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The International Comparative Legal Guide to: Telecommunication Laws and Regulations 2012

A practical cross-border insight into
telecommunication laws and regulations

Published by Global Legal Group
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Penny Smale

Managing Editor

Alan Falach

Deputy Publisher

George Archer

Publisher

Richard Firth

Published by

Global Legal Group Ltd.
59 Tanner Street
London SE1 3PL, UK
Tel: +44 20 7367 0720
Fax: +44 20 7407 5255
Email: info@glgroup.co.uk
URL: www.glgroup.co.uk

GLG Cover Design

F&F Studio Design

GLG Cover Image Source

Stock Xchange

Printed by

Information Press Ltd
August 2011

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ISBN 978-1-908070-06-7

ISSN 1754-0100



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Ukraine



Nazar Chernyavsky



Orest Matviychuk

Sayenko Kharenko

1 Framework

1.1 What are the overall policies and objectives for the electronic communications industry and have these been published in draft or final form? What legislation is relevant to telecommunications and radio frequencies?

The principal legislative acts setting out the overall policies and objectives for and regulating the electronic communications industry are the Law of Ukraine “On Telecommunications” dated 18 November 2003, as amended (*the Telecommunications Law*) and the Law of Ukraine “On Radio Frequency Resource” dated 1 June 2000, as amended (*the Radio Frequency Law*). In addition, the Government has adopted the Telecommunications Development Concept, which sets forth key goals and strategies for the development of the telecommunications industry in Ukraine.

The operation of the Ukrainian telecommunications industry is subject to the following key principles: to ensure interconnection of the telecommunications networks, to promote competition, to ensure efficiency and transparency of regulation, and to encourage an efficient use and management of radio frequencies and numbering resources.

The overall policies and objectives for the electronic communications industry in Ukraine are adjusted to the principles adopted by the EU.

1.2 Is Ukraine a member of the World Trade Organisation? Has Ukraine made commitments under the GATS/GATT regarding telecommunications and has Ukraine adopted the WTO Basic Telecommunications Agreement?

Ukraine became a member of the World Trade Organisation on 16 May 2008. Ukraine did not make any commitments under the WTO Agreement on Basic Telecommunications Services either at the time of its accession or unilaterally (ratification by Ukrainian parliament). However, Ukraine has made general commitments under the GATS regarding telecommunications services.

1.3 How is the provision of electronic communications networks or services regulated? Is the provision of electronic communications networks or services open to competition in Ukraine?

The provision of electronic communications networks or services in Ukraine is regulated by the Telecommunications Law, the Radio Frequency Law and through implementing regulations of the respective state authorities. The Telecommunications Law

establishes, among other things, competences of governmental authorities, access to the telecommunications market, interconnection of telecommunications networks, administration, pricing and right of way. The Radio Frequency Law sets out rules for allocation, assignment, interrelation and use of the radio frequency spectrum.

The provision of electronic communications networks or services in Ukraine is a very competitive market since there is no natural monopoly in the telecommunications in general.

1.4 Which are the regulatory and competition law authorities? How are their roles differentiated? Are they independent from the government?

The telecommunications industry in Ukraine is regulated by the Cabinet of Ministers of Ukraine (*the Government*), the Ministry of Infrastructure of Ukraine, the National Commission for State Regulation of Communications and Informatization (*the NCRCI*) and other governmental authorities. The Government and the Ministry of Infrastructure are responsible for state management of telecommunications industry, while the main regulator of the telecommunications industry, the NCRCI, is in charge of, *inter alia*, licensing and registration, tariff regulation, determining and analysing of telecommunications services markets, interconnection regulation, allocation of numbering resources and settlement of disputes relating to interconnection. The activities of the NCRCI are directed and coordinated by the Government.

The Antimonopoly Committee of Ukraine (*the AMC*) is a state authority with a special status, entrusted with the provision of state protection of competition in the field of entrepreneurial activity including in the telecommunication sector. In addition, the NCRCI is vested with the authority to inform the AMC of any violation of competition law if it arises.

1.5 Are decisions of the national regulatory authority able to be appealed? To which court or body?

Any legal entity or individual affected by a decision of the NCRCI may bring a court action to an administrative court seeking to appeal against such decision.

2 Authorisation

2.1 What types of general and individual authorisations are used in Ukraine?

Currently, Ukraine remains committed to developing the general

authorisation regime, however, it continues to use individual authorisations.

