

# NEWSLETTER

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## CORPORATE LAW

### Mandatory Disclosure of Final Beneficiaries of Legal Entities

All legal entities, registered before 25 November 2014, are obliged to submit information on final beneficiaries to the State Registrar by 25 May 2015.

As previously reported, such a requirement was established by the Law of Ukraine regarding determining ultimate beneficiaries of legal persons and public office-holders, dated 14 October 2014 (the "Law"). The Law is geared to fighting corruption and aims to create mechanisms that ensure transparent corporate ownership structures.

As specified in the Law, the term "final beneficiary of a legal entity" means a private individual who (directly or indirectly) exercises a decisive influence on a legal entity's management or activities irrespective of their participating interest, or who directly or indirectly holds an interest of 25% or more in the share capital.

The information on final beneficiaries is provided to the State Registrar and reflected in the commercial register (the Unified State Register of Legal Entities and Individual Entrepreneurs). The commercial register includes the final beneficiary's first name(s) and surname, patronymic name (if any), their nationality, passport details and tax number, as well as a directory of founders (shareholders) for the legal entity and information on its ownership structure. This serves to ensure that private individuals who hold an interest in this legal entity can be determined.

The law also sets out the administrative liability for the legal entity's managing director for not presenting the information on the legal entity's final beneficiary to the State Registrar. This administrative penalty is set at between UAH 5,100.00 and 8,500.00 (or approximately USD 190 to 315).

## CURRENCY LEGISLATION

### Control over Advance Payment under Import Contracts Strengthened

The Resolution of the National Bank of Ukraine «On Peculiarities of Certain Currency Transactions» No. 124 dated 23 February 2015 came into force on 24 February 2015. The NBU imposed strict control over advance payment under import contracts. Thus, all transactions for over USD 50,000 are subject to verification (previously – over USD 100,000).

From now, prior to allowing any advance payment under the import contract over USD 50,000 (or the equivalent amount in any other currency at the NBU official currency exchange rate on the effective date of agreement), the banks will have to obtain the NBU's approval. This restriction is not applicable to import transactions where payment is made under a documentary letter of credit. However, the documentary letter of credit shall be approved by a first-grade bank (at least investment grade) according to one of the leading world rating agencies (Fitch IBCA, Standard & Poor's, Moody's).

Bank transactions associated with advance payment under import contracts of customers for more than over USD 500,000 (or the equivalent amount in any other currency at the NBU official currency exchange rate on the date of the agreement) shall be performed exclusively through a documentary letter of credit. In such a case, the documentary letter of credit shall be approved by a bank which has an investment-grade rating or above.

The abovementioned restrictions shall also apply in cases where advance payment is made in foreign currency under import contracts executed with one and the same non-resident, if the overall amounts under such contracts exceed USD 50,000 and USD 500,000 respectively within one calendar month.

In the event if the overall value of the import contract is not specified, the aforementioned restrictions shall apply, if the transferred amounts under such contract, starting from the

effective date of the Resolution No. 124, exceed USD 50,000 or USD 500,000 respectively.

Furthermore, the banks shall be prohibited from purchasing foreign currency on behalf of its customers, if customer's credit funds are used for this purpose. This requirement is not applicable to individuals that purchase foreign currency for the purposes of repayment of consumer loan to the bank.

## **DISPUTE RESOLUTION**

### **First Step towards Judicial Reform**

On 12 February 2015, the Verkhovna Rada of Ukraine adopted the Law of Ukraine «On Ensuring the Right to a Fair Trial». This Law laid down the legal basis for a judicial reform that should provide the effective protection of rights and freedoms of citizens, interests of legal persons in courts, and practical realization of the right to a fair trial. The Law shall become effective from 28 March 2015.

#### *Citizens*

The citizens shall be granted rights regarding the guarantees of equality before the law and courts, transparency and openness of a trial, binding nature of a court judgment and regulation of unbiased distribution of court cases.

The Law stipulates that the information on the court hearing, stage of hearing, place and time of hearing shall be open and public. The right to be present in the open hearing cannot be restricted. Furthermore, the findings of the Supreme Court of Ukraine in relation to application of legal norms shall be binding for power authorities, and the courts will take it into consideration for ensuring the equal application of legal norms.

#### *Judicial Proceedings*

The state executive authorities shall not have any influence over processes of court establishment or specification of number of judges. The number of administrative positions in courts will be shortened and the number of judges will be in line with the real load.

#### *Judges*

Guarantees for judges' independence and immunity, their rights and duties were specified and improved. The procedure of appointment of a judge, including processes of candidate selection, qualification examination and training and education for the position of a judge shall be more transparent.

