-style-type: none"> ➤ <i>Social partnership</i> ➤ Lobbyism ➤ <i>Co-governance</i> ➤ Voluntary responsibilities of entrepreneurs |
| 3 | Modernisation vertical | <ul style="list-style-type: none"> ➤ Individual country ➤ <i>World region</i> ➤ <i>Whole world</i> |
| 4 | Modernisation mechanism | <ul style="list-style-type: none"> ➤ Phased ➤ Evolutionary change ➤ Pluralism ➤ Depolitisation ➤ Debureacratisation |

1.4. Ukrainian Practices

Relations between the Government and big businesses have been the problem of the most recent history of Ukraine since it left the USSR in 1991. Up to that moment the structure of its economy only included a smaller private sector that consisted mostly of small-size companies and firms. The non-governmental sector to total enterprise number ratio in the most reformed industrial sector made 29.8%, and in the total industrial production, 18.2% in 1992. Those enterprises were mostly in a joint public-private ownership and owned by their employees.¹⁰ There was no big business as such.

The breakdown of the USSR and the ensuing disruption of the formerly common public economy complex shocked the Ukrainian economy; high investment risks stripped it from any attractiveness for foreign businesses. Therefore, unlike post-Social eastern-European countries the economies of which started to restore fuelled with massive investments from big foreign companies, the development of economy in Ukraine had to go first through the phase of building up a national capital of its own. Ukraine entered the 21st century already having powerful transnational-level financial and industrial groups (FIGs) of its own.

Big businesses started developing their relations with the Government from scratch and kept building them up for sixteen years in special conditions of new nation establishment and development.

Start-up Conditions: Establishment of Oligarchic System of Relations

Ukraine as an independent nation entered the path of most complex systemic transformations in 1991. Like any other post-Soviet state, it had to simultaneously introduce a process of triple transformation:

after leaving the USSR, it was necessary to establish its own statehood and a national economy independent from the common Union amalgamation;

to carry out post-Socialist transformations by inducing a transition from the administrative, public ownership-based economy towards private property-based market economy, and from the totalitarian state to a democracy;

become a fully-fledged participant of general post-industrial development and globalisation processes.

Ukraine had to carry on with that extremely complex triple transformation in adverse start-up conditions offered by history:

- weak statehood,
- ex-Soviet elites remaining at power,
- monopoly State ownership,
- lack of market or market infrastructure,
- deep economic collapse.

Such start-up conditions actually predetermined those in-depth distortions/deformations in the established socio-economic system of the modern Ukraine including the system of Government-big business-society interrelations.

Throughout the first 7 or 8 years of Ukraine's development, the would-be big FIGs went through the period of primary capital accumulation demonstrating a clear-cut rent-oriented model of behaviour. In conditions of a weak State incapable of supervising entrepreneurial activities, wide possibilities of using shadow rent revenue sources appeared.

The weak State allowed governmental officials to 'privatise' State functions and trade in public administration services. That gave rise to a wide-scale corruption.

Two dominating groups of interests representing particular interests of corrupt government officials and those of new big businesses striving to secure shadow rental payments for themselves were formed in the Ukrainian society. A system of relations that developed between those two dominating groups of interests

¹⁰ *People's Economy of Ukraine in 1992* Statistical Yearbook, Kyiv, Tekhnika, 1993, p.255

was tagged, first by journalists, then by analysts, as the *oligarchic system*.¹¹ That way the Government *de facto* merged with the big business.

The system of relations between big businesses and the Government continued its shadowy operation without any need for formal institutionalisation. By late 1990ies, chaotic and incoherent personal agreements between FIGs and individual government officials transformed into a stable informal institutional system with a certain hierarchy. On the top of the system was President Leonid Kuchma himself who personally ‘dispatched’ the process of distributing public assets, privileges, benefits, public investments and budgetary support between big FIGs. The relations were informally managed using a sort of manipulation mechanism, the President either attracting FIGs closer to him, or distancing from them. Losing his benefaction might mean for participant FIGs tremendous risks and, in individual cases, even economic demise.

The informal institutional system that formed in Ukraine was much more powerful in terms of its impact on governmental policies development than any such pressure existing political parties might exert.

Whatever negatives the oligarchic system might have, it historically became the only real alternative able to avert a nation-wide social-economic catastrophe. For the short time Ukraine developed a powerful national business able to resuscitate the economy (Table 1.3). In 1999, the crisis downturn in the national economy was slowed and changed into an increasingly positive trend effective since 2000. In 2004, the last year of President Kuchma’s authoritarian regime, the current-to-previous year GDP growth rate made 112.1%.¹²

In the same time, the established oligarchic system did hide contradictions that surfaced most severely throughout the period of economic progress. Expectations of post-crisis improvements among the public were actually never fulfilled, though government officials and related FIGs did manage to benefit from economic progress outcomes. “The loser team” consisted of individuals (the per capita average expenditures of 73.8% residents were lower than the minimum subsistence level in 2004¹³) and small and medium enterprises who resulted stuck between the double sledgehammer of corrupt governmental officers and big businesses. The ‘losers’ were joined by those FIGs that had lost their competition and were squeezed outside central Government’s patronage.

Forms of Institutionalisation of the Government-Big Business-Society Relations

The establishment of a formal institutional system in the area of Government-big business-society relations started virtually in the first year of national independence in Ukraine. The process unfolded within the overall framework of new statehood system and civic society component development. Bigger FIGs did not participate in the process as it was only in late 90ies when they started legalising their operations. From that moment on though, they started shaping their own formal system of relations with the Government.

The formal institutional systems of relations between the Government, big businesses and the society that have appeared in the country throughout that period are, by their nature, a rather unique mix of components from both basic models, the corporatist and the pluralist one. On one hand, some of business associations grew on the groundwork of former public amalgamations and their title to represent interests of sectoral companies was immediately acknowledged by the Government. On the other, hand, a considerable proportion of business associations emerged as a ‘grassroots’ move; they had to struggle for new members and for their right of representing their groups of interests in governmental institutions.

¹¹ The notions of ‘oligarch’ and ‘oligarchic’ have never been used in economic analysis before. Initially introduced by journalists as descriptive notions, they have nevertheless made it rather quickly into practical analytical assessment because of the pinpoint accuracy with which they highlighted the nature of relations between the Government and big businesses formed in Russia and Ukraine in late 90ies.

¹² *Statistical Yearbook of Ukraine - 2005*. Kyiv, Konsultant, 2006, p. 31.

¹³ *Statistical Yearbook of Ukraine - 2004*. Kyiv, Konsultant, 2005, p. 433.

Table 1.3

**The Most High-Priced Financial and Industrial Groups in Ukraine Rating
(prepared by the Ukrainian Rating Agency¹⁴)**

| Rati ng | Name | \$ billion. | Key areas of business interests |
|--------------------|--|--------------------|---|
| 1 | System Capital Management Company | 12,144 | Iron and steel production, iron ore, coal, coking coal, electric power industry, machine building, financial business, telecommunications, hotel industry, beer and soft drinks etc.. |
| 2 | Naftogaz Ukrainy NJSC (publicly owned) | 9,951 | Oil and gas production |
| 3 | Industrial Union of Donbass Corporation | 7,391 | Iron and steel production, iron ore, coal, coking coal, machine building, agribusiness, tourism etc. |
| 4 | Privat Group | 6,312 | Financial business, oil business,, iron and steel production, iron and manganese oil, ferroalloy production |
| 5 | Interpipe Corporation | 5,410 | Pipe production, iron and steel production, ferroalloy production |
| 6 | The Ilyich Mariupol Metalworks | 5,102 | Iron and steel production, coking coal, iron ore |
| 7 | DonetskStal (ex Energo) | 4,271 | Iron and steel production |
| 8 | Alpha Group (Russia) | 3,997 | Oil business, telecommunications, financial business |
| 9 | Zaporizhstal | 2,763 | Iron and steel production, financial market |
| 10 | ARS Group | 1,931 | Coal, coking coal, machine building |
| 11 | UkrAvto Corporation | 1,594 | Automotive industry, financial market |
| 12 | Contynium | 1,491 | Oil business, confectionery and dairy industries |
| 13 | EnergoStandart | 1,429 | Power production, machine building |
| 14 | Smart Group (Russia) | 1,399 | Iron and steel production, iron ore |
| 15 | UkrSibBank (Russia) | 1,308 | Financial business, industrial chemicals and building materials production |
| 16 | Finances & Credit | 1,28 | Financial business, automotive industry, iron and steel production, industrial chemistry, pharmaceuticals |
| 17 | Lukoil (Russia) | 1,187 | Oil business, industrial chemistry |
| 18 | UkrPromInvest | 1,129 | Automotive industry, shipbuilding, confectionery industry, road carriers |
| 19 | KyivMiskBud Holding (community enterprise) | 0,887 | Development |
| 20 | The Ukrainian Innovation and Financing Company | 0,788 | Electricity production, hotel industry, gas production |

¹⁴ *The Guardiia All-Ukrainian Rating Programme, November 2005*. Published by: Halytsky Kontracty Editorial Board, LLC, p. 74-75. No FIG overall asset value ratings have been carried out ever since. The presented rating does not distort the impression about asset value ratios between FIGs, with the only exclusion of the Kontinium Group a part of the assets of which were sold.

Table 1.4 below presents a short information about the institutional systems that emerged throughout the post-Soviet period in Ukraine.

Table 1.4

The Main Institutional Systems of the Government-Big Business-Society Relations

| Systems | Governmental institutions | Institutions | Business associations |
|---|---|---|--|
| Social partnership | Cabinet of Ministers of Ukraine | General agreement | Federation of Employers and the Union of Tenants and Entrepreneurs of Ukraine |
| Sectoral groups of interests | Cabinet of Ministers of Ukraine, sectoral ministries | Network of advisory and consulting councils with governmental institutions; ad hoc workgroups, councils; adoption of memoranda, agreements etc. | Sectoral business associations like UkrMoloko, UkrMiaso, UkrSakhar, the Union of Agrarian Exchanges etc. |
| SME support | State Committee of Ukraine for Regulatory Policies and Entrepreneurship | Network of advisory and consulting councils with the Committee and its local branches. State support programmes | Sectoral business associations, SME associations |
| Strategic policymaking | Cabinet of Ministers of Ukraine | Council of Entrepreneurs | Representatives of business associations and big FIGs |
| Representation of interests of foreign businesses | President of Ukraine | Consulting Council for Foreign Investments into Ukraine | European Business Association; American Chamber of Commerce in Ukraine |

The authoritarian regime and oligarchic economy led to a situation when the newly developed institutions serving the system of relations were quickly ‘red-taped’ and reduced in authority to mostly decorative functions. Some of these institutions have stopped their operations for a number of years already. Business and employer associations have subdued to a powerful State influence losing their real representation authority granted to them by big businesses.

The process of institutionalisation of new big FIGs’ relations with the Government after their legalisation assumed a rather specific format in Ukraine showing clear differences from similar practices elsewhere. While the developed countries saw decades-long formation of dedicated non-political institutions, FIGs in Ukraine started using the nation’s common political structure to resolve their problems.

Big FIG representatives started to penetrate the nation’s supreme legislative body, the Parliament, since the end of 90ies. By some estimates, while the first Ukrainian parliaments had no big business representatives at all, there was already almost 50 of them (nearly 12%) among MPs after 1998 elections, and 2002 elections opened the way to the Parliament for more than 100 of them (almost a quarter of total parliament members.) The MP status opened before big business representatives some possibilities of rather importance for them:

- The possibility to directly impact government formation for the benefit of own corporate interests implementation,
- The possibility of exerting pressure on officials from the Executive,
- The possibility of employing personal immunity status as a shield against possible encroachments of the Government.

Ukrainian new big businesses used the institute of political parties as a vehicle to the Parliament. The first ever mass party building by bigger FIGs took place during preparations for 1998 Parliamentary elections. There were 56 parties registered by the elections date; of these, 47 did take part in the elections. Those were ‘pocketed’ political parties established to only serve entirely pragmatic purposes of either big business representatives themselves, or those government officials who played umbrella for them.

In such conditions, the issue of establishing specialised institutions to manage relations between the Government and big FIGs lost all of its topicality.

The ‘Orange Power’: Attempts of Oligarchic System Eradication (2005 – 1st semester of 2006)

By the year 2004, contradictions inside the society reached an intolerably high level turning the regular elections of the President of Ukraine into the ‘Orange Revolution.’ Austere pre-election struggle between the two main candidates – Viktor Yushchenko who represented opposing political forces and Viktor Yanukovich, a representative of the totalitarian power, was increasingly perceived by the public as a fight over selection of country’s further path of development.

The opposition came victorious in that struggle bringing to power the team of the new President, Viktor Yushchenko; the new team received from the revolutionary ‘Maidan’ a mandate to liquidate the totalitarian political regime and debilitate its economic groundwork of oligarchic FIGs.

The first post-revolutionary government of Yulia Tymoshenko wasted no time to set off on the mission in a most radical way. Among the government’s act that drew the most repercussions were, in particular:

First of all, a mass personnel rotation was carried out in public administration bodies up to regional level, i. e., the major portion of carriers of traditional oligarchic relations with big businesses was squeezed out of the Government;

Secondly, the Government pioneered an uncompromisingly abrupt change of priorities in respect of groups of interests: the 2005 budget increased the proportion of consumption expenditures and reduced the development provision that had been earlier disbursed for the benefit of private businesses. In the same time, privileges and preferential treatment of business operators, including those envisaged for free economic areas (FEA), were abolished.

Thirdly, the Government pioneered the so-called re-privatisation policy (the policy of reinstating assets as public property for their subsequent resale.) The key object of it became the Interpipe Corporation (it was under the auspices of ex-President Leonid Kuchma) and System Capital Management Company (under the patronage of former Prime Minister Viktor Yanukovich.) Some of the FIGs that had demonstrated no support to the ‘Orange Revolution’ lost some of their most valued assets.

A change in national policy priorities and a review of privatisation outcomes were undoubtedly the most burning tasks in the fight against the existing oligarchic system; however, the radicalism of the new power clearly exceeded the level of safety for the public and the economy. It dealt a tangible blow to big FIGs and ricocheted onto economic progress rates quickly sending them down. While Jan.-Aug. 2004 to same period of the previous year GDP growth rates were 113.6%, in Jan.-Aug. 2005 (the time of Tymoshenko’s government at power) it slumped to only 102.8%¹⁵. The backbone of any market economy – the title to private property – became at risk. By unleashing re-privatisation, the government kicked-off a nation-wide mechanism of property redistribution of scale. The media were rather inventive in labelling the situation a time when big businesses felt themselves ‘simple street vendors’ totally vulnerable to any acts of the Government.¹⁶

The demise of Yulia Tymoshenko’s cabinet in September 2005 and nomination of a new government of Yuriy Yekhanurov signalled of the “Orange” Power’s intention to abandon its radical policies. Speaking before Verkhovna Rada’s session on September 20, 2005, Mr. Yekhanurov underlined that the new cabinet would regard the first month of its operation as a time for rehabilitating government-business relations.

The first declarations by President Yushchenko and Prime Minister Yekhanurov covered Government’s positions on issues most tangible for big businesses. The President and the Prime Minister announced full resignation from the re-privatisation policy and firmly promised guarantees of property title to businesses.¹⁷ Certain promises regarding a review of the issue of FEA liquidation were also made, as well.

On November 27, 2005, President Yushchenko arranged a meeting with 20 big business representatives to announce cardinal changes to governmental policies in respect of entrepreneurs. At that meeting, a

¹⁵ <http://www.ukrstat.gov.ua/>

¹⁶ <http://investgazeta.net/print.php?id=19454&number=3&year=2005&top100=1ФПГ>

¹⁷ <http://www.zerkalo-nedeli.com/nn/print/51247>

decision to set up a taskforce to provide for Government's permanent contact with big businesses was made.¹⁸

The 'Orange Revolution' and post-revolution developments certainly affected self-identification of the big business. The history of events made a clear tip to FIGs: going at odds with the public threatens with considerable risks for entrepreneurship. For the first time throughout their existence did big business representatives comprehend the responsibility for national development as a vitally important target of their own.

Entrepreneurs boosted their sponsoring and charity offerings.¹⁹ In 2005, Ukrainian businesspersons started adopting the ideas of socially responsible business (SRB.) Ukrainian companies have started joining the UN Global Agreement that contributed to worldwide adoption of SRB principles.²⁰ Still, the analysts are unanimous in that the key driving factors for the rising sponsorship and charity trend until now stem from businesses' most traditional practical needs of securing governmental patronage for themselves.

Nevertheless, that reciprocal 'honeymooning' moves of the Government and big businesses did not last long; it was eventually choked by preparations to next Parliamentary elections of March 2006. Following the elections, the "Orange" political forces failed to retain the power and in August 2006 the nomination of a new government led by Yanukovich marked off the end of the "Orange" period in the history of Ukraine.

The "Orange" period in the history of Ukraine, despite rather short (it lasted for only a bit more than a year and a half), nevertheless played an important role in changing the nation's development vector. In spite of failures and mistakes, President Yushchenko's team provided a broadening of civic democracy foundation and *de facto* brought to an end the oligarchic system of relations between the Government and the big business. The Government's umbrella patronage of FIGs degraded in status from the institutional one towards only rare phenomenon found elsewhere.

In the same time, the "Orange" team failed to offer a viable concept of new system of relations between the Government and the big business: for the whole time of it being at power, not a single legal regulation or new institution which would effectively streamline behaviour of the key relations agents, Government and big business representatives were introduced in that domain. The luxury of being close to power has remained the key prerequisite for business progress.

President Yushchenko and Prime Minister Yekhanurov eradicated the confrontation that had evolved because of the moves of Tymoshenko's cabinet; still they did not succeed in fully overcoming the standstill between the Government and big Ukrainian businesses. There have been several reasons for that:

Firstly, the Government did not guarantee the property title as the issue of re-privatisation was not fully dealt with;

Secondly, "Orange" team representatives continued regarding Ukrainian FIGs as carriers of economic negatives and related economic progress with mass involvement of transnational investors of non-Ukrainian origin.

The Coming of Big Businesses to Power (since August 2006)

Previous experience of oligarchic relations with the Government during the time of President Kuchma's authoritarian rule and ensuing radicalism of the "Orange" team towards entrepreneurship prompted brisk changes in strategic objectives of big FIGs that started viewing the winning of power as one of the most reliable guarantees of success for their business endeavours. That already had nothing in common with earlier limited corporate targets the need for meeting which compelled some business representatives to sporadically penetrate the Parliament.

That made a phenomenal historic experience for Ukraine. During March 2006 Parliamentary elections, big businesses became active agents of political fights over winning the power.

¹⁸ http://www.prezident.gov.ua/news/data/7_12041.html

¹⁹ <http://www.zn.kiev.ua/ie/print/52804/>

²⁰ <http://delo.ua/news/economics/organisation/info-23343.html>

On the eve of Parliamentary elections, the big FIGs distributed between nation's major political parties, as follows:

The parties that came to power after the "Orange" Revolution and their supporting FIGs:

The People's Union Our Ukraine (President): The Industrial Union of Donbass Corporation, UkrPromInvest Corporation;

Yulia Tymoshenko's Block: Privat Group;

The Socialist Party of Ukraine: the Ilyich Mariupol Metal Works Group.

The party in opposition and its supporting FIGs:

The Party of Regions: System Capital Management CJSC and its affiliates from the Donetsk region (the party leader Yanukovych is the permanent patron of the FIG.)

Those Parliamentary elections were won by the opposing party, the Party of Regions. Taking into account that System Capital Management Company is the key driving force in the party, one might say that it was the country's most influential FIG that came to power that time. The second-tier team in the party comprised representatives of the top-level government officials from the time of Kuchma's presidency that had been retired by the "Orange" Revolution.²¹

The representative membership in the winner party prompted within it powerful currents that fuelled ideas of political retaliation and attempts of restoring oligarchic relations between the Government and the big business. It was beginning to be increasingly clear from the first days of the Party of Regions at power.

The first trend concerned the Party of Region's endeavour to secure for itself controlling positions within the bodies of government for guaranteed influence on governmental policymaking. It manage to set up a manageable majority in the Parliament, the Anti-crisis Coalition (with 52.9% votes.) The party practically reached the absolute monopoly in the central Executive – Viktor Yanukovych chaired the cabinet where all six deputy Prime Minister and 14 out of the total of 19 ministerial positions belonged to his party representatives. All the top managers in the central executive bodies were promptly replaced based on their political affiliation; many old-timers returned to their offices. The party that voiced interests of a certain group of big businesses acquired a real possibility of directly orchestrating the government and the parliament.

The second trend related to the initiated use of the Legislature and the Executive for implementing corporate interests of the group of big businesses that came to power. Lots of features indicative of revival of the old system of 'customer support' of big businesses' needs mushroomed.

A quick rotation of top managers of public companies and regulatory bodies in the railroad and fuel & energy sector in favour of representatives tied to System Capital Management CJSC was unleashed; it made it possible to imposed control over areas where a considerable proportion of costs of iron and steel production (the main line of business of the companies supporting the Party of Regions) was generated²².