2.2 Please summarise the main requirements of Ukraine's general authorisation.

Based on recent amendments to the Telecommunications Law, an undertaking may carry out telecommunications activities upon the entering of its details into the operators and providers register and such activities can be carried out without a licence unless such activities are subject to licensing. Where a licence is not required, an undertaking must comply with the rules of telecommunications activities. The NCRCI has prepared a draft of such rules but they have not yet been adopted.

2.3 In relation to individual authorisations please identify their subject matter, duration and ability to be transferred or traded.

Pursuant to the Telecommunications Law, the following types of telecommunications activities are subject to licensing:

- provision of local, inter-city and international fixed-line telephone services, with the right to maintain and operate telecommunications networks and lease communications channels;
- provision of local, inter-city and international fixed-line telephone services using wireless access to the telecommunications network, with the right to maintain and operate telecommunications networks and lease communications channels;
- provision of mobile telephone services, with the right to maintain and operate telecommunications networks and lease communications channels; and
- provision of maintenance and operation services of telecommunications networks, on-air and cable broadcasting and television networks.

Pursuant to the Radio Frequency Law, an undertaking which uses radio frequency spectrum must obtain a licence for the use of radio frequencies for telecommunication activities, a permit for the utilisation of radio, electronic and/or transmitting devices (*the Device Permit*) and obtain a document issued by the Ukrainian State Centre of Radio Frequencies as a proof of electronic compatibility of radio devices (*the Compatibility Conclusion*). According to recent amendments, if an undertaking imports radio electronic and transmitting devices, it must obtain a permit for such importing activities.

In addition to the above, should there be a need for the numbering resource, a permit for the allocation of numbering resource is required for an operator.

The duration of a telecommunications licence and a licence for the use of radio frequency resources is determined by the NCRCI on a case-by-case basis and may not be less than 5 years. The term of a licence may be extended (renewed) upon a licence holder's request at least 4 months prior to the expiration of the licence. Generally a telecommunications licence is granted on a non-competitive basis. However, if, *inter alia*, there is a decision of the NCRCI which limits the number of licences, a licence must be granted on a competitive basis. Furthermore, telecommunications licences and licences for the use of radio frequency resources may be revoked under certain circumstances, including if the information submitted by the licence holder is subsequently found to be untrue, or if the licence holder violates the licensing conditions or fails to rectify violations thereof.

Telecommunications licences and licences to use radio frequencies may not be transferred, assigned or traded. Nonetheless, upon joint application of the operators who use radio frequency spectrum, such radio frequencies may be reallocated in order to optimise the usage of spectrum. The numbering resource may not be transferred either to another operator save for a secondary transfer.

3 Public and Private Works

3.1 Are there specific legal or administrative provisions dealing with access and/or securing or enforcing rights to public and private land in order to install telecommunications infrastructure?

Pursuant to the Telecommunications Law, telecommunications operators have rights of way over the land designated for communications purposes. Particularly, operators may require the owners or users of land plots to provide an easement for laying out the underground telecommunications networks and/or repairing such networks. The amount of compensation for the exercise of easements is to be established by the Government.

3.2 Is there a specific planning or zoning regime that applies to the installation of telecommunications infrastructure?

No specific planning or zoning regime is applicable to the installation of telecommunications infrastructure in Ukraine. The installation of infrastructure must be performed in compliance with the general planning regime (i.e., to obtain relevant authorisations).

3.3 Are there any rules requiring established operators to share their infrastructure, e.g. masts, sites, ducts or cables (i.e. dark fibre)? Are there any proposals to mandate 'passive access' to such basic infrastructure?

Ukrainian law provides for the rules that require the owner of an electronic communications cable duct to provide access to its cable duct to other telecommunications operators or providers upon their request. As an alternative, the owner of a cable duct may propose other options or refuse to provide access. The only circumstances when the owner may refuse to provide access to the cable duct are: (i) if the requesting party fails to make payments for three months for the provided access to the duct; or (ii) if the requesting party fails to rectify defects in the provided documentation within ten business days of a request to rectify such defects.

National roaming services have been available to Ukrainian subscribers since July 2010, allowing subscribers of one operator to receive mobile communications services through the networks of other operators. The NCRCI is currently working on the draft resolution on the provision of national roaming services.

