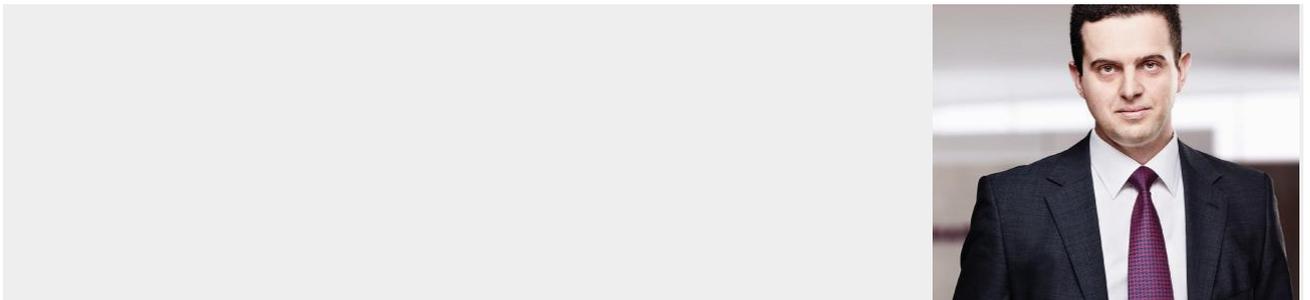


The Reality Today: Sayenko Kharenko's Crimea Desk in Unsettled Times



by Stuckey
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in [The Frame](#)

The Ukrainian Sayenko Kharenko law firm claims to have unique Crimean capabilities and the strongest Crimea Desk of any firm in the country. CEE Legal Matters asked Vladimir Sayenko, one of the founding partners of the firm, to describe how the ongoing crisis in Crimea relating to the recent Russian annexation of the region has affected the firm's Crimean practice and its clients. Mr. Sayenko's comments were made to CEE Legal Matters on April 9, 2014.



Vladimir Sayenko

CEELM: I know your firm has rather unusual experience and expertise in Crimea. Can you describe it?

V.S.: Indeed, historically Crimea has been a priority region for us due to the background of our team. About three years ago we merged with the largest law firm in Crimea. The core team from that firm, including the founding partner, Mr. Sergey Pogrebnoy, moved to Kiev and joined our office here. Some lawyers who wanted to stay in Crimea continued to operate independently and dealing with

local matters in that region. Larger international projects were handled by our firm, but whenever a local presence was required, we had a reliable team on the ground that was effectively integrated into whatever we did in Crimea.

CEELM: And how does Sayenko Kharenko operate in Crimea today?

V.S.: Today we continue to operate under the same model, but responding to client demand we increased our capacity. We have a strong Crimean Desk within our firm – a group of five lawyers who moved from Crimea and became the core of our litigation practice, plus lawyers from our trade, corporate and banking teams. The lawyers who moved from Crimea have always been doing various things, even if it's not litigation ... if there was anything related to Crimea they would jump on it, because it's their home region, they have the feel for where the problems may be, for example, when doing a due diligence of a real estate piece. And now with current political crises on a personal level they are very involved. Their families and friends are there, they follow all the developments closely, they know the background of all the key officials in Crimea and have a much better understanding of what's going on there. We could not miss this opportunity to offer clients unique insights and local knowledge that make our legal advice and our solutions a lot more viable. In addition, we have started working a lot more with the lawyers in Crimea who used to be part of the same firm with our Crimean team, but are now independent for a number of years. And we still want them to be fully independent, because of the law currently under consideration in the Ukrainian parliament, which may restrict our ability, as a Ukrainian law firm from Kiev, to provide services to clients in Crimea. Hopefully, these restrictions won't be implemented. But even in the worst case scenario, we won't suffer because legally our colleagues in Crimea are completely independent and unaffiliated, yet fully reliable on a personal level. We work essentially as an integrated team, irrespective of the formal boundaries.

CEELM: What about business and your clients?

V.S.: Obviously, the clients are very concerned with the current legal uncertainties, and they come with numerous problems that arise in their day-to-day operations. It's impossible to trade properly, it's impossible to sell and register real property, it's impossible to pay taxes and operate as a Ukrainian company in Crimea, so you have to incorporate as a new entity there or somewhere in "continental" Russia. The current situation there has created a lot of problems for businesses, and we're doing our best to help solve them as quickly and efficiently as possible.

CEELM: So are things on hold for now, or is there a new reality on the ground that you have to deal with?

V.S.: Things are a mess at the moment, if I may say bluntly, without trying to be politically correct. We are facing a reality where, for a legal standpoint, Ukraine continues to treat Crimea as part of its territory, while at the same time Russia is doing the same thing – they view Crimea as part of their territory – and they physically control it. Russia has a clear advantage there now, despite the lack of international recognition of the accession. Businesses have to adapt to that somehow. These are Ukrainian businesses – all of the businesses that are in Crimea, they used to be Ukrainian companies, incorporated and operating within the framework of Ukrainian law. Many of them are branches of companies that are incorporated elsewhere in Ukraine. So for them to restructure their operations is a very difficult task. And at the moment it is still not entirely clear what the best solution will be in

each particular case. So for a trading company, for instance, it is easier to transfer the assets to some Russian affiliate and operate as a Russian company in Crimea, than to continue the current operations. For someone else this may be impossible.

