



## Update on Current STCU Headquarters Building Lease.

### *Force Majeure Declaration*

On 8 April 2008, the local electric company cut power to the STCU headquarters building. The STCU Executive Director informed the Ukrainian Government and Governing Board that, in accordance with the instructions of the 25<sup>th</sup> GBM, he was declaring "Force Majeure" and was suspending all STCU HQ office operations. The ED sent individual letters of suspension to each Project Manager, Institute Director, and Partner of approximately 130 active STCU projects that involved solely Ukrainian scientists (the total amount of project funds suspended totaled approximately \$5.5 million US and €5.3 million). Included in the suspension were Regular Projects and Governmental Partner Projects (with the exception of DOE/IPP Partner Projects, which was confirmed by written procedure by the Governing Board).

A diesel generator was installed for the week of 8<sup>th</sup>-11<sup>th</sup> April to enable STCU to power down its operations, and to inform all parties, project managers, government and non-government partners, .

Thereafter, the building has been closed except for limited maintenance checks, cleaning. Staff stayed at home and monitored their e mails from home. Management liaised via phones & e mail and occasional meetings.

Planned Project Monitoring carried on as usual during April.

The ED gave regular weekly updates to all concerned. Regular contact was kept with the Ambassadors who regularly assisted in meeting with the Government Officials and informing them about our case.

Mr. Ian Boag of the European Delegation was very active in contacting the Vice Prime Minister Nemyrya and other Heads of Delegations.

Many other activities were affected by the Force Majeure: the lack of electricity meant that no local financial transactions could take place, thus planned project-related travel and STCU program-related travel plans had to be altered or cancelled because there was no way to ensure when travel vouchers could be paid by STCU. Because of the prohibitive cost of keeping project-purchased equipment in Customs storage, the ED, CFO, CAO and Customs Officers developed a schedule for printing and signing Customs Clearance forms to clear such equipment. Project monitoring for April (where travel advances were already paid by STCU) were allowed to continue as planned, but other planned project activities were postponed. Finally, the IT Group discovered that in order for the STCU email to work over the long term, and for a banner to be kept on the STCU web site, the STCU computer server had to be moved to STCU's local telecom provider to hook up the server to the providers' computer system.

There were several starts-and-stops during the Cabinet of Ministers' consideration of the new decree on STCU, which apparently re-opened old debates about STCU and Ukraine's need for such an organization. But after at least 3 separate CabMin decisions, and the continued phone calls and communications to MES, to MFA, and to the Vice Prime Minister's office by the Canadian, EU, and U.S. diplomatic missions, by the beginning of June, the final CabMin decree was approved. MES stated that was ready to pay the Kamenyariv Landlord the rent and utility monies. MES also stated its proposal to relocate STCU to new premises that are more under MES control on the campus of Kyiv Polytechnic Institute, because the long-term ability of MES felt it could not afford to pay the privately owned Kamenyariv building over the long term.

**During this interim period these are some of the main points which occurred and which are briefly outlined below:-**



On 17<sup>th</sup> April The Landlord sent a letter to MES stating/demanding that if the lease was not signed within 7 days then STCU should vacate Kamenyariv by 30<sup>th</sup> April;

On 24<sup>th</sup> April the Landlord signed a lease with MES retroactive to 1<sup>st</sup> January 2008. However the lease agreement needed to be verified (stamped), by 4 other UA Authorities and then go back to CabMin for final verification.

On 7<sup>th</sup> May CabMin approved the resolution proposal to only approve the "principle" of authorizing MinEdScience to take responsibility for the STCU lease issue. Now there needs to be CabMin approval of the actual arrangements between MinEdScience and the Landlord (i.e., the approval to implement the lease agreement and authorization for payments). Thus this 1<sup>st</sup> decision was only to approve the idea in principle and not to actually approve the content details.

A CabMin edict signed by the Prime Minister Yulia Tymoshenko noted to resolve the STCU situation and also look and come up with a long term solution proposal within 3 months.

On this last issue the landlord then advised STCU that maybe this 3<sup>rd</sup> / last decision item may be changed to extend the lease but would need a new CabMin decree. This started a new round of questions / delays.

The Kiev City Mayoral elections were at this time taking center stage and keeping government parties busy. Thus STCU's situation was therefore not a priority and getting signatures as required on the lease was proving difficult. Plus there were several holidays during May which interfered with the process.

On 28<sup>th</sup> May CabMin finally approved the payment of monies for the lease. This in principle meant that payment could go ahead and there should be no other obstacles. Although some minor administrative issues and signatures were still required.