4 Access and Interconnection

4.1 How is network-to-network interconnection and access mandated?

Pursuant to the Telecommunication Law, network-to-network interconnection is carried out based on the agreements on interconnection of telecommunications networks between the operators. The NCRCI sets out the requirements applicable to such agreements and may settle interconnection disputes. Telecommunications operators are required to ensure the

interconnection to their networks by other interested operators so that such other operators are able to provide telecommunications services of an appropriate quality.

4.2 How are interconnection or access disputes resolved?

If the operators fail to settle an interconnection dispute through negotiations and there is no court judgment or pending proceedings relating to that dispute, such dispute may be resolved by the NCRCI through extrajudicial procedure. The NCRCI's decision is binding on the operators in the dispute but they, however, reserve a right of appeal before the relevant courts.

4.3 Which operators are required to publish their standard interconnection contracts and/or prices?

Operators holding a monopolistic (dominant) position are required to submit to the NCRCI an offer for interconnection with their telecommunications networks. The NCRCI, not less than once a year, publishes in its bulletin such offers for interconnection. The information published must include a list of points for interconnection, as well as organisational, commercial and technical conditions of interconnection.

4.4 Looking at fixed, mobile and other services, are charges for interconnection (e.g. switched services) and/or network access (e.g. wholesale leased lines) subject to price or cost regulation and, if so, how?

Tariffs for interconnection and network access are generally determined by the telecommunications operators on a contractual basis. At the same time, the settlement rate for traffic transmission services and tariffs for access to networks of operators holding a monopolistic (dominant) position and/or operators with significant market power are determined by the NCRCI.

4.5 Are any operators subject to: (a) accounting separation; (b) functional separation; and/or (c) legal separation?

Telecommunications operators are not generally subject to accounting, functional or legal separation. The Telecommunications Law, however, sets forth the separation of administrative and regulatory functions in the telecommunications sector. Besides, the undertakings rendering telecommunications services are divided into operators and providers. Whilst an operator may maintain and operate telecommunications networks and lease communications channels, a provider is not allowed to do so and can perform its activity based on an agreement with an operator and a copy of a licence of such operator.

4.6 How are existing interconnection and access regulatory conditions to be applied to next generation (IP-based) networks?

There are no specific rules applicable to next generation (IP-based) networks. Such networks are subject to the existing interconnection and access regulatory conditions outlined above.

4.7 Are owners of existing copper local loop access infrastructure required to unbundle their facilities and if so, on what terms and subject to what regulatory controls? Are cable TV operators also so required?

Neither owners of copper local loop access infrastructure nor cable

TV operators are required to unbundle their facilities.

4.8 Are there any regulations or proposals for regulations relating to next-generation access (fibre to the home, or fibre to the cabinet)? Are any 'regulatory holidays' or other incentives to build fibre access networks proposed? Are there any requirements to share passive infrastructure such as ducts or poles?

There is neither a regulation relating to next-generation access, nor any "regulatory holidays" incentives in the telecommunications industry. There are no requirements to share passive infrastructure other than those outlined in question 3.3 above.

5 Price and Consumer Regulation

5.1 Are retail price controls imposed on any operator in relation to fixed, mobile, or other services?

The NCRCI establishes the following maximum or fixed tariffs: (i) tariffs for public (universal) telecommunications services (i.e., universal access, local telephony, as well as dialling emergency and informational services and public payphones); (ii) tariffs for leases of electrical telecommunications channel by operators who hold monopolistic (dominant) position in the market of such services; (iii) settlement rates for traffic transmission services and tariffs for access to telecommunications networks of operators with significant dominance in the relevant market or operators holding a monopolistic (dominant) position in the telecommunications market; and (iv) tariffs for the provision of use of a cable duct.

5.2 Is the provision of electronic communications services to consumers subject to any special rules and if so, in what principal respects?

The telecommunications operators provide telecommunications services to consumers in accordance with the Telecommunications Law, the law on consumer protection and the Rules on Rendering of Telecommunications Services (*the Telecommunications Rules*). The Telecommunications Rules specify the following in relation to the provision of such services: the procedure for billing and settlement of provided services; consideration of customers' complaints; and responsibility of customers and providers.

