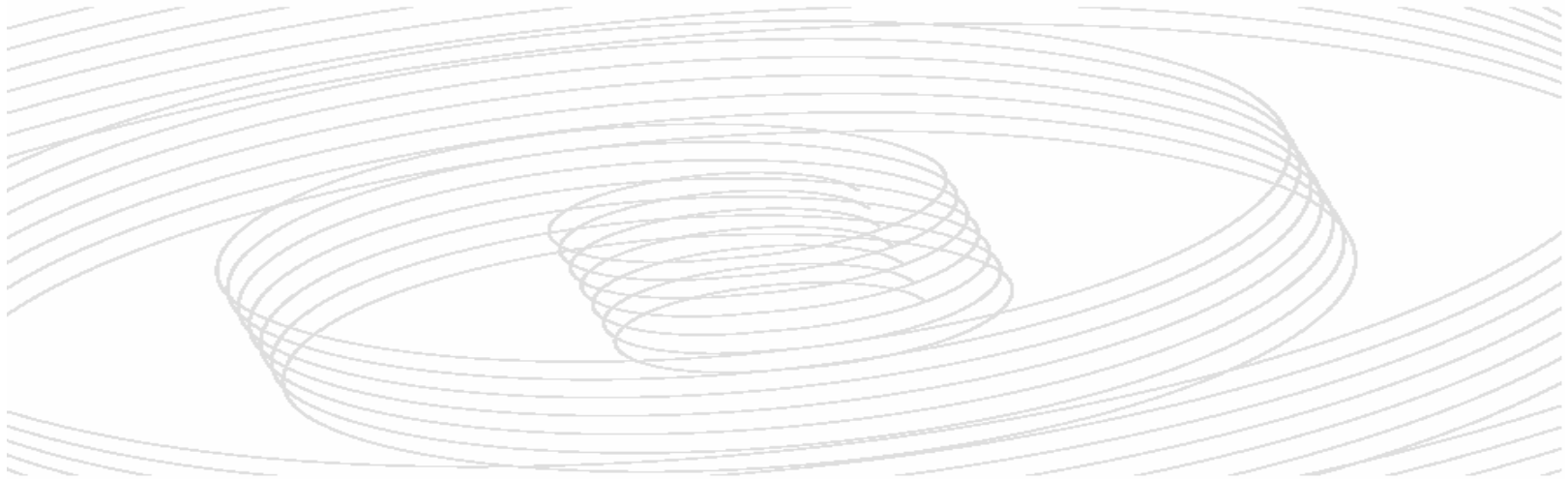


**Weil, Gotshal & Manges LLP**

  
**Magister & Partners**  
Attorneys-at-Law



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## **International IPOs for Ukrainian Issuers**

Olga Khoroshylova,  
Oleh Marchenko,  
Magister & Partners

James Cole,  
Weil, Gotshal & Manges

## Magister & Partners – Banking & Finance Expertise

- Leading CIS-based law firm
- Offices in Kyiv and Moscow
- Dedicated team of 85 attorneys
- Annual turnover - 18 million USD
- **Awards:**
  - **“Best Financial Operation of the Year”** awarded by Emerging Markets and **“Best Sovereign Deal of the Year”** awarded by Euroweek to the issue of USD 800 million notes of external state borrowing and of USD 200 million tap issue in 2003 by the Ministry of Finance of Ukraine, represented by Magister & Partners.
  - **“Best Deal of the Year”** awarded by Euromoney to 2002 Facility Transaction in the amount of USD 30 million between WestLB AG and NaftoGaz of Ukraine, represented by Magister & Partners.

### ■ Banking and Finance Practice

- Capital Markets
- Structured and Project Financing
- Telecommunications
- Oil & Gas

### • Clients:

- Credit Suisse, Deutsche Bank and UBS Limited, Ministry of Finance of Ukraine, NaftoGaz of Ukraine, Dresdner Kleinwort Wasserstein, UBS Limited, ABN AMRO, MNB Capital Markets, Mobile TeleSystems OJSC , Odessa City Council, Energoatom, Chornomornaftogaz, World Bank, Joint Stock Financial Corporation Sistema, Mobile TeleSystems, Gazprombank, Vneshekonombank, WestLB AG, State Railway Transport Administration of Ukraine, etc.