On 29<sup>th</sup> May the Landlord went on holiday till 12<sup>th</sup> June.

The issue of extending the Force Majeure to Partner projects was raised with the GB and also asking the GB to consider issuing instructions on whether to suspend all remaining non-Ukrainian projects, if the power continues to be off.

The ED asked for the generator to be brought back in to help prepare for the coming AC/GB.

The Generator was installed on 12<sup>th</sup> June. Vital IT equipment kept at our telephone provider to allow e mail access was taken back and reinstalled.

Staff were called back in to resume work on 13<sup>th</sup> June for limited operations, (i.e. payment of bills, AC/GB preparation etc).

During the week of 9<sup>th</sup> June MES confirmed it had paid the Landlord.

The Kamenyariv Landlord was on vacation until 12 June, but returned on 11<sup>th</sup> and confirmed receipt of the funds. On 13<sup>th</sup> he paid all outstanding dues to KievEnergo including the fine for non/late-payment, STCU currently awaits resumption of electrical power which is anticipated sometime on or after 17<sup>th</sup> June.

On Friday 13<sup>th</sup> the ED, CAO and Maintenance Officer met with Vice Minister Maxim Strikha, the Rector of KPI and discussed KPI's proposal for STCU's temporary and permanent office relocation to the campus of KPI.

The temporary solution is half of a fourth floor office space (total 483sqm) of a KPI campus building. The office needs renovation which will take several months. This can only commence once the STCU Board agree to accept this KPI proposal (and specify STCU's agreement in the Record of Decision), which will be used by



MES to send a letter to the GofU to adopt the proposal, approve it and allocate separate budget funds to finance the renovation. Essentially this space can only be used for work places.

As this office space is quite small (half of current Kamenyariv building size), STCU has to send to KPI its minimum building specification requirements, (vis-à-vis, office requirements, power, communications entrances, parking, security, location etc), to see if KPI can accommodate all STCU's minimum requirements). The CAO will draw up these specifications.

Additionally, KPI has offered the use of it's meeting / conference rooms, auditorium facilities to compensate STCU for the temporary office's lack of space. Details on this have not yet been discussed.

The longer term solution will be a brand new building to be built on the current campus site construction starting sometime in 2009 and taking 2.5 to 3+ years to build. KPI say they can allocate 1000sqm to STCU.

The ED voiced concern that the GofU should make some sort of formal commitment to reserve this future space as without that and with time and people moving on the original agreements could well be forgotten.

MES advised that if this long term proposal was also acceptable by the GB then this should also be recorded and noted in the Record of Decisions and which MES will get the GofU to agree and approve this proposal and to allocate a special STCU building budget for this purpose which will be mentioned in the law on the budget of Ukraine to stand and confirm as a GofU commitment to this proposed offer.

The STCU awaits for resumption of full electrical power, and will commence the administrative requirements in respect of follow up to MES and KPI's temporary and permanent office proposal, to which the AC/GB will be informed and to which the GB will have to make a decision on the recommendation of the STCU Secretariat in order to start the process of securing new office premises.

Whilst the Secretariat welcome the proposals offered which shows a positive sign from MES & GofU, this is only the start and the due process of getting final GofU approval and commitment of budgetary funds for renovation and further setting aside funds for the new building. If history is anything to go by this will take some time and there is some concern that the year end deadline may not be met.

The temporary office space would have to be ready in December in order that a full move of the office, fixed assets and equipment could be made before the expiry of the lease on 31<sup>st</sup> December 2008.

There is a Secretariat recommendation that MES consider a fallback solution of a possible current lease extension in case the new office premises will not be ready in time as we made end up again in another Force Majeure situation with the Landlord demanding our vacation of our current building.

Also what is not currently clear is that while renovation of the new temporary office should be done, no discussions or decisions have yet been made about what STCU may have to also spend in respect to cabling for IT and communications and or any other expenses.

#### **Update since AC/GB Meeting on 17<sup>th</sup>/19<sup>th</sup> June 2008**

At the GBM the Governing Board welcomed the proposal by the Ministry of Education and Science of Ukraine to build a new facility for STCU on the campus of Kyiv Polytechnic Institute. However, this building has not yet started construction, and probably will not be ready until 2011-2012. Nonetheless, the Board wanted to endorse this idea with the Ukrainian Government

While waiting for this new building to be constructed, the Board asked the Ukrainian Government to ensure that STCU remains in a building that is suitable for STCU's needs. This means either (a) extend the current lease agreement for 21 Kamenyariv Street so STCU can stay here beyond 31 December 2008, or (b) find an office space that is ready for immediate occupancy and is fully suitable to host STCU.