6 Numbering

6.1 How are telephone numbers and network identifying codes allocated and by whom?

The NCRCI allocates and assigns a numbering resource and issues numbering permits to telecommunications operators. Operators intending to obtain the numbering resource must apply to the NCRCI and the latter issues or refuses a respective permit within one month. Subject to payment of the fee for allocation of the numbering resource, the permit is issued within three days. Telephone numbers for emergency services and for social services not aiming to receive profit are allocated on a free of charge basis.

6.2 Are there any special rules which govern the use of telephone numbers?

The Telecommunications Law and the National Plan of Numbering

of Ukraine set out the basics of allocation and use of telephone numbers. The NCRCI has adopted a resolution which specifies allocation procedure, including allocation of short number for particular services, permit issuance procedure and grounds for removal of the numbering resource.

Based on recent amendments to the Telecommunications Law, a subscriber of one operator is allowed to skip to another operator without changing his or her telephone number (fixed or mobile). However, a special regulation covering this is still to be adopted.

6.3 How are telephone numbers made available for network use and how are such numbers activated for use by customers?

A telecommunications operator holding a respective licence may apply to the NCRCI for the allocation of the numbering resource, in accordance with the National Plan of Numbering of Ukraine. In turn, the operator assigns telephone numbers to customers and telecommunications providers.

6.4 What are the basic rules applicable to the 'porting' (i.e. transfer) of telephone numbers (fixed and mobile)?

The Telecommunications Law envisages the possibility of "porting" of telephone numbers (fixed and mobile). At the beginning of 2011 the NCRCI started considering a draft regulation on porting of telephone numbers but such regulation has not yet been adopted.

7 Submarine Cables

7.1 What are the main rules governing the bringing into Ukraine's territorial waters, and the landing, of submarine cables? Are there any special authorisations required or fees to be paid with respect to submarine cables?

Laying down of cables on the seabed or coastline is governed by the Water Code of Ukraine dated 6 June 1995 and a respective regulation. In order to carry out such activity, an undertaking must receive a permit from the respective department of Ministry of Ecology and Natural Resources of Ukraine, the issuance of which is free of charge.

8 Radio Frequency Spectrum

8.1 Is the use of radio frequency spectrum specifically regulated and if so, by which authority?

The Radio Frequency Law is the principal act which sets out the basics of radio frequency regulation in Ukraine. In addition, the Government has approved the Plan of Radio Frequencies Usage (*the Frequency Plan*) and the National Table of Allocation of Radio Frequencies.

The Government has the power relating to, *inter alia*, the coordination of other state authorities in the radio frequencies sector and approval of fees for the issuance of licences for use of radio frequencies. The NCRCI is the main governmental authority in this sector and is vested with a number of powers relating to radio frequencies. Besides, the National Council for Television and Radio Broadcasting and the General Staff of Armed Forces of Ukraine are also empowered to regulate the radio frequency spectrum in Ukraine.

8.2 How is the use of radio frequency spectrum authorised in Ukraine? What procedures are used to allocated spectrum between candidates - i.e. spectrum auctions, comparative 'beauty parades', etc.?

The Telecommunications Law and the Radio Frequency Law stipulate that a licence for the use of radio frequencies has to be obtained by an operator in order to carry out telecommunications services. Such licence is issued for particular bands and channels of radio frequencies in specific regions or cities.

The issuance of radio frequency licence is subject to the availability of radio frequencies resource. A licence is awarded on a competitive basis (through an auction or tender) if the requested demand for the frequency spectrum exceeds its availability. The Telecommunications Law specifically prescribes certain conditions (e.g. term and publication requirements) for the auction or tender procedure adopted by the NCRCI.

8.3 Are distinctions made between mobile, fixed and satellite usage in the grant of spectrum rights?

The allocation of frequency spectrum is carried out in accordance with the Frequency Plan, which provides for a distinction between mobile, fixed and satellite usage. In particular, the Frequency Plan specifies which spectrum is allotted for which radio devices.

8.4 How is the installation of satellite earth stations and their use for up-linking and down-linking regulated?

The installation of satellite earth stations is subject to the same regime as installation of other structures and requires certain authorisations and permits.

In particular, under Ukrainian law, before construction works can begin, an undertaking must submit the notification on commencement of construction works and register a declaration on commencement of such works with the local architectural control authorities. In certain cases, a construction permit is also required. Furthermore, the certificate on conformity of the newly constructed building is required for commissioning of the constructed object.