When developing the national budget for 2007, the cabinet of Yanukovych cut the consumption expenditures in favour of practically full restoration of the previous mechanism of financial aids to economy sectors. That way the government turned into a centre for managing State investments and privileges between selected FIGs again.

From that moment on, privatisation areas began to be selected with focus on interests of big Ukrainian businesses. Foreign investments penetration into the Ukrainian economy was back under supervision again. Furthermore, in the field of privatisation the government returned to the mechanism of 'targeted inexpensive' sales of strategic public enterprises. Among the most blatant recent examples were the sales of 76% share in LuganskTeplovoz SHC and 38.14% share in Komsomolskoye Ore Mining Administration OJSC: the two nation's biggest enterprises were actually sold directly to pre-selected buyers at low bids they offered themselves.

However, the Ukrainian public after the "Orange" Revolution was already past the point at which the Government was able to monopoly dictate governmental policies in close alliance with oligarchic FIGs.

²¹ *Delovaya Stolitsa*, Issue No. 39, 25 September 2006, p. 1-2

²² *Delovaya Stolitsa*, Issue No. 33-34, 21 August 2006, p. 6; Issue No. 48, 29 November 2006, p. 1

The “Orange” Revolution resulted in a system of checks and balances established within the society. An exceptional role in that system of checks and balances belonged to those FIGs that formed the backbone of opposing political parties and backstopped the President who became the focal point of counteraction to political retaliation and oligarchic system restoration processes. The developed system of checks and balances can be generally described, as follows:

In governmental authorities:

- President Yushchenko who has the constitutional authority of vetoing laws adopted by the Parliament and the title to pre-term disbandment of the Parliament;
- The National Security and Defence Council and enforcement agencies within the orbit of his influence;
- Efficient opposition that has united with opposing forces outside the Parliament (e.g., a new mass People’s Self-Defence movement etc.).

In the civic society system:

- A relative balance between powerful political parties actively supported by big FIGs;
- Control on behalf of independent media outlets, proactive public associations and political opposition forces outside the Parliament; use of ‘street democracy’ tools;
- Ample use of the judiciary for protection of interests.

In the area of economic relations:

- Strong economic competition between FIGs employing available administrative and political resources to protect their interests;
- Risks of anti-dumping investigations potentially threatening with considerable financial damages for FIGs on the world markets.

In the area of behavioural orientation:

- After the “Orange” Revolution, ex-government officers and particularly big businesses acquired a new genetic memory that fixed recognition of the dangers of radical public reactions. The government had to accept the rules of the game established by the “Orange” team: publicity of actions of the Government; accountability before the civic society; adherence to free competition principles in the economy.

The developments in Ukraine showed the system of checks and balances to be rather efficient and able to exert a powerful pressure on the Party of Regions to counteract its attempts of resuscitating the old regime. Even in conditions of actually full monopolisation of the executive power, the President and opposition forces are able to push through decisions not in line with policies pursued by the Party of Regions, and FIGs not connected with the ruling party can successfully protect their positions from unfair encroachments of the Government and their competitors.

Still, and many experts have it,²³ it was particularly throughout that period that the existing government system showed its crystal-clear incapacity, inability to assure stability of public progress. Unlike developed democracies, the government system of Ukraine lacks institutional mechanisms able to provide some real influence of all of the most important groups of interests in the society on governmental policymaking. Because of that, the system of checks and balances that had been developed unsupported by relevant institutional changes started operating as a mechanism of political conflict that did not rule out recourses to brutal force-based solutions. A severe political crisis that broke out in the country in April-May 2007 might serve just a good proof of that. Such a mechanism of struggle for leverages of influence on the Government is utterly detrimental for the society and hides negative economic aftermaths.

The above further substantiates a thesis that, in conditions of Ukraine, the need for institutional modernisation of relations between the Government and big FIGs should not be viewed as a narrowly private issue relevant for only specific group of public interests. Given the political and economic power

²³ <http://www.zn.ua/1000/1550/59506/?printreview>

accumulated by modern Ukrainian FIGs, the solution of the problem will allow a timely identification, aversion and reconciliation of arising discrepancies of importance for country's future without letting them grow into an open force confrontation.

Conclusions and Recommendations:

(1) The process of development of big businesses and their relations with the Government and the public in Ukraine unfolded in a sporadic and chaotic manner in conditions of a rather compressed timeframe. The State proved to be a weak regulator unable to offer either a decent strategy or powerful management of the process of importing civilised standards developed by international experience and implanting them in the Ukrainian society. The "Orange" Revolution of 2004 and the political crisis in April and May 2007 made it obviously clear that deformities in the Government-big business-society relations have reached the level no longer acceptable for the Ukrainian public.

(2) The "Orange" Revolution gave an impetus to the development of positive trends in the system of Government-big business-society relations. Having come to power, the "Orange" political forces liquidated the most blatant mechanisms of 'client servicing' corporate interests of big businesses. Even after the power was ceded to the Party of Regions, the developed system of checks and balances effectively opposed attempts of using governmental policies for FIGs' corporate interests implementation. Still, those positive changes were not enshrined in any institutional way. The lack of legal regulatory framework and of relevant institutions drives the situation to a point at which political struggle becomes the main mechanism of assuring the balance between groups of interests. Moreover, given that big FIGs may attain guaranteed protection of their interests only at 'power seizure', it becomes an agent provocateur fuelling permanent political instability inside the society. Competitive struggle aspects only add to the harshness of resulting political struggle.

(3) One should not really expect the big business to concede to 'roll-back' from the power in the coming years. FIGs will use their partisan affiliation in their relentless endeavours to reach their objective of gaining control in the system of power. Therefore, it is unlikely that the big business will be in any way susceptible to ideas related to its relinquishment of power. In the same time, the experience of the 2004 "Orange" Revolution and of the recent political crisis of April-May, 2007, will inevitably make the big business face the imminent issue of providing for stable public development through, first of all, elimination of conflict points that heat up political conflicts. In this context, we would deem as more perspective the following proposals:

Establishing an institutional lobbying system that will secure channels of influence on the Government for all groups of interests inside the society. This will alleviate the level of aggressiveness of political standoff as will, to certain extent, comply with elections-related needs (re. the winning of supporters) of the Party of Regions itself.

Big business representatives' widespread penetration of into the Government adds to topicality of issues of institutional enshrinement of the processes of their separation from business (a procedure of company transfer for third-party management; settlement of conflicts of interests etc.) Hence, big business representatives need a formal legal procedure as a measure of protection against public allegations, claims included, and this should be implemented under strict public control.

The big capital at power has an indispensable need for institutional provision of strategic policy-making processes. Here, accumulated international experience could be used.

Following the "Orange" Revolution, the big business felt it necessary to restructure its relations with the public. The available international experience offers new historical practices for that area related to using social responsibility principles by entrepreneurs. This will improve the image of big businesses not only inside the country, but also within the whole framework of international relations.

(4) The process of institutional modernisation of the domain of Government-big businesses-society relations requires the following aspects of intrinsic relevance for the modern Ukraine to be taken into consideration:

A mutual distrust existing between the Government and businesspersons; rent-oriented business persistence; high level of corruption in the officialdom;

Low response rates of old-time informal institutional systems;

Permanent political instability that distracts both the Government and other participants in the process from problems of relations institutionalisation;

The lack of a broad information about relevant international experience creates a widespread lack of understanding of Ukrainian practices being incompatible with challenges of today. Meanwhile, such information, if available, could provide incentives for parties – big businesses and the Government – to initiate changes.

(5) Ukraine will most probably see a coexistence of the following components of the corporatist and the pluralist models:

Like other post-Socialist nations, Ukraine has to resolve the tasks of transition to market economy and civic society and of integration into the global economy in a historically momentary and parallel way; this requires a strong role of the State and its close cooperation with associations representing groups of public interests. These conditions logically presuppose a need for consolidated actions of association members, particularly given the Government has granted the associations a title to represent interests in exchange of certain responsibilities that extend to also cover its members.

The pluralist model will be rather widely spread as the Ukraine of today is distinguished by a considerable fragmentation of groups of interests competing between one another for influence on, or ability to win, the Government. Consequently, the system of organisation of public administration bodies should also include numerous points of access to (channels of pressure on) the political decisions-making process available for its representatives.

Given the process of transformation the country has been through and that terms and conditions of individual progress phases will change, there is a need for a phased implementation of institutional modernisation of Government-big business relations. It would be feasible to use for that purpose transitional models while recognising, in the same time, the end targets, i. e., to carry out institutional modernisation in the “institutional complementarity” format.

(6) In conditions of Ukraine, the speeding up of processes of establishing big business associations where FIGs would also participate gains paramount importance. Now local FIGs act independently not only as economic competitors (which is rather natural) but also rather often as political rivals, as well. Powerful FIGs that are regular world market operators might unite their efforts to make real carriers of European civilisation standards for the rest of entrepreneurs and for the country, in general. Unification in associations will provide a more coordinated and less costly (compared with individual lobbying) pressure capabilities for better articulation of new objectives in the society, aggregation of interests in groups and more efficient lobbying of proposals before governmental bodies.

2. BIG BUSINESS INTERESTS: LOBBYING SYSTEMS

Big financial and industrial groups (FIGs) are, by nature of their scale of operations, rather sensitive to changes in governmental policies, foreign policy domain included, as these directly impact their corporate interests. Unlike SMEs that face only sporadic encounters with government officials, FIGs have to continuously monitor acts of the Government arranging pressure on government authorities to lobby adoption of necessary political decisions.

The most developed industrial nations faced wide-scale negative effects of big FIGs' lobbying activities came since those came into being. Having tremendous financial and organisation resources, FIGs contributed to corruption spread in public administration authorities and, in the final count, provoked a serious danger of imbalance of interests in governmental policies. The issue became so severe that the countries set off in searches of rational solution options. One civilised way of that disagreement that was acknowledged as possible concerned establishment of *legal, publicly controlled communication channels* which could be used to promote big business' corporate interests in the Government (lobbying systems).

2.1. International Experience ²⁴

Lobbyism in developed countries has turned into one of the structural components of civic society and democratic system of public administration these days. Like other democratic mechanisms, it allows identifying and averting conflicts in the society. Free competition between various lobbying groups ultimately provides the balance of interests so necessary for the public.

Let us use available international experience to identify features characterising lobbyism as a special institutional system.²⁵

Lobbyism is an activity performed by methods and ways not expressly prohibited by law by influencing the object of lobbying for the purpose of securing one's own or interests or interests of clients. It is an open defence of interests with public means (persuasion, public discussions, PR etc.)

Interests of a certain stratum, social group or sector rather than interest of private individuals or an individual company are defended. This is taken beyond the scope of lobbying itself.

Members of parliament or officials of any government body are strictly prohibited from engaging in any lobbying (also within the legally established period after expiry of term of office.)

Lobbying should not be detrimental to moral or legal basics of the society; on the contrary, it must agree multivector interests for the purpose of seeking balance, consensus of those interests on the basis of generally accepted moral and ethic standards.

There have been two mainstay systems (not speaking of their versions) of big business interests promotion in the Government in the world to date. Their principal differences concern divergences between basic models of relations between the Government and groups of interests, the corporatist and the pluralist one. The lobbying systems also have a rather specific territorial distribution.

First System

The first system of lobbyism organisation comprises commercial (fee-based) professional activities aimed at promoting interests through bodies of government.

The most developed professional lobbying systems can be currently found in countries using the pluralist model of relations between the Government and interest group representatives, among them the U.S.A. and Canada. The first lobbyism act was adopted in the U.S.A. in 1946²⁶ and in Canada, in 1988. Let us illustrate professional lobbying organisation on the US example.

²⁴ <http://www.minchenko.ru>; <http://www.sovetnik.ru/konkurs/places/raso3/?id=74&type=view>;

<http://magazines.russ.ru/nz/2006/48/bu12.html>; A. E. Binetskiy, *Lobbyism in Modern World*, Tais Publishers, 2004

²⁵ <http://uv.ukranews.com/cgi-bin/r6/print.pl>, *Parliament Magazine*, Issue No. 1/ 2004

²⁶ <http://www.senate.gov/reference/pdf/contacting10465.hdf>

UNITED STATES

Professional lobbying activities were allowed in the US first in the field of the Legislature; however, the lobbying domain was further extended to also cover the Executive in 1995. To rule out any acts of corruption in the above areas, the existing body of law provides a rather meticulous and detailed regulation of all the aspects of activities related to promotion of interests in public administration bodies.

The body of law recognises as a lobbyist any individual who has been hired by a client for a financial fee or other such remuneration in exchange of services that include more than one lobbying contract. The law provides clear definitions of individual or corporate lobbyists from financial and fiscal points of view.

There is a special legalisation and control system established in this area. Lobbyists have to register themselves in the registry, submit detailed quarterly reports stating their amounts received and disbursed, names of persons who were paid regardless of payment amounts, names of all articles and bills published on lobbyist's initiative etc.

Accounting requirements cover orders with budget in excess of \$20,000. The law provides detailed definitions of permitted actions and expenditure amounts – e.g., number of meetings and allowed expenditures on contacts with congressmen and their aids. Fines for non-compliance are rather high and may go as high as \$50,000.

Table 2.1

US' 10 Biggest Lobbying Companies²⁷

| Company name | Revenue (\$ mln. in the first semester of 2000) |
|---|---|
| Cassidy & Associates | 16.680 |
| Patton Boggs | 10.260 |
| Akin Gump Strauss Hauer & Feld | 9.480 |
| Verner, Lipfelt, Bernhard, McPherson and Hand | 8.840 |
| Greenberg Trauring | 8.675 |
| Van Scoyoc Associates | 6.240 |
| Williams & Jensen | 5.500 |
| Barbour Griffiths & Rogers | 5.500 |
| Washington Council Ernst & Young | 5.500 |
| Hogan & Hatson | 3.380 |

There is a network of big firms specialising in lobbying established in the U.S.A. According to Washington Profiles, almost \$1.6 billion were spent in the US in 2000 on lobbying fees. The biggest lobbying budgets can be traditionally found in pharmaceutical, oil & gas, telecommunications and insurance companies, as well as among electricity producers.

Second System

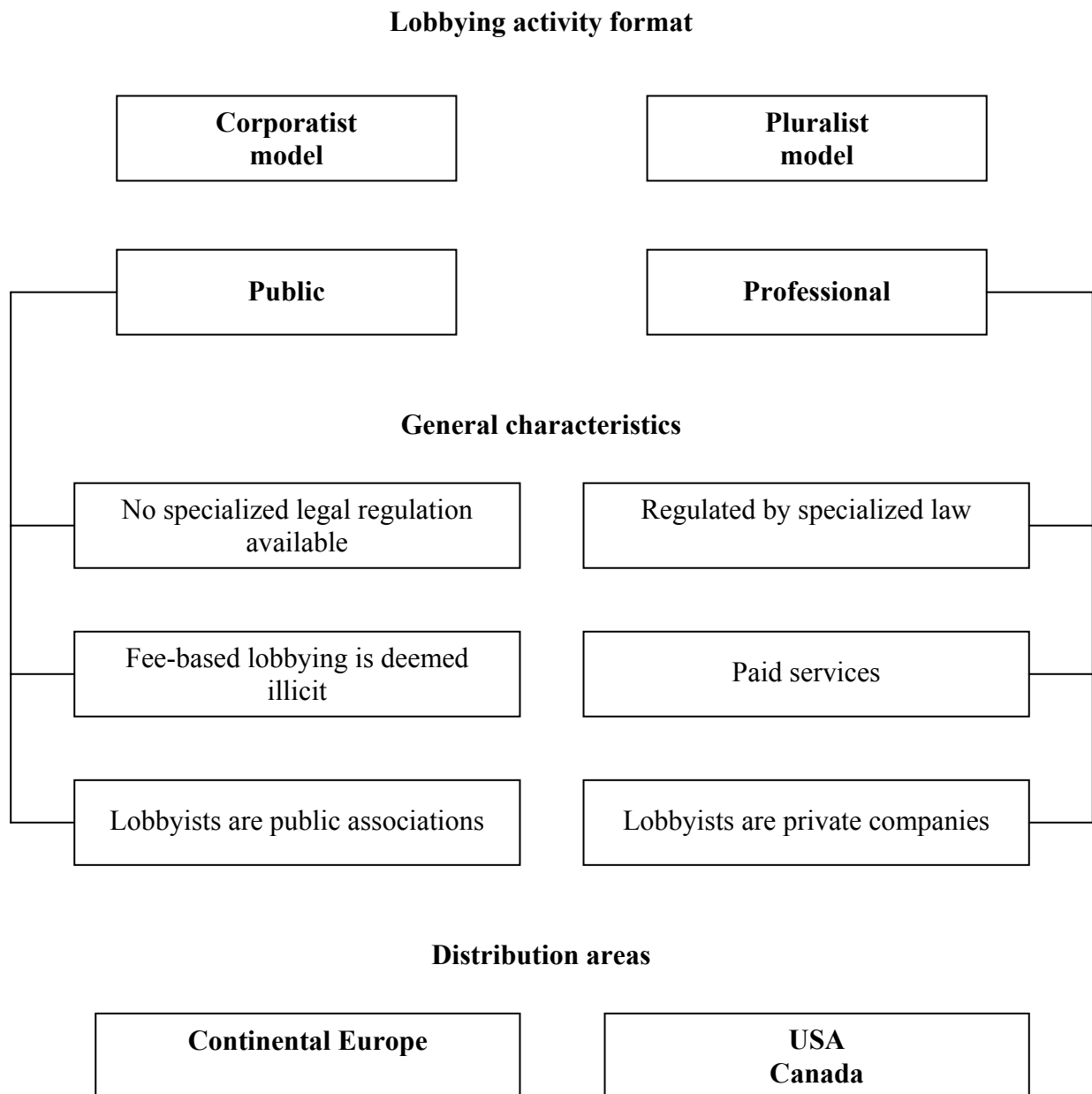
This lobbying system represents institutional mechanisms of accumulating and aggregating various groups of interests on a non-commercial basis (different associations, unions, amalgamations of kind) for the purpose of influencing governmental policymaking/decisions-making by governmental authorities. Here, a for-profit lobbying is regarded as an illicit activity.

The second system of interest promotion in the Government is used in the countries of the continental Europe where the corporatist model of relations between the Government and interest group representatives is applied.

Lobbying in the countries users of the mentioned system has no special regulatory framework.; it is rather regulated by general legislative acts governing operations of public administration authorities and public associations. Relations between big businesses and the Government are mediated by a variety of business associations, unions, chambers etc.

²⁷ *InvestGazeta*, Issue No. 13, 30 March 2004, p. 11

PIC 2.1. SYSTEMS OF LOBBYING BIG BUSINESS INTERESTS



Notwithstanding common corporatist principles, countries do have their specifics in setting up communication channels with which big business' interests are pushed through the Government. Some countries grant public associations the right of immediate participation in the work of governmental bodies; in others, the State itself promotes establishment of dedicated institutions tasked with providing connections between big businesses and the Government (official sites for agreement of interests.)

*Germany*²⁸

The law in force requires from all national enterprises, excluding traditional crafts, agricultural companies and free professionals, to be members of chambers of trade and commerce. The chambers are established based on democratic foundations and are independent from the State. They represent interests of regional entrepreneurial groups in communities, *Lander* governments and regional governmental institutions. Entrepreneurial interests at the federal and the EU level are represented by an Association of German Chambers of Trade and Commerce.

The pole position within the hierarchy of national industrial unions, associations and amalgamations belongs to the Federal Union of Industrial Manufacturers, an umbrella organisation uniting 35 sectoral units. Federal Union representatives are standing members of different consulting bodies in ministries and participate in meetings, roundtable discussions and hearings to voice their opinions on topics of discussion. Their proposals are taken into account when developing governmental policies. The Union President has regular meetings with the Chancellor of Germany.

The Common Provisions of Federal Ministries warrant participation of experts from (representatives of) professional and business associations concerned in governmental policy development. Possibilities of public hearings of expert (interest representative) opinions in parliamentary committees are regulated by the German Bundestag Regulations. Besides, there is an act adopted back in 1972 in the Federated Republic of Germany that envisions publishing of a 'lobbyist list' of all the unions and associations granted formal access to the government and the parliament in the media.

*Austria*²⁹

There is a special Economy Chamber Act in place in the country. These chambers enjoy the title to motion legislative initiatives and carry out expert assessment of all governmental draft acts or orders relating to economics. The chamber system has a hierarchic organisation; it is headed by the Federal Chamber of Economics of Austria uniting 9 *Lander* chambers. Membership in the Chambers is mandatory for all legal entities and private entrepreneurs employed in the national economy, the only exclusion being agrarian and forestry companies, and free professions. All foreign companies operating in the country also must register with the chamber. The Federal Chamber represents interests of its members before governmental authorities and social partners (trade unions and the Workers' Chamber.) The chambers are public law agents independent from the State; still, they have to perform certain functional responsibilities on commission of the State like personnel training and certification, and representing national interests abroad.

