



Daniel Bilak

Senior Counsel; Chairperson of the Management Committee, Ukraine office

Kinstellar LLC

### **BRIEF BIOGRAPHY:**

Daniel Bilak is a Canadian-qualified lawyer with 30 years of professional experience advocating and promoting the interests of investors in Ukraine and the region. He is currently Senior Counsel to the management of Kinstellar, one of Central and Eastern Europe's leading independent law firms, and Chairperson of Kinstellar's Ukraine practice.

Between 2016-2019 Daniel was chief investment adviser to the Prime Minister of Ukraine and headed UkraineInvest, the Ukrainian government's foreign investment promotion agency. During Daniel's tenure, UkraineInvest collaborated with the investor community to unlock \$3 billion of pent-up investment in Ukraine.

Daniel has advised major international businesses in the energy, agribusiness, infrastructure, and technology sectors and acted as Counsel to the Business Ombudsman Institution of Ukraine. He twice served as Chief of Staff to the Minister of Justice of Ukraine (1995-1997; 2006-2007) where he played a

leading role in legal and judicial reform issues. His understanding of the machinery of the Ukrainian government was augmented as a senior rule of law adviser to two Prime Ministers, and to the Cabinet of Ministers Secretariat of Ukraine. Daniel was appointed by the President of Ukraine to the National Commission on the Strengthening of Democracy and the Rule of Law, where, among other initiatives, he contributed to drafting judicial reform legislation. As a member of the United Nations-sponsored Blue-Ribbon Commission, he co-authored the proposals on judicial reform, governance and administrative reform adopted by the Ukrainian government in 2004.

Daniel advised the governments of Bulgaria and Lithuania on administrative justice reforms relevant to the Justice and Home Affairs chapters of their European Union accession negotiations. As part of this effort, he mobilised business associations, civil society organisations, ombudsman institutions, and media to enhance their capacity to hold public authorities accountable for their actions.

Why do you think membership in the American Chamber of Commerce is important for business operating in Ukraine?

As Ukraine's most prominent business association, the Chamber is uniquely positioned to influence the outcomes of the rule of law and investment debates affecting business in the country. In my view, membership in the Chamber provides two key benefits: advocacy and voice. A Chamber member enjoys the security of a strong and influential advocate for its own and for the positions of the wider business community. Further, a member can have its voice effectively heard by authorities and other stakeholders, whether involving an individual case or a collective purpose. Advocacy and voice mean a member takes comfort that the Chamber enjoys unparalleled access to the ear of government; that the Chamber's robust positions of principle achieve tangible results; and that a member can contribute directly to the Chamber's legislative initiatives.

What motivates you to be a Chamber Board Member?

My motivation to join the Chamber's Board remains the same as that which convinced me to accept Prime Minister Volodymyr Groysman's invitation to establish and lead UkraineInvest – a passionate commitment to establish Ukraine as a globally attractive investment destination. I accepted the PM's challenge because it aligned with my firm belief that creating a stable and predictable investment environment is essential to Ukraine's prosperity and security.

My commitment to you as a Board member would be to continue to strive to secure a level market playing field and defend the property rights of all Chamber members. To fulfil this promise, I would apply the approaches I practiced most recently at UkraineInvest, which for me was the culmination of thirty years of extensive public and private sector service in Ukraine.

UkraineInvest was guided by the principle that Ukraine's investment problems could only be resolved through engagement between business and government. When appointed, I explained to the Cabinet of Ministers that investors would only come to Ukraine if government authorities treated investors as they would treat a guest in their own home. I further warned the ministers that Ukraine would not attract new investment unless we first resolved the problems faced by Ukraine's existing investor base.

Accordingly, UkraineInvest's first outreach was to the Chamber with an offer to constructively collaborate – we challenged you to not just bring us your problems, but to come to us with your proposed solutions. There is often a misperception among the business community of an uber-powerful government with the ability to solve all the problems that it is perceived to have caused. In actual fact, the Ukrainian government possesses a catastrophic lack of institutional capacity to address the myriad of challenges it faces. Together with the Chamber (and the support of Prime Minister Groysman and the Government Investment Commissioner, Oksana Markarova, now Ukraine's ambassador to the United States), we achieved many successes: forestalling the epidemic of raider attacks on business through legislative (the Mask-Show Stop! Law) and pro-active means (new regulations on body cameras worn by law enforcement agencies, transparent recorded proceedings to obtain search warrants); massive deregulation of anachronistic regulations impeding business activity; addressed customs (including contraband) and tax issues (circumscribing search and seizure powers); reduced port fees by 25%; and held the state construction authority (DABI) accountable by creating transparent permitting procedures, and many others.

While I am proud of UkraineInvest's contribution to improvements in the investment environment, our accomplishments were a result of your voices being effectively heard in the corridors of power. My role was to ensure that your voices were not just heard but acted upon. Ultimately, the common efforts of the business community, UkraineInvest, the Government Investment Commissioner, the Business Ombudsman, and the National Investment Council brought the most egregious aspects of systemic corruption under control. We managed to unlock \$3 billion of frozen investment from existing investors – an unprecedented result. We provided confidence to new investors, like sports equipment manufacturer HEAD, to enter the market with major investments.

Without a doubt, UkraineInvest's high point was our team's receipt of the Chamber's Thanksgiving Award for 2018. This was the greatest accolade we could ever hope to receive – recognition from you, our partners, of our successful collaboration in promoting Ukraine as an investment destination.