8.5 Can the use of spectrum be made licence-exempt? If so, under what conditions?

Pursuant to the Radio Frequency Law, an undertaking is not required to obtain a spectrum licence in order to utilise radio frequency spectrum if it does not render telecommunications services.

8.6 If licence or other authorisation fees are payable for the use of radio frequency spectrum, how are these applied and calculated?

The following fees are payable in connection with the use of radio frequency spectrum: (i) fees for issuance or reissuance of a spectrum licence, the Compatibility Conclusion and the Device Permit; (ii) monthly charges for the use of radio frequencies; and (iii) fees for other services relating to the allocation of frequency spectrum.

The fees for the issuance or reissuance of a spectrum licence depend on the type of the radio device, the range of bands and the covered territory. Such fees varied from UAH 170 (or EUR 15) to UAH 1,360,000 (or EUR 118,261) per MHz in each region. The Ukrainian State Centre of Radio Frequencies also charges fees for

issuance of the Compatibility Conclusion and the Device Permit, as well as for other rendered services. The monthly charges are determined in accordance with the Tax Code of Ukraine dated 2 December 2010 and vary from UAH 0.36 (or EUR 0.03) to UAH 13,909.96 (or EUR 1,210) per MHz. Certain governmental authorities and radio amateurs are exempted from payment of monthly charges for the use of radio frequencies.

8.7 Are spectrum licences able to be traded or sub-licensed and if so on what conditions?

Licences for use of radio frequency spectrum may not be traded or sub-licensed in Ukraine. In particular, if a licence holder transfers a licence to another undertaking, the licence will be annulled by the NCRCI.

9 Data Retention and Interception

9.1 Are operators obliged to retain any call data? If so who is obliged to retain what and for how long? How are data protection (privacy rules) applicable specifically to telecommunications implemented in Ukraine?

Telecommunications operators and providers must take technical and organisational measures in order to protect the information handed over telecommunications networks. The Telecommunications Rules provides for an obligation of operators and providers to keep records of telecommunications services during the general 3-year limitations period.

As a general rule, operators and providers must ensure the confidentiality of information about customers and services rendered. The only exceptions to this rule can be found in statutory provisions.

9.2 Are operators obliged to maintain call interception (wire-tap) capabilities?

Ukrainian law requires telecommunications operators to maintain wire-taps on their networks at their own cost in order to allow investigations by the relevant state authorities.

9.3 What is the process for authorities obtaining access to retained call data and/or intercepting calls? Who can obtain access and what controls are in place?

The Constitution of Ukraine prohibits any collection, storage, utilisation and circulation of confidential information about individuals without their consent. Hence, law enforcement agencies may retain call data and/or intercept calls of individuals only upon their consent or on the basis of a court ruling.

10 The Internet

10.1 Are conveyance services over the internet regulated in any different way to other electronic communications services? Which rules, if any, govern access to the internet at a wholesale (i.e. peering or transit) and/or retail (i.e. broadband access) level? Are internet service providers subject to telecommunications regulation?

Ukrainian legislation does not specifically regulate conveyance services over the internet. However, such services are under the

general regulatory regime of the Telecommunications Law and the Telecommunications Rules.

10.2 How have the courts interpreted and applied any defences (e.g. 'mere conduit' or 'common carrier') available to protect telecommunications operators and/or internet service providers from liability for content carried over their networks?

Under Ukrainian law, operators or providers are not liable for content carried over their networks. As a general rule, a person who is the owner of the content shall bear a responsibility for such information, however no precedents have been established in this respect.

10.3 Are telecommunications operators and/or internet service providers under any obligations (i.e. provide information, inform customers, disconnect customers) to assist content owners whose rights may be infringed by means of file-sharing or other activities?

Telecommunications operators and/or internet service providers in Ukraine are under no obligation to assist content owners whose rights may be infringed by means of file-sharing or other activities. Besides, operators and providers are not liable for direct or indirect losses incurred by their customers or third parties in connection with the use of the internet.

10.4 Are telecommunications operators and/or internet service providers able to differentially charge and/or block different types of traffic over their networks? Are there any 'net neutrality' requirements?