France

In France, the objective of big business interests promotion into the Government is within the domain of the Social-economic Council enshrined by the 1998 Constitution. The Council comprises representatives of various professional groups and is authorised to present its opinions on all draft legislative acts of economic and social nature before bodies of government, thus performing the role of a 'lobbying parliament' of sorts. Despite its proposals are of recommendation nature, they are traditionally paid great attention during formal political decisions- and law-making procedures.

European Union

After a flood of scandals related to misuses of authority at lobbying certain interests, the European Union set off for a gradual development of a lobbying regulation system within the framework of existing EU organisations.

An outburst of lobbyists' interest towards EU structures can be generally attributed back to 1970ies when the direct elections to the European Parliament took place. The process received a particularly potent

²⁸ <http://www.rb-de.ru>; <http://russia-today.ru>

²⁹ <http://www.tpprf.ru>.

impetus after the Common Internal Market was created.³⁰ According to some estimates, there are around 15 thousand lobbyists: consultants, lawyers, national and regional representations of all kinds, international and non-governmental organisations, research centres currently operating in Brussels. More than a half of these promote interests of specific corporations (firms, companies.)

Lobbyism is regulated at EU level at the “soft law” level in parallel with a system of incentives promoting self-organisation of groups of interests. The Code of Behaviour for Lobbyists³¹ adopted in 1997 envisioned voluntary registration of pressure groups. That same year, a Society of European Affairs Practitioners, an umbrella organisation of lobbyists aimed at contributing to the enhancement of transparency and legalisation of lobbying activities in the EU, was established. However, the EU has recently shifted in lobbying regulation from the “soft law” towards mandatory requirements: on 21 March 2007, the European Commission announced a mandatory registration of all European affairs practitioners in the Lobbyist Registry to come into effect since 2008. Effective from the coming year, lobbyists will have to disclose information about their clients and payment amounts received. In the event of submitting false information, lobbyists may be subjected to certain sanctions like public announcement of their dishonesty. Moreover, they will be granted the right to participate in formal consultations on EU legislation development only if duly registered with the Registry.

Some shifts in traditional perceptions of the nature of lobbying system organisation have been recently observed worldwide. They have been felt in countries using both the first and the second model of relations between the Government and groups of interests. For example, non-commercial methods of business interests promotion in bodies of government via public associations have been growing in popularity in the U.S.A. European nations with traditional non-commercial lobbying systems, in their turn, have started discussions around the need for recognising professional lobbying activities.

2.2. Ukrainian Practice. Conclusions and Recommendations

The world’s established formal practice of lobbying groups of interest is perceived by Ukrainian public with certain scepticism, if not negated altogether. Negative reactions are prompted by facts of Ukrainian life itself.

As our assessment has shown, there are three principally different communication channels currently used by big businesses in Ukraine to promote their corporate interests in the Government.

The first two channels – personal shadow agreements with government officials (using the corruption mechanism) and FIG representatives’ elevation to the Government – may be truly named the key and most characteristic lobbying methods in their own right that are traditionally popular among big Ukrainian businesses. In spite of that, we will only mention them in this Section because:

First of all, the two channels have been given a rather detailed description in Section 1.4 above. By way of amendment we might just note a system of legal and consulting companies that emerged in the shadow lobbying sector as mediators between big businesses and individual governmental officials. Such companies often employ ex-government officers and MPs;

Secondly, the two represent distorted methods of interest promotion proper for the oligarchic type of relations between the Government and big businesses. These methods must be eliminated in the process of democratising the public administration system.

The subject matter of our analysis concerns the third channel representing *a legal system of promoting big business interests in the Government via non-commercial or non-governmental public associations (business associations).*

A legal system of big business interests promotion in the Government copies, to a certain extent, practical experience of developed nations (importing corporatist model components.) It is of rather considerable scale and is also potentially able to cover all the entrepreneurs starting from the regional and sectoral to all-national level. However, in conditions of Ukraine that lobbying system was quickly reduced to another

³⁰ <http://www.stratagema.org/lobbizmpressclip.php?nws=ck2919549118759;>
<http://magazines.russ.ru/nz/2006/48/bu12.html>

³¹ http://www.euractiv.com/29/images/SEAP%20-%20CODE%20OF%20CONDUCT_tcm29-135557.doc

yet red-tape tool, to a decorative component, formal attribute the only purpose of which has been to show how democratic the public administration framework is.

The efficiency of that lobbying channel resulted rather low however, business associations showing inability to accumulate strong groups of interest inside themselves and thus, having no sufficient influence to exert required pressure on the Government. Big Ukrainian FIGs are still not interested in consolidating their actions and therefore offer no support to business associations operating in the country. They rather prefer individualistic methods of shadow lobbying or use political structures to fight for power.

Public associations established to promote business interests in Ukraine include a network of chambers of trade and commerce, the Ukrainian Union of Industrial Manufacturers and Entrepreneurs, and a developed network of sectoral business associations.

*The Chamber of Trade and Commerce of Ukraine (CTCU)*³² is the only non-commercial and independent organisation in Ukraine to operate based on special legal framework and to have legally established functional responsibilities related to representing and protecting interests of entrepreneurs before bodies of government. CTCU membership is open for legal entities and natural persons of Ukraine registered as entrepreneurs and for associations thereof. Unlike the developed European nations, there is no mandatory requirement for entrepreneurs to adjoin the CTCU. By this time, the Chamber has practically ceased to discharge its legally provided lobbyist functions limiting its operation to professional consulting and legal advice services, trainings, information services for companies, investor searches etc.

The Ukrainian Union of Manufacturers and Entrepreneurs (UIME).³³ During President Kuchma, the UIME formally represented big business interests in the bodies of government and was authorised to participate in sittings of government committees, provide expert assessment of legislative acts and government decisions. The UIME was one of official agents of the social partnership system then. After a similarly-named party was established in 2005, the focus of attention of Union members shifted towards political struggle to the detriment of Union's lobbying activities. UIME leaders now try to restore its lobbying capacities: they have signed cooperation agreements with Viktor Yanukovich's government and the Antimonopoly Committee of Ukraine recently.³⁴

Sectoral business associations. A kind of public associations for representing business interests most widely spread all over Ukraine. Some of them historically emerged on the basis of former public sectoral amalgamations (e.g., UkrAvtoProm (automotive industry), UkrMoloko (Ukrainian Milk), UkrMiaso (Ukrainian Meat), UkrTsement (Ukrainian Cement), UkrSpirt (Ukrainian High Spirits), the Ukrainian Association of Light Industry Enterprises, the Ukrainian Association of Iron & Steel Industry, to name but a few.) They were traditional pillars of sectoral support for the government and ministries before; within several past years however, business associations lost their contacts with governmental authorities and related influence on sectoral enterprises. After the "Orange" Revolution, it was all reduced to sporadic contacts prompted by a need for settling crisis situations on individual commodity markets.

Public associations representing big business interests interact with governmental authorities either directly (by taking part in such authority operations) or via specially established standing or ad hoc organisations. E.g., while the UIME is entitled to directly contact governmental authorities, the rest of public associations generally act via specialised organisations established with respective bodies of government.

Standing organisations established to agree interests of the State and those of influential groups of public interests; by their status are consulting-advisory bodies with the President, the Government and other bodies of power. The right to represent groups of interests in these belongs only to public associations (unions, amalgamations of kind.) Their form of operation mostly concerns meetings, and decisions they make are of advisory nature.

The group of standing organisations in Ukraine currently includes:

The Consulting Council on Foreign Investments in Ukraine³⁵ established with the President of Ukraine in 1997. It includes representatives of organisations related with foreign investor

³² The Law of Ukraine on the Chamber of Trade and Commerce of Ukraine No. 671\97-vr, of 02.12.1997.

³³ <http://glavred.info/print.php?article=/archive/2007/04/05/143535-6.html>

³⁴ http://www.ya2006.com.ua/rus/presscenter/news/45ffcedf3586e/view_print

³⁵ President of Ukraine Decree on the Consulting Council on Foreign Investments in Ukraine No. 323\97, of 29.07.1997

operations in Ukraine. Council decisions may be implemented by Presidential decrees on an as-necessary basis. Inoperative of a number of years now.

The Council of National Associations of Commodity Manufacturers with the Cabinet of Ministers of Ukraine was established by government's decision in December 2006.³⁶ The Council membership comprises 47 representatives of sectoral business associations, unions and amalgamations. Seven commissions have been set up within the Council organisation to perform its statutory functions. However, it might be premature to speak of any experience of Council operation as it has not actually commenced its activities to date.

The Council of Exporters established with the Ministry of Economy of Ukraine in May 2007.³⁷ The Council shall contribute to establishing permanent relations between the government and representatives of main exporting sectors (metallurgy, chemical and machine-building industries). The organisation is effectively big business-oriented.

Public councils with bodies of the Executive established by government decision in September 2004.³⁸ These councils play the role of communication channels for all groups of interests, business included.

Public councils with units of the State Committee of Ukraine for Regulatory Policy and Entrepreneurship. The key role in them belongs to sectoral business associations and small and medium business associations.

Practical operation of standing organisations showed them practically not performing their functions in the domain of governmental policymaking/decisions-making by bodies of government. A list of their most general shortcomings would include the following:

Firstly, they have failed it to become real points of agreement of groups of interests – at its best, they are able to provide business associations with information about direction/action plan a public administration authority might take;

Secondly, regulatory document do not identify a technique of business association proposals promotion. The country lost even that small administrative experience of working with such organisations that it had before;

Thirdly, these organisations are extremely dependent from governmental authorities because it is the latter that ultimately identify their objectives, tasks and duration of operation.

The scope of business association representatives' involvement in governmental policymaking within the framework of *ad hoc organisations* (taskforces, expert groups etc.) has considerably slumped in the last two years. Unlike standing organisations, they have more specific areas of operation. Big business representatives are involved in consultations and discussions during development of draft legislative acts or regulations, national programmes of sorts etc. Such operational framework provides business associations with real possibilities of lobbying their interests.

After big private companies started playing an important role on certain commodity markets, the government and sectoral bodies started attracting them for joint solving of issues arising on such markets. Starting from 2003, governmental institutions and companies have shifted towards agreements initialled in the form of memoranda. Governmental institutions provide sectoral businesses with guarantees in form of legislative changes, additional budget provisions, privileges or preferences in exchange of guaranteed product supplies or retaining of established price level. Some examples of this could be Memoranda on coking coal and iron ore supplies on the internal market of the country (2003),³⁹ the Memorandum of foodstuffs market establishment (2004);⁴⁰ the governments have been signing Memoranda with grain

³⁶ Cabinet of Ministers of Ukraine Resolution to establish the Council of National Associations of Commodity Manufacturers with the Cabinet of Ministers of Ukraine No. 1685 of 08.12.2006

³⁷ Minister of Economy Directive to establish the Council of Exporters with the Ministry of Economy of Ukraine No. 133, of 15.05.2007

³⁸ Cabinet of Ministers of Ukraine Resolution on Some Issues of Assuring Public Participation in Governmental Policy Making and Implementation No. 1378, of 15.10.2004

³⁹ *Big Private Business Formation in Ukraine*. Millennium Publishers, Kyiv, 2004, p. 64.

⁴⁰ The Memorandum of Concerted Actions of the Cabinet of Ministers of Ukraine and Professional Public Associations in Respect of Foodstuffs Market Establishment in 2004 – http://vap.org.ua/displayHTML.php?file=mem_ukr3

trading companies on an annual basis since 2002.⁴¹ A Memorandum on agreed actions was signed by and between the Cabinet of Ministers of Ukraine and Ukrainian oil production companies 16 February 2005 to regulate and promote national oil and oil product market development.⁴² One last example of joint decision made by the government and big private companies concerned price regulation on the gasoline market in 2006.⁴³

Permanent government changes do not allow for consistency in governmental policies and lead to a situation when the accords enshrined in memoranda are generally never complied with.

In Ukraine, where the merger of power and big businesses is already an established fact (excluding the brief period of the “Orange” team at power) all attempts of implementing a legislative regulation of lobbyism have failed so far. All four draft legislative acts submitted to the Verkhovna Rada since 1992 were declined.⁴⁴

The most recent draft Act No. 8429 on Lobbyist Activity in the Verkhovna Rada of Ukraine⁴⁵ was motioned to the Parliament by People’s Deputy of 4th convocation Mr. Igor Gryniv (Reforms and Order Party Faction) on 09.11.2005 is interesting by its author’s idea of recognising lobbyism as a kind of professional activities. The draft envisions a rather detailed legal regulation of that new kind of activity.

The subject matter of lobbying covers everything regulated by laws.

Allowed forms of lobbying are: 1) preparation of proposals, information and analytical materials, research outputs; 2) contacts with MPs; 3) presence at committee and ad hoc special commission sessions; 4) arranging seminars etc. with participation of members of parliament; other actions.

The range of prohibited actions includes those that: a) may affect MPs position on issues regulated by acts of the Verkhovna Rada of Ukraine of individually legal nature; b) bear risks related to money transfers, free-of-charge or privileged services, loans etc.; c) are aimed at national sovereignty elimination, forced transformation of the national constitutional framework, breaches of sovereignty and territorial integrity of the country, illicit taking of power etc.

Only a natural person resident of Ukraine registered in the Verkhovna Rada of Ukraine may be a lobbyist. The status of a lobbyist is confirmed by the certificate that expires on the last day of the current session of the Verkhovna Rada. Individuals with previous convictions or who have been adjudged incapable or had not conviction overturned, also civil servants working in the bodies of government or local self-government, as well as employees of publicly owned enterprises, institutions and organisations may not be lobbyists. A mandatory reporting of lobbyist activities for the time of certificate validity is also envisaged.

There is administrative, criminal, civil and disciplinary responsibility established for interfering with lobbyists’ operations. The scope of responsibility established for a lobbyist involves reprimand, withholding of operations, or certificate cancellation. Publicity requirements concern annual publication of reports in the *Golos Ukrainy* Newspaper. The State supervisory function is performed by the Verkhovna Rada Office.

That draft act of 20 December 2005 was declined; the Verkhovna Rada’s Scientific and Expert Administration expressed in its opinion doubts over the very necessity of legislative regulation of the institute of lobbyism in Ukraine.⁴⁶ Nevertheless, draft law discussions at expert and public hearings held in Kyiv (23 November 2005) and regions (in Kharkiv (30 November) and L’viv (23 December) showed that the majority of professionals and business representatives were strongly in favour of such a legislative regulation of that phenomenon: they said that the time was ripe for Ukraine to introduce a specialised legislative act governing lobbyist activities in government bodies.

⁴¹ <http://www.proagr.com.ua/art/46029.html>

⁴² http://maidan.org.ua/news/for-print.php3?bn=maidan_mai&key=111658003

⁴³ <http://ntn.tv/print/biz/06/12/20/18/58.html>

⁴⁴ <http://uv.ukranews.com/cgi-bin/r6/print.pl>

⁴⁵ http://www.parlament.org.ua/content/print_draft.php?action=draft&draft_id=1983

⁴⁶ <http://uv.ukranews.com/cgi-bin/r6/print.pl>

Conclusions and Recommendations:

1) Ukrainian big businesses have been given the most powerful tools of influence on governmental policymaking/decisions-making by governmental authorities – political parties and ability to be actually present both in the Legislature and the Executive. This will inevitably impede functional development of the existing institutional system of big business interests promotion in the Government and, even more, the implementation of legislative regulation of lobbyism activities. Ukraine has been currently living through the time period when neither big business nor government representatives feel any real need for that. Therefore, a clear public-wide articulation of the idea of an emergency need for civilised reshaping of lobbyism activity area and further dissemination of information about positive practical experience of developed nations becomes of paramount importance these days. Ukraine has to grow to the idea that institutionalisation of lobbyism activities is one of the most important trends of coming reforms. In the meantime, no such proposals can be found in either agendas of political parties, governmental reform programmes, demands of business associations and other public associations.

2) Establishing efficient channels of big business interests promotion in the Government which would be acceptable for the public makes a whole multifaceted problem impossible to be resolved on an one-off basis. It includes three parallel ways of reform:

First of all, it is about legalising the existing informal lobbying system and transforming it into a formal system of communication able to efficiently transfer necessary information from interest group representatives to the Government. Any formal lobbying system, even if imperfect, is nevertheless better than a shadow one. The latter poisons both the business and the Government.

Secondly, it is about implementing legal limitations which would hamper government officials' jobbing possibilities (i.e., taking bribes, or pushing through decisions of benefit for their own business). It shall be necessary to introduce a specialised public procedure of government representative separation from business and an efficient control over his proceeds.

Thirdly, it is about contributing to business association development. Such associations have to become real fully authorised representations acting on behalf of entrepreneurs; they have to be independent from the Government and able to exert necessary pressure on the latter. Business associations might be attractive for entrepreneurs if supported by big FIGs and recognised by the State.

3) Taking into account current world trends and practices of Ukraine, one might deem it feasible to recommend developing both lobbying systems – the professional and the non-commercial one -- in the country. Both forms have been already established in practice in Ukraine.

4) Representation of groups of interests via associations is the most traditional method for Ukraine. Remnants from the collective Socialist past only contribute to that. Because of that, it will be much more easier to develop associated forms of interest aggregation in line with new challenges. However, the task itself consists not only in providing their maximum coverage of businesses nationwide (a simple mandatory requirement of association membership would suffice for that) but rather in developing the very technology of assuring real influence of associations onto governmental policymaking/decisions-making in bodies of government. On one hand, it is associations themselves that have to master the government impact technology; on the other hand, the Government has to implement specialised procedures to account for associations' proposals in governmental policymaking/decisions-making in bodies of government.

5) Here a legal regulation of professional lobbying activities becomes prominently important. International practices show that national legislative frameworks in that area are, to a larger extent, shaped by applicable administrative practice, traditional perceptions, political situation and many others external considerations.⁴⁷ However, institutional characteristics may serve the basis for formulating mandatory components of a system of legislative regulation of lobbyism seen as a professional activity.

Lobbyist may be a natural person or a legal entity. It is important to identify categories of persons banned from becoming lobbyists.

Customer may be a natural person or a legal entity. In this case, the applicable law should also provide a clear definition of persons whose interests may not be promoted in the national bodies of government.

⁴⁷ *The Parliament Magazine*, Issue No. 1/ 2004.

Subject matter of lobbying is an influence affecting decisions made by governmental authorities. In international practices, the subject matter of lobbying is stipulated in law either in general terms, or as a specific list of legal regulations, decisions by authorised bodies on granting licenses, permits, privileges, guarantees, concessions or contracts with governmental authorities. The body of law should viably include a list of subject matters prohibited from lobbying.

Lobbying methods (ways) are actions taken with the aim of influencing their object that are not prohibited by law. National legislations of some countries provide, beside the mentioned general category-based definition, also a list of specific actions permitted under the law.

Rights and liabilities of lobbyists and lobbied bodies the rights to: information; presence in bodies of government; voicing one's position; to contact government representatives. The liabilities include the one of respecting legality and confidentiality requirements (not available in law systems of some countries.) A detailed procedure is generally described in internal regulations of the body in which the lobbying procedure unfolds.

Legalisation of lobbying activities is performed via certification as professional occupation and mandatory registration (listing in the Registry.)

Supervision over lobbying activities. Regulation-defined reporting requirements are the main method of supervising lobbyists' activities. Public control over the lobbying area can be further enhanced with mandatory publication of lobbying agents' reports in generally-accessible media outlet.

Liability envisions sanctions, as follows: admonition; fine; withholding operations; removal from the Registry.

6) After the Parliamentary elections of March 2006, the power has been *de facto* monopolised by one powerful financial and industrial group, the System Capital Management Company. Establishing of channels of interest groups promotion in the Government could play a key role in playing down severe political standoff with other big FIGs in the country. That way, legalisation of lobbying may become one of preconditions of nation's further sustainable progress.

3. BIG BUSINESS AND ITS NEW ROLE IN THE SOCIETY

Having passed the tumultuous and dark period of initial capital accumulation, big Ukrainian financial and industrial groups (FIGs) have switched for mastering their new role in the society. They have started to actively go beyond the limits of their own business. After the “Orange” Revolution Ukrainian FIGs have begun expanding charity and sponsorship of arts. However, given the specifics of historical progress, big Ukrainian businesses resulted intimately linked to political fight over power. This makes them involved in solving strategic problems not only of their own, but also of the country in general.

The current situation in Ukraine resembles in many respects the one in developed economies in early decades of 20th century. Representatives of big banks and corporations, first in the U.S.A. then also in Europe, being compelled by a variety of reasons, personal considerations included, expanded from just making business to also solving socially important issues. At first, their non-commercial involvement was only episodic bringing local outcomes (like in the Ukraine of today.) However, it did not take long for those activities to start assuming specific institutional forms adding systemic features to that area of big business activities.

