



Real Estate Market Report 2008
Kyiv, Ukraine

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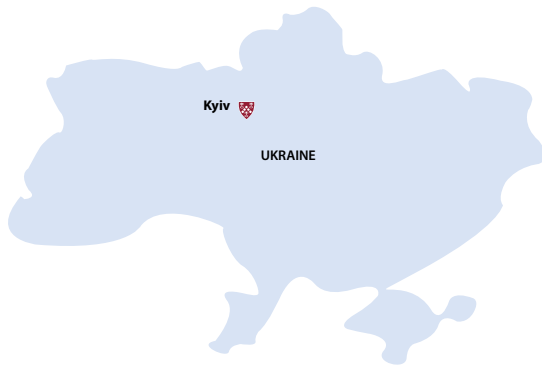
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Kyiv, Ukraine

Economy

Ukraine's GDP grew 7.3% in 2007 after growing 6.5% in 2006. Projections are for the economy to continue growing 5-7% in the years ahead.

Inflation hit 8.6% in 2007, but unemployment is down to a low of 7.4% and dropping at the beginning of 2008.

The local currency, the Ukrainian hryvnia (UAH) has remained in a tight band of 5.00 - 5.05 UAH to the US dollar since 2005.

Office

2007 saw a sharp rise in rents

Supply

Developers brought 45,000 sqm of new class A space to market in 2007, bringing the total amount of class A space to 120,000 sqm. While there is a total of 585,000 sqm of office space in Kyiv, only 350,000 sqm can be considered modern class A or class B space.

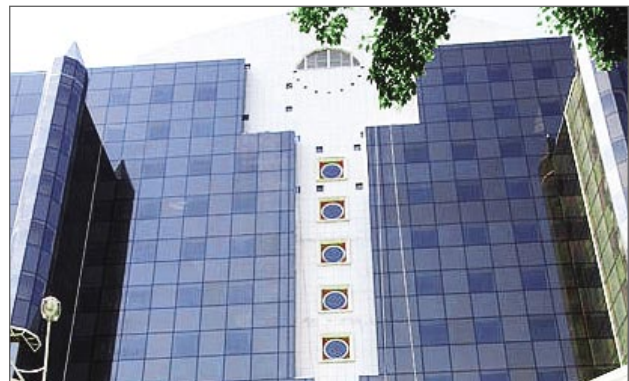
Recent Developments

For leasing opportunities in these and other buildings, call Ober-Haus on +380 44 287-8770.

Parus - a new 75,000 sqm mixed-use building with 45,000 sqm of office space. Developed by Mandarin Plaza in 2007, the building claims Interpipe, bank Renesans, Sokrat, Olimp as major tenants. The building is 100 % occupied, and rents start at US\$ 100 per sqm per month.

Europe Plaza - a retail and office complex with 40,000 sqm area, including 10,000 sqm of office space, in operation since 2005. Major tenants include Loctite, Wellton, and FC factoring. Rents range from US\$ 50-80 per sqm per month.

Iceberg - completed in 2007, Iceberg has 25,000 sqm of office space. Rents start at US\$ 86 per sqm per month.



• Iceberg business centre is considered the largest of high-class office centres in the capital.

New Projects

For leasing opportunities in these and other buildings, call Ober-Haus on +380 44 287-8770.

Mirax Plaza - Russian developer Mirax Group will build two 46-storey towers, reaching 192 metres, with mixed use, on Gluboczicka Street in Kyiv. Total office space will be over 100,000 sqm, to be delivered by the end of 2010.

Kyiv City - a newly announced, 1 billion USD mixed-use project to be built by Russian Developer MCG, the developer of Moscow's Imperial tower and Eurasia tower. Kyiv City will consist of six

Cilina - A mixed use office/retail scheme with 134,000 sqm of office space is under development by IWT Investments. The building on Serafimowicza Street will reach 22 storeys in height.

Pogol Commercial Park - This project by HCM-group company will deliver 132,840 sqm of new office space in the centre of Kiev in 2008-2010. Asking rents are US\$ 65 per sqm.

Merks-2 - This project by developer Giprostroymashina will deliver 10,000 sqm of new office space in the centre part of Kiev in 2008. The building will have three levels of underground parking, in an object is in the architectonically-guard area of Kievo Pecherskoy Lavry. Asking rents are US\$ 60 per sqm.

Bussines-park Alacor - company Immoeast Immobilien Anlagen AG (Vienna) and Ukrainian developer company Alacor, with 26,900 sqm of office space.



• KOMOD, spectacular multi-anchor retail, office and entertainment centre.

Demand

Soaring demand pushed vacancy rates below 5% by the start of 2008. The trend in demand is away from offices located in old buildings towards new buildings that offer modern amenities, comfortable work areas, whether in the city centre or in new, but cheaper, suburban office space. Given the growing demand for office space, the vacancy rate will remain between 3-5% in the years ahead.

Offices located in the central business district and in those close to the inner city or metro stations are, as usual, in the greatest demand.

Rents

Class A rents leaped 27% in 2007 to an average of US\$ 100 per sqm, as companies scrambled to take the best spaces available.

Class B space can be leased for an average of US\$ 60 per sqm, and even poorer grade Soviet-era stock rents for at least US\$ 40 per sqm per month.

Retail

The boom is just beginning for retail space

Supply

Over 60,000 sqm of new retail space was built in 2007, bringing the total to 415,000 sqm. The amount of modern retail space remains small, and it will take many years for Kyiv to catch up in retail with Central European cities like Warsaw, which has 1.3 mln sqm of new retail area.

New Projects

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Key existing and upcoming retail projects include:

Property	Size	Year of completion
Eney	65,000	2009
Mirax Plaza	34,000	2009
TRC	140,000	2008
Bolshevik II	23,000	2008
Sors-Invest	30,000	2008
Cilina	170,500	2010
Blockbuster	30,000	2008
Materik II	33,000	2008
Dneprovska Pristan	85,000	2008
Esplanada	125,000	2008
Multiplex Plaza	35,000	2008
Darnitsky	25,400	2008
Kvadrat Avora	40,000	2008
Amstor	60,000	2009
Kvadrat na Troeshene	50,000	2009
Magelan	14,000	2008

Cilina - A mixed use office/retail scheme with 170,500 sqm of retail space and 134,000 sqm of office space is under development by IWT Investments. The building on Serafimowicza Street will reach 22 storeys in height.

Demand

Strong consumer spending growth drives demand for quality retail centre spaces, pushing vacancy rates under 3%. The recent entrance of reputed Western brands has heightened competition for space, including IKEA, Auchan, Ramstore, Metro, Ava, OBI, Bata, Leroy Merlin, and also Russian networks such as Sedmoy Kontinent, Perekrstok, Pyatiorochka, Mosmart,

and Weimart. Ukrainian brands take up less than 20% of retail space in local malls.