The Law specifies the procedure for appointment of judges and their election for unlimited term. The first appointment is made by the President of Ukraine on the basis of submission of the High Council of Justice; the election for unlimited term is made by the Verkhovna Rada of Ukraine on the basis of submission of the Head of the High Qualification Commission of Judges of Ukraine.

There are regulations for the independent assessment of the professional level of a judge,

the results of which will determine the further career of a judge. The attestation is introduced in order to encourage judges to increase their qualification level.

There are clear grounds and procedure specified for disciplinary proceedings in relation to judges, a number of disciplinary sanctions are introduced, and fixed terms provided for holding judges liable and application of disciplinary sanctions.

#### *High Qualification Commission of Judges*

In addition, changes were introduced into organization and formation procedure of the High Qualification Commission of Judges of Ukraine, which will compose of the qualification and disciplinary chambers, and also position requirements were specified for members of the Commission.

## **DOING BUSINESS**

### **Business Facilitation**

On 12 February 2015 the Verkhovna Rada of Ukraine passed the Law on facilitation of business (deregulation). This Law made a number of amendments to the legal acts of Ukraine with the purpose of deregulation of terms and conditions of doing business. The Law was submitted to the President for signature and will come into force the next day after its publication.

The amendments are intended to bring the Ukrainian legislation in the certain areas in line with the EU legislation, thus raising the expectations on improvement of Ukraine's position in the World Bank's Ease of Doing Business ranking.

#### *Administrative Services*

The Law has shortened terms for provision of administrative services during the state registration of legal entities and private entrepreneurs. It provides the possibility to submit documents either to the local officials or to the executive officers of the administrative services centres. The number of such administrative services centres is reported to be increased.

The mandatory publication of notification of the state registration, termination, change of name, location of the legal entity in a specialized printed media was cancelled. Instead, such notifications shall be published on the official website of the State Registration Service of Ukraine.

#### *Agricultural Lands*

Changes affected also the agricultural area. The mechanisms for improvement of legal regulation of the leased land and stimulation of a rational use of agricultural land were envisaged by the Law. Thus, the amendments were made to the Law of Ukraine «On Land Lease» dated 06 October 1998 in relation to the transfer of the lease object and the form of rent.

As of now, the lease object under the agreement on lease of land is deemed to be transferred to the lessee from the moment of the state registration of the lease rights. Previously, the lease object transfer was made under the transfer and acceptance certificate under the terms and conditions specified in the lease agreement.

The minimum term of lease of the agricultural land plots for commercial agricultural production, farming or personal farming cannot be less than 7 years. Previously, the terms were agreed in the land lease agreements and could be lower.

The clear criteria in relation to the form of rent were specified. From now the rent can be paid only in a cash form. However, under the mutual agreement of the parties, the rent can be paid in a natural form, which shall be of a cash equivalent of products at the market price at the time of rent payment. The exceptions to the above are the lands in state or communal ownership where the rent shall be paid only in cash.

#### *Other Issues*

The Law terminated the requirement of mandatory state registration of commercial concession (franchising) agreements.

The prohibition of seizure of electronic information systems (or parts thereof) and mobile communication system terminals was imposed. Temporary seizure of electronic information systems and mobile communication system terminals is now only allowed if it is directly specified in the court ruling. The law enforcement authorities are now only allowed to copy information stored in the electronic information systems (or parts thereof).

A number of changes were made in the area of enforcement proceedings in relation to the procedure of collection of the enforcement duty and costs of the enforcement proceedings.

In addition, the procedure of refurbishment and redevelopment of residential premises was simplified; the requirement for obtaining the relevant permit for refurbishment and redevelopment was cancelled. The Law specifies the list of works which can be carried out without the authorizing documents. After completion of such works, no commissioning of the object is required.

### **Product Standardization – a Step towards EU**

By the adoption of the Law of Ukraine on the technical regulations and conformity assessment procedures dated 15 February 2015, the Verkhovna Rada introduced a regulatory document that specifies elaboration, adoption and application of technical regulations and conformity assessment procedures in Ukraine. The adoption of this Law is influenced, first of all, by the necessity of adaptation of the national legislation in the area of technical regulations to the EU legislation.

The purpose of development of the technical regulations is to protect life and health of human beings, animals and plants, environment and natural resources, and to ensure energy efficiency, property protection and national security.

Elaboration, adoption and application of technical regulations will be based on principles specified in the Agreement on Technical Barriers to Trade which is annexed to the Marrakesh Agreement Establishing the World Trade Organization of 1994.