3.1. International Experience

International practices give examples of three main lines of institutionalisation of social activities performed by big businesses outside their main business lines:

- a) “Investing” in the area of social tasks implementation (a systemic charitable actions⁴⁸ via foundations);
- b) “Production and promotion” of analytical/ideological products (independent analytical centres) to support development of national policies and optimal decisions-making by the Government;
- c) Influencing policymaking on the national level, selecting optimal decisions for the Government by affecting visions/outlook of ruling elites (elite political and economic clubs.)

Big Businesses As Alternative “Investors” in Solving of Social Issues⁴⁹

Charity as a natural phenomenon has followed the mankind throughout its existence at all phases of development. Mass spread of charity and its subsequent transformation into a systemic phenomenon, that is, into a part and parcel component of society’s functioning are related to big businesses. The charity system that emerged in developed economies at that stage finally received an individual institutional completion and started providing alternative solutions of socially important tasks along with the state. Big businesses turned into “investors” well able to compete with the national budget by the sheer scope of financing they were able to provide.

As experts smartly outline, the charity system developed with participation of big businesses has assumed the institutional design that corresponds to the very ideology of big business making. Charity institutions akin to commercial trusts have developed. Their management is aimed at reaching good performance levels (providing maximum effect at minimum cost.) A concentration of charitable activities and related financial provisions to assure improved performance took place much like they do it in business. Competition in that area is similar to that in business environment, albeit not for profit but rather for public recognition.

Charitable foundations are backbone institutions within the system; they are, by their status, non-profit organisations established for managing charity activities and related targeted provisions.

These foundations are generally divided by financing sources and management types into two following kinds:

Independent foundations are generally established by a private individual, a family or a group of persons who make initial endowment; then the foundation continues running drawing funds from

⁴⁸ In Western practice, the notion of ‘charity’ means activities aimed at meeting non-commercial socially important targets (not only monetary aids to below-the-line individuals.)

⁴⁹ <http://www.ecolife.org.ua/education/apress/money/gl1.php>, <http://www.polit.ru/research/2006/05/19/daa.html>

dividends accrued on the initial investment. Among the examples of such foundations are: the McArthur Foundation, the Rockefeller Foundation, and the Soros Foundation.

Associated foundations are continuously funded by individual founding companies or groups thereof. Examples of these include: Xerox Foundation, Apple, Hewlett-Packard etc.

All the foundations are practically identical by their structural and managerial organisation.

The supreme body – the board of directors/trustees. Members of the body work voluntarily and free-of-charge. A board may include businesspersons, representatives from other foundations, scholars, and (rather often) a prominent lawyer – to deal with issues within the foundation's competence. The board adopts strategic decisions on funds distribution among foundation's programmes and approves main expenditure items. In case of a smaller foundation, the board may also approve less important decisions, as well.

Executive bodies – the president, one or two deputy presidents, the financial director, and managers of individual programmes. These employees are generally recruited from among intellectual elite as per foundation's activity lines. As a rule, they gradually become professionals in the area of foundation management.

Practical experience of developed economies has convincingly proved a relatively high performance of charity activities implemented via foundations. Foundations set up by active businesspersons have impressively contributed not only to the solving of social community issues but also to the development of science, culture, medical science, researches in the areas of politics and economy, and to support of innovative international ideas. E. g, development of new trends of research in the domain of modern molecular biology and molecular genetics is directly linked to the Rockefeller Foundation (USA) and the Volkswagen Foundation (Germany.) No state aids have been disbursed to these research lines as they were perceived too risky and having no future.

Compared with individual charity activities (traditional philanthropy efforts), the institute of charitable foundations makes it possible to:

- Concentrate financial resources to provide possibility of implementing systemic projects of scale, sometimes even in a number of countries (without limiting to one-off donations);

- Manage selection of charity lines depending of socially important target priorities (possibilities of agreed long-term policies with the government and local communities);

- Apply the professional approach towards selection of individual projects and candidate implementers, as well as arrange an efficient supervision over the use of disbursed provisions;

- Implement public control over charity activities via the system of supervisory boards.

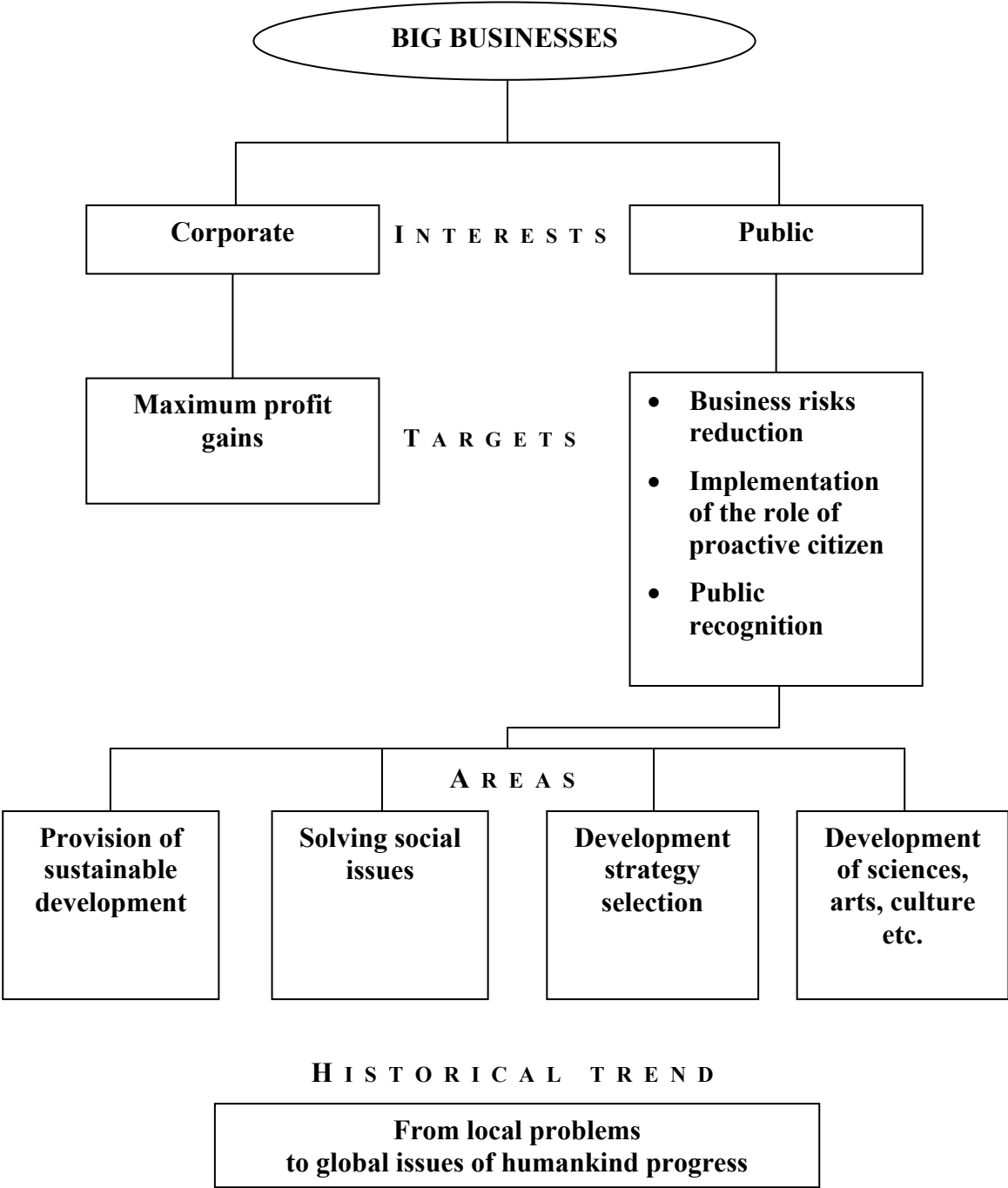
Compared with the governmental system of social targets implementation, the institute of charitable foundations provides:

- More flexible reaction to social needs (prompt decisions-making, support to venture projects.) Complex red tape procedures in the government complicate the decisions-making process, and governmental officials are not prone to taking additional risks;

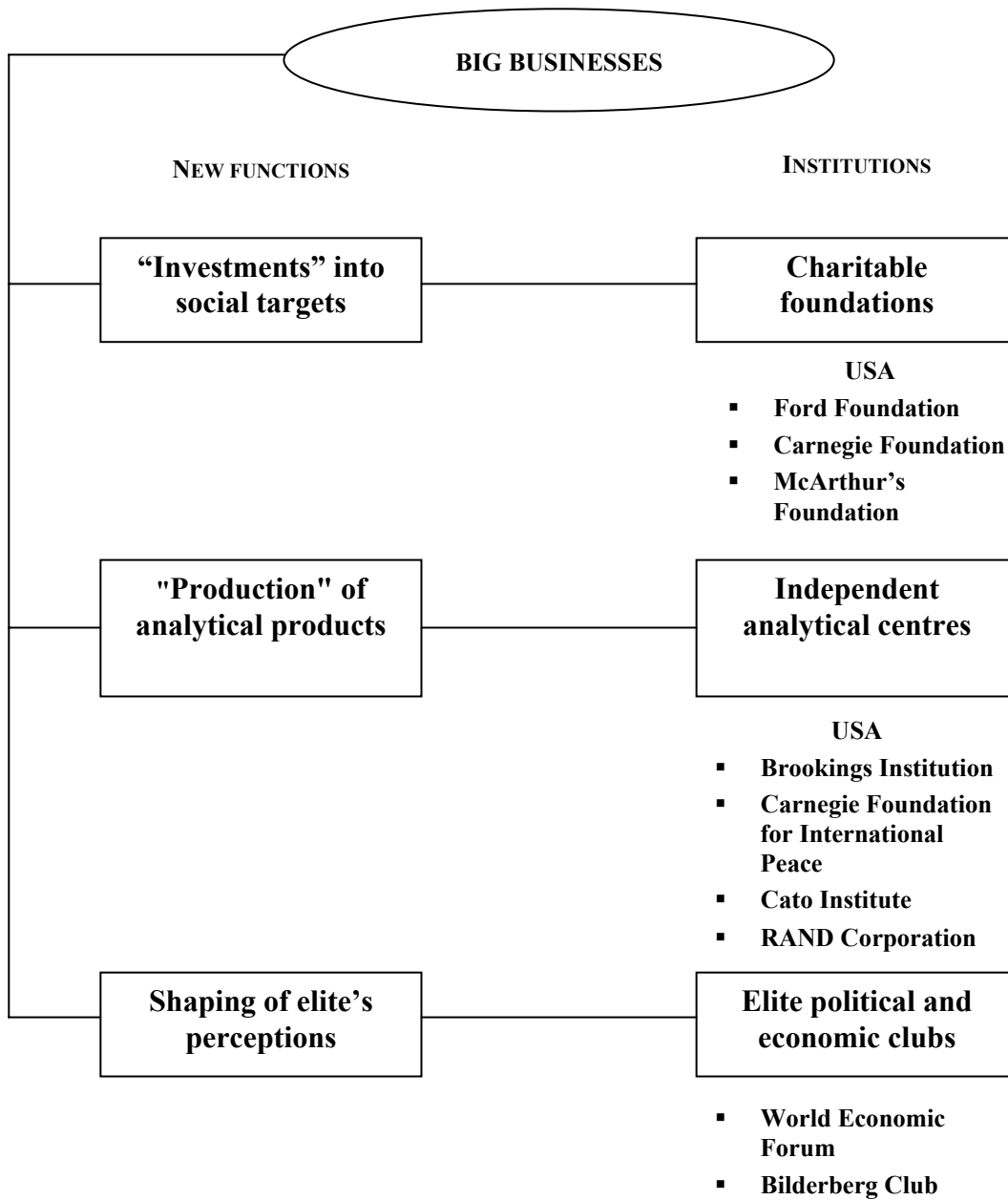
- Rational use of available financial resources (big businesses transferred their experience of efficient business performance onto foundations' activities; public supervision);

- Alternative solutions of social tasks.

Pic. 3.1. BIG BUSINESSES: FROM MAKING PROFITS TO SOLVING SOCIAL ISSUES



Pic. 3.2. BIG BUSINESS AND ITS NEW ROLE IN THE SOCIETY



Such a special factor as personal interest should not be overlooked, as well; foundations make a sort of personal “monuments” to their founding entrepreneurs. Investments in non-profit activities are returned to the founders in form of public gratitude providing additional efficient incentives for private investments attraction for solving publicly important tasks.

The system of governmental regulation of charitable foundations’ operation in various countries reflects polarities in public perceptions of charity institutions.

On one hand, every country is interested in furthering charity activities and to that effect enshrines some efficient incentives, first of all, tax benefits in its national legislation. E.g., the first tax benefits for a proportion of income transferred to charity were introduced in the U.S.A. as early as in 1913. The act released from taxation up to 15% personal annual income earmarked for charities. It also *de facto* introduced the status of non-profit associations releasing from taxation educational, religious, scientific, and charity organisations.

On the other hand, the risk of businesses using the charity domain for satisfaction of corporate interests of their own to the detriment of the public emerges. At first, companies started using foundations to secure their shares (before a legislative prohibition of that was introduced; the U.S.A. did it in 1969.) By doing that, companies were able to hide shares from taxation or protect themselves from hostile acquisition. Not infrequently foundations served as vaults to evade taxation of a portion of profits obtained from commercial transactions. All other US acts that followed were aimed specifically at prohibiting from any such possibility. Still, the efforts on imposing legislative limitations on transactions between foundations and their mother companies brought little success, if any overall. In experts’ opinion, the bureaucratic procedure of foundation establishment in the US became so complex by 1969 that no smaller foundation has been established in the country ever since, the whole monstrous procedure being manageable to only rather powerful founders.

Charitable foundations in the U.S.A. and Europe lived through an imminent period of abuse to finally become civilised. They eventually transformed into powerful structures capable of assisting the solving of the most important social tasks inside their countries and abroad.

The most powerful (by scope and level of resources concentration) network of charitable foundations has formed to date in the U.S.A. Nouveau riches that appeared in the country in late 19th – early 20th centuries “pioneered” the international experience of systemic charity activities organisation in a way basically different from traditional philanthropy.

US Experience

In the second half of the 19th century the U.S.A. witnessed a quick build-up of big businesses. The development of a group of nouveau riches (often tagged as ‘brigand barons’) was followed by a wide spread of charity actions on which considerable money were funnelled. That prompted a rather special historic challenge when a vital need for development of charity and related money flow management mechanisms emerged. The U.S.A. reacted to it by starting to develop systemic charities. The process unfolded under influential impact of entrepreneurial efforts of nouveau riches who imparted their performance requirements and the tremendous energy of individuals used to compete and independently resolve their problems.

On the analogy with commercial trust funds, charity funds started to be established. The first ever charity fund in the country was established immediately after the war between the North and the South by businessman George Peabody. He was followed by John Rockefeller who established the foundation of his own in 1902. The two events prompted a kind of competition among national nouveau riches who founded some 146 charitable foundations of all sorts by 1910.

The first foundations were rather specialised; e.g., the Rockefeller Foundation initially supported the sanitary commission meant for dealing with diseases in the southern states, and the Carnegie Foundation contributed to improving teaching and education in the education system. However, entrepreneurial practices of the founders quickly led them to a conclusion on inefficiency of narrowly specialised foundations both in terms of funds spending and charity actions organisation. Hence, they gradually switched for bigger foundations with diversified interests.

The history of most powerful and influential foundations of the country is clearly demonstrative of the historic path of systemic charity development.

*The Ford Foundation.*⁵⁰ Established as a local charitable foundation (the State of Michigan) in 1936. The initial endowment in the form of Ford Motor Company shares was made by two brothers, Henry and Adsel Ford. The early history of the Foundation has pages of its use in commercial interests of its founders. Still, the Foundation eventually developed into a powerful independent charity structure pursuing systemic social policies and solving issues in the US and many countries worldwide. Its say is influential enough to be heard by governments.

The Foundation currently has no direct links with the Ford family. It is managed by an international board of trustees. The Foundation has offices in the U.S.A. and 12 representations in countries of Africa, Asia, Latin America, and Russia. For the time of its existence, the Foundation has distributed more than \$10 billion-worth of grants and continues disbursing more than \$500 mln each year to support its programmes. It implements three global programmes:

Asset Accumulation and Local Community Development – the programme supports individuals and organisations tackling poverty issues.

The World and Social Justice – the programme deals with development of development strategies and public involvement in national governance and observance of rule of law principles.

Knowledge, Creativity, Freedom – the programme’s objective concerns promotion of achievements in the areas of arts, education and science, as well as of an unbiased approach to sexuality and reproductive health issues.

The Foundation started supporting projects aimed at supporting democratisation and economic reform processes in the USSR and Eastern-European countries in 1950.

*The Carnegie Foundation.*⁵¹ Established by Andrew Carnegie (industrial development, iron and steel production) in 1911. The Foundation initially focused on improving training and education. A. Carnegie, its founder, initiated establishment of country’s first private research institution thus pioneering a new international practice of establishing research activities in the form of independent analytical centres. Shortly after that expansion of charity lines, Carnegie went on to establishing the Carnegie Corporation in New York. The Corporation is currently involved in varied charity activities not only in the US but also widely abroad (the British Commonwealth, Africa, Russia.) The total grants awarded in 2005-2006 only amounted to \$90 million. Among the main programmes of the Foundation are:

- International Development,
- Education,
- Safety and the World,
- Strengthening Democracy.

The McArthur Foundation. Established in 1978 by John McArthur and his spouse, Catherine. She joined the Board of Directors after her husband’s demise. John McArthur earned his capital by engaging in insurance and developer business and became one of the three wealthiest men in the U.S.A. of that time. Unlike other entrepreneurs, John never dictated what lines should the foundation take; it was the Board of Directors that defined those based on assessment of a range of most problematic issues the country faced. The Board of Directors continuously initiates new trends of Foundation’s operation since then. The Foundation is currently in the top-ten list of US biggest foundations. Its assets total to \$4 billion, and annual financing volume stands at \$150 mln. Grants are distributed along two global programmes that include a variety of different projects:

- Global Security and Sustainable Development,
- Human and Community Development.

A part of the US public was rather critical towards foundations establishment from the outset. Populist allegations of ‘nouveau riches trying to calm their consciousness over their crooked earnings’ were flying here and there. New tycoons were even condemned with undermining democracy basics: ‘instead of

⁵⁰ <http://www.fordfound.org>

⁵¹ <http://www.carnegie.org>

paying to the budget for the money to be allocated in interests of the general public, businessmen select financing lines as it pleases them.’ Senator Walsh who was the then-chair of the US Senate Commission for Industry Relations was firmly confident of philanthropic associations being only able to manipulate the public consciousness thus meaning risks for the country. His Commission tried to put the process of nation-wide charitable foundation establishment on hold.

Nevertheless, further history of systemic charity development in the US attested to its high economic and social performance capacity. The next generation of American multimillionaires that grew on high-tech business continued its progress towards systemic charity initiated by “nouveau riches” of the early 20th century. Bill Gates established one of the world’s biggest charity mega-foundations. Ted Turner in one of his interviews underscored the responsibility for solving numerous international and US issues that lies on newly rich people in the US.

A new wave of systemic charity development prompted experts to outline emergence of a new rather stable trend. The new generation of rich is a generation of relatively young people for whom charitable actions are a new line of professional activities much like entrepreneurship does. Having assumed systemic features, charity as voluntary ‘call of the heart’ kind of activities gradually turns into a separate field of professional activities. What place in the society will it finally take? As there have been only early attempts of researches into the phenomenon made to date, any clear-cut forecasts are yet to be sought.

Analytical Support of New Big Business Functions⁵²

Deepening concentration of big businesses (specifically at the level of their transformation in transnational businesses) leads to strategic issues of national development and global processes making it higher and higher in the list of big business’ interests. Big capital enhances its impact on the development and implementation of governmental policies and on the formation of public perceptions that ultimately shape decisions made by the government. That has logically led to the need for providing ideological and analytical support of this field of big business’ operations.

Having to face that new challenged, big businesses in developed economies started contributing to the formation of a network of independent non-governmental analytical centres.⁵³ Such centres are currently *de facto* generators of strategic ideas also providing ways of solving issues, assessing expected outcomes of decisions made etc. As years-long international practices show, this allows providing:

- Sustainability and high quality of strategic policies irrespective of any changes of ruling elites at power;

- Formation of an alternative stream of strategic ideas and solution;

- Their promotion inside the society.

Analytical centres have the status of non-profit associations; they are established on initiative of private individuals, individual companies, banks or business associations. They have historically progressed from small highly specialised institutions to powerful research centres with a diversified range of research lines, highly professional personnel, and modern material and technical support framework. Effective since 1960ies, the world has seen rapid development of transnational analytical centres aiming at global objectives of developing forecasts and strategies of development of the whole of the mankind. One of the first transnational centres became the Roman Club established in 1968.⁵⁴ It became a testing lab for ideological and scientific researches into ways of solving global issues.

That network of non-governmental analytical centres that developed as a reaction to the new challenge might be, though with certain reservations, divided into two types, as follows:

- First type (advocacy think tanks). Non-governmental analytical centres that are part and parcel of any civic society. The network of these centres has substantially grown since 1980ies. Their activities and analytical products have a certain ideological/political predisposition. The centres contribute to attaining certain social-economic and political outcomes within the society. The majority of the centres either escape public funding or allow only insubstantial proportions of it.