## Weil Gotshal & Manges - Equity Capital Markets Expertise

- **London Main Market IPOs**
  - Premier Foods
  - Yell
  - Amtel Vredestein
  - Agora
- **AIM IPOs**
  - Infinity Bioenergy
  - Energy XXI
  - International Metal Enterprises
  - Peachtree Holdings
  - Lancashire Holdings
  - IRF - European Finance Investments Limited
  - Phytopharm
  - Songbird Estates
- **Frankfurt IPOs**
  - IFCO
- **Warsaw IPOs**
  - PGNiG
  - Opoczno
  - PKO Bank Polski
  - Global Trade Centre
  - Bank Pekao
  - Ambra
  - Agora
  - PKN Orlen
  - Bioton
  - TVN
  - Netia
- Our global capital markets practice consists of 90 lawyers worldwide, with 19 based in London.
- We have particular experience in central and eastern European and emerging market IPOs on AIM, the London Stock Exchange and the Warsaw Stock Exchange.
- “The Capital Markets team stands out as the hub for Weil Gotshal’s European efforts, and it derives benefit from having offices in Frankfurt and Warsaw” (*Chambers Global*)
- “Weil, Gotshal & Manges operates a strong high yield and equity offerings practice, concentrating on sponsor-originated transactions, and it is certainly gaining ground in high yield.” (*Legal 500*)
- “Already recognised as a capital markets leader in the USA, the firm has striven hard to establish itself as a premier European equity capital markets player.” (*Chambers UK*)

## **Foreign Securities Issuance - Ukrainian Requirements**

- (1) Denomination of securities;
- (2) Requirements by State Securities and Stock Market Commission:
  - Registration
  - Trading in Ukraine
  - Restrictions on size of issuance;
  - Other formalities
- (3) Recent changes into securities laws

## **Alternative routes to structure an IPO for Ukrainian entity**

(1) Depository receipts

- Certain practical issues remain on the legal status of instruments and authority of depository

(2) SPV/holding company structures

- Allows to mitigate certain risks associated with depository receipts, and offers certain tax benefits (depending on pre-IPO structuring).

## **What to issue?**

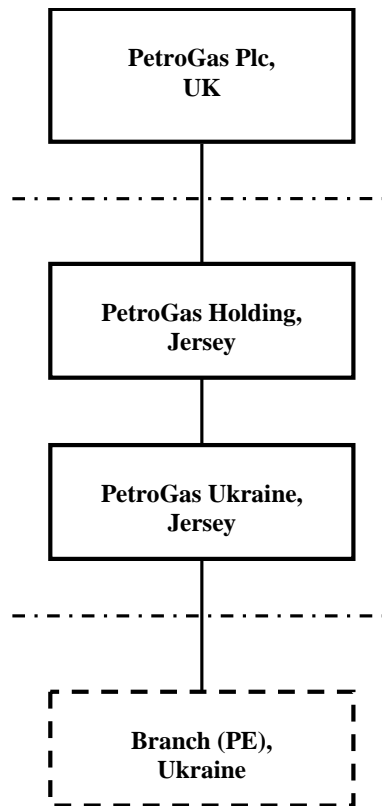
- 1) Shares/GDRs in primary/secondary listing
  - PTRS/international exchange
  
