

# NEWSLETTER

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## **BANKING**

### **Enhanced liability of bank related persons**

The amendments in relation to liability of bank related persons introduced on 2 March 2015 became effective on 8 March 2015.

The amendments increased liability of bank managers, owners (final beneficiaries) and bank controllers over matters that affect the financial state of a bank.

In particular, amendments to the Code of Ukraine on Administrative Offences and the Criminal Code of Ukraine were introduced which deal with breach of acts of the National Bank of Ukraine, including submission of false (incomplete) reports on the quality of assets, transactions with bank related persons, performance of risky transactions.

In addition, administrative liability for actions that resulted in designation of a bank as a problematic one, and criminal liability for actions that resulted in designation of a bank as a problematic one, if this caused significant pecuniary damage to the state or a creditor, were introduced. Such actions are punished by restraint of freedom for a term between 1 to 5 years or imprisonment for the same term with a fine between UAH 85,000 (approx. USD 3,630) and UAH 170,000 (approx. USD 7,260) and disqualification to hold certain positions or engage in certain activities for up to 3 years.

The amendments also established material liability of bank related persons for losses incurred by a bank due to a fault of such persons. If loss to a bank was caused due to actions or inactions of a bank related person, and another bank related person directly or indirectly obtained material benefit from that, both such persons shall be jointly and severally liable for the damage caused to a bank.

## **CORPORATE LAW**

### **Decrease of quorum for general meeting in JSC**

On 19 March 2015 the Verkhovna Rada amended the Law of Ukraine on joint stock companies. The amendments affected the quorum for general meetings of shareholders, the procedure for payment of dividends, and also the mechanism of election of candidates to the bodies of a joint stock company. The amendments came into force on 27 March 2015.

Thus, decrease of quorum for general meetings of shareholders in a joint stock company from 60 % to 50 % + 1 share was introduced for all joint stock companies, not only for those in which the state has corporate rights in the charter capital and 50 and more per cent of shares are owned by the state.

Also, changes were introduced to the mechanism of payment of dividends. Now, if no payment of dividends takes place within the term prescribed by the law or the general

meeting of shareholders, the shareholder becomes entitled to apply to the notary for executive endorsement on the documents under which debt collection is made on the uncontested basis.

In addition, it was specified that the rights of shareholders in relation to submission of proposals to the agenda of the general meetings and also in relation to proposals of new candidates to the bodies of the company and procedure of their submission cannot be altered by the charter of a joint stock company. In case of early termination of powers of one or several members of the supervisory board and until appointment of all of its members the meetings of the supervisory board are authorized if more than half of its members are authorized.

## CURRENCY LAGISLATION

### New currency control restrictions of the NBU

On 4 March 2015 the Resolution of the NBU «On stabilization of credit and currency control markets of Ukraine» No. 160 dated 3 March 2015 came into force, extending restrictions on currency market until 3 June 2015. Moreover, Resolution No. 160 introduces additional restrictive measures aimed at stabilization of the currency market of Ukraine.

Thus, the mandatory requirement for legal entities, individual entrepreneurs and representative offices (except for official representative offices) to sell 75 % of the foreign currency proceeds received from abroad has remained in force.

The NBU also extended prohibitions on, inter alia:

- issuance of funds in the amount of over UAH 150,000 (approx. USD 6,900) per one business day to legal entities and individual entrepreneurs. The exceptions include payment of salaries, costs of business travels and other social payments;
- transfer of foreign currency abroad by individuals under current non-commercial transactions without confirming documents in the amount of over UAH 15,000 (approx. USD 690) per day (UAH 150,000 (approx. USD 6,900) per month);
- sale of cash in foreign currency to one person in a bank office during one business day in the amount of over UAH 3,000 (approx. USD 135).

Residents are precluded from early repayment of loans in foreign currency under loan agreements with non-residents. This restriction is also applicable to payment of interest under such agreements. The NBU still refuses to register amendments to loan agreements with non-residents in relation to shortening the maturity period under such agreements or their early performance.

The NBU has broadened the list of restrictive measures for stabilisation of UAH, in particular by introducing prohibition on purchase of foreign currency:

- for the purposes of repatriation of dividends to foreign investors abroad;

- for the purposes of repatriation of proceeds received by foreign investors from the sale of corporate rights, other than shares, of legal entities, decrease of the charter capital of legal entities, exit from a legal entity;
- for the purposes of repatriation of proceeds received by foreign investors from the sale of securities of Ukrainian issuers (except for sales of bonds conducted on a stock exchange).

The banks are prohibited to sale foreign currency to clients (except to individuals) that have funds in foreign currency on current and deposit accounts with this or other banks. Such prohibition is not applicable when the aggregate amount of client's funds in foreign currency is less than USD 10,000. However, such amount does not include those funds property rights to which are under pledge; funds placed onto deposits prior to enforcement of Resolution No. 160; and funds on the accounts with banks in temporary administration or liquidation.

Cash under electronic means of payment is issued only in UAH on the territory of Ukraine.

In case of purchase and transfer abroad of foreign currency under import transactions in amount of over USD 50,000, legal entities and individual entrepreneurs, in addition to confirming documents, shall also provide a bank with the certificate on absence of tax debt from the Fiscal Service of Ukraine, and, if required, the appropriate price assessment act.

### **Payment under foreign economic agreements**

On 3 March 2015 the National Bank of Ukraine amended Resolution No. 597 on transfer of funds to non-residents under certain transactions regarding payment for services under foreign economic agreements.

As of now, the expert price assessment act issued by the State Enterprise National Research and Information Center for Monitoring International Commodity Markets that certifies conformity of the contract prices for works, services, intellectual property rights serves as the ground for payment for works, services, intellectual property rights to a non-resident in the amount of EUR 25,000 (previously EUR 50,000) and above, or its equivalent in any other currency.

## **DISPUTE RESOLUTION**

### **Clarifications of the Supreme Court of Ukraine**

In March 2015 the Supreme Court of Ukraine (the SCU) clarified some aspects of application of legislation on foreclosure on the mortgage by notaries and joint and several liability of sureties.

In case No. 6-141цг14 the SCU confirmed the ruling of the lower court on illegality of the executive notary enforcement in a dispute. Thus, the court clarified that in accordance with the Article 87 of the Law of Ukraine on notaries, in order to foreclose

on funds or reclaim property the notaries execute enforcement on documents that establish indebtedness. The list of documents required for the undisputed procedure for foreclosure of indebtedness through executive notary enforcement is specified by the Cabinet of Ministers of Ukraine.

In accordance with clause 1 of the Resolution of the Cabinet of Ministers No. 1772 dated 29 June 1999 on the list of documents required for executive notary enforcement, the original of the notarized agreement, documents confirming undisputed indebtedness of a debtor and late performance of obligations are required in order to foreclose on the notarized agreements.

Therefore, in the opinion of the SCU, if at the time of executive notary enforcement there was a court dispute on the amount of indebtedness under the credit agreement, there is no undisputed indebtedness of a debtor.

In the other case No. 6-35ц15 the SCU stated that the sureties under different agreements with the debtor are not jointly and severally liable before the creditor. Therefore, the creditors are entitled to submit a claim to the sureties only on the basis of the existing agreement.

## **DOING BUSINESS**

### **New law on licensing of economic activity**