Those are the type of issues we are facing, and for which we are trying to come up with solutions, but for many problems the solutions are not there yet. Since Ukraine sees Crimea as part of its territory, there is no customs border, so you can not clear goods through customs. But then the Russians view it as Russian territory, so if you do not clear goods through customs you are not supposed to enter the country. Yet, today trucks can still go through the border and goods reach Crimea without any customs. That's the reality today, but this may change tomorrow, as the situation evolves rapidly. As you can see, the reality is very different from the legal position, and we also have to take that into account, be practical on the one hand, but anticipate the legal risk on the other hand.

CEELM: What's the most common issue you've had to deal with involving Crimea in the past three weeks?

V.S.: The most common issue is that many people want to sell their assets in Crimea, and if you're talking about real estate, it's impossible to do that. Because the register of the property is in Ukraine. However, Ukrainian notaries in Crimea are not able to work, they cannot access the register, for example. You can not really transfer property in Crimea at the moment without a register. Still there are some solutions. You can go to the Kherson region in Southern Ukraine and try to do this transaction ... but the technical documents are in Crimea, and you cannot take them out to a Ukrainian notary in a different region. So what do you do, is a big question. Now we have developed some proposals and we are waiting for some solutions, and we think the local authorities in Crimea will allow access to the technical documentation, and this will allow transactions to take place. But it hasn't happened yet. So when developing legal solutions we have to be practical and we have to take into account laws of two jurisdictions with local peculiarities of Crimea.

CEELM: What was the name of the firm you merged with in Crimea?

V.S.: "Business Law Audit". We merged only with the legal branch of that firm.

CEELM: Would you say of the Ukrainian firms you have the largest Crimean practice?

V.S.: Well, I would say that we are the only large firm that has any systematic large-scale operations in Crimea. The big firms have never seen Crimea as an interesting market. That was exactly the reason we didn't keep an office there. We kept the people – we incorporated them into our team in Kiev – but we said we don't need the office in Crimea because commercially it is not attractive, it's of no use to us. Well, it was of no use to us at the time, but who could have predicted what would happen! Now that Russia has established its jurisdiction over Crimea, we need to deal with client demands, so we are reestablishing the links to those people.

CEELM: Are those people on your Crimean Desk going back and forth often now?

V.S.: Well, the Crimean Desk within our firm stays in Kiev. Obviously, our lawyers travel back and forth for personal reasons, for client matters, but they spend most of their time in Kiev. Our colleagues from Crimea also travel to Kiev occasionally. Unfortunately, soon there may be some limitations imposed on the ability of Ukrainians to travel to Crimea. We closely follow all the legal

developments. Our partners participate in the working group within the Ukrainian parliament that is preparing the draft law governing the status of Crimea as an occupied territory for the second reading. If we are not able to convince the parliamentarians to relax the restrictions than we are fully prepared to continue our operations without putting our lawyers in Kiev or our Crimean colleagues at risk.

CEELM: Is there any suggestion that with all the confusion and uncertainty this could be good for business in the short term? You must have a lot of clients needing your help right now.

V.S.: Frankly, I wish we did not have all this situation in Crimea. And even all the demand and all the clients with their current headaches related to asset protection. Again, we have always had more work in Crimea than any other firm, I suspect. And I wish we could continue that kind of work – transactional support and investment projects – rather than dealing with the current security issues. We prefer long-term relationships with clients, while the current restructurings will be completed quickly and the flow of legal work will dry out.

CEELM: What percentage of the firm’s work or clients would you say involve Crimea? 5%?

V.S.: Yes, something like that, maybe slightly more. In real numbers that’s still quite significant, as we are one of the largest firms on the Ukrainian market.

CEELM: My last question for you is a personal one. Do you have strong feelings about what’s going on in Crimea?

V.S.: Well, I think most Ukrainians do. Speaking in layman’s language, it’s not a very pleasant situation when a country that has always told us that we are brothers almost, suddenly stabs you in the back and occupies part of your territory. It’s like having your good old buddy living in a very big house next door suddenly moving into one of the rooms in your house at the time when you were ill and could not get out of bed. I guess most people would take it personally. But as a lawyer I am also concerned with the issues of international security and rule of law. It looks like the good old Latin saying *Pacta sunt servanda* (“agreements must be kept”) is no longer relevant and international treaties can no longer be relied upon. It is very worrying to live in the age when on the international arena the one with the strongest army can do whatever he wants.

Note: The “Kiev” spelling of the Ukrainian capital is used in this article, and across all CEE Legal Matters publications, instead of the “Kyiv” spelling. Mr. Sayenko was kind enough to accept that our editorial policy for the “Kiev” spelling simply reflects a commitment to consistency in such matters, and does not reflect any personal or political preference.