⁵² <http://www.intertrends.ru/eleveth/008.htm>

⁵³ These have been named in Ukraine as “brain trusts” since 1950ies. These centres in the West have received the name of “think tanks” since 1960ies.

⁵⁴ <http://www.intertrends.ru/eleveth/008.html>

Second type is represented by non-governmental analytical centres performing commission orders made, among others, by governmental administrations. Unlike the traditional university-based system, they have higher mobility and their structural organisation and activity lines permanently change to flexibly react to requests of numerous customers. They are characteristically involved in activities aimed at practical implementation of obtained results, though to the lesser extent than the first-type institutions.

The centres produce analytical reports and publications, arrange roundtable discussions and conferences.

Independent analytical centres' operations are funded along the following scheme:

The greater portion of funds comprises donations from charitable foundations, big companies, banks, and private individuals;

Additional funds are made of research and expert assessment orders including those paid from the national budget;

A smaller proportion of financing is collected from foundations' own proceeds from editorial and publishing activities.

Analytical centres established within business associations are funded from their budgets, respectively.

Big analytical centres are often to establish within their organisation special funds to finance analytical programmes by smaller centres and individual expert groups.

Historically, analytical centres emerged in early 20th century to service processes of foreign policy and defence strategies development. It was related to the appearing of transnational companies interests of whom the State had to account for in its policies. In 1950ies – 1960ies, centres started dynamically developing their research lines to include issues of economy, social dimension, politics, law, psychology etc. It was then when the second wave of independent analytical centre development swept the world.

The first and most active network of independent analytical centres was launched in the U.S.A. The process then spread to include EU nations⁵⁵ and then other developed economies worldwide. The National Institute of Scientific Research Development in Tokyo made a list of analytical centres worldwide; it included a total of 3,500 names, a half of them in the U.S.A.⁵⁶

The worldwide process of independent analytical centre formation evolved under strong influence of the US experience. Many experts from various countries worldwide underwent traineeship in US analytical centres and then disseminated the received experience in their countries. A part of US centres established associated partnerships with newly established analytical centres in Europe and Japan.

The only exception, according to analysts, were France and the United Kingdom where research institution networks developed mostly independently from US practices.⁵⁷ Traditional universitarian centres of science in these countries have retained their important role in national strategic policies development (through the involvement of individual researchers and experts in state policy development.) Analytical centres there developed predominantly as public research organisations. Such big public analytical centres as the Royal Institute of International Affairs (RIIA),⁵⁸ the Royal United Services Institute for Defense and Security Studies (RUSI)⁵⁹ have been rather popular in the UK. Here, the number of non-governmental centres closely linked to the government is lesser than in the US – e.g. the International Institute for Strategic Studies IISS⁶⁰ established in 1958.

*US Practices*⁶¹

The first ever forms of organisation of non-governmental agents' expert and ideological impact on governmental policies development emerged during US foreign policy and defence strategy development by President T. Roosevelt's Administration. With big transnational companies (TNC) developing in the country, it was necessary to account for their interests at new governmental strategy development. The

⁵⁵ The Analytical Centre Portal – [http://thinknets.org/inde\[.php?option=_weblinks&catid=61&Itemid=23](http://thinknets.org/inde[.php?option=_weblinks&catid=61&Itemid=23)

⁵⁶ <http://usinfo.state.journals/itps/1102/ijpr/pj73talbott.htm>

⁵⁷ <http://www.intertrends.ru/eleveth/008.htm>

⁵⁸ <http://www.chathamhouse.org.uk>

⁵⁹ <http://www.rusi.org>

⁶⁰ <http://www.iiss.org>

⁶¹ <http://www.intertrends.ru/eleveth/008.htm>

Office of the President involved prominent scholars and experts to resolve the task. By working together, the government and TNCs managed to recognise the need for a network of government-independent analytical institutions able to produce alternative strategic ideas and to disseminate them among elites and the public.

The US analytical centre network comprises both types of the above organisations.

The following analytical centres established by prominent business persons are the biggest and the most influential not only in the US but also worldwide:

*Carnegie Endowment for International Peace*⁶² – established 1910 as a research organisation. Its mission is to contribute to the development of international cooperation and to support the USA's active position worldwide. The Endowment has three principal research programmes: the Russian-Eurasian Programme; the Global Policy Issues Programme; and the Chinese Programme. The Endowment publishes its *Foreign Policy Magazine* distributed in 120 countries worldwide. It has representations in many countries.

*Brookings Institution*⁶³ – established in 1927 based on the Institute of Governmental Research, the Institute of Economy, and the School of Economics and Management. Its researches now extend to cover issues of foreign and internal policies, management and economics. The personnel strength is 75 persons, among them ex-civil servants (up to 10) who now transfer their experience to other staff members.

*Cato Institute*⁶⁴ – established in 1977. The scope of activities is rather broad involving budget and taxation, law, defence and security, environmental protection, foreign policy, education, science, commerce, fight against terrorism etc. The Institute is an umbrella structure for a number of research institutions specialising on specific regions or tasks.

The three above centres (the Carnegie Endowment for International Peace, the Brookings Institution and the Cato Institute) declare their full independence from the government. They avoid collaboration with governmental institutions, refuse from donations and orders from governmental or state bodies. Their main lines of activities include researches into topical issues in various areas of US life and assessment of analytical products developed by the government and the public.

*RAND Corporation (RAND –abbreviated from Research and Development)*⁶⁵ – established in 1948 as a structural unit of Douglas Aircraft Company. Currently has divisions throughout the US and beyond its borders. The Corporation is one of the world's biggest non-governmental analytical centres; its annual turnover exceeds \$250 million. While it initially specialised on military equipment, now the Corporation has extended its operations onto practically all spheres of public administration from politics, sociology, psychology to drug prevention, health care, labour market to regional integration etc. The centre traditionally serves the supporting point for the US Government. It is mostly funded from governmental orders and is sometimes even called 'the real US Government.'⁶⁶

A certain place within the US analytical centre network belongs to structures established within the framework of individual unions or associations representing entrepreneurial interests. Such analytical structures operate with a status of units or subsidiary organisations of the above unions and associations providing ideological/analytical backbone for the latter. They carry out researches, arrange, by joint efforts with councils and associations, public discussions among experts, political figures, government officials and entrepreneurs. The biggest creations of the kind are: the American Foreign Policy Association⁶⁷ established in 1918 and the Council on Foreign Relations⁶⁸ (established in 1921.)

Elite Political and Economic Clubs

World practices developed a specific tool for increasing efficiency of big business' impact onto national strategic policies and international relations. Initiatives aimed at affecting outlook of those social strata that play a certain role in the governmental decisions-making process started appearing around 1950ies. Elite political and economic clubs, discussion panels of sorts to talk about burning issues, were created.

⁶² <http://www.carnegieendowment.org/about/index.cfm?fa=history>

⁶³ <http://www.brookings.edu/about/hist.html>

⁶⁴ <http://www.Cato.org/about/about.html>

⁶⁵ <http://www.rand.org>

⁶⁶ <http://www.vd.net.ua/journals/articles-1101?arch=1&prvers=1>

⁶⁷ <http://www.fra.org/about/hist.html>

⁶⁸ <http://www.cfr.org/about.history/crf>

One particular feature of those clubs was their relative (as in the case of the World Economic Forum) or total (as with the Bilderberg Club) restrictiveness of membership.

The World Economic Forum (WEF) also known as the Davos Forum came to being in 1971 on initiative of Claus Schwab, a professor of the Geneva University.⁶⁹ The WEF is currently the world's most representative non-governmental organisation. Initiated as a European-US business seminar, the WEF quickly grew into an international place for discussing most topical issues and an informal meeting place for national leaders, renowned politicians and public figures, notorious businesspersons, prominent scholars, artists etc. The WEF promotes trustful personal networking, a free dialogue in an informal format without any minutes or mandatory final reports. The forum has been used not once as an informal diplomatic spot for elimination of distrust between conflicting parties.

The WEF is notorious for thorough preparation of issues meant for discussion. Summits are prepared by three centres, the Global Agenda Centre, the Centre for Global Economies, and the Centre for Regional Strategies.

Publications: the annual World Economy Competitiveness Rating (with addenda per individual world regions and sectors); summit summary reports; the *World Link* monthly magazine.

In 1980, the WEF introduced a membership fee system. The Forum currently unites more than a thousand big companies from more than 70 countries worldwide. The membership type includes: strategic partners (\$250,000), annual partners (\$78,000), and members (\$20,000). The WEF's budget is made of membership and registration fees from Forum participants.

The WEF's structural organisation comprises the Founding Board, the Council, and the Managing Board, as well as area-specific individual councils and taskforces, e.g., the Academic Council (uniting directors of world's biggest research institutions), the Business Associations Council (leaders of key international corporations), the Non-governmental Organisations Council etc.

*The Bilderberg Club*⁷⁰ was established in 1954. It is a brainchild of Joseph Retinger, a political analyst and philosopher. The Club unites representatives of US and European elites: prominent political figures, bankers, CEOs of transnational corporations, outstanding intellectuals, analysts and political analysts. The Club headquartered in New York (USA) is chaired by Dutch Prince Bernard and is said to have more than 380 members. Club sessions are always a complete secrecy. In view of political analysts and experts, the Club has an impact on development of countries' external and domestic policies substantial enough for the Club to be called sometimes an executive body of US and European big businesses (by estimates, it controls up to 30% world's assets.) In 1973, some of the Club members joined an even more powerful centre, the Tripartite Commission, chaired by Chase Manhattan Bank owner and President David Rockefeller and Zbigniew Brzezinski, its CEO. The Commission performs the role of an international research and analytical centre and, judging by estimates, controls up to 60% world wealth.

3.2. Ukrainian Practices. Conclusions and Recommendations

For 16 years of independence, Ukraine has managed to gradually dismantle old Soviet structures that provided solutions for the most important social agendas for residents and shaped strategic governmental policies (which is entirely natural for the post-Socialist transformation period.) However, no new fully-fledged systems to replace the old ones have been put in place.

Unlike developed economies where huge resources and tremendous energy of big businesses were employed to establish alternative non-governmental systems for solving socially important issues, only few big FIGs in Ukraine have begun to comprehend their new role in the society. The majority of national FIGs are still mostly concerned with their narrow business expansion problems thus limiting interrelations with the public to sporadic charity activities at local community level and political party involvement (generally, during the elections period.)

The only exclusion here are two FIGs, the System Capital Management Company and the Interpipe Corporation, that have been pursue systemic policies outside their business lines since 2005. These two

⁶⁹ <http://www.zerkalo-nedeli.com>

⁷⁰ <http://www.rusk.ru/st.php?idar=6507>; <http://www.svobodanews.ru/Article/2007/06/01/20070601144530013.html>

groups are insistent and coherent in implementing measures targeted at strategic results of important for nation's future development.

Charitable foundations

There are two biggest charitable foundations built to international standards in Ukraine to date; they are linked with the System Capital Management Company (Rinat Akhetov) and the Interpipe Corporation (Viktor Pinchuk.). These foundations became 'pioneers' in implementing positive international experience of systemic charity organisation with direct involvement of big businesses in Ukraine.

The System Capital Management Company⁷¹

The Company announced the establishment of its Development of Ukraine Charitable Foundation with a status of non-profit organisation on 15 July 2005. It is managed by the Managing Board comprising 9 members and chaired by Rinat Akhmetov. The Foundation implements three global programmes:

Modern Education. The Foundation implements projects by joint efforts with the Economics Education and Research Consortium (EERC). Within the framework of EERC's Master Programme measures aimed at qualifications upgrade and support to professional development of young professionals are carried out: meetings with political figures and economists; practical training in public administration bodies; conferences, summer schools, joint research projects implemented by professors together with students. The SCM has allocated around 15 mln. Hryvnias for the Programme within the last two years.

Health of the Nation. Implementation of a drug-resistant TBC management strategy in the Donetsk Oblast. This 4 years-long Project has been developed together with the World Health Organisation. The Company will funnel around 15 mln. Hryvnias on its implementation.

Cultural Heritage. Within the framework of the programme the Foundation participates in restoration of the Sofia Kyivska National Reserve. The Company has already earmarked almost 15 mln. Hryvnias for that purpose,

Viktor Pinchuk Fund⁷²

Viktor Pinchuk established a foundation of his own for managing charity activities and related financial provisions in 2006. Fund's ambitious objectives declared at the time of its establishment operations are: '... to contribute to modernisation of Ukraine and to support emergence of a new generation of Ukrainian leaders committed to serving their country'.

The leading role in Fund's activities coordination plays Viktor Pinchuk himself. The Fund is a member of the European Fund Centre and the Ukrainian Forum of Grant Makers.

The Fund implements its six programmes:

Health. Newborn healthcare centres; fight against HIV/AIDS.

Education. Stipend programme, the Kyiv School of Economy, Aspen Ukraine Initiative (value-oriented education of young Ukrainian leaders.)

Culture. The Centre of Contemporary Art, a joint-venture movie with Stephen Spielberg, chamber orchestra, support of cultural events.

Spiritual Revival. Projects in Dnipropetrovsk; Beit Zindlikht Project.

Human Rights. Legal clinics, legal assistance (by joint efforts with the Soros Foundation.)

Ukraine Worldwide. Main projects within the Programme: YES Initiative (the Yalta European Strategy), Lunch Conference within the framework of the World Economic Forum in Davos, the Brookings Institution, the Peterson Institute of World Economy, and the International Crisis Group.

⁷¹ <http://www.scm.com.ua/index.php?page=331&1>

⁷² <http://pinchukfund.org/foundation/goals>; <http://pinchukfund.org/ru/projects/ukraine>

The Ukrainian Forum of Grant Makers⁷³

Established in 2005 on initiative of Ukrainian and international donor organisations, the Forum declares its mission as the one of contributing to responsible and efficient charity activities, promoting ideas of transparency and openness in granting aids, and promotion of legislative initiatives.

Two types of membership in the Forum, a full membership and an associated one, are envisaged. One of the qualification requirements to Forum members stipulates annual grant disbursements for the total of 100,000 Hryvnias, at least, to no less than 10 Ukrainian contenders.

The Forum currently unites 16 charitable foundations operating in Ukraine, 11 of which relate to international donor organisations. The list of Forum's full members from Ukrainian side includes: the Kindness Donetsk Fund, the Initiative Centre of Assistance to Activity and Development of Civic Enterprises Unity, and the Carpathian Foundation; and its associate members are the Viktor Pinchuk Fund and the Odessa Foundation.

Analytical Centres⁷⁴

Historically, the start of independent analytical centres in Ukraine falls on the period of nation-wide post-Socialist transformations. It happened mostly due to an external factor represented by initiatives by international donor organisations. In view of the latter, independent centres should have become vehicles of new market economy and civic society ideas among political figures, professionals, government officers, and rank and file country residents. For that purpose, professionals and CEOs of Ukrainian centres were arranged trainings and internships in the U.S.A. and countries of Europe.

Because of that, Government's official reactions to those centres in time of President Kuchma's regime was extremely negative. The centres were labelled conveyors of other nations' and, first of all, of the U.S. policies/interests. The Government purposefully discredited the centres to limit their impact on the public opinion. Consequently, the centres had to limit their activities to analytical research work done on commission of international financing organisations, foreign embassies and overseas analytical centres. According to the public opinion poll carried out by the Oleksandr Razumkov Ukrainian Economic and Political Research Centre in 2003 supported by experts' estimates announced in 2007, Ukrainian analytical centres have little effect of governmental policy development and implementation (little impact was attributed to 56.9% centres, and negligibly little impact, to 22.0% them.)

As Ukrainian fiscal legislation imposes really harsh limits on non-profit operations,⁷⁵ analytical centres in Ukraine have been established in the form of public associations⁷⁶. In other words, independent analytical centres are civic society components in the legal sense of it (i.e., one of the forms of civic associations.)

Legal regulations governing centres' operations reflect civic association specifics thus considerably complicating their operation conditions. The centres are limited in their possibilities of pursuing income-based activities. Their possibilities of performing fee-based activities are limited to only grants from international financing organisations and foreign foundations of kind, as well as central budget-funded scientific researches. In trying to overcome that limitation, some non-profit centres set up subsidiary structures in the form of commercial consulting companies to allow performing works commissioned by governmental institutions and businesses. This, however, makes an additional handicap for such coupled (analytical centre-consulting firm) operation. Moreover, the civic association status denies any interest in centres' founders to improve material and technical provision of their brainchildren as, under the applicable law, assets of the centre in the event of its winding up must be either transferred to another centre or in ownership of the Government.

Experts deem the independent intellectual market in Ukraine an underdeveloped one.⁷⁷ The analytical centre network that currently exists in Ukraine is extremely specialised and low-potential one. The majority of the centres have little staff and a weak information and technical support framework.

⁷³ <http://www.donorsforum.org.ua/ua/about/team>

⁷⁴ *InvestGazeta*, Issue No. 19, 21-27 May 2007, p. 20-25, <http://www.vd.net.ua/journals/articles-1101?arch=1&prvers=1>

⁷⁵ Art. 7.11, Law of Ukraine on Corporate Profit Taxation No. 334/94, of 24.12.1994.

⁷⁶ Art. 3, Law of Ukraine on Civic Associations No. 2460, of 16.06.1992.

⁷⁷ *InvestGazeta*, Issue No. 22, 11-17 June 2007, p. 25.

A decline in financing from international organisations and insubstantial demand for analytical centres' services among governmental institutions and big businesses observed within the past years have led the analytical centres that have never known how to fight for either sources of financing or customers in financial dire straits.

A considerable proportion of the Ukrainian analytical centres now render services to political parties (development of party agendas, participation in partisan discussions) and MPs (lawmaking activities).⁷⁸ Their most popular lines of research activities are reduced to sociological science, political analysis and political technologies.

Among the most reputable analytical centres of the first wave are:

Ukrainian Centre for Economic and Political Studies named after Olexander Razumkov. The Centre was established as a non-profit public association on initiative of Oleksandr Razumkov in 1994. After the demise of its founder in 1999, experts from the Office of the National Security and Defence Council of Ukraine left civil service in favour of working in that Centre. By expert estimates, it is the most diversified Ukrainian centre in terms of a variety of research lines that include, among others, domestic policies, social and economic development, power production, public administration, international economics, foreign policies, national security and defence, military development, international and regional security, and peacekeeping activities.

Its products include: a monitoring of threats to the national security of Ukraine; political assessment and strategic forecasts; analytical reports, newsletters, articles; public opinion polls; online comments on most topical issues in the media. It presents research outputs in a specialised magazine and own web page, arranges conferences, roundtable discussions, and participates in the development of draft legislative acts and regulations.

Its permanent staff makes 24 employees; the sources of financing include: budgetary funds, donor grants, and donations from private businesses.

*The Institute of Economic Research and Policy Consulting*⁷⁹ was established by joint efforts of some prominent Ukrainian politicians and the German Consulting Group on Economic Reforms (TRANSFORM Programme) in 1999. The Institute is an independent research institution with the status of civic association; it provides consulting advice and supports economic education and analytical potential of research fellows. The Institute's manning schedule lists 12 researchers working in Macroeconomic Analysis, Structural Reform, and Public Finance departments. Foreign scholars also participate in Institute's operations. The managing bodies of the Institute are represented by the Supervisory Board and two Directors (from the Ukrainian and the German side), and the Audit Commission.

The International Centre for Policy Studies – a non-profit civic association established in 1994. It works supported by grants from international financing institutions. The mission of the Centre is to develop procedures for a content-rich dialogue between the Legislature, the Executive, and the public. The key lines of activity include economic policies, public administration reform, governmental policies, European and Euro-Atlantic integration, local self-government, political analysis, healthcare policy, education and science policies, business services.

*The CASE Centre for Social and Economic Research*⁸⁰ is a component of the CASE network (Poland), an umbrella institution that includes a number of analytical centres in some CIS countries. It is a non-profit civic association established in 1999 as a successor of the Project for Macroeconomic Reforms of the Harvard University of International Development. The main operation areas include researches, assessment and forecasting of macroeconomic policies, fiscal and monetary policies, international trade, European integration, pension system reform and fight against corruption. The Centre arranges roundtable discussions and international conferences.

The second wave of analytical centre development in the country has been related to such founder categories as ex-members of parliament and former government officials.

⁷⁸ <http://www.vd.net.ua/journals/articles-1101?arch=1&prvers=1>

⁷⁹ <http://www.ier.kiev.ua/Ukraine/cili.cgi>

⁸⁰ http://www.case-ukraine.com.ua/index.php?mode=static_page&pid=5&miid=2

A number of years ago former political apparatchiks and top-level officials set off to establishing their own centres all over Ukraine to secure formal employment after the end of their office term, among these: the Centre for Political and Legal Reforms of ex-People's Deputy Igor Koliushko; the Institute of Reforms of former MPs Ivan Vasiunyk and Viktor Pynzenyk; the Institute of Financial Policy of ex-Finance Minister Igor Mitiukov, to name but a few. The trend actually reflects the similar tendency elsewhere in the West – with the only exclusion however, that such Ukrainian centres are mostly short-lived and fall into oblivion as soon as they have coped with a specific mission for which they were established.