Unfortunately, the first "temporary premises" offered at the GB meeting by the Ministry of Education and Science was in a "cherdak" in a KPI student's building that required major repairs and renovations. The Board felt that this specific location was too small, required too much repair work, and was not suitable for an intergovernmental organization of STCU's diplomatic status. So, the Board asked the Ukrainian Government to look for other alternative solutions, such as extending the STCU's stay at 21 Kamenaryiv St.

After the GBM the following actions were brought & or implemented.

- In June at MES' request the CAO re-wrote STCU's minimum building specification and requirements. These were then given to MES / KPI etc.
- A Letter dated 02/07/08 from the 3 funding party country Ambassadors was sent to the Vice Prime Minister the Hon. G.M Nemyria urging the GoU resolve the STCU Headquarters situation, and expressing the parties strong political will to STCU and asking the GoU to reconsider it's decision to limit the lease of the current premises to the end of 2008 and to have an extension option in order to prevent any further force majeure situations.
- Letter dated 14/07/08 from the STCU Governing Board Chairman Zoran Stancic sent 23/07 to MES Deputy Minister Strikha and copy to Mr. Yatskiv plus cc'd to all Ambassadors etc, again calling on MES to resolve all issues as soon as possible to find either a location ready for use or extend the current lease. The The minimum specification s are also attached for MES information.
- STCU requests the signed user agreement for the current STCU building from MES.
- In response MES requests STCU to draft the agreement & get landlord to sign it
- STCU sends user agreement draft to MES 30/07/08 for their review and for them to finalise and get all interested party signatures as STCU is not a part of the user agreement.
- To date MES has not provided a user agreement citing that there are some legal issues in the draft that their lawyers are trying to work on.
- The ED was in regular contact with Yatskiv & Strikha and the Ambassadors.
- This finally results in meeting with Mr Strika/MES and Mr.Yatskiv and representative from KPI & KFA on 19/08/08 in MES's office advising STCU of a new proposal.
- The proposal turns out to be the same earlier proposal but with some enhancements such as additional reception and entrance space and storage facilities. Plus proposed office planning drawings
- MES advise this is the only realistic option available from the GoU and was the position of VPM Nemryia & the MFA, and believe they have fulfilled most of STCU's minimum building specifications.
- MES advise that a contractor has been chosen and will start the renovation work from 26/08/08 and it was stated the office would be ready by the end of November.
- Strikha asks STCU to meet immediately with KPI & discuss informally office floor planning & logistics for STCU requirements.
- A formal written proposal confirming their (new/old) premises proposal to STCU would be sent out shortly. To date this has not been received.
- There was an unofficial ultimatum by MES that If for any reason the STCU & GB did not agree with the proposal then there was likely to be serious concerns as to continued GoU goodwill towards STCU's activities in Ukraine.
- As such any change of current policy would need a new GoU decree to allow STCU to stay at the current premises.
- The proposed building review meeting with KPI was delayed by KPI until 02/09/08 where STCU requirements were discussed.



- A further meeting took place on 05/09/09. A reminder to MES for their formal proposal letter was given.

**Update since AC Meeting on 30<sup>th</sup> September 1<sup>st</sup> October 2008, In Brussels.**

- At the AC Meeting in Brussels on 30<sup>th</sup> September / 1<sup>st</sup> October the parties agreed through an agreed worded draft to send out individual part letters by their local Ukrainian Embassies / Ambassadors to the GofU / MFA cc MES essentially rejecting the second temporary accommodation proposal reconfirming the GB Decision of 19/06/08, on the basis that the premises was not suitable for an intergovernmental organization of STCU's diplomatic status.
- Note Verbale & Demarche letters sent out by Parties' Kiev based Embassies/Ambassadors.
- The CAO sent copies of past & current lease & user agreements to the parties as requested by them at the AC meeting in Brussels.
- A letter from MES (Mr. Strikha) dated 01/10/08 received 06/10/08 advised that the KPI proposed premises is currently under reconstruction and will be finished by 01/12/08 and STCU will be able to occupy the premises by 01/01/09.
- The Landlord sends a letter to MES at the end of September beginning of October requested MES to inform him as to the prolongation or otherwise of the current Kamenyariv lease agreement and if not to be extended then to prepare to vacate the premises by 31/12/08.
- Andrew Hood Meets with MES / Mr. Strikha on 20/10/08 regarding building situation but no change to current MES stance.
- The US Ambassador meets with First Deputy Prime Minister Nymeyra on 23/10/08 and discusses building issue.
- A KPI building site reconstruction status visit is scheduled for 29/10/08.