• Materik, retail centre constructed on the basis of the former manufacturing plant.

Rents

Retail rents grew 30% in 2007 to reach an average of US\$ 128 per sqm per month for a 100 sqm unit in a modern shopping centre. Rental rates for large anchor tenants are lower, but even the lowest starts at US\$ 40 per sqm per month. Tenants pay another US\$ 2.50-5.00 per sqm per month for public utilities and common charges.

Investment

Retail centres in the remote suburbs can be bought for US\$4,000 to 10,000 per sqm. Cashflowing retail investments in the suburbs yield 12-15% on cost.

Warehouses

Rivalry intensifies in the logistics sector

Supply

In 2007 developers built 180,000 sqm of new warehouse space, bringing the total of modern space available in Kyiv and the immediate surroundings to 250,000 sqm. Vacancy remains below 5%.

Most warehouse facilities are far below the standard expected. In terms of quality, the warehouse premises market in Kyiv is structured as follows: A Class - 5%, B Class - 10%, C Class - 40%, D Class - 45%.

Key existing and upcoming warehouse properties include:

Property	Size	Year of completion
ALACOR Logistic Park	120,000	2009
Miraz II	30,000	2008
East Gate Logistic	40,000	2007
West Gate Logistic	78,000	2008
MLP Chaika	100,000	2008
Comodor Logisitcs Park	59,500	2008
Kopylov	150,000	2008

For leasing opportunities in these and other buildings, call Ober-Haus on +380 44 287-8770.

New Projects

Developers will bring another 300,000 sqm of warehouse space to the market in 2008-2010, including the following.

MLP Chaika - a new project with over 100,000 sqm of warehouse space and 4,455 sqm of office space.

Comodor Logistics Park - situated 32 km from Kyiv on the Zhytomir highway (M17) at the road intersection with highway P10, this project will have 59,500 sqm of warehouse space and 3,650 sqm of office space.

Kopylov - a new logistics park on the Zhytomir highway, which will total 150,000 sqm.



• Comodor Logistics Park, modern, hi-tech commodious office, warehouse and logistics centre.

Demand

Demand far exceeds supply, with at least 400,000 sqm of unsatisfied demand outstanding for warehouse space in and around Kyiv, and estimates of up to 850,000 sqm of demand in the next few years.

Rents

At the start of 2008, rents for better quality warehouse space near the city borders were US\$ 12 - 16 per sqm per month, while rents for mid-level quality warehouse space near the city borders were US\$ 11 - 12 per sqm per month. Low quality Soviet-era space is available starting as low as US\$ 3-5 per sqm.

Cheap production premises with heating and necessary engineering services (C Class) rents for US\$5-7 per sqm in the suburbs.

Investment

Investors expect to get yields of 14-16% if they buy mid-level quality warehouses in Kyiv. Investors expect to make their money back quickly, as the large amount of new space to be built in the next five years will affect the rentability of older stock.

Residential

Puny supply doesn't satisfy strong demand

Prices

The average apartment price in Kyiv at the start of 2008 was US\$ 3,300 per sqm. Prices for three-room flats rose 19% in 2007, while one and two-room flats rose a more modest 11% in 2007.

Kyiv and surrounding regions is an agglomeration of nearly four million inhabitants, so prices rise significantly towards the city centre. In the Pechersky area of the city centre, apartment prices range from US \$4,500 per sqm for poor quality space to over US \$8,000. Of course there are luxury offers even twice that price, but these are the exceptions.

New projects are sold without fit-out, requiring an additional US\$ 200 - 500 to finish out, depending on the quality level. The average price range for new economy class apartments in the suburbs is US\$ 2,100 - 2,600, while new projects in the city centre sell for well over US\$ 5,000.

Supply

Kyiv has an industrious local building industry, which completed 11,000 new apartments in 2007, and should complete

another 12,000 in 2008. Three local construction companies - Kievgorstroy, XXI Vek, T.M.M., Poznyakizhstroy, and Osnova-Solsif, - all but control the market, delivering 70% of all the new flats built. There are almost no foreign investors building in the Kyiv market.

The supply of new units has changed in the last three years, as the quality of build has increased markedly from earlier offers. Another major change in recent years has been reduced size, as prices per sqm have soared in Kyiv. Whereas just three years ago a typical three-room apartment would be 75 sqm, today a newly built three-room apartment in the suburbs is 100 sqm. Developers are also building fewer three-room units and more one or two room units. On the whole, three years ago the average new apartment size in the suburbs was 70 sqm - today it is 90 sqm.

The housing market is very tight, with little supply available to match demand. At the start of 2008, the total number of apartments available for sale - both completed new projects and secondary market - was only 6,700. Of those, 56% were Soviet-era stock (mostly pre-fabricated concrete panel block), 4% were pre-war, and 40% (roughly 2,500) were completed new-build units for sale.

Kyiv has 19 sqm of living space per capita, which is less than half the 38 sqm per capita of most Western capitals, but roughly the same as the 18-22 sqm per capita in Central European capitals like Warsaw, Riga, or Tallinn.



• RC "Golosevo", modern and exquisite residential complex located in the environmentally friendly district of the capital.

New Projects

To purchase these or other residential opportunities, call Ober-Haus on +380 44 287-8770.

Victoria – A modern designed apartment tower just on a major metro stop, in the preferred right bank of Kyiv. This attractive

new residential development has both underground and surface parking. Prices start at of US\$ 2,400 per sqm up to US\$ 2,600 per sqm.

Goloseevo - Like most projects in Kyiv, Goloseevo is big: 1,563 apartments in buildings of 20-25 storeys. The projects includes its own nursery, school with swimming pool, 10 storey parking and social infrastructure facilities. Improved zones for recreation, playgrounds as well as sports grounds are designed. A helispot is even built near the complex. Prices start at US\$ 2,475 per sqm up to 3,070 per sqm.

Vremena Goda - A new suburban projects with 896 apartments in five buildings of 17-25 storeys. Includes underground parking for 595 car spaces, plus surface parking. Prices range from US\$ 3,240 to 3,800 per sqm.



• "Vremena Goda", new residential complex located within the green surroundings of Solomensky district in Kiev

Demand

Demand far outpaces supply, especially for new build projects. In 2007, 7,700 new apartments were sold. The greatest demand in Kyiv is for economy class accommodation represented by one room apartments from 28 sqm to 38 sqm and two room apartments from 42 sqm to 54 sqm. The Kharkivsky suburban area is much sought after as it lies on a main underground metro line. As in all major cities, apartments on the metro line command a premium for both rents and selling price.

Demand for apartments in new buildings is highest for those built within the last three years, as the quality is substantially higher than older builds. Again, one and two room apartments in suburbs are the most popular on the secondary market.