The Law defines the executive bodies authorized to implement the state policy in the area of technical regulation, their powers and procedures to be followed by these bodies, ranging from the elaboration of technical regulation drafts, approval, conformity assessment and publication of technical regulations, to the control over their compliance.

In addition, the Law envisaged a possibility of assigning the independent organizations, that would perform conformity assessment procedures, and accredited testing laboratories of manufacturers, that may be used for enterprise conformity assessment procedures, as specified in the relevant technical regulations.

It is worth mentioning that certain products listed in the technical regulations will be labeled with the mark of conformity with the relevant technical regulations. The form and features of such conformity mark shall be set by the Cabinet of Ministers of Ukraine.

Generally, it is worth noting that the process of harmonization of national legislation, norms, rules, regulations and standards is rather slow and difficult. Therefore, it is crucial to adopt the law aimed at ensuring stronger control over this process. This law sets out the rules for elaboration and application of technical regulations, organizations responsible for elaboration and adoption of technical regulations, and thus brings consistency into this complex process.

The adoption of the Law on the technical regulations and conformity assessment procedures will ensure performance of the Agreement on Conformity Assessment and Acceptance of Industrial Products with EU.

The Law will become effective on 10 February 2016.

## **LABOUR LAW**

### **Change in Employment Permit for Foreigners**

On 11 February 2015, the Resolution of the Cabinet of Ministers of Ukraine «On Deregulation of Economic Activity» No. 42 dated 28 January 2015 came into force.

This Resolution introduces changes into the Procedure of issuance, prolongation and termination of employment permits for foreigners and stateless persons, approved by the Resolution of Cabinet of Ministers No. 437 dated 27 May 2013.

#### *Termination of Payment for Issuance of the Employment Permit*

As of now, no payment for issuance of the employment permit for foreigners and stateless persons is required for:

- persons in relation to whom it is decided to process documents in order to grant a refugee status or a status of a person requiring additional protection;
- persons who submitted documents in order to prolong the employment permit for foreigners.

### *Justification for Work of Foreigners*

In addition, Resolution No.42 specifies criteria under which the work of foreigners and stateless persons is appropriate and sufficiently justified. Thus, in case a foreigner or a stateless person is:

- a candidate for the position of a director, deputy director or for other managerial position with the condition that such foreigner or stateless person is a founder or a participant of such entity, institution, organization;
- a candidate for the position that provides for creation of items subject to copyright and/or related rights as the primary duty of employment;
- a candidate in the programming industry for the position of a director or the position which is specified by the codes of Classification of Professions as professionals in the areas of computing and programming;
- obtained a Diploma of Higher Education from one of the educational institutions that included into one hundred world rankings of: Times Higher Education according to the appropriate profession; Academic Ranking of World Universities by the Center for World-Class Universities at Shanghai Jiao Tong University; QS World University Rankings by Faculty; Webometrics Ranking of World Universities.

### *Shorter Terms*

Resolution No. 42 envisaged shorter terms for submission of documents by the employer and relevant decision-making of the State Employment Service of Ukraine:

- submission of documents by the employer to the State Employment Service of Ukraine for prolongation of the permit is carried out within 20 calendar days (previously – within 30 calendar days);
- decision of the State Employment Service of Ukraine regarding issuance, refusal to issue, prolongation, refusal to prolong or termination of the permit is carried out within seven business days (previously – within 15 calendar days);
- sending of the decision of the State Employment Service of Ukraine to the employer is carried out within two business days (previously – three business days);
- transfer of funds for issuance of the permit by the employer to the account of the State Social Insurance Fund Against Unemployment is carried out within ten business days (previously – within 30 calendar days);

processing and issuance of the permit by the State Employment Service of Ukraine is carried out within three business days after transfer of funds to the account of the State Social Insurance Fund Against Unemployment (previously – within ten days).

## **RENEWABLE ENERGY LAW**

### **Feed-in Tariffs Reduced**

On 31 January 2015, the National Commission for State Energy and Public Utilities Regulation (NCSEPUR) has reduced the legally established rates of the Feed-in Tariffs for business entities that produce electricity from alternative sources of energy.



According to the NCSEPUR's resolution, the Feed-in Tariffs were reduced by:

- 20% - for entities that generate electricity from solar energy via ground electric power facilities commissioned before 31 March 2013 inclusive;
- 10% - for entities that generate electricity from all other alternative energy via electric power facilities commissioned before 31 March 2013 inclusive.

The reduced rate of Feed-in Tariff will be applicable during a period of emergency in the energy sector introduced by the Resolution of the Cabinet of Ministers of Ukraine No. 36-p dated 14 January 2015. At the end of February the Cabinet of Ministers prolonged the temporary emergency measures in the energy sector until 24 March 2015 inclusive.

