



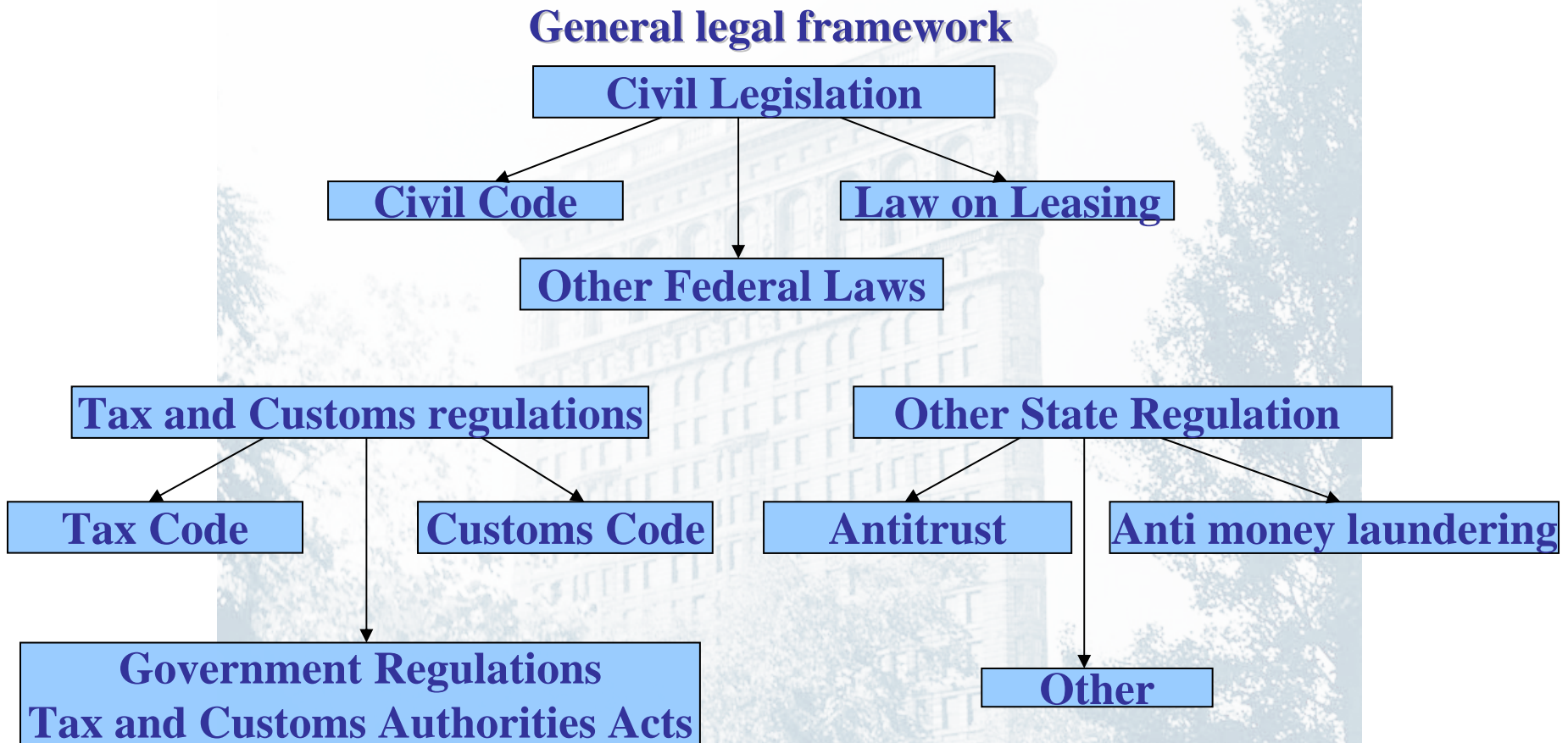
**CAPITAL LEGAL SERVICES
INTERNATIONAL, L.L.C.**

**AEB Leasing WG event on
Prospects of Leasing in Russia in 2009**

**Leasing in jurisdictions
of the Russian Federation, Ukraine
and the Republic of Kazakhstan**

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	Russia	Kazakhstan	Ukraine
Definition of leasing	A mix of economic and legal relations arising from the implementation of a lease agreement, including the acquisition of the subject of lease (Law on Leasing of RF dated 29.10.1998).	Type of investment, in which the lessor undertakes to transfer the subject of the lease purchased from the seller and provided by the lease agreement to the lessee for a fee and under certain conditions in temporary possession and use for at least three years, for business purposes. (Law on Leasing of KR Dated 05.07.2000).	Kind of civil law relations arising from the contract of financial leasing. (Law on Leasing of Ukraine dated 16.12.1997).
Variations	Financial leasing, Operational leasing, Sale and lease back.		
The requirement for a license	No special requirements for a license.	license is required for Banks dealing with leasing operations.	No special requirements for a license.