At the same time, I recognize that we need to continue to do more in this regard. In particular, **rule of law issues** remain paramount in the minds of investors in Ukraine. These especially include: i) ensuring a level statutory and regulatory playing field for all companies, and ii) a functioning independent and impartial judicial system. The fact that these issues are not unique to Ukraine, and indeed pose challenges in many neighbouring EU countries, doesn't make them any less imperative to Chamber members.

Implementation of the post-Maidan EU-Ukraine Association Agreement has done much to facilitate the regulatory convergence and compliance of Ukrainian law with EU standards regarding **uniform rules for all market players**. From the Board, I would encourage the Chamber to push this regulatory integration agenda further and faster, narrowing the scope for vested interests to exploit gaps in the law (especially in the energy (gas, and renewables especially), chemicals, and ferrous metals sectors). Engagement with tax and customs authorities to address contraband and trademark violations unfortunately remain a perennially unacceptable issue for Chamber members in the FMCG sector. Further, Chamber members in the agri-business sector will want to ensure that they are treated fairly with all other players as Ukraine's new land law evolves.

At the same time, new opportunities are opening for Chamber members to exploit. The recently adopted law on concessions, for example, creates unprecedented public-private partnership opportunities with

respect to Ukraine's creaky infrastructure. Infrastructure development is becoming the key driver of Ukraine's economic growth, attracting private sector companies in construction, engineering, project finance, transportation and logistics, and consultancy. I will encourage the Chamber Board to advocate equal opportunity, moderate regulation, and open access to these new vistas.

**Judicial reform** is arguably the most urgent issue facing business in Ukraine. I was deeply involved with this issue during my tenure at Ukraine's ministry of justice, but I have never seen the malignment of Ukraine's court system reach the hysterical proportions that it has recently. Judges are an easy target for criticism – as many Chamber members can attest, historically the conduct of Ukraine's judiciary has been abysmal. Yet, some Chamber members may have also experienced that justice, at least at the highest instance, has improved since the reform of the Supreme Court in 2018 – of the more than 300,000 cases (!) that the Court has heard in the past three years, there has not been an outcry against any ruling as having been corruptly decided. This ranks as a major achievement given how compromised Ukraine's justice system was before the reform. But curiously, it is an accomplishment that has gained little recognition or attention, perhaps because discussion of judicial reform has become highly politicized and sweepingly broad, with judges tarred as members of a "judicial mafia".

Of course, serious issues do remain in the judiciary. However, I remain convinced that these kind of facile populist indictments are counterproductive. They unfortunately undermine the nascent legitimacy of justifiable judicial reforms in the eyes of a public that instead requires reassurance that effective changes are taking place, even incrementally. They also distract from the opportunity to positively influence the most pressing aspects of judicial reform – the restructuring of the Higher Council of Justice and the courts of first instance and appeal. Ukraine's court system is on the verge of collapse not because of rampant corruption, but because of an absence of judges – the result of the political decision in 2019 to suspend the reforms of the lower courts. Further, lack of adequate financing of the judiciary by the government has starved the courts of funding, severely impeding their proper functioning. As a result, fully one-quarter of lower and appeal court judicial positions remain vacant, with the numbers growing.

Unchecked, these circumstances will have dire consequences for business – parties will experience even longer delays in hearings and decisions, resulting in a denial of justice and further instability and uncertainty in Ukraine's legal environment.

As a Board member, I will encourage the Chamber to recognize the achievements to date, and to take a forceful approach to influence the reform of the judicial system. The Chamber, cooperating with civil society organizations and the US Embassy, can have an important impact in monitoring and supporting the restructuring of the Higher Judicial Council and the first instance and appeal courts. The Chamber can also urge the government to adequately resource and finance the court system to ensure its proper functioning. Continued outreach to the Supreme Court is also desirable. Engagement will facilitate members' understanding of how the unification of practice and jurisprudence in the commercial courts narrows the scope for corruption and contributes to a more stable and predictable business environment.

I would be honoured to apply my experience to continue to defend and promote investor interests and to represent your concerns in these crucial discussions. If you believe that my background and experience can be an asset to the Chamber, I would humbly request and would be very grateful to receive your vote as a Board Member.

Why do you feel you are qualified to serve on the Chamber Board? What skills would you bring to the Board?

During my UkraineInvest selection interview, I told the Prime Minister that as an international lawyer in Ukraine, my job is to protect my clients by helping them manage the inherent risks in this environment. Joining Kinstellar I have come full circle in defending the rights of investors from the private sector. I believe that my unique public-private sector background qualifies me to make a substantive contribution to addressing the rule of law issues identified by our members as their most pressing concern. The most relevant among these qualifications are an understanding of how to effectively collaborate with government authorities to achieve objectives important to the business community; a demonstrated ability to build effective stakeholder alliances to develop and advocate coherent policy positions; and profound experience in legal and judicial reform issues at the policy and implementation level.

I would add to this list my first-hand experience in promoting Ukraine to investors abroad. I have learned we need to be more positive about advocating Ukraine as an attractive investment destination. It means talking about and explaining reforms in their proper context - too often, many tend to make the Perfect the enemy of the Good when making judgments about Ukraine as a place to invest. Let's look at the glass half full, not half empty.

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How have you been active in the Chamber over the course of the last two years?

Having just re-established myself in the private sector after heading UkraineInvest, I have not had the opportunity to engage with the Chamber until this time.

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What activity or Committee would you participate in and be responsible for?

Rule of Law matters (Legal and Judicial reform); investment climate improvement

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