The Ukrainian telecommunications legislation does not require telecommunications operators and/or internet service providers to differentiate charges for different types of traffic over their networks. In case of infringement of the Telecommunications Rules or the respective service agreement, operators or providers may suspend the provision of internet services to their customer(s). There are no explicit requirements relating to "network neutrality" in Ukraine.

10.5 How are 'voice over IP' services regulated?

Ukrainian law does not specifically regulate "voice over IP" services and general telecommunications rules apply to such services. In particular, the definition of "telecommunications" given in the Telecommunications Law covers "VoIP" services.

IP-telephony services used to be subject to licensing. The requirement to have a licence for such services was abolished in 2009.

10.6 Are there any rules to prevent, restrict or otherwise govern internet or email communications, in particular, marketing and advertising communications?

Pursuant to the Telecommunications Rules, customers are prohibited to distribute certain type of messages through the internet without a prior consent of the addressee, as otherwise such messages would be qualified as spam. Also customers may not order or offer spam via the internet.

11 USO**11.1 Is there a concept of universal service obligation; if so how is this defined, regulated and funded?**

The Telecommunications Law provides for public (universal) telecommunications services which include universal access, local telephony, as well as dialling emergency and information services and public payphones. Starting from July 2011 universal telecommunications services may be provided through both cable and wireless access devices.

The NCRCI may oblige telecommunications operators holding a monopolistic (dominant) position or operators with significant market power in the respective market as well as regional fixed-line operators to provide universal services in certain regions of Ukraine where the level of sufficiency of such services has not been met.

12 Foreign Ownership Rules**12.1 Are there any rules restricting direct or indirect foreign ownership interests in electronic communications companies whether in fixed, mobile, satellite or other wireless operations?**

Ukrainian law does not prohibit direct or indirect foreign ownership of electronic communications companies. At the same time, the telecommunications services in Ukraine may be provided only by undertakings registered and operating in Ukraine.

13 Future Plans**13.1 Are there any imminent and significant changes to the legal and regulatory regime for electronic communications?**

Over the past few years, the Ukrainian legislation in telecommunications sector has been substantially amended with a view to mater the rapid growth of this industry. The regulatory authorities continue to work on the development of the telecommunications regulatory framework, focusing on the following key areas: further implementation of EU regulatory principles; implementation of *ex ante* regulation; gradual transition to digital broadcasting; and establishment of a universal service fund.

In addition, the NCRCI has published several draft regulations relating to facilitation of the existing rules and regulation of access to electronic communications cable ducts, provision of national roaming services, etc.

**Nazar Chernyavsky**

Sayenko Kharenko
10 Muzeyny Provulok
Kyiv 01001
Ukraine

Tel: +380 44 499 6000
Fax: +380 44 499 6250
Email: NChernyavsky@sk.ua
URL: www.sayenkokharenko.com

Mr. Chernyavsky, a partner at Sayenko Kharenko, focuses on cross-border finance, debt and equity capital markets transactions. Mr. Chernyavsky has also developed outstanding niche expertise in telecommunications and was named among top three IT and Communications lawyers in Ukraine according to *Ukrainian Law Firms 2011 Who's Who* research by *Yuridicheskaya Praktika*, the leading legal publishing house in Ukraine.

Mr. Chernyavsky's experience includes advising on transactions involving the largest international and local telecommunication companies (Astelit - Life TM, Cosmote-Mobile Telecommunications, Kyivstar, Ukrainian Radiosystems - Beeline TM, Ukrtelecom, etc.) on a variety of issues related to the application of industry-specific legislation, licensing, equity and debt financing and other matters.

Mr. Chernyavsky completed Intercollegiate LL.M programme at Queen Mary College of the University of London and earned LL.M degree, *summa cum laude*, from the School of International Law of Kyiv National Taras Shevchenko University.

**Orest Matviychuk**

Sayenko Kharenko
10 Muzeyny Provulok
Kyiv 01001
Ukraine

Tel: +380 44 499 6000
Fax: +380 44 499 6250
Email: OMatviychuk@sk.ua
URL: www.sayenkokharenko.com

Orest Matviychuk is an associate at Sayenko Kharenko. Mr. Matviychuk specialises in international finance and capital markets. Mr. Matviychuk advises local and international clients in a variety of industries and sectors, including telecommunications, energy, and natural resources on the most sophisticated transactional matters.

Mr. Matviychuk earned Master's Degree in Law from the National University of State Tax Service of Ukraine.

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