There is demand for elite apartments but of course the number of such buyers is small.

Rents

Rents for city centre flats in good locations, which most foreign workers seek, are high due to lack of good supply. A typical city centre, two room (70-90 sqm) renovated apartment with furniture rents for US\$ 2,500 to 5,000 monthly. Larger or more luxurious flats rent for significantly more. Well equipped modern houses are difficult to find and rent for US\$ 5,000 or more.

On the local market, compact one or two room flats in the suburbs near metro stops rent from US\$ 500 to 700 per month.

Legal

Introduction

Rapid development of investment processes in Ukraine requires that investors be aware of legislation related to the primary investment targets, namely, land and buildings. In general, though Ukrainian legislation is relatively new, it provides an appropriate framework in civil, corporate, commercial and other related spheres, thereby allowing potential investors to perform their activities in Ukraine.

In general transactions with real estate other than land in Ukraine may be freely performed by any investors, including foreign individuals and legal entities. In contrast, the law substantially restricts the rights of non-residents in respect of the purchase of land (though in current practice foreign companies may overcome such limitations, as demonstrated below). The law imposes certain restrictions on resident investors as well. Namely, as of today, a moratorium on certain operations with agricultural land is in force. It is anticipated, however, that legislators may remove the above restrictions in the near future. Whether this happens remains to be seen but should this be the case, the influx of investment into the Ukrainian land market should increase significantly.

Importantly, the effective legislation does not generally provide foreign investors with any advantages as compared to Ukrainian residents in respect of land and other real estate issues, even though some privileges and guarantees are declared by the investment law. It is therefore important that non-residents duly comply with the relevant legislative requirements in Ukraine. Below we outline separately some major land and other real estate issues as well as construction.

Real Estate

The issues of ownership and use of real estate (other than land plots) (hereinafter – the “Real estate”) in Ukraine are primarily regulated by the Civil Code of Ukraine and the Commercial Code of Ukraine. Among other things, these sources provide for the right of legal entities to acquire any assets unless the contrary is expressly stipulated by law. The owners may freely use the objects they own, though the interests of community and the rights of its members should be taken into consideration. The owners are entitled to protect their property using the measures provided for by the law. Specifically, they may apply for court injunction of certain actions in case any violations are foreseen and, if any illegal action has taken place, for available remedies. The owners are entitled to protect their property in accordance with the law, but the measures taken should be commensurate with the consequences of the violation.

It is common to acquire real estate in Ukraine using one of the following options: (1) purchase of assets under a sale and purchase agreement, and (2) purchase of shares of the legal entity owning the real estate (i.e., the assets).

Acquiring of Real Estate via Share Transaction

Due to heavy expenses arising from direct sale and purchase of real estate (principally VAT), another option, i.e. the purchase of shares of the company owning the property, is widespread in Ukraine.

Firstly, agreements related to the purchase of shares do not require notarization. Sale and purchase of shares in joint stock companies should be arranged by professional security traders, but their fees are generally fair. Secondly, there is no obligation to remit either state duty, or the State Pension Fund contribution and in addition such transactions are VAT exempt. Lastly, the title to real estate does not require re-registration and, more importantly, all permits, if any, issued to the owner of the real estate (if any) should remain valid.

However, the parties should take into account the peculiarities of the transfer of shares. To illustrate, in this option it is not enough to verify that the owner has a duly registered ownership title. The purchaser needs to perform an additional due diligence in respect of the legal status of the owner, title to shares etc. Next, the prospective purchaser should properly complete all procedures envisaged by constituent documents of the owner and ensure that the preemptive rights of all shareholders/participants are not violated (usually, it is recommended to convene an extraordinary general meeting of the shareholders/participants of the Company for this purpose). Finally, the transfer of shares in limited liability companies triggers re-registration of the constituent documents which may take certain time (generally from one week to one month).

As a whole, when choosing a share transaction the following issues must be considered:

- increased volume of due diligence, since more extended review of corporate documents, financial issues, other fields of the targeted company is required;
- the investor may face the risk of historical issues of the target company with regard to its establishment, previous shareholders, activities, taxation;
- by acquiring the targeted real estate the investor also “acquires” all rights and obligations of the company arising on a legal and contractual basis, including payment of debts, if any, performance of contractual obligations to the third parties, etc.

In addition the tax consequences need to be examined in detail to ensure the transaction is structured in a tax efficient manner.

Restrictions on Purchase of Real Estate

Both local and foreign companies may freely purchase real estate in Ukraine (the restrictions related to purchase of land are outlined below). The non-resident potential purchasers should address mainly the issues related to currency control regulations and competition legislation, in addition to local and international tax issues where appropriate.

According to the Ukrainian legislation any transactions which may lead to concentration require prior authorization from the Antimonopoly Committee of Ukraine. Among others, such transactions include:

- direct or indirect purchase or control of the shares exceeding 25% or 50% of the voting rights of the target company;
- acquisition of control of the target company, inter alia, through purchase of its assets.

The authorization should be obtained in case the thresholds set out below are exceeded:

- the aggregate worldwide value of assets or turnover of the participants to the transaction (including related parties) during the last financial year exceeds EUR 12 million, and at the same time:
 - the aggregate value of assets or the sales volume of at least two participants concerned exceeds EUR 1 million, and
 - the aggregate value of assets or turnover in Ukraine of at least one participant concerned exceeds EUR 1 million.
- or if the market share of any participant or the aggregate market share of the participants concerned exceeds 35% of the market, and the concentration is reached at the same or adjacent market (in this case, the value of assets and turnover is irrelevant).

Lease of Real Estate

Lease of real estate must comply with the legal requirements stipulated by the Civil Code of Ukraine and the Commercial Code of Ukraine. Ukrainian legislation also contains special provisions governing the lease of state and municipal property.

Importantly, lease agreements related to real estate must be concluded in writing and, in case the lease period exceeds three

years, require notarization and state registration (the latter is performed by a notary). As this takes place, the state duty to be paid with regard to such agreements comes to 0.01% of the aggregate lease payments during the lease term stipulated by the agreements (the state duty is currently capped at about USD 170.00).

The parties may enter into lease agreements for a fixed or indefinite period. In the latter case, should real estate be subject to lease, any party may terminate the agreement subject to three months' prior notification (unless another term is set by the particular lease agreement). In case a fixed term was agreed, the law provides for an exhaustive list of grounds for termination by any of the parties.