	Russia	Kazakhstan	Ukraine
Conditions for entry into The industry	<ol style="list-style-type: none">1. Provision in the Charter.2. Individual proprietor or commercial organization.3. Primary financial monitoring.	<ol style="list-style-type: none">1. Provision in the Charter.2. Individual proprietor or commercial organization.	<ol style="list-style-type: none">1. Provision in the Charter.2. Individual proprietor or commercial organization.3. Primary financial monitoring.





	Russia	Kazakhstan	Ukraine
Cross-border leasing transactions requirements	<p>Article 209 of the Tax Code of the Russian Federation prescribes the application of the preferential regime of temporary import in the event of importing equipment under lease agreements. Under such import regime payment of customs duties and taxes in full is not required and partial conditional exemption is applied for the period when the goods circulate on the local leasing market.</p>	<p>1. Preferential Temporary import regime is applied in respect to leasing items imported under international leasing agreements which do not provide for the transfer of ownership to lessees. This regime provides for full (in respect to goods included in the list approved by the Government of Kazakhstan) or partial (in respect to goods not included in the said list) exemption from payment of customs duties and taxes (Article 191 of the Customs Code of the Republic of Kazakhstan dated 05.04.2003).</p> <p>2. Release of goods for free circulation is used in the event when an international leasing agreement provides for the transfer of ownership from lessor to lessee or when a leasing company purchases the leasing item from a foreign supplier for the subsequent transfer into lease.</p>	<p>1. Import regime</p> <ul style="list-style-type: none">-provides for the transfer of ownership for the imported goods;- provides for the full payment by the lessee of import duty at the rate prescribed by tariffs of Ukraine (annex to the Law No 2371), and taxes and fees applicable to the imported goods (Article . 189 Customs Code of Ukraine). <p>2. Temporary import (export)</p> <ul style="list-style-type: none">-does not provide for transfer of ownership of the imported object to the lessee.



	Russia	Kazakhstan	Ukraine
Taxation of leasing transactions	<p>VAT – 18%, <u>Tax Incentives</u> 1. Opportunity to use accelerated depreciation with the acceleration ratio of up to three; 2. Inclusion of lease payments in the production cost in full; 3. The lessor includes interest rates on loans used for the acquisition of the lease property in the cost of production which inclusion reduces the taxable income amount thus reducing the leasing costs of the lessee. 4. VAT on imported equipment is paid on a deferred basis during the period of receiving future lease payments. 5. Opportunity to offset evenly the VAT against future lease payments. 6. The redemption price of the leased property is excluded from the income tax base (Clause 5, Article 270 of the Tax Code of the Russian Federation, Letter of the Ministry of Finance No.03-03-05/10 dated April 27, 2007).</p>	<p>VAT 13% (12% from Jan 2009). <u>Tax Incentives</u> 1. Exemption from payment of corporate income tax for leasing companies and clients. 2. Leasing companies are exempted from payment of VAT on import of some types of goods which list is approved by the Government of the Republic of Kazakhstan (Decree of the Government of Kazakhstan “On approval of list of property imported by a lessor for financial leasing purposes under financial lease agreements, which import is exempt from value added tax, and of the rules of composition of such list” dated April 28, 2004). 3. Opportunity to apply accelerated depreciation. Calculation of depreciation allowances per double depreciation rates in the first tax period of operation of the leasing item.</p>	<p>VAT – 20%, 0%,. Zero rate is applied to export operations and in some other cases provided for by the Law of Ukraine “On Value Added Tax” dated 03.04.97. <u>Tax Incentives</u> 1. Opportunity to use accelerated depreciation; 2. Inclusion of lease payments in the production cost in full. Article 3.2.2 of the Law of Ukraine “On value-added tax”: operations of transfer of property into leasing (except for transfer into financial Leasing), and of return of property previously transferred into leasing to the lessor (except for property transferred Into financial leasing) are not subject to tax.</p>



Federal Antitrust Agency reporting and approval requirements in Russia

Under the **Russian Competition Law of July 26, 2006 (Article 35)**, financial organizations are obliged to report to the Federal Antitrust Authorities on the conclusion of any agreements, with the exception of:

- conclusion of agreements with organizations whose share in the trade market is below the level of 10% (for a single service provider market) or 20% (for a market engaging multiple service providers);
- agreements for provision of leasing services;
- agreements concluded in the course of normal business activities.