Ukraine now faces a third way of non-governmental analytical centres: some big FIGs, in keeping abreast with fresh trends, have initiated establishment of analytical institutions of their own or proceeded to legalise the existing analytical taskforces they have. The purpose of that is to have a structure with enough intellectual capacity to impact the power. Examples of such centres could mention⁸¹ the Progressive Reforms Support Fund financed by the Industrial Union of Donbass Corp and the Corporate Relations Research Centre funded by Privat Group. However, it is the System Capital Management Company that can boast the most coherent policy in that area.

The System Capital Management Company

The Company is a financial, ideological and coordination donor of the Party of Regions that gained power after the 2006 Parliamentary Elections. Because of the above, the Company has to actually support public pursuits of Akhmetov as an MP and a real party leader, as well as policies of the cabinet of Yanukovich who is the official chair of the party. The Company continuously expands its activities aimed at development of national strategic policies.

According to the media, the Company presented outcomes of its new project of scale within the framework of which a programme of economic changes in Ukraine has been developed in June 2007.⁸² The project involved specialists from a reputable foreign consulting company, McKenzie Consultants.

To provide a continued support of government activities, an Efficient Governance Foundation was established on initiative of Akhmetov.⁸³ It is envisaged that the Foundation will tackle projects and programmes aimed at providing for long-term development of Ukraine, improving competitive status of the Ukrainian economy, and upgrading the living standards of Ukrainian residents. Political independence of the Foundation and its mission of uniting leading Ukrainian and foreign professionals for elaboration of recommendations on Ukraine's sustainable development have been proclaimed. The founders expect the Foundation to become a "think tank" with the main responsibility of assisting (rather than affecting) executive authorities in the shaping of national economic policies with due regard to best international practices. The Foundation tries to learn from experience of other leading world analytical centres: the Carnegie Foundation, the Brookings Institution, the Cato Institute, the Adam Smith Institute etc.

In 2006, the Company established a non-governmental analytical Bureau of Economic and Social Technologies (BEST.) The centre has the status of a limited liability company (for-profit operation.) Its main lines of business include: monitoring of macro- and microeconomic processes, researches into issues of corporate and social responsibility of businesses etc. Analytical outputs of the centre are mostly meant for internal use by the founding company.

Much in the same way as the System Capital Management Company managed to rise to top positions in business, it, judging by its insistent and purposeful actions, may well become a founder of Ukraine's most powerful independent analytical structure, as well.

Elite Political and Economic Clubs

The Viktor Pinchuk Fund gave birth to two initiatives targeted at impacting the vision and outlook of Ukrainian elites.

The first initiative is YES (Yalta European Strategy), an independent international organisation that unites prominent representatives of Ukraine and other countries -- politicians, company CEOs, scholars, researchers, and journalists. The mission of the YES is to contribute to the development of a just, free and

⁸¹ <http://www.vd.net.ua/journals/articles-1101?arch=1&prvers=1>

⁸² *InvestGazeta*, Issue No. 11-17 June 2007, p. 20-25.

⁸³ <http://ukrrudprom.com/const/print.php?/dgdsfgsdh130607.html>

wealthy Ukraine and to develop relations to support Ukraine's accession to the EU. Being a true forum for exchange of ideas and development of approaches on the basis of international practical experience and non-standard vision, the YES arranges lectures, taskforce sessions, public discussions in Ukraine and the EU, publishes regular publications, and holds an annual congress in Yalta.

The second initiative is the so-called 'Lunch in Davos', lunch conference on Ukrainian problems arranged by the Foundation on an annual basis within the framework of the World Economic Forum in Davos. The conferences already presented to the international community the new Ukrainian President Viktor Yushchenko (2005) and new Prime minister Viktor Yanukovich (2007.)

Despite quite a number of elite discussion clubs in Ukraine none of those is currently able to boast with having any substantial impact on the formation of elite's strategic visions. Though national elites take the most active part in the Rotary movement (some 30 Rotary clubs established countrywide), the movement itself is more related to universally human ethical values, i.e., to selection of one's own personal behavioural milestones.⁸⁴

Conclusions and Recommendations

(1) The historical logical behind big business development shows that its representatives at some moment comprehend the need from the viewpoint of corporate interests (risk prevention) and, vying for accomplishment as proactive national citizens, make a step outside the margins of their own business to meet challenges of truly social importance. There are alternative non-governmental institutional systems that already exist in the U.S.A., EU states and Japan and provide for new responsibilities of big businesses: independent charitable foundations, non-governmental analytical centres, elite political and economic clubs. Big businesses use their financial and energy capacities to implement alternative projects that support governmental policies of sustainable development and provision of social welfare for country residents; moreover, they now shape the public opinion and provide alternative strategic proposals thus assisting the Government in making efficient and reasonable decisions. Big businesses in developed economies participate in the accumulation of civilisation experience used throughout the world as the most efficient and attractive regulatory framework.

(2) Though big Ukrainian FIGs did make it to the power during the 2006 Parliamentary elections, it did not lead to any automated qualitative change in either the role or the place of big businesses in social development. A greater portion of FIGs still confines itself to one's own business issues, the social dimension traditionally remaining a headache for the central budget and the Government. This brings about some serious tension in the consumption and development-related budget cost items. Moreover, Ukrainian elites has found itself unprepared for selecting a strategic path of national development. Meanwhile, the Government and the public have lost even their previous, far-from-perfect administrative experience of public strategy development.

(3) The experience of the two biggest FIGs, the Interpipe Corp. and the System Capital Management Company, clearly shows that the involving of big business' money and energy in the solving of socially important tasks may become one of the most important factors for Ukraine providing the country with possibilities of accelerating and finding best rational solutions for the most vital social issues haunting its residents. It would be feasible here to avoid repetition of the early experience of now developed economies when banks and corporations developed their narrowly specialised petty charitable foundations. Establishment of several big institutions of that type could become the most efficient option for Ukraine. They should be structures trusted among FIGs and able to concentrate financial flows onto systemic projects of scale. Operations of such foundations will require a steady attention to public supervision issues and (given the importance of its for individual image) ways of enshrining greatest charity donor names in time.

(4) The country needs a system which would contribute to the development of strategic vision among national elites that until recently have been bothered with only political clashes; and the country needs it like never before. It shall be necessary to further develop the positive experience of the Interpipe Corp. that created first international discussion points on issues of Ukraine's development. The process must attract not only political, but also business elites in the country. According to experts, charismatic features of the owners of big Ukrainian FIGs might rather become a handicap on the way to establishing

⁸⁴ <http://www.zn.ua/3000/3150/26467/?printpreview>

associations for development of agreed behaviour. An elite political and economic club might look more acceptable an option given their status and level of independence. There is a pressing need for high-level discussion spots where positions could be highlighted and outlook of national business elite representatives shaped in Ukraine.

(5) There is a global, government-independent system of ideological and political support of strategic policy development established these days worldwide. It comprises reputable analytical centres whose recommendations and expert assessment have become a source of vital information for developed economy governments for quite some time now. The network of independent analytical centres in Ukraine resulted poorly capable, and the local market for ideological products, underdeveloped. The Ukrainian analytical centres mostly perform as subcontractors to foreign and international centres falling behind with their primary function of providing advance initiatives with proposals and suggestions re. ways of resolving the most pressing issues.

(6) What is the future of the Ukrainian analytical centre network? The one and only answer is to be found yet given a high level of indetermination in the public itself. Still, we may already mention here the main factors of importance to be taken to the attention in this regard:

Firstly, it is about a powerful sector of public science and scientific research that has historically formed in Ukraine much like in France and the UK. Any increase in budget provision of analytical researches will mostly (and quite logically) address the mentioned sector today and in future. It is expected that governmental orders will not become sources of financing able to support the development of independent analytical centres in the nearest future.

Secondly, big businesses could play a certain role in independent analytical centres of tomorrow. Active financial and organisation support by big businesses could bring an impetus to the development of a centre network (though the coming years will most probably become for Ukrainian analytical centres the period of harsh survival selection.) Judging from the current practices, FIGs rather prefer establishing new centres for themselves. There is no information about them merging with the existing centres to date. Moreover, those centre who have already earned their good reputation will do their best to remain independent in the future.

Thirdly, the analytical centre as a civic society structure able to assess actions of the Government and of other political agents on behalf of the public, as well as offer alternative strategies and solutions to the Government and the public, will retain its dominating positions in the coming years in Ukraine. The demand for such functions of the analytical centres will only grow in time. It is therefore necessary for Ukrainian big businesses of today to start performing the role of a donor supporting independent centres thus effectively replacing those international financing institutions and foreign foundations from the first post-Soviet years. The network of analytical centres could be restored with supporting institutional grants (on technical framework upgrade, to cover basic research and internship costs etc.)

(7) In the field of legislation – it is necessary to legislatively provide for closing the gap between the current status of non-profit organisation and applicable international standards. Civic association form as a variant of non-governmental association's organisation currently used by Ukrainian centres limits their possibilities of leading for-profit activities and on the other, restricts their possibilities of securing material and technical support necessary for their proper discharge of their functional responsibilities. Founders have no interest in building up centres' assets as in the event of centre dissolution its assets must be transferred either to another centre or the State.

4. SOCIALLY RESPONSIBLE BUSINESS

High levels of capital concentration and free operation of market economy mechanisms do hide potentially high risks of destabilising progress of not only the national economy but the society in general. However, world practices have already devised methods providing sustainable development possibilities for market economies with powerful transnational capitals. Parallel to the special government regulation system, a whole new way of correcting ‘negative energy’ of big businesses evolved: it concerned voluntary adherence of entrepreneurs to principles and standards of socially responsible business-making.⁸⁵ This international experience may become one of efficient tools for the public to influence big business’ behaviour, and the big business, in its turn, will be able to use it for changing its own negative image in the eyes of the public.

4.1. International Experience⁸⁶

The Notion of ‘Socially Responsible Business’

It took the world a number of decades to practically shape principles and standards of socially responsible business (SRB). Researchers have it that the first ever mass examples of corporate philanthropy appeared somewhere around 60ies; the early experience was then improved to gradually assume SRB shape by 80ies. SRB principles and standards were formed in 1980ies – 1990ies mostly within respective regional initiatives. SRB as a global initiative is believed to have developed on the brink of the new century (about 2000).⁸⁷

There still is not any more or less established and universally recognised definition of that notion in worldwide practices yet. Nevertheless, one might select from a variety of applied definitions one key contextual criterion of SRB as a “*voluntary commitment of companies to principles and standards of socially responsible business making (beneficial for both the society and the environment) in excess of the level provided for by law.*”

To better understand its format, it shall be necessary to first underscore that SRB principles and standards have never been a regulatory framework for entrepreneurial operations – they should be rather referred to ethical norms regulating business behaviour in modern society. In other words, SRB is a totality of internationally recognised principles and standards to be voluntarily followed by businesses if they are to be publicly recognised as socially responsible.

A shift to SRB principles will, in the short term, bring extra expenditures and thus, to a certain reduction in company’s competitive status. In the long term, however, it will provide benefits by reducing risks of clashes with the public, increasing business’ development stability, and giving better chances of winning consumer predilections owing to high public image. Such an additional costs-bearing behaviour of companies may be only possible if respectively supported by the Government (tax benefits, private and State joint projects) and the civic society (a system of buying predilections, selection of employment area, investing in social projects.) Otherwise it will be hard for businesses to maintain such a high level of requirements for itself.

SRB Levels

There are several levels of socially responsible business-making:⁸⁸

Bona fide performance of legally provided responsibilities before the society and the State (otherwise called “the basic level”).

Development of partner inter-corporate relations covering corporation employees and their families.

⁸⁵ The terms of “socially-oriented behaviour” or “corporate social responsibility” (CSR) are also used.

⁸⁶ Source: http://www.un.org.ua/brc/ua_wdp_src/ua_wdp_src_scr05.pd.

⁸⁷ http://www.bsr.org/CSRResources/ResourcesDocs/BSR_200588_AllenWhite_Fade-Transform.pdf.

⁸⁸ *Economic Issues*, No. 10, 2005, p. 23.

Activity programmes and trends beyond the scope of an individual corporation. Their targets are individual areas or population categories.

Socially responsible business-making in the broadest meaning of it presupposes participation of corporations in the development and implementation of State social and economic policies aimed at provision of sustainable development of the society, in general.

Developed economies have already transited to higher levels of SRB principles and standards implementation. Discussions of SRB development issues in the West no longer refer to the first basic phase, its responsibilities already perceived as a natural component of entrepreneurship not requiring any special public endorsement of the socially responsible business status.

An Overview of SRB Standards and Principles

There is an immense number of lists of SRB standards and principles developed in various countries and regions worldwide. They generally reflect local and regional preferences. Standards and principles formulated based on global initiatives are of more universal nature as they personify a synthesis of the whole body of international experience gained throughout the time of regional SRB system development. The range of global initiatives includes SRB systems supported by such international organisations as the UNO, the EU, and the OSCE.

UN

The UN made its first step in that direction by developing a code of behaviour for transnational companies in 1980. Still, the main UN initiative became the Global Compact⁸⁹ (Insert 4.1) that united on a volunteer basis UN institutions with companies, nongovernmental labour organisations and other civic society institutions. The purpose of that association has been to promote actions and partnership in support of principles in the areas of human rights, labour relations, natural environment protection and fight against corruption to contribute to the establishment of a sustainable and open global economy.

Social responsibility of business is acknowledged by developed economies as a vital and indispensable factor of competition. CEOs of world's leading companies have recognised that the flourishing of their business endeavours is directly connected to well-being of local communities. The Global Compact calls upon business circles to accept certain standards of corporate social responsibility to allow companies to not only improve their performance indicators, but also to contribute to solving the most acute social issues in areas of their operation.

Participation in the Global Compact opens before companies a wealth of possibilities, among them:

Demonstration of company's lead position in the fields of social equality and social responsibility of business development.

Participation in development of practical measures aimed at solving existing globalisation problems, enhancing social responsibility of business, providing sustainable development possibilities within the framework of multipartite cooperation.

Risk management via implementation of active position on the most acute issues.

Participation in a wide range of UN programmes and activities with participation of various national governments, influential business representatives, labour and nongovernmental organisations etc.

Access to ample information sources about practical UN operations worldwide. Exchange of experience.

Use of international experience for improving methods of corporate governance/brand management systems, company performance management etc.

⁸⁹ <http://www.unglobalcompact.org>

Pic. 4.1. SOCIALLY RESPONSIBLE BUSINESS (SRB)

SRB – voluntary acceptance by companies of principles and standards of socially responsible (i.e., useful for the society and the environment) business making above existing statutory provisions established by law

PRINCIPAL SRB STANDARDS:

- **Human rights**
- **Labour relations**
- **Natural environment protection**
- **Fight against corruption**

SRB LEVELS:

- **Basic (legislative standards)**
- **Corporate**
- **Local**
- **National**
- **Global**

Insert 4.1. Ten Principles of Global Compact:

Human rights

1. Businesses should support and respect the protection of internationally proclaimed human rights; and
2. make sure that they are not complicit in human rights abuses

Labour standards

3. Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining; and
4. the elimination of all forms of forced and compulsory labour
5. the effective abolition of child labour; and
6. the elimination of discrimination in respect of employment and occupation.

Environment

7. Businesses should support a precautionary approach to environmental challenges
8. undertake initiatives to promote greater environmental responsibility; and
9. encourage the development and diffusion of environmentally friendly technologies

Fight against corruption

10. Businesses should work against corruption in all its forms, including extortion and bribery

European Union

Ideas of social responsibility of business (in EU terms, of ‘corporate social responsibility’) appeared in EU policies in 2000 when the European Council at its Lisbon forum addressed businesses requesting them to comprehend social responsibility for the sake of obtaining ‘the most competitive, dynamic and knowledge-based economy.’ All-European discussions of the topic commenced with a Green Paper on Promotion of European Approach Towards Social Responsibility of Business published by the European Commission.⁹⁰ It presents the strategy of increasing business’ contribution into social progress and environmental protection above the basic level commitments set out in the law.

The European Commission focused its efforts on securing a wide public support of SRB practices. For that purpose it opened a specialised forum on the EC’s web site to facilitate exchange of experience and ideas between employers, trade unions, investors and other stakeholders. One of the objectives of its creation has been to develop guidelines of SRB implementation which will be further enhanced in a relevant code of conduct, accounting documents, reporting standards etc. The Commission is convinced that SRB’s success in Europe will depend, first of all, of its spreading scale. The Commission plans to integrate SRB principles in all aspects of EU’s employment, social protection, industrial, foreign etc. policies.

In April 2003, the European Parliament adopted its Resolution on Corporate Social Responsibility: (CSR): A Contribution into Sustainable Development.⁹¹

OECD

OECD member states have shared democratic governance and market economy commitments, and this contributes to the development of internationally agreed tools, decisions and recommendations establishing rules of the game in areas where multipartite agreements between states are necessary to assure progress in globalised economy conditions.⁹²

⁹⁰ http://ec.europa.eu/employment_social/soc-dial/csr/greenpaper_en.pdf

⁹¹ http://europa.eu.int/employment_social/soc-dial/csr/sipade2.pdf

⁹² http://www.un.org.ua/brc/ua_wdp_src/ua_wdp_src_scr05.pdf

OECD's contributed to SRB implementation policies by developing and adopting the OECD Guidelines for Multinational Enterprises.⁹³ This paper includes principles and standards to be voluntarily applied by responsible companies in such areas as human rights, disclosure of information, fight against corruption, relations in the areas of taxation, labour, environmental protection, and consumer rights protection. These Guiding Principles are recommendations to transnational companies jointly adopted by Member States' governments.

SRB Standardisation Attempts

The International Standards Organisation (ISO) adopted at its Stockholm Conference of 15-16 June 2004 a resolution on elaboration of social responsibility guidelines ISO-26000.⁹⁴ The paper was given the name of a standard in line with ISO terminology; however, it does not envisage standardisation of SRB aspects as such. It will neither contain requirements to performance procedures or act as a management standard. No certification of companies' compliance with that standard has been envisaged either.

The ISO-26000 standard must provide so much needed guidance to organisations and their stakeholders in a multitude of acts, norms, standards and tools on social responsibility issues. The standard development and implementation have been scheduled for 2007-2008.

SRB performance indicators have been included in international practices of country development evaluation. For the first time ever, the social responsibility of business indicator was included in the group of 22 indicators comprising the Index of Economic Stability of Countries (IES) presented before participants of the 2001 World Economic Forum at Davos. According to IES calculations, Ukraine ranks 110th in the list of 122 nations, the top five places being occupied by Finland, Norway, Sweden, and Switzerland.⁹⁵

International Business Associations

The group of initiators of SRB principle development and implementation at the international level includes, beside national governments and international organisations, also big businesses themselves. Several business associations have been established to expand international cooperation in this regard, the most reputed among them being:

- World Business Council for Sustainable Development (WBCSD);
- Coalition of Economies Responsible for Environmental Safety (CERES);
- Business for Social Responsibility (BSR);
- International Business Leaders Forum;
- CSR Europe.

Institutional SRB Support on the National Level

Institutional support of SRB standards and principles promotion at the national level is rendered by the State, the public, and businesses themselves. Information about forms of institutional support of SRB in different countries is given in Table 3.1 below. The information may be systemised to group these forms of support, as follows:

The State:

- a) Establishment of specialised bodies,
- b) Initiatives of SRB principles development and dissemination to enhance general understanding and awareness,
- c) Arranging ratings and competitions awarding honourable signs of merit for best opportunity implementation, the most responsible company etc.,
- d) Joint projects with businesses,
- e) Introducing mandatory corporate reports of social, environmental and economic impact of operations.

⁹³ <http://www.oecd.org/dataoecd/46/36/2075173.pdf>

⁹⁴ <http://www.globalreporting.org/about/ISO26000Consortium.asp>

⁹⁵ http://www.ombudsman.kiev.ua/oop_3/R5_4.htm

The public (non-profit organisations, associations, consulting and research centres in their role of public “think tanks”) collaborates with governmental institutions:

- a) On projects aimed at developing codes of corporate conduct, preparation of publications on SRB issues;
- b) Development of databases for clients and companies willing to inform the public about their SRB activities as a component of corporate governance.

Business (business associations and networks):

- a) SRB promotion through business associations,
- b) Cooperation with governmental institutions in publication of business ethics compliance reports,
- c) Partner relations with governmental institutions in the areas of proactive mitigation of social issues, promotion of social integration, enhancing business awareness.

Legal-regulatory Framework

The available international practices on SRB legal-regulatory framework are represented by the so-called “soft law” that includes international conventions, declarations, principles and recommendations that may serve as examples and the basis for further legislation development worldwide. They will be useful for developing minimum international standards. The SRB legal framework may be accepted as commitments in certain areas.