- 2) International/domestic offer
  - Ukrainian restrictions/settlement issues
  
- 3) US private placement
  - Cost
  - Pricing benefit
  - Liability



## **International Ukrainian IPOs**

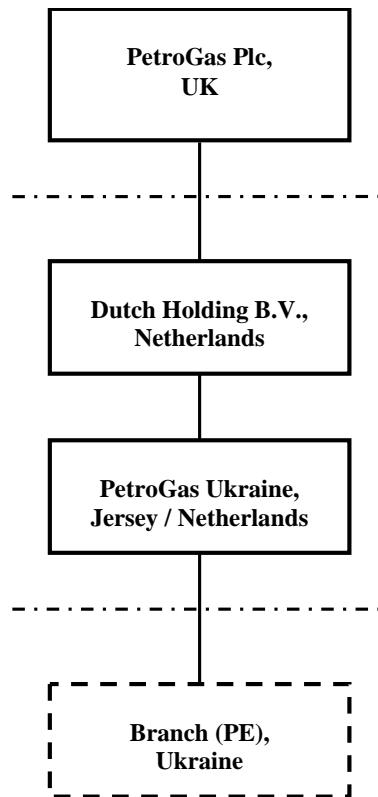
- 1) London Main Market – GDRs
  - none to date
- 2) AIM – shares
  - XXI Century Investments, Ukrproduct Group (via CI holdcos)
- 3) Frankfurt – GDRs
  - Tsentrenergo, Ukrnafta, Ukrtelecom, Azovstal, Ilyich, Zaporishstal, Bank Forum, Halnaftogaz, LuAZ, Dniproazot, Stirol, Dniproenergo, Zakhidenergo, Khmelnyshkoblenergo, Stakahnov, Zhytomyrgaz
- 4) Warsaw – shares
  - Astarta-Kyiv (passporting via Dutch holdco)

## Pre-IPO Structure Case Study. Tax Issues



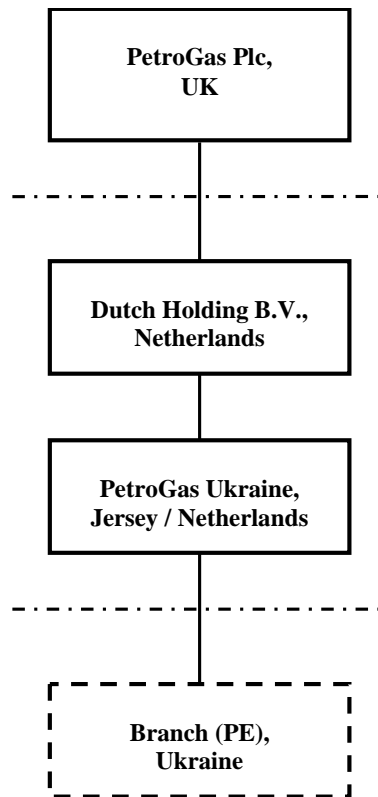
- (1) PE profits are double taxed in Ukraine (25% CIT + 15% WHT)
- (2) Offshore payments (payments made by head office of PG Ukraine) are not deductible in Ukraine
- (3) Effective tax rate – at least 36.25% - even much higher taking into account that offshore expenses are not deductible

## Restructuring. Moving Residence of PetroGas Ukraine to Netherlands



- (1) “Central management and control” of PG Ukraine is transferred to Netherlands – Dutch tax residence is established (Cyprus may be considered as an alternative)
- (2) Dutch Holding B.V. (“DH”) is interposed between PG Plc and PG Ukraine
- (3) PG Plc raises debts financing in UK, contributes funds as loan to DH; DH transfers funds to PG Ukraine as loan financing

# Restructuring. Tax Benefits



- (1) No 15% WHT in Ukraine on remittance of profits by Branch (PE) to head office of PG Ukraine (under Dutch DTT)
- (2) Offshore expenses incurred by the head office are deductible in Ukraine (under Dutch DTT)
- (3) Branch (PE) profits are not taxable in Netherlands; same applies to dividends derived by DH from PG Ukraine; no Dutch WHT on dividends payable by DH to PG Plc under EU Parent-Subsidiary Directive
- (4) Interest payable by PG Ukraine to DH are deductible in Ukraine
- (5) Effective tax rate on profits from investments in Ukraine, Netherlands and UK will be 30% (UK tax rate)

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