In the event that the total assets of a leasing company exceed RUR 100 mln (approximately USD 4 mln) as of the last accounting date preceding a transaction (**Government Decree No.334 of May 30, 2007**), prior approval of the antitrust authorities is required for a transaction if it involves:

- purchase of assets of such a leasing company, with total value of the acquired assets in excess of 10% of that leasing company's total assets; or
- purchase of at least 1/3 or more of the shares of such a leasing company, provided that the purchaser possessed null or less than 1/3 shares in the leasing company prior to such a transaction; or
- a number of other transactions, similar to those stated under previous items, entailing acquisition of control over a leasing company (**Article 29 of the Competition Law**).



Impact of anti money laundering legislation in Russia

- According to the Law No.115-FZ of August 7, 2001 On Measures Against Legalization Of Criminal Revenues, a leasing company must file information with the Rosfinmonitoring regarding operations on provision of equipment under leasing agreements, operations on obtaining and providing loans, and other operations (not later than on the next day following the date the respective operation is carried out).
- Furthermore, the bank in which either of the parties to a leasing contract maintains its account should also report on the same operation to the Central Bank of Russia.
- The leasing company is further obliged to maintain internal supervision and audit of the company's activities, as well as to monitor the reporting on the transactions for leasing and provision of loans, in the event the total amount of such transactions exceeds RUR 600,000 (approximately USD 25,000), as well as other transactions requiring reporting to Rosfinmonitoring in accordance with [Article 6 of Law No.115-FZ](#).



Governmental initiatives stimulating the leasing industry in Russia

- Subsidizing of small enterprises out of the federal budget for the purposes of leasing transactions ([Government Decree No.755 of December 9, 2005](#)).
- The rules for providing subsidies to Russian leasing companies for the purpose of compensating part of interest payable on bank loans obtained from Russian credit institutions in 2008-2010 for purchasing domestic aircraft for subsequent leasing out to Russian aviation companies ([Government Decree No.90 of February 16, 2008](#)).
- Providing subsidies to cover part of leasing payments under contracts concluded in 2008-2010 with Russian leasing companies with regards to civil water vessels manufactured in Russia ([Government Decree No.383 of May 22, 2008](#)).
- Decree on customs duty and tax exemption of drilling rigs or platforms functioning under water that are imported by Russian companies for conducting geological investigation, if the equipment leasing contracts are concluded with foreign lessors ([Government Decree No.17 of January 19, 2008](#)).



Other interesting aspects of Russian leasing legislation and judicial practice

I. Estimation of redemption value

- No special statutory regulation: parties are free in agreeing the terms.

II. International leasing features

- Since 1998, Russia is a party to UNIDROIT CONVENTION ON INTERNATIONAL FINANCIAL LEASING, OPENED TO SIGNATURE AT OTTAWA ON 28.V.1988.
- If an international leasing agreement leaves undefined the applicable law, then legal relations shall be regulated by the laws of the lessor's country of origin ([Clause 3 Article 1211 of Russian Civil Code](#)).



III. Court practice on sham nature of the leasing transaction

- Tax authority may declare that a financial lease agreement was entered into in order to disguise the sales contract thus reducing the amounts of taxes payable.

IV. Sale and lease back

- The property seller and lessee are same (Clause 1 Art.4 of Law on Leasing dated 29.10.1998).
- Tax authorities and courts generally recognize the legality of such transactions.
- Tax payers must be ready to prove economic viability of lease-back transactions.



V. Features of financial leasing compared to rent

1. 3-Party Transaction
2. Lessee always must have the right to engage in entrepreneurial activity
3. The subject of the lease agreement can not be land plots and other natural resources
4. The subject of the lease agreement must be used for commercial purposes
5. Opportunity to use accelerated depreciation
6. Tax Incentives and Exemptions
7. Particularities of State supervision And other...



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