The principal international documents are:

International Labour Organisation (ILO)

- Declaration of Fundamental Rights and Responsibilities at Work
- Tripartite Declaration of Principles for Transnational Companies and Social Policies (adopted in 1977 and revised in 2000)
- Code of Conduct in Respect of Labour Safety and Health Protection
- Code of Conduct in Respect of HIV/AIDS

International Standards Organisation (ISO)

- ISO14000 Standard on Environment

Global Reporting Initiative (GRI)

- International Guidelines on Organisations’ Voluntary Reports of Economic, Environmental and Social Lines of Operations, Products and Services

Council for Economic Priorities of the Accreditation Agency (CEPAA)

- SA8000 Standard on Voluntary Audit, Certification and Assessment of Labour Conditions

SRB Incentives

The main types of SRB incentive are:

- *Merit signs and decorations.* Companies are generally awarded by governmental bodies or institutions in charge of SRB issues (in Belgium, the sign is awarded to socially accountable products the production line of which fully complies with Eight ILO Conventions; in Denmark, a special decoration is awarded based on evaluation of company’s social responsibility status; the EU has introduced the Eco-Sign marking procedure etc.).
- *Fiscal/credit benefits and financial support.* Below are some examples of such support:
 - a) Access to funding earmarked for environmentally safe projects (Germany, Ireland, the Netherlands, Ukraine, the EU);
 - b) Assistance to employers in retribution of costs of providing living conditions to employees with physical disabilities and accessibility of its workplaces (US, Italy);
 - c) Support of fair business (Spain).

Table 4.1

Institutional SRB Support in EU Member States⁹⁶

| State | Governmental institutions | Research centres | Business environment |
|----------------|--|---|--|
| Austria | <p>The Federal Ministry for Social Security, Generation and Consumer Protection arranged a competition among companies implementing family-friendly policies with subsequent awarding of winners.</p> <p>The Ministry of Agriculture, Forestry, Environment and Water Supply coordinates a whole range of SRB-related events.</p> <p>The Federal Government adopted the Sustainable Development Strategy (April 2002)</p> | <p>The Austrian SRB Initiative developed in late 2002 by the Austrian Industrial Federation by joint efforts with the Federal Ministry for Economic Issues and Labour and the Chamber of Commerce.</p> <p>The Platform for Socially Responsible Investments was developed by the Austrian Community for Environment and Technologies in 2001.</p> <p>The Institute of Development Policy Cooperation has been publishing a magazine on SRB issues since December 2003.</p> | <p>The Austrian Business Council for Sustainable Development by joint efforts with the Federal Ministry for Social Security, Generation and Consumer Protection, the Institute of Integration Tourism and Development and an Asian tour operator – elaboration of a Code of Conduct to prevent sexual abuse of children.</p> |
| Denmark | <p>The Ministry of Economy and Business Cooperation together with the National Council for Business Development published a report on ethics in business.</p> <p>The Ministry of Social Affairs has started a campaign on Social Responsibility of Corporate Sector: Our Common Interest.</p> <p>The Government supports assessment of the level of human rights protection developed by the Danish Centre for Human Rights.</p> <p>The Ministry for Environment and Power produced a memorandum requiring environmental reports from more than 3,000 companies.</p> <p>The Ministry for Social Affairs identified social and ethical reporting principles.</p> | <p>The Danish Institute of Social Researches performed a research programme of monitoring SRB and labour market development with financial support from the Government.</p> <p>The Legal Protection and Social Governance Act of 1999 requires from all local government bodies to participate in a Coordinating Council for Preventive Measures on the Labour Market featuring representatives from trade unions, employer associations and other public associations.</p> <p>In 1998, the Government approved the establishment of a Copenhagen Centre, an independent institution in charge of contributing to social cohesion between business, the government, and the public.</p> | <p>The Ministry of Social Affairs established a National Network of Business Managers in 1996. The Network provides the Ministry with advice on SRB issues and implements social cohesion measures. Annual awards to most socially responsible companies introduced.</p> <p>Effective since 1997, a number of regional business networks has been established to initiate partnership between companies and local governments on research of local social changes.</p> |
| France | <p>The National Strategy of Sustainable Development and the National Council for Sustainable Development were established in 2003. The High-level Group on Sustainable Development established.</p> <p>The Ministers for Sustainable Development.</p> | <p>In January 2002, four trade unions established a joint Committee for Employee Wages to oversee investments and management of socially responsible funds.</p> | <p>IMS-Entreprendre pour la Cite, a non-profit organisation established on initiative of the French Business Leaders in 1986. The organisation uses a network of member companies to promote corporate responsibility principles.</p> |

⁹⁶ http://www.un.org.ua/brc/ua_wdp_src/ua_wdp_src_csr05.pdf

| State | Governmental institutions | Research centres | Business environment |
|-----------------------|--|---|---|
| Germany | <p>The Federal Government implements more than 50 individual projects in the area of environment and fair trade.</p> <p>The Ministry of Public Health and Social Security has initiated a Project on Employment Without Barriers to improve professional and career development options for disabled and enhance preventive measures in the area of worker health protection.</p> <p>The Government held a roundtable discussion on corporate codes of conduct.</p> | <p>Weltladendachverband.</p> <p>A Local Alliances for Family Initiative was established within the framework of the Alliance for Family set up by the Government by joint efforts with Bertelsmann Foundation in 2003. The Initiative's objective concerns such activities as beautification for balance of life and work conditions and flexible child care facilities.</p> | <p>Zusammenarbeit (GTZ) – promotes awareness of, and support to, SRB dissemination.</p> <p>The General Code for Coffee Society developed by the German Coffee Association and the Government to prompt development of corporate codes of conduct.</p> |
| United Kingdom | <p>2000: the Government introduced a position of the Minister for Social Responsibility.</p> <p>The role of the Government in the field of SRB development concerns enhancement of the level of awareness, development of guiding principles, implementation of legal and institutional framework of social, environmental and marketing accountability</p> | <p>SIGMA Project is an association that aims at developing managerial sustainability structure comprising principles, systems, and tools of management.</p> | <p>The Small Business Consortium undertakes for enhancing business' awareness of managerial events for the purpose of improved social, economic and public impact .</p> |
| Japan | <p>Japan has committed for SRB development in the UN via the Japanese Bank for International Cooperation and the Japanese Agency for International Cooperation.</p> | <p>In 2002, the Japanese Federation of Economic Organisation (Nippon Keidanren) made changes to the Keidanren Charter for Good Corporate Behaviour underscoring the need for enhancing agreement and trust on behalf of consumers.</p> <p>In 2003, the Association of Corporate Managers (Keizai Doyukai) published its 15th White Paper on Market Evolution and SRB Management.</p> | <p>Some companies have introduced SRB units in their managerial organisation; a considerable proportion of corporations set up SRB departments to promote SRB-related information via their reports.</p> |

4.2. Ukrainian Practices. Conclusions and Recommendations

Big businesses formed in Ukraine in historically short period of time. Financial and industrial groups (FIGs) managed to go all the way from small company to recognised world market operators in a relatively small period of time; however, almost two thirds of the historic period of big Ukrainian business existence belonged to the period of primary capital accumulation with all negative aspects proper to it. Thus, despite having entered the 21st century with a genuine intention to overcome the shadowed past and to become civilised, Ukrainian FIGs still face a prejudiced attitude on behalf of the Ukrainian public.

One great danger for the business here consists in the fact that any political force may “heat up” these public perceptions for its own benefit. A vivid example of that can be found in the policy of the first “Orange” cabinet of Yulia Tymoshenko that used revolutionary moods of the public to unleash a real “warfare” against oligarchic FIGs. “Anti-oligarchic” rhetoric was also present in the agendas of some political forces throughout March 2006 Parliamentary elections, as well.⁹⁷

Recognising the risks related to persistent standoff with the public, big Ukrainian FIGs felt compelled to address international experience of winning public sympathies through socially responsible business making. However, the majority of Ukrainian companies still limit these their activities to sporadic sponsorship and charity actions.

The Most Developed Forms of Big Business’ Social Activities

As our analysis showed, objective presets of the majority of Ukrainian companies show a domination of narrow corporate interests aimed at obtaining profits. They resolve their internal tasks arising from their relations with staff, consumers and the Government mostly via social activities.

It may be possible to identify several typical models of social behaviour of big companies.

First model (the most scale). The first model is a continuation of the model of big governmental enterprise operation that had evolved during the Socialist past when big enterprises had to provide a certain range of social, cultural, housing and municipal utility services to their own employees, their families and residents in the neighbourhood. Implementation of such method of privatisation as buying-off governmental enterprises by their staff employees contributed to that model preservation in Ukraine.

One example of that model is activities of the Business Group of the Ilyich Mariupol Metal Works purchased by the enterprise workers.⁹⁸ Vladimir Boyko, a standing Director of the Enterprise who has currently assumed an undisputed control over the whole enterprise, openly advocates for Socialist ideology. Because of that, the Metal Works has retained its traditional social responsibilities towards its employees and the residents of the town of Mariupol where it is located. The Metal Works also preserved its permanent programmes of support for retired persons, veteran workers, personnel training etc., as well as a network of recreational facilities at the Azov Sea and a recreational centre at the Black Sea. Moreover, the Metal Works covers the greater portion of recreational costs for its employees and their family members.

Probably the most impressive example yet is the Metal Works’ Mariupol Infrastructural Development Agenda. According to Vladimir Boyko, the enterprise has set for itself an impressive task of ‘making a European town’ with solid roads, refurbished town airport, and an ambitious social facilities development and refurbishment programme. Some 1.2 billion Hryvnias were funnelled on social needs of the enterprise itself, the town and the Donetsk Oblast in five years (1999-2004).

Second model comprises the established practice of developing relations between businesses and the Government through participatory activities in the social sector.⁹⁹ Trying get a title to lease or buy an asset or land plot, private companies often seek loyal attitude from governmental bodies by taking additional commitments on land beautification, gas pipeline development, or museum refurbishment. According to the media, big businesses have recently developed a taste for support of Ukrainian culture: the most publicly known actions include restoration of the town of Baturyn and of the Mariinsky Palace,

⁹⁷ <http://www.zerkalo-nedeli.com/ie/print/52113/>

⁹⁸ *InvestGazeta*, Issue No. 45, 8 November 2005, p. 14

⁹⁹ *InvestGazeta*, Issue No.42, 18 October 2005, p. 9.

and development of the Artistic Arsenal Cultural and Museum Complex. Those were prompted by priorities proclaimed by President Yushchenko himself.

Third model emerged from business' own predilections to sporadic sponsorship and charity activities performing the role of PR actions (to improve corporate image and product marketing.) Companies carry out sports competitions, festivals, support already known performers and promising youth, make financial contributions to hospitals, children care institutions, provide regular aids to retired and disabled persons.

Fourth model is the most widespread one. Corporate social activities are, in the majority of cases, limited to a social benefit package offered certain bundled services to company's own personnel (depending on company's possibilities.) Social packages are used as components of the system of incentives and promotions for staff employees.

Other components of socially responsible business making in Ukraine, like assuring transparency of corporate operations, labour and environmental protection, fight against corruption etc., have not even reached the level established by the law. These requirements are extremely seldom to be voluntarily taken as commitments by Ukrainian companies.

First Steps Towards SRB

Practical accession to SRB standards still goes sporadic in Ukraine. Businesses, the Government and the public are still equidistantly remote from fully comprehending the need for SRB mass promotion as a tool for assured sustainable development of the society in general.

First examples of socially responsible business making were pioneered in the Ukrainian practice by international financing institutions and big Western companies starting to operate in Ukraine. The level of such activities was particularly high in 2005.

The UNDP Blue Ribbon Analytical and Advisory Centre became the focus point for promoting SRB principles in Ukraine by implementing a Project on Social Responsibility of Business in Ukraine: A Dialogue Between the State and Private Business Organisations was implemented.¹⁰⁰ Among the Project partners were the Ministry of Social Policies and Labour, private companies, and business associations. In December 2005, two reports were prepared based on Project outputs on:

- 1) Social responsibility of Ukrainian business: polling results; and
- 2) Social responsibility of business: understanding and implementation.

UN's Mission to Ukraine on Social Responsibility of Business and the Global Compact received a continuation in the form of an Initiative on Social Responsibility of Ukrainian Business. The Initiative aims at establishing a dialogue between businesses, the Government and the public in this area.¹⁰¹

The Microsoft Ukraine Company became a co-coordinator of the Forum on Social Responsibility of Ukrainian Business: Principles, Divergences and Perspectives¹⁰² (16 December 2005) arranged within the framework of the Initiative. The company shared its rich experience of cooperation with the public and the Government in Ukraine. Forum participants were presented a draft Memorandum on Social Responsibility of Business in Ukraine. The Memorandum was joined by 22 companies and organisations, among them Kyivstar, the Ukrainian League for Public Relations, the Association of Cities of Ukraine, the Ukrainian National Committee of the International Chamber of Commerce, the Industrial Television Committee, the Union of Entrepreneurs of Small, Medium and Privatised Enterprises, the League of Insurance Organisations of Ukraine, the All-Ukrainian Public Association of Entrepreneurs New Formation, the Brand of the Year of Ukraine, the Ukrainian Association of Iron & Steel Enterprises, the Association of Shipbuilding Companies of Ukraine etc.

Big Western companies demonstrate a common type of behaviour in the country of investment. Big philanthropic programmes on fighting breast cancer launched by Avon Corporation and on providing medical care to children affected by the Chernobyl catastrophe – by Philip Morris Corp. have gained a wide publicity in Ukraine.¹⁰³

¹⁰⁰ http://www.un.org.ua/brc/ua_wdp_src/ua_wdp_src_csr05.pdf

¹⁰¹ <http://www.microsoft.com/Ukraine/News/Issue.asp?16-12-2005-Tradition.xml>

¹⁰² <http://itware.com.ua/events/666/print>

¹⁰³ Blue Ribbon Analytical & Advisory Centre. Соціальна відповідальність бізнесу: розуміння та впровадження.

The “Orange” Revolution gave an impetus to the promotion of SRB ideas among Ukrainian big business representatives as well: by mid-March 2006, around 50 Ukrainian companies, associations, and public organisations joined the Global Compact.¹⁰⁴ However, that public step has not been supported by a systemic restructuring of their behaviour which fact gives grounds to assume it being made as a measure of improving overall external image of the neophytes.

Coherently shaped public policies in this regard can be found only in the two big national FIGs, the System Capital Management Company (SCM) and the Interpipe Corporation. A great role in these activities of the mentioned FIGs belongs to their key owners, Rinat Akhetov and Viktor Pinchuk. Charitable foundations established by them are close to Western examples by global outreach of their approaches. Social projects of scale are also implemented by one of Ukraine’s biggest FIGs, the Industrial Union of Donbass Corporation. However, unlike the two FIGs mentioned earlier, that last one has not shifted to systemic social policy yet limiting itself to, though big, nevertheless sporadic charity and sponsorship projects.¹⁰⁵

*Initiatives of the SCM Company*¹⁰⁶

The SCM has been among the first Ukrainian companies to publicly declare its SRB commitments. The Company placed on its web site a document on Corporate Social Responsibility in 2005.¹⁰⁷ The paper states that the SCM “is interested in Ukrainian business circles developing a greater understanding of the importance of the social component of sustainable development together with environmental and economic aspects of it. We are of opinion that the adopting of Corporate Social Responsibility principles (CSR) will not only benefit the society, but also assist companies in improving their reputation, enhancing their competitiveness, and upgrading their risk management systems”.

The SCM is one of the few Ukrainian companies the owners of which have shifted from sporadic, sometimes even occasional actions towards establishing a specialised structure in charge of implementing systemic social policies. On 15 July 2005, the SCM announced the establishment of its Development of Ukraine Charitable Foundation with a status of non-profit organisation. According to expert estimates, this is the biggest charity fund in the country; its 2007 budget made \$12 million. The Foundation was established in full accordance with the socially responsible business principles adhered by the Company.

*Viktor Pinchuk Fund*¹⁰⁸

- Viktor Pinchuk, the principal owner of the Interpipe Corporation, is known in Ukraine as one of the first entrepreneurs to pioneer sponsor support of arts. Pinchuk switched to a systemic policy in that area earlier than others did. He actively builds on his reputation of a public businessperson performing his social projects to improve the image of the country and has already earned a nick of ‘businessman propagator’ for that. The Viktor Pinchuk Fund was established in 2006 to manage all of the projects not linked to commercial business of the Corporation.

*The Industrial Union of Donbass Corporation*¹⁰⁹

Both owners, Serghei Taruta and Vitaliy Haiduk, still elude publicity in their arts sponsoring and charity activities despite their Corporation’s projects are pretty close to expenditures of the foundations set up by the two above companies. Unlike Akhmetov and Pinchuk, the owners of the Corporation have never intended to take the role of promoters of new business making principles.

Their arts sponsoring and charity activities mostly comprise substantial financial contributions to individual projects, many of which are linked to initiatives of President Viktor Yushchenko and his spouse, Kateryna Yushchenko. Thus, the Corporation donated 75 million Hryvnias to the Children Hospital of the Future Development Project, and 10 mln. Hryvnias more to reconstruction of Baturyn. It also supports performances of scale of Ukrainian artists – e.g., Modern Theatre Days in Kyiv (a representational spectrum of theatrical performances by renowned Ukrainian theatre director Andrey

¹⁰⁴ <http://delo.ua/news/economics/organisation/info-23343.html>

¹⁰⁵ Инвестгазета, №22, 11-17 июня 2007. – С.20-25

¹⁰⁶ <http://www.scm.com.ua/index.php?page=331&1>

¹⁰⁷ <http://www.skm.com.ua>

¹⁰⁸ <http://pinchukfund.org/foundation/goals>; <http://pinchukfund.org/ru/projects/ukraine>

¹⁰⁹ InvestGazeta, Issue No. 22, 11-17 June 2007, p. 20-25.

Zholdak), sponsor participation in the production of the *Kobzary* movie by Ukrainian producer Oles Sanin.

One permanent project implemented by the Corporation concerns creation of Platar, a collection of ancient Slavic, Scythian and Tripyllian artefacts. The collection is already of exceptional value, it served the basis for a museum exhibits of which are shown not only in Ukraine, but also widely abroad.

Legislative Framework and System of Support

SRB in Ukraine lacks proper legislative regulation and economic and organisational support on behalf of the Government. According to political analyst Aleksandr Levchenko, Ukraine has no conditions which would enable oligarchs to enter a “social agreement” binding enough on them to keep to their agreed political commitments.¹¹⁰ Researchers from UNDP Blue Ribbon share the opinion, too.¹¹¹

The existing fiscal system offers no incentives for businesses in this regard: under the Law on Corporate Profit Taxation No. 334/94-VR, of 28.12.1994, a considerable proportion of company’s social expenditures is related to profits and is therefore subject to profit tax (30%.) Moreover, the amount of expenditures on sponsorship and charity subject to release from taxation has been established at over 2% but must not exceed 5% taxable profit for the previous reporting year.

There were two draft legislative acts on sponsorship of arts and charity issues registered in the Parliament for the past two years; however, they have never been reviewed.¹¹² Still, as the two drafts were to a greater extent declarations not envisioning any changes in the fiscal legislation they would hardly provide any incentive for entrepreneurs to move in the desired direction.

Conclusions and Recommendations:

(1) As the new history of Ukraine shows, the country does have a potential that enables it to speed-pace through certain phases of its development. Ukraine completed the phase of “initial capital accumulation” that took eons in some developed economies in as little as 7 or 8 years. One might expect therefore, that, given relevant beneficial conditions, Ukraine will be able to narrow the gap between it and Western nations in the level of mastering and implementation of SRB principles, as well – still more than it has received a powerful impetus from the “Orange Revolution”. Big Ukrainian businesses and the Government become susceptible to new global development challenges in the form of socially responsible business principles.

(2) The overall situation in Ukraine only supports the above forecast. Searches of mechanisms of mitigating a standoff between big businesses, on one hand, and the Government and the society, on the other hand, have been growing in topicality of late. Natural laws of market economy development, economic feasibility and political common sense considerations make both entrepreneurs and the Government abandon radical decisions in favour of searches for the balance of interests. The need for a consensus between big businesses, the Government and the public which would be supported by a more or less stable system of relations has arisen. SRB concept as a nation-wide project might become a cornerstone for streamlining tripartite partnership as it might also complete the system of social partnership existing in Ukraine without any involvement of bigger FIGs.

(3) SRB contents allows:

Creating an attractive image of business in the eyes of the public,

Clearly identifying the format of relations between the Government and businesses and eliminating any other possible deliberations on the nature of their partnership,

Developing mechanisms of big business’ cross-control via commitments of members of various associations and partnership agreements,

Contributing to the improvement of international image of the country.

¹¹⁰ *Zerkalo Nedelyi*, Issue No. 43, 5 November 2005, p. 4.

¹¹¹ Blue Ribbon Analytical & Advisory Centre. *Social Responsibility of Business: Understanding and Implementation*, p. 11.