The obligations of the lessor are generally transferred by the action of law with the transfer of ownership title to the leased object (unless otherwise is stipulated by the lease agreement). The lessee may sublease subject to the consent of the lessor, however, the parties may deviate from this requirement in the lease agreement. By default, the lessor shall perform capital repairs of the leased object, while the lessee is responsible for current repairs. Should the lessee continue using the leased object without any objections from the lessor within a month after the lease term has expired, the lease agreement is deemed extended for the initial term of lease. The lessee, in case of proper execution of the agreement, has a preemptive right to subsequent lease and purchase of the leased object (in case the lessor decides to lease or sell the latter).

There is a separate regulation for finance leases. Pursuant to the finance lease agreement, the lessor undertakes to purchase an object specified by the lessee and, subsequently, to lease it to the lessee for a period of at least one year. Land plots, natural resources and an enterprise as a going concern cannot be transferred under a finance lease agreement. The law provides the lessor with a simplified procedure for terminating a finance lease agreement if the lessee fails to remit any lease payment within 30 days.

Special rules applicable to the lease of land plots are summarised below.

Mortgage of Real Estate

Pursuant to the effective Ukrainian legislation, the owner may secure contractual obligations by the mortgage of real estate. Such a mortgage will generally result in:

- the prohibition of the alienation, lease, further mortgage, etc. of the mortgaged real estate imposed on the pledgor unless the pledgee grants the appropriate consent;

- the priority of claims of the creditors secured by mortgage in bankruptcy procedures (should the parties register the mortgage properly).

The parties shall ensure notarization of the mortgage agreement and, respectively, payment of the state duty at the rate of 0.01% of the value of mortgaged assets (capped at USD 170.00). All mortgages are registered with the Register of Mortgages. Additionally, the parties shall register the agreement with the State Register of Prohibitions on Alienations of Real Estate in case they agree on the respective prohibition. The pledgor shall insure the mortgaged estate unless the pledgee undertakes to arrange for insurance.

The pledgee may attract refinancing under the instruments based on the mortgage agreement, namely, mortgage bonds (zastavni). These are “non-issue securities”, hence, they shall not be registered with the State Commission of Securities and Stock Market. The mortgage bonds may be issued by the pledgor if their issue is envisaged by the mortgage agreement. When a mortgage bond is issued, fulfillment of the principal obligation (i.e., debt) and the right of foreclosure of mortgaged real estate follows the issue of mortgage bond (rather than the principal and/or mortgage agreements). Subsequently, the ultimate bond-holder may demand fulfillment of the respective principal obligation from the pledgor. Should the pledgor default to do so, the bond-holder is entitled to satisfy the claim at the cost of the mortgaged real estate (ie to enforce the mortgage by repossessing the property).

Land

General comments

Relations in respect of land are governed in Ukraine by the Land Code of Ukraine, the Civil Code of Ukraine and the Law of Ukraine “On the lease of land”. According to the Civil Code of Ukraine, a land plot and any immovable (real estate) property located thereon are defined as immovable property. According to recent changes in Ukrainian law, when purchasing land with property located thereon, the rule of automatic transfer of title to land plot applies to the purchaser of title to real estate property located thereon, in contrast to previously needed conclusion of two separate agreements. Notwithstanding this fact, Ukrainian legislation and practice requires registration of such land plot and real estate property located thereon in separate registers (State Land Register and State Register of Rights to Real Estate at the Technical Inventory Bureau).

According to the Land Code of Ukraine, there is a distribution

of local authorities’ powers with respect to the land disposal. Local councils are entitled to dispose of the land plots located within city limits, and local state administrations deal with those located outside city limits.

Title to land is certified by the state acts on land plot property and the lease agreements, registered according to a special procedure.

Restrictions and Moratorium

At present, the land market in Ukraine is restrained by the moratorium with regard to agricultural land. This moratorium was imposed in 2005 and extended each subsequent year.

Pursuant to the latest amendments to the Land Code, a moratorium was established with regard to certain operations with agricultural land. In particular, the moratorium specifies the following restrictions:

- Until January 1, 2015, Ukrainian citizens and legal entities may purchase agricultural land plots with total area up to 100 hectares. This area of land plots may be increased in the case of legal inheritance;
- Until the Law of Ukraine on State Land Cadastre and on Land Market comes into effect, it is not permitted:
 - to contribute rights to land shares to the authorized share capital of commercial companies;
 - to sell agricultural land plots of state and/or municipal property except as a buy-out for public purposes;
 - to sell or otherwise alienate and/or to change the designation of agricultural land plots owned by citizens and legal entities for individual farming purposes.

The above-mentioned restrictions do not apply to inheritance transfer, a barter of one land plot for another land plot and to the transfer of land plot for public use.

Purchase

The Land Code of Ukraine provides several means of acquiring rights to land property, the most widely used being sale and purchase agreements and lease agreements.

Foreign legal entities, joint ventures with foreign participation, foreign citizens and stateless persons are:

- allowed to purchase land only according to special procedures set out in the Land Code of Ukraine subject to the restrictions set forth therein;

- prohibited from owning agricultural land; and
- entitled to purchase non-agricultural land within city limits for the purposes of constructing real estate and in case of the purchase of real estate, and outside city limits, provided that they purchase the real estate property located thereon.

In order to avoid the above limitations, often a two-tier structure of two Ukrainian companies is used for purposes of doing business with land by non-residents, which provides for treatment of "second" Ukrainian company as a Ukrainian and owned by Ukrainian shareholder.

Subject to the consent of the Verkhovna Rada of Ukraine (Parliament), state land (except for the land which is a part of property undergoing privatization) may be sold to foreign states and foreign entities by the Cabinet of Ministers. Land owned by communities may be sold to foreign states and foreign entities by the local council subject to the consent of the Cabinet of Ministers. There is no legislation providing the procedures for obtaining such approval. Therefore, the process is long and complicated.

According to the recent amendments to the Land Code of Ukraine, land in state or communal ownership may be sold to legal entities, including foreign legal entities, on a competitive basis (i.e., by auction), except for the land on which real estate owned by the buyer is situated. Since 2008, the purchase of land in state or communal ownership is practically impossible due to absence of the competitive procedures in Ukrainian law (only a draft of relevant regulation exists).

The land plot transaction may be executed either by purchasing a particular land plot (via assets) or by purchasing shares in a company holding the target land plot (via share transaction).

i. via assets

Asset transfer involves the following issues:

- the asset transfer must be formalized in the sale and purchase agreement, which is subject to notarization and state registration;
- the asset transfer is subject to payment of a notary fee and state duty. The state duty related to certification of such agreements comes to 1 per cent of the amount of agreement. The amount of the notary fee is agreed upon between the notary and the payer, but must be not less than the state duty rate;
- the asset transfer is subject to restrictions, mentioned above for the foreign citizens and foreign legal entities.

ii. via share transaction

- When choosing a share transaction the issues mentioned above in the section "Acquiring of Real Estate via Share Transaction" must also be considered.

iii. restrictions

In addition to the restrictions mentioned above, in case of land plot transactions one should check whether the transaction is subject to concentration control as mentioned above in section "Restrictions on Purchase of Real Estate" of this Brochure.