## TAX LAW

### Additional Import Duty Introduced

The Resolution of Cabinet of Ministers of Ukraine on the completion of negotiations with international financial organizations dated 16 February 2015 became effective on 25 February 2015.

Adoption and publication of this Resolution was necessary in order to give effect to the Law of Ukraine on measures of stabilization of the balance payments of Ukraine No.73-VIII dated 28 December 2014. This Law envisages a temporary (up to 12 months) accrual of the additional import duty.

Thus, starting from 25 February 2015 the additional import duty shall be paid when importing goods into the customs territory of Ukraine, irrespective of the country of origin of such goods and free trade agreements concluded with Ukraine.

The additional import duty will be charged at the following rates:

- 5% for goods classified as product groups 25-97 according to the Ukrainian Classification of Foreign Economic Activity Products;
- 10% for goods classified as product groups 1-24 according to the Ukrainian Classification of Foreign Economic Activity Products;
- 10% for goods that are subject to import duty under Article 374 of the Customs Code of Ukraine (goods that are imported/forwarded by citizens on the territory of Ukraine).

Vitally important goods, such as some sorts of oil, natural gas, coal, electricity, medical products for hemodialysis-dependent and cancer patients, are exempted from the additional import duty. The list of such medical products, which are exempted from the additional import duty, was approved by the Resolution of Cabinet of Ministers No.63 dated 16 February 2015.

Pharmaceutical products and compounds used for their production which are not produced in Ukraine are also exempted from the additional import duty. The relevant list of such



pharmaceutical products and compounds was approved by the Resolution of Cabinet of Ministers No.1568 dated 17 November 2004.

Defense products, including drones, binoculars, thermal imagers, night vision devices, protective goggles, telescopic sights and other optical devices for military weapons, components of the military and special equipment, etc., are not subject to the additional import duty.

It is worth mentioning that the tax base for goods imported into the customs territory of Ukraine is their contract price, which cannot be less than their customs price, specified by the provisions of the Customs code of Ukraine, inclusive of import duty and excise tax to be paid and included in the price of goods. Thus, when calculating VAT, the amounts of additional import duty shall be included into the tax base.

### **Tax Changes for Printed Media**

On 13 February 2015, the Verkhovna Rada of Ukraine adopted the Law on changes to the Tax Code of Ukraine. The introduced changes will reduce and simplify taxes payable by domestic publishers. The Law was submitted to the President of Ukraine for signature, and becomes effective from the day of its publication.

In particular, the changes relate to VAT exemption for such activities as preparation (literary, scientific and technical editing, adjustment, design and layout), manufacturing (paper print or electronic media record), distribution of books, including electronic content of domestic production, student notebooks, textbooks and manuals, dictionaries of Ukrainian-foreign or foreign-Ukrainian languages of domestic production on the customs territory of Ukraine. Also, subscription for and delivery of printed periodicals of domestic production is exempted from tax. Delivery is defined as transfer of the right to dispose of goods by the owner, including through their sale, exchange or donation as a gift, and also by a court order.

Thus, the VAT exemption is applied at any stage of delivery (realization) of printed periodicals of domestic production, from manufacturers to final consumers.

This preferential tax treatment is not applicable to erotic production.

It is also worth mentioning that as of 1 January 2015 the benefits associated with taxation of income received by publishers and printing entities through production of books on the territory of Ukraine have been cancelled.

### **Tax Exemptions for Defense Products**

Starting from 1 March 2015 it is possible to import defense products into Ukraine without payment of import duty and VAT. Amendments to the Tax Code of Ukraine aimed at the exemption of defense products from import duty and VAT, introduced in September 2014, were not implemented properly, *inter alia*, due to collision of certain provisions. After the relevant changes were made to the Tax code and after Ukraine recognized Russia as an aggressor state, the abovementioned legal collision was remedied.

Defense products, specified as such in Article 1 (9) of the Law of Ukraine «On State Defense Order» dated 03 March 1999 and classified into separate groups, product positions and categories according to the Ukrainian Classification of Foreign Economic Activity Products, are exempted from import duty and VAT.

Defense products, including drones, binoculars, thermal imagers, night vision devices, protective goggles, telescopic sights and other optical devices for military weapons, components of the military and special equipment, etc., are not subject to taxation.

Defense products originating from the Russian Federation shall continue to be taxed on the general basis. Depending on the product category, the amount of import duty for such products shall range from 6.5% to 30%. The VAT rate is 20%.

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