¹¹² Draft Law of Ukraine on Sponsorship of Arts No. 6176, of 22.09.2004, Draft Social Code of Ukraine No. 8495, of 24.11.2005

(4) When developing national SRB principles and standards for Ukrainian business, the following specific components might be identified:

Ukrainian businesses in their majority have never adhered to even the basic level of responsibility (compliance with legislative requirements); therefore, unlike developed economies elsewhere, the first SRB level for Ukraine should include such responsibilities for all companies involved.

SRB must become one of the driving factors for Ukraine in its fight against corruption and shadow economy that permeated the national business environment.

Companies in Ukraine, particularly big ones, have been traditionally deeply involved in the life of local communities. That should be relevantly reflected in corporate SRB commitments.

Local residents have developed a strong habit to State-sponsored free-of-charge public services.

(5) SRB system development in Ukraine should include:

Assistance to SRB institutional system establishment (within the structure of governmental bodies and voluntary business association networks),

Development of national SRB standards and principles based on internationally recognised standards and principles,

Promotion of SRB ideas to enhance awareness among businesses, the public and in the Government,

Adoption of respective legislative framework,

Preparation of a package of partner projects implemented on equal conditions by the State, local governments and businesses,

Development and implementation of a set of SRB-driving incentives,

Implementation of a system of indexes to measure the level of social responsibility of business,

Implementation of corporate reporting standards comprising SRB indicators.

(6) The socially responsible business making is implemented via partnership programmes. Such social programmes could be feasibly developed as different-level programmes: a) corporate, b) territorial, c) national ones. In order to engineer a rational model of territorial and national programmes, such programmes at the beginning phase of their development could be feasibly declared as the pilot ones. International experience shows that the partnership between the Government and businesses (shared financing, public control system development, joint participation in programming etc.) is the most efficient form of territorial and national programme implementation.

(7) The speed of SRB development in the big Ukrainian business environment will directly depend on the extent to which the SRB principles have become national policy priorities. If unimportant for either the State or the public, they will hardly make a threshold for businesses to try to achieve. Entrepreneurs will then rather switch to searches of easier ways of solving conflicts between them and the Government and the public. Here, the Government must clearly demonstrate how important these changes in business behaviour are for it. This could be underlined, first of all, by a high-level representation of the State in its partner relations with businesses (on the level of deputy Prime minister.) Secondly, predilections of all levels of government in their contacts with various companies should be streamlined along that parameter (elaboration competitive selection criteria; involvement of company representatives in council bodies of sorts; mentions of them as a positive example etc.) Thirdly, it is necessary to promptly introduce a system of SRB incentives providing merit awards, tax/loan benefits, financial support etc.

(8) The fact that the acceptance by society of any idea, still more if borrowed from outside, will depend, first of all, from elementary awareness of all process participants should not be left unattended. For that purpose, it shall be necessary to develop a network of 'think tanks', to draw attention of the media to the issues, and to use all other channels of SRB ideas promotion (seminars, roundtable discussions, permanent discussion and information sites etc.) The State should be able to offer a portfolio of projects that big business could join. Such portfolio should be conveniently amended with incentives understandable and attractive for businesses.

5. SHADOW PROCEEDS LEGALISATION AND CORROBORATION OF OWNERSHIP TITLE

Ukraine belongs to the group of countries with high levels of shadow income. According to calculates of the Ministry of Economy of Ukraine, the level of shadow economy currently stands at 33% GDP.¹¹³ By existing world estimates, shadow sector proportion in a normal economy should not exceed 10-15%; moreover, Western countries refer here mostly to illicit (criminal) sources of proceeds.¹¹⁴ The shadow sector in Ukraine has formed mostly from legal kinds of activities through tax dodging and exports of capital assets and private income abroad. That comprises an amount of funds big enough (if legalised) to become a substantial factor of economic progress of the nation. Therefore, studying the experience of shadow proceeds involvement in the legal economy, all nuances (positive results, also risks and typical mistakes) included, will be of exceptional importance for Ukraine.

After the “Orange” Revolution Ukraine became submerged in extremely heated process of reviewing privatisation outcomes brought to life by demands to restore justice in the issue of government property distribution carried out during President Kuchma’s regime. The process, not dealt with until these days, hides in itself a permanent threat of resuscitation of re-privatisation policy that one or another political force might want to use to promote its interests in the struggle for power.

5.1. International Practices

Developed countries have accumulated a positive experience in the field of legalisation/amnesty of proceeds and restoration of justice violated in the process of government property privatisation. Outputs of that experience provide a wide spectrum of different solutions from which Ukraine might choose one most suitable to it.

Legalisation/amnesty of Proceeds

World practices show that the problem of capital exports is rather relevant for all of the countries. A solution, depending of specific situation in a given country, may pursue different targets and is reached with different mechanisms. The most radical model of solving the problem can be found in countries determined to put an end to corrupt regimes and to restore justice; there, the problem is generally solved with confiscation and nationalisation of proceeds and properties of those declared “enemies of the new power”. Developed countries set more tangible practical goals (returning capitals, legalisation of revenues collected abroad etc.) choosing for that more predictable ways. In that case, the issue is resolved by using capital legalisation/amnesty mechanisms.

Experts note a certain natural law in the existing international practices: legalisation/amnesty of proceeds and capitals are most often to be initiated by a new cabinet that has only recently come to power. Financial circles that have been supporting the new cabinet at this time, may agree to the procedure in order to obtain additional personal guarantees; otherwise, it is a rather complex project that generally is of only minor benefit for the budget (this is regarded as one of the basic successful performance indicators of such programmes.) World’s normal return indicator stands at up to 1% budget volume. The most successful amnesty of shadow income carried out in the State of New Jersey (USA) returned to the budget an amount equivalent to 2.6% annual tax revenues.

History shows that the majority of countries carry out such actions only from time to time because of their low efficiency; e.g., legalisation/amnesty of proceeds was declared 5 times in India, 4 times in Portugal, 2 times in France, Austria and Ireland (each). There were 62 such programmes implemented in the US since 1982.

¹¹³ http://www.me.gov.ua/control/uk/publish/category/main?cat_id=78295

¹¹⁴ Problems of Property Redistribution and Shadow Capital Legalisation in Ukraine. Kyiv, March 2004, p. 10.

Insert 5.1. Principles of Legalisation/Amnesty of Proceeds

- Clear definition of proceeds and capital assets not subject to legalisation/amnesty
- A one-off procedure carried out within the time established in law (generally, within one year)
- Non-confiscation nature of the procedure
- Sufficient guarantees of release from responsibility for declared assets
- Information confidentiality guarantees
- A combination of amnesty with more strict responsibility for concealment of proceeds
- Wide-scale outreach

The low efficiency of deshadowisation of proceeds and capital assets may be explained with a widespread apprehension among entrepreneurs who do not rule out risks of possible criminal prosecution after the proceeds legalisation procedures is over. Experts are unanimous in that consent to undergo the proceeds and capital legalisation procedure can be mostly expected from those who have already entered the “higher risk area”, i.e., become the object of attention for law enforcement agencies.

As international experience shows, the efficiency of programmes of shadow income legalisation/amnesty is not directly dependent from the strictness of responsibility envisioned for those who have skipped established procedures. E.g., the German government, while carrying out its legalisation/amnesty procedure, declared severe persecution under the law on those who will not de-shadow their proceeds by the end of 2004. However, German analysts are of opinion that the penalties looming under the scheme did fail to warrant success of the endeavour. It can be further confirmed with the experience gained by Argentina in 1987 when the national government delivered an ultimatum to all big entrepreneurs requiring them to legalise their income for their mandatory investing into national economy sectors pinpointed by the government itself. The campaign only resulted in a wide-scale capital flight from the country.

Because of that, governments in developed economies have been recently keen on assuring maximum confidentiality for process participants no longer requiring them to fill in the national budget.

For example, Italy uses a scheme that fully respects privacy of individuals who have decided to return their capitals back into the country: funds are returned via account opened with a commercial bank that pays taxes due on legalised amounts itself to save the individual in question from any hassle around him. Similar scheme is also used for legalisation of real estate: the bank is then authorised to declare, on behalf of a given individual, before tax authorities 2.5% value of the legalised property without disclosing either its nature or location.

Relevant law of Belgium (in force since January 2004) is deemed the most advanced one in this regard: the concept of the law envisaged denial from any budget revenues-increasing actions.¹¹⁵ Belgians were given a year to either declare their proceeds obtained from overseas operations without actually returning the declared amounts back to Europe (9% tax rate) or to invest them somewhere in the EU for 3 years, at least (6% tax rate.) Everyone willing to do so was issued a certificate by local revenue office warranting the release from any criminal responsibility.

¹¹⁵ *InvestGazeta*, Issue No. 15, 14 April 2004, p. 9

Review of Privatisation Outcomes

Given the situation in Ukraine, the country would benefit the most from the experience of review of privatisation outcomes carried out in late 90ies in the UK.¹¹⁶ The whole procedure was initiated by political pressure and its implementation led to political clashes inside the society much in the way it happened in Ukraine. However, actions taken by the national government finally met public expectations and restored the justice overlooked during public property privatisation.

The Labour Party entered the 1997 elections campaign with an agenda of collecting additional revenues to the budget from extra payments for municipal utility enterprises (power-, water- supply, sewerage) made privatised companies under Margaret Thatcher's Conservative Cabinet. Party representatives though selling prices for those public properties were lower than they should have been. The Party made the move drawing support from overall public frustration about utility tariffs that soared after the sector went private.

Insert 5.2. Principles of Review of Privatisation Outcomes

- The Procedure is based on public acknowledgment of lowered selling prices on privatised assets
- Only the assets included in a special list (exclusive inventory) shall be subject to review
- Clear asset selection criteria applied
- A method of extra budget payment calculation that rules out any corrupt actions
- Socially meaningful lines of spending additional budget revenues
- Reliable guarantees of ownership title issued by the State
- Destitution of ownership title is foreseen only in exceptional cases (refusal from making additional payments to the budget, criminal offence discovered)

The suggested scheme of reviewing privatisation outcomes was thoroughly regulated to rule out any corrupt action possibilities at the decisions-making phase. In the same time, it also limited the scope of claims the government could make.

The Labour Party pushed through the Parliament a law to exact a one-off tax on incidental profit chargeable on new owners of natural monopolies de-nationalised by the government of Margaret Thatcher. The need for extra payments to the budget was substantiated with prices on privatised assets established without regard to possible increase in tariffs on respective services.

The tax amount was calculated based on the following clear-cut equation: net annual profit arithmetic average for the first four years post privatisation was multiplied by the average stock price to return on stock ratio (the ratio generally equalled to 9.) Asset purchase price was then deducted from the obtained value; the difference made the taxable income amount. The applicable tax rate made 23%.

The review of privatisation outcome involved such big companies as BAA, BG, British Telecom, British Energy, Centrica, National Power, PowerGen etc. The UK budget consequently received 5.2 billion pounds. The amount was earmarked on specific targets – support of employment programmes for unemployed youth, -- from the outset, and that materially enhanced public acceptance of the privatisation outcome review policy among UK residents.

¹¹⁶ http://www.opec.ru/news_doc.asp?d_no=43441, *Business*, Issue No. 50, 12 December 2005, p. 34.

5.2. Ukrainian Practices. Conclusions and Recommendations

Attempts of Proceed Legalisation/Amnesty

First attempts of legislative regulation of natural persons' income legalisation/amnesty processes in Ukraine date back to 2002-2003. Legalisation/amnesty covered proceeds on which no taxes, deductions, mandatory contributions to the budget and State target funds were paid. During Kuchma's presidency, only one draft legislation regarding legalisation of capitals was developed.

A series of draft legal acts developed on the topic attests to the challenge that the public in Ukraine has been trying to answer. Considerable shadow income proportions have become a burden for business groups and individuals for a variety of reasons:

Business groups have developed the need for legally investing their capitals. Besides, legality considerations become prerequisite for business safety as shadow proceeds make business groups vulnerable to government claims;

Legalisation of proceeds has become necessary to those who, being released from their power because of next regular President elections, required guarantees of release from possible claims of their office successors;

The need for capital and proceeds legalisation/amnesty has started to be perceived as a vital measure for improving the nation's overall image.

There were no principal differences in the texts of the motioned drafts except for tax rates (from 0 to 10%) suggested for legalised amounts and responsibility release terms; however, all the motioned drafts, the one suggested by President Kuchma himself included, were opposed by the Parliament.

The issue of shadow proceeds legalisation/amnesty was also raised by the "Orange" team that came to power after Viktor Yushchenko won the last Presidential elections. The Cabinet of Ministers of Ukraine Resolution No. 367-r to Approve Measures of National Economy Deshadowisation in 2006-2007 (of 23 August 2005)¹¹⁷ envisaged development of a draft Law on Legalisation of Income of Natural Persons On Which No Taxes, Deductions (Mandatory Contributions) to the Budget and State Target Funds Have Been Paid. For the purpose of draft development, a task force comprising representatives of the Ministry of Finance, the State Tax Administration, the Ministry of Economy, the Ministry of Justice and the National Bank was established. April 2007 saw early communications about the Cabinet of Ministers approving the draft version of the Law; however, it has not passed the Parliament to date.

Table 4.1

List of Draft Legislative Acts on Natural Persons' Proceeds and Capital Legalisation/Amnesty Registered with the Verkhovna Rada of Ukraine

| Reg. No. | Date | Draft name |
|----------|------------|--|
| 1307 | 04.07.2002 | on Economic Amnesty |
| 2178 | 11.09.2003 | on Tax Amnesty |
| 3228 | 14.03.2003 | on Legalisation of Proceeds and Properties On Which No Taxes Have Been Paid |
| 3228-1 | 18.06.2003 | on Legalisation of Proceeds of Natural Persons On Which No Taxes, Deductions (Mandatory Contributions) to the Budget and State Target Funds Have Been Paid |
| 3404 | 11.07.2003 | on Capital Amnesty |
| 4003 | 17.07.2003 | on Tax Amnesty |

The draft envisions that anybody willing to do so may declare his/her shadow income within one year as of the law adoption by paying 3% declared amount to the budget. It also provides incentives for those having shadow income. Revenue offices are granted the right to apply indirect methods of searching for hidden income after the declaration campaign termination. Responsibility for concealing income – payment of chargeable taxes in full and criminal responsibility – are envisioned. However, the draft envisions a rather liberal procedure of taking to criminal responsibility by giving the suspect a possibility

¹¹⁷ <http://zakon.rada.gov.ua/main.cgi?nreg=367%2D2005%2D%F0&p=113687767242058>

of paying the applicable tax at any investigation phase and thus receive a release from further criminal proceedings. The period of shadow income legalisation is expected to be established in 2009.

The Ministry of Economy expects the amnesty to legalise almost a half of the capitals exported outside the country throughout the Independence. The estimates amount to almost \$30 billion. The Tax Service thinks that the low tax rate will be attractive for big capital owners; still, professionals obviously don't share the optimism of government officials.¹¹⁸ They are sure that Ukraine no longer needs such act as the money that left the country for the past years have been already legalised through offshore areas. A more safe and economically profitable way for big business representatives would involve repatriation of accumulated capitals in form of foreign investments (not subject to taxation) made via purchase of securities and charity activities. Specialists think that it is small and medium businesses unable, unlike tycoons, to 'launder' money in industrial scale that really need amnesty. However, some of the advocates see that the campaign might be efficient only if flat zero tax rate is applied.

Nevertheless, all of the professionals without exclusion agree that political instability and high economic risks (potential cancellation of the above commitment at government change, competition) are the main handicaps for such would-be campaign.

Re-privatisation As a Measure To Review Privatisation Outcomes

The demand for a review of outcomes of the privatisation carried out in times of President Kuchma's authoritarian regime and widely perceived by the public as a 'larceny perpetrated against the Ukrainian nation' became one of the key tasks set by the "Orange" Revolution before the team of the new President Viktor Yushchenko. The first post-Revolution cabinet led by Yulia Tymoshenko set off with the procedure in the form of so-called 're-privatisation', i.e., by reinstating assets in public ownership for subsequent resale.

The re-privatisation was carried out as an act of political struggle without any regulatory backbone or approved technology whatsoever; it was accompanied by considerable political turmoil and economic stirs of scale. Moreover, the risk of its repetition has not vanished away yet – particularly in conditions of permanent change of political forces at power. Therefore, the problem with selecting painless and publicly acceptable ways of reviewing privatisation outcomes and furnishing solid State guarantees of ownership title remains highly topical for the country.

A number of draft legislative acts that covered specific aspects of regulating the process of corroboration of ownership title acquired during the privatisation appeared in 2005-2006:

Draft Law No. 7108 on The List of Asset Complexes Alienated from Public Ownership in Contravention of The Law in Force;

Draft Law No. 7504 to change the Law of Ukraine on Privatisation of Public Property (re. additional payments for public asset privatisation);

Draft Cabinet of Ministers of Ukraine [Resolution] on Re-Evaluation of Value of (Price for) Public Ownership Title Objects Privatised in Contravention to Rules of Free Competition.

One material shortcoming of those drafts on review of ownership title to privatised assets was in that breaches committed by the Seller (playing down prices and pre-selecting buyers based on established criteria) were laid upon the Buyer. It would be problematic to prove a concert between the Seller and the Buyer after years passed, still more than State strategic asset sales procedures were formally complied with. Besides, those approaches required the adoption of reciprocal acts (to introduce a new reason for court proceeding initiation), which would be in breach of the very basics of law. Because of that, none of the motioned draft acts did reach even the Parliamentary review phase.

Conclusions and Recommendations

(1) Previous practice of Ukraine shows slim chances for legalisation/amnesty of past shadow proceeds to have any success in the coming years because of shaky political situation, faulty legislative framework and imperfect administrative system (high levels of corruption) in the country. Moreover, in a number of recent years big businesses have made it to conceal their shadow incomes legalising them outside Ukraine. Legal ways of repatriating necessary investment resources back in the country have been

¹¹⁸ *Delovaya Stolitsa*, Issue No. 17/311, 23 April 2007, p. 9.

developed, as well. One of the most widespread of them concerns investing under disguise of foreign capitals: such a method provides benefits on the taxation level and makes the overall procedure more safe for its participants (compared with the formal legalisation/amnesty procedure.) A policy of assistance and promotion of process of deshadowisation of existing companies' activities in the country seems to be more promising in this regard as it is in the interests of big businesses themselves as a transparent and legal business-making corresponds to their positions of worldwide operators.

(2) When making a decision on legalisation/amnesty of proceeds and capitals, one has to account for the consideration that active searches of concealed income and criminal persecution of persons guilty of concealing their income do require special legislative mechanisms, considerable organisation, human, financial and material resource inputs, and relevant scientific and methodical support. The cost of arranging supervision and imposing penalties on offenders may supersede expected additional budgetary revenues. On top of that, the very situation with persecuting offenders may become a destabilising factor for the Ukrainian economy – as it was, e.g., in the time when Yulia Tymoshenko's cabinet performed its policy of reviewing ownership title to privatised assets.

(3) This does not mean however, that the whole idea of proceeds legalisation/amnesty is totally unacceptable for Ukraine. The State must provide its citizens with a possibility of legalising their shadow income. Below are presented the key requirements to the proceeds/capital legalisation/amnesty procedure:

One-off procedure

Non-confiscation nature of the procedure

Sufficient guarantees of release from responsibility for declared assets

Information confidentiality guarantees

Combination of amnesty with more strict responsibility for concealment of proceeds

Clear-cut definition of kinds of proceeds and capital not subject to legalisation/amnesty

Wide-scale outreach.

(4) Ukraine's specific feature concerns the need for corroboration of ownership title on privatisation transactions that had been closed in the pre-“Orange” period without any regard to privatisation law or terms and conditions of competition. The remaining uncertainty makes shaky the ownership title in the area and provides a basis of incentives for asset redistribution processes. The main requirements to process organisation are, as follows:

The procedure should not have any prosecutory context (not in form of amnesty.) The process should be organised as an act of confirmation of available ownership title with subsequent State warranty. One useful model can be found in the UK where the process was carried out in the context of reimbursement of incidental income of new owners not otherwise reflected in the sales price of an asset.

It would be feasible to promote voluntary forms of owners' participation in the ownership title review process. One possible solution here could be the signing of reconciliation agreements. The legislation must envision benefits for those owners who have voluntarily joined the process. Those who have not should not be granted any immunity from judicial claims on behalf of the State and private bidders.

Additional payments to the national budget and subsequent use of such extra revenues for implementation of socially important projects may become a socially acceptable form for the review of ownership title in conditions of an increased susceptibility of the Ukrainian public towards an ‘unjust privatisation.’

The mechanism of ownership title review must include verifiable criteria substantiating privatisation procedure violations. The scope of procedure should be clearly limited to only big enterprises – otherwise the procedure will consume too much financial resources to cover costs and administrative resources borne by governmental authorities involved.

Impeding mass ownership title review processes will require additional efforts; here, the principal measure may concern maximum elimination of ownership title cancellation decisions within procedures.