Lease

General terms and conditions of the land plot lease agreement are regulated by the Land Code of Ukraine and the Law of Ukraine "On Land Lease". The essential conditions and annexes of the lease agreements are specified in the aforementioned law. However, the parties to the lease agreements may include additional conditions subject to their mutual consent. Pursuant to the Land Code of Ukraine, a long term land lease may not exceed 50 years. In practice, the parties usually agree on 49 years.

Notwithstanding the contradictions (a "conflict of laws") between the Commercial Code of Ukraine and the Law of Ukraine "On Land Lease" regarding the form of land lease agreements, existing practice shows that these agreements are subject to notarization and state registration. Conclusion of a lease agreement is also subject to the payment of a notary fee and state duty. The state duty related to notarization of such agreements comes to 0.01 per cent of the pecuniary valuation of the land plot (in case of absence of such a valuation – to 1% of the amount of agreement). The amount of the notary fee is agreed upon between the notary and the payer, but must not be less than the state duty rate.

Similar to the case of the purchase of land, land in state or communal ownership may be transferred into lease only through auction, except for the land, on which real estate owned by the buyer is situated.

Subsequent use

According to the Land Code of Ukraine, land must be used in accordance with its designated purpose (e.g., agricultural lands, land for residential and social construction, recreational lands, industrial lands etc.). The purpose of the land must be specified in the state acts on land plot property and land lease agreements. Furthermore, the Land Code of Ukraine prescribes a special procedure of changing land's designated purpose.

If a land owner or lessee fails to use the land plot for its designated purpose, the title to the land may be terminated in court.

Redemption and compulsory sale of lands for public purposes

Pursuant to the provisions of the Land Code of Ukraine, the state and local authorities are entitled to redeem land plots, which are owned by individuals and legal entities subject to their consent, for public purposes (i.e., construction of buildings for the state and local authorities, for natural reserve or other environmental purpose, for defense and national security, for construction of roads, gas and water pipelines, airports, for allocation of diplomatic representative offices and international organizations, etc.). The owner of the land must be notified 1 year prior to redemption. If the owner does not consent to the redemption value of the land plot (which is usually much lower than the market value), the issue must be settled in court.

Another procedure specified in the Land Code of Ukraine, is a compulsory sale of lands for public purposes. In case of the declaration of martial law or state of emergency, the land plots owned by natural persons and legal entities may be sold on a compulsory basis for reasons of public necessity. Nevertheless, such owners are entitled to demand return of such land plots after termination of the circumstances due to which the land plots have been sold, or to be given another land plot, if the return of the sold land plot is impossible.

Construction

Ukrainian legislation contains numerous requirements on construction as well as for the companies and individuals carrying out the related works. Those willing to be engaged in construction activities, including research and development for construction purposes, must apply for the respective license. Project owners, general contractors and developers may perform their functions without a license provided, however, that the subcontracted third parties will be performing construction works.

Obtaining a Construction License

An applicant will be granted a license subject to compliance with certain requirements concerning the organization's structure, the qualifications of management and professional employees as well as technological issues. The license term comes to three years for the first license and five years for each subsequent license. In practice, any company meeting the outlined requirements may obtain the license without any substantial complications.

Importantly, all the construction licenses issued prior to 1 January 2008 are subject to re-issue in accordance with recently adopted legislation. The licensing authorities may perform regular and unscheduled examinations of license-holders. In case of any violations, the inspectors may suspend or withdraw the license.

Certified architects are not required to obtain a license to carry out certain professional activities. Non-residents may participate in the project works related to construction in Ukraine if such non-residents cooperate with Ukrainian license-holders or certified architects.

Stages of construction

From the regulatory perspective, the construction process includes the following stages:

- **obtaining of construction permit:** local authorities issue such a permit according to a comprehensive report on the compliance of the prospective construction to applicable technical and local development rules. Alternatively, the permit may be issued in the form of a land plot allotment by the authority for construction purposes;
- **gathering of initial data:** the project owner must obtain a relevant permit and, subsequently, compile the data. These include documents prepared by the project owner (namely, design assignment) and various approvals and permits issued by the competent authorities and professional institutions (architectural planning assignment, technical terms on engineering provisions etc.);
- **project works:** depending on the object to be built, this stage may include different sub-stages. After completion, authorized official bodies approve the project and, finally, the complex state expert examination is arranged;
- **commencement of construction works:** upon successful completion of the prior stages, the project owner applies for the permit to commence works;
- **proceeding with construction works:** the law provides for considerable liability for violations in construction. The fines are mostly calculated in proportion to the cost of relevant works or value of objects. Supervisory authorities may suspend the construction works in case they reveal violations of the state standards, local development rules or the project itself;
- **putting object into operation:** the state acceptance committee approves the completed object. Such committee consists of the representatives of local authorities, professional institutions, the project owner and the general contractor. In

particular cases, it may be required to convene the working committee in advance in order to approve the object before to the state acceptance committee;

- **registration of newly-constructed object:** local Technical Inventory Bureaus perform the inventory of the object, following which local authorities register the ownership title to the constructed object (i.e. the real estate).

It is common in Ukraine that constructors encounter difficulties while obtaining of the above permits and approvals. Among the reasons there are, primarily, vague and inconsistent regulations and a high degree of discretion enjoyed by the authorities which often results in arbitrary actions.

Specifics of Financing Residential and Commercial Construction

Ukrainian legislation restricts the options of attracting the investors' funds for residential construction purposes. Namely, project owners may engage such financing, both from individuals and legal entities, only via:

- mutual investment funds;
- corporate bonds secured by constructed property;
- funds for financing construction and funds for real estate operations;
- non-governmental pension funds.

In practice, the most popular option is probably a combination of venture investment funds with target corporate bonds issue. Complying with the legislative framework, this mechanism allows constructors to optimize the tax consequences related to sale of constructed property. The option of funds for financing construction is relatively more costly. In this case Ukrainian banks usually participate by establishing the funds and by supervising the construction.

For commercial construction, Ukrainian constructors mostly employ investment agreements which allow to attract the resources and to fund the construction as agreed by the parties. Additionally, the constructors may adjust any generally available mechanism of debt and equity financing for commercial construction purposes. Still, it is crucial to implement the correct approach to respective agreements with investors, since from the legal viewpoint attracting financing may be treated as trust management, which, in its turn, may be carried out by financial institutions under the appropriate license. Detailed advice needs to be sought to ensure later problems do not arise.

In view of the permitted financing options, the status of construction as residential or commercial is of particular importance. From the legal perspective, a project owner shall define the type of construction in permission and registration documents. From the technical standpoint, residential real estate objects are subject to different, for the most part more stringent, standards than the objects constructed for commercial purposes.

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Taxes

Taxation of sale and purchase transactions

Capital Gains Tax

Ukrainian legislation does not provide for a separate capital gains tax on the sale of immovable property. Any capital gain realized by a company on the sale of property will be subject to corporate income tax (hereinafter – the CIT) as part of the company's taxable profit.

Corporate Income Tax

Profit from sale of immovable property (i.e. buildings and structures) will be subject to CIT on a quarterly basis as part of the company's profits at a flat rate of 25%. For tax accounting purposes, the immovable property is accounted for on an item by item basis. In case of sale of such property, the difference between the selling price of the property and its net book value for tax purposes is included in the taxable income of the seller. In case purchased property constitutes fixed assets of a buyer it is depreciated at 2% quarterly using reducing balance method from the next quarter following the acquisition.

If the real estate is purchased together with the land plot or this land plot is an integral part of the functional use of such real estate, according to specific provisions in the legislation, the aggregate value of the real estate and land plot shall be subject to depreciation. Land purchased separately is not subject to depreciation.

Annual indexation allowance is granted by law with respect to real estate, including land plots.

Proceeds received by a non-resident company from the sale of immovable property located in Ukraine are subject to withholding tax of 15%, unless otherwise provided for in a double tax treaty. If the property is attributed to the non-resident's permanent establishment in Ukraine, the profit generated from sale of such property will be subject to 25% CIT under the general rules, again subject to the provisions of the relevant double tax treaty (if any).

Real estate businesses in Ukraine are sometimes structured via Cyprus as the current double tax treaty contains certain beneficial taxation provisions. However, under the new draft double tax treaty with Cyprus (which may change before it comes into force), proceeds from the disposal of shares by a Cyprus company in a real estate rich Ukrainian company may not be sheltered by the treaty from Ukrainian tax. Therefore, in such cases normal domestic rules will apply.

Value Added Tax

Generally, the sale of real estate is subject to 20% VAT. Sale of shares in real estate rich company as well as in any other company is not subject to VAT. Transactions with land plots and residential premises are exempt from VAT. Additionally, please refer to sections "VAT exemption for sale of residential premises" and "Tax peculiarities regarding transactions with land" below.

Personal Income Tax

A single sale per year of residential real estate (dwelling house, apartment, room, garden house), including the land plot under the real estate as well as ancillary buildings and structures located thereon, is not subject to PIT, if the area of the real estate does not exceed 100 square meters. If it does, the excess area will be taxed at 1% of the greater of selling price or real estate valuation.

Further sales per year will be subject to 5% PIT calculated from the greater of the selling price or valuation.

A sale of non-residential real estate is subject to 5% PIT.

Transfer Taxes

Any agreement envisaging transfer of title to the real estate shall be duly notarized. State Duty comprises 1% of the transaction value. Also, the contribution to the State Pension Fund at the rate of 1% of the purchase price should be paid by the purchaser. The latter does not apply to sale of land.

Taxation of Operating Lease Transactions

Corporate Income Tax

The transfer of property under an operating lease will not generally result in CIT consequences either for the lessor or for the lessee. The property in question is not included in the fixed assets of the lessee and remains within the fixed assets of the lessor. The lessor continues to receive tax depreciation for the property transferred under an operating lease.

The operating lease fee is subject to 25% CIT for the lessor and is a valid CIT deduction for the lessee.

Under domestic rules, the rent of real estate owned in Ukraine by a non-resident may generally only be carried out through a permanent establishment or agent company of the non-resident, which will act as a tax agent. Therefore, rental income

earned by non-resident via its Ukrainian permanent establishment will generally be subject to domestic CIT at 25%, unless otherwise provided by the double tax treaty. Payments made from the permanent establishment to its non-resident head office may be subject to withholding tax, subject to the provisions of a relevant double tax treaty.

Value Added Tax

According to current legislation, the lease fee will be taxed with VAT at 20%. The transfer of property under an operating lease is not subject to VAT.

Personal Income Tax

An individual's income from an operating lease is subject to the personal income tax at the rate of 15%. For tax non-resident individuals, the rental income will be subject to doubled PIT rate (ie 30%).

The tax is assessed based on the lease fees established in the contract. For certain items of real estate a minimum rent fee is envisaged.

Additionally, pursuant to Ukrainian legislation, individuals receiving lease income may be registered as unified taxpayers and pay fixed amount of tax on a monthly basis. The amount of tax is capped at UAH 200 (approximately USD 40) per month. The annual turnover of a unified taxpayer may not exceed UAH 500,000 (approximately USD 99,010).

Transfer Taxes

Rent agreements with a life exceeding 3 years shall be duly notarized and registered with the state authorities. In this case the stamp duty at the following rates will be imposed:

- Rent of the real estate – 0.01% of the agreement's price, but not less than UAH 85 and not more than UAH 850.
- Rent of the land plot – 0.01% of the valuation, determined pursuant to a special state procedure; in cases where the appraisal is absent – 1% stamp duty will apply to the contractual value of a land plot.

Taxation of Finance Lease Transactions

Corporate Income Tax

From a CIT perspective, the transfer of property under a finance lease will be treated as the sale of such property at the moment of transfer. Therefore, the leased property should be included in the fixed assets of the lessee following such transfer for CIT purposes. The real estate may be depreciated by the lessee at the 2% quarterly rate. Land cannot be subject to finance lease.

According to current legislation, only the interest element of a lease payment is subject to CIT on an accruals basis.

Where the leased property is returned to the lessor, this return will be treated as a disposal back of this property for CIT purposes.

The repatriation of lease income will follow similar rules as described in operating lease section above.

Value Added Tax

The transfer of property under a finance lease will be subject to 20% VAT at the moment of transfer. The lessee will become eligible for the respective amount of input VAT at the moment of transfer as well. Generally, the interest element of a lease payment will not be subject to VAT, unless the effective interest rate exceeds double discount rate of the National Bank of Ukraine. In that case the excess interest will be subject to VAT. Currently, the discount rate of NBU is 10% p.a.

Transfer Taxes

At the moment of actual transfer of title from the lessor to the lessee (usually, at the end of the lease agreement), the latter pays the contribution to the State Pension Fund at the rate of 1% of the property price. State Duty comprising 1% of transaction value should be also paid at the moment of transfer of title to the real estate.

Other Related Taxes

Land Tax

Individuals and companies which own land plots in Ukraine are subject to Land Tax.

The basis for the land tax is the area of the land plot. The tax rate depends on the location and category of the land plot, and

whether there is a monetary valuation available.

The regular land tax rate is 1% of the land value payable annually by owners of land plots. For land plots under residential premises the tax rate is 0.03%.

Where no land valuation is available, the land tax rate is fixed per square meter. In this case, the tax rate depends on location and nature of the land plot. Additionally, step-up coefficients may apply.

The users of state and communal land plots pay land lease fees. The land lease fees cannot be less than the triple land tax rate and cannot exceed 12%.

Property/Real Estate Tax

There is currently no property/real estate tax in Ukraine. However, the Parliament is currently considering the draft law "On real estate tax" that establishes tax rates of up to 5% p.a. for individuals and legal entities. The tax rate is supposed to depend on the total area of real estate owned by a taxpayer. It is unclear whether the tax will be introduced and, if so, whether in its current form.

Taxation of Specific Transactions

Special Rules for Taxation of Construction - Long-Term Contract

Ukrainian CIT Law envisages the possibility of a specific treatment of long term agreements for taxation purposes.

In this case, taxable income received from long term agreements is equally distributed among the tax periods based on percentage-of-completion ratio (hereinafter – "POC ratio"), which is calculated based on the expenses borne by a taxpayer in connection with the project. The main advantage of POC method is that advances received from the customer are not taxable on receipt. Conversely, the CIT liabilities are recognized equally over the construction period regardless of prepayments received.

The POC method is elective and not mandatory.

In this respect, the CIT Law specifies the following criteria for the agreement to be recognized as a "long term" contract:

1. Property constructed, produced and installed under the agreement will eventually constitute the customer's fixed as-

sets or components thereof. The agreement may also include elaboration of intangible assets related to such construction, such as engineering services, Research and Development works, etc;

2. The planned term of the agreement exceeds nine months starting from the date when initial contract-related expenses are incurred or first advances are received.

Upon completion of the construction, tax liabilities of the preceding tax periods are recalculated by applying actual POC ratios, the latter based on the actual total cost of agreement. In case that any differences occur between recalculated actual tax liabilities and their respective estimates calculated in the past, respective adjustments should be made. In addition, 120% of the NBU refinancing rate (currently 12% p.a.) should be applied to differences (either positive or negative) for each reporting period starting from the date the difference occurred to the date the recalculation is carried out.

Vat Exemption for Sale of Residential Property

The supply (i.e., sale) of residential premises is a VAT exempt transaction, except for their first supply.

The first supply is defined as the first supply of constructed premises to the buyer or the rendering of services on construction of residential premises.

The implication of this first supply rule is generally the following: where the residential premises are initially supplied from a constructor to a general contractor (and these are separate taxpayers) and thereafter - from a contractor to the customer, this latter transfer of the premises to the customer will not be treated as a "first supply" and as a result will not be subject to VAT.

Tax Peculiarities Regarding Transactions with Land

Corporate Income Tax

Legal entities should keep separate records for operations with land for CIT purposes. Land purchase expenses are not included in deductible expenses and the cost of land plot is not a depreciable cost. The cost of capital improvements to this land plot, however, may be depreciated.

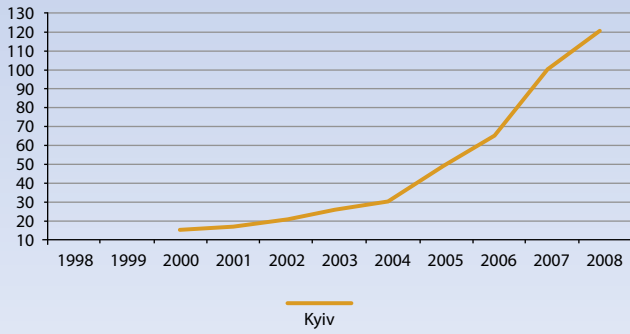
Where the land plot is sold, the difference between selling price and the cost of land plot purchase (grossed up by indexation) will be included in the taxable income of the seller. Losses on the sale of land plots are not tax deductible ie they are permanently disallowed for tax purposes.

Value Added Tax

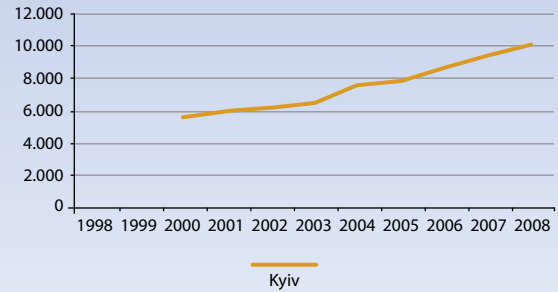
The sale of land plots is generally exempt from VAT, except for the land plots under the real estate in question, the value whereof is included in the aggregate value of such real estate, according to the civil legislation.

The lease of state or communal land plots is VAT exempt if the rent fee is payable to the state or local budget.

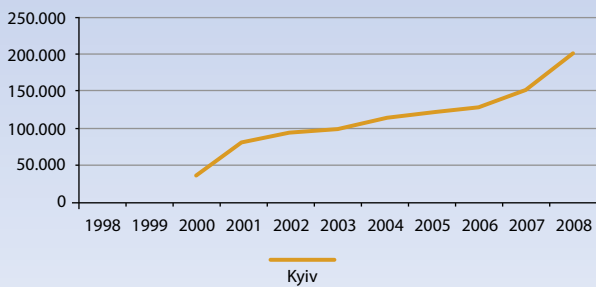
Avg class A office rents (USD)



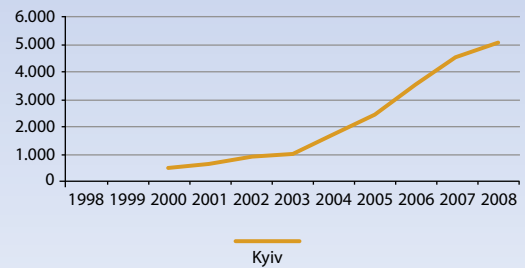
Completed residential units



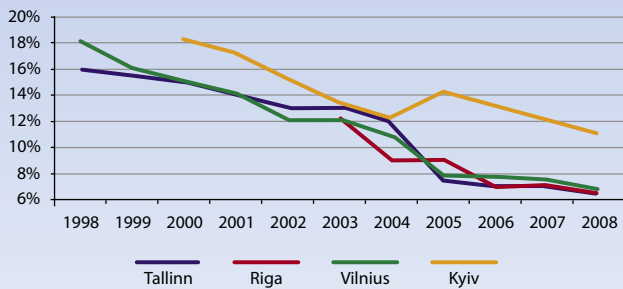
Total class A office space (sqm)



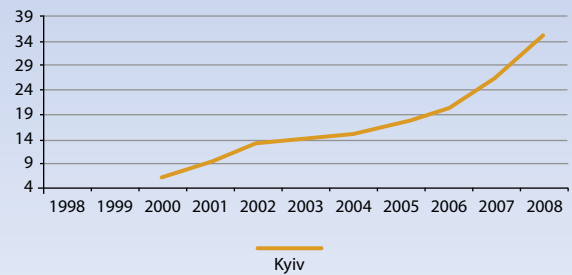
Average city centre residential prices (USD/sqm)



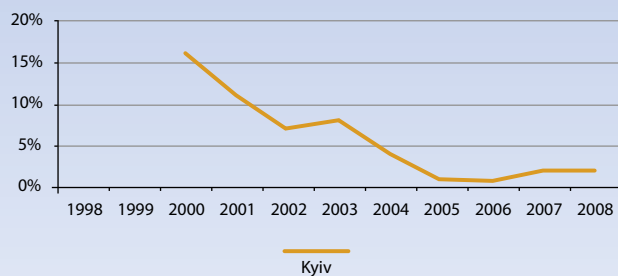
Class A office investment yields



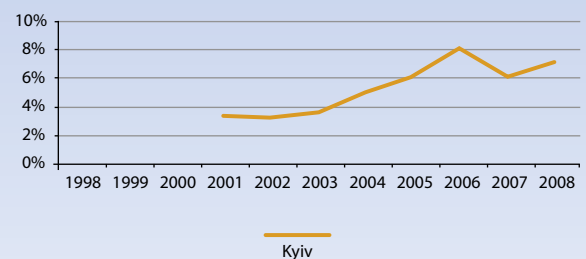
Average residential rents (USD/sqm/month)



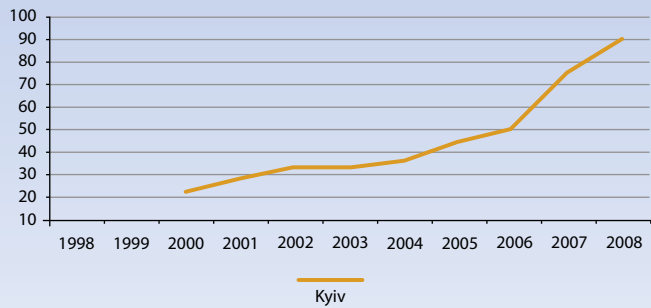
Class A office vacancy rates



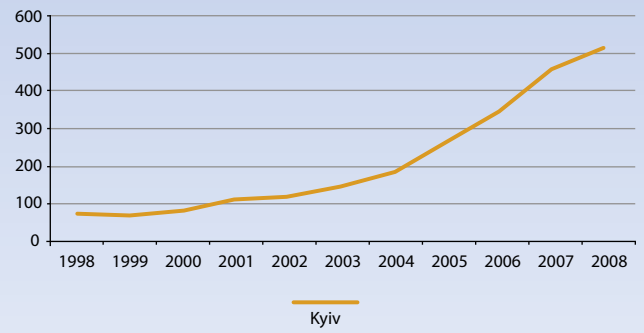
Residential investment yields



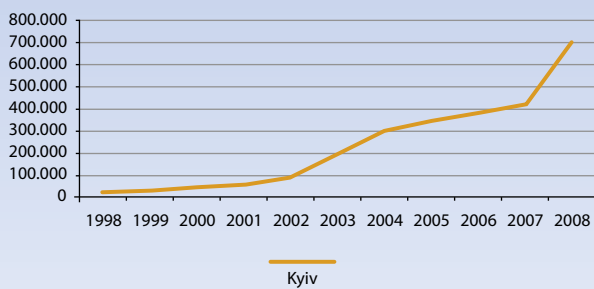
Avg mall rents (USD)



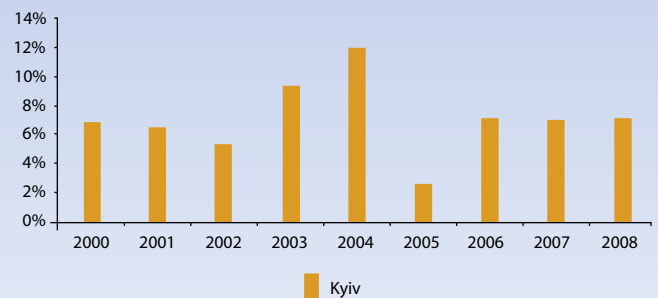
Avg salary per month (USD)



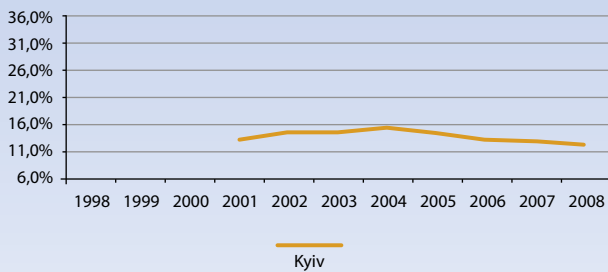
Total mall space (sqm)



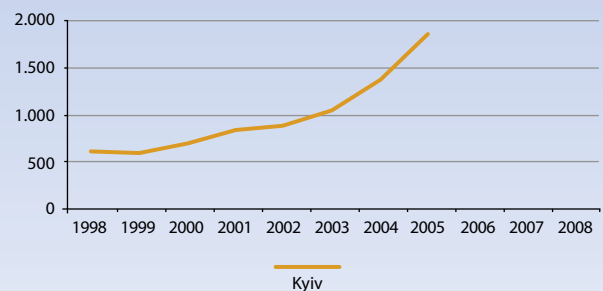
GDP growth



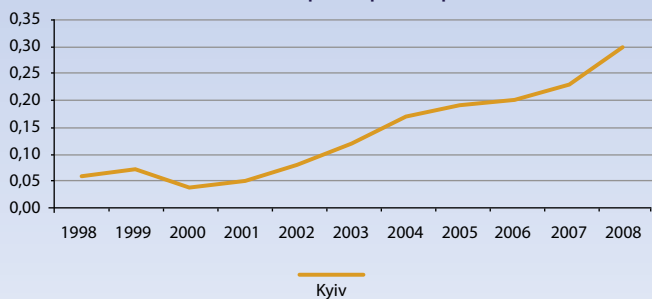
Retail investment yields



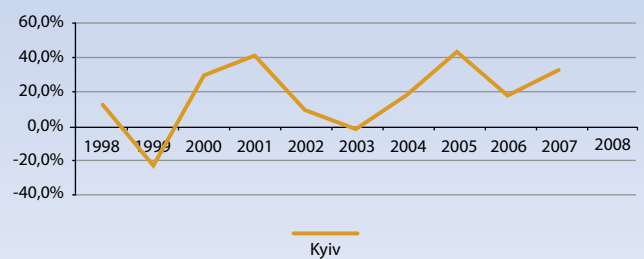
GDP per capita (USD)



Total mall space per capita



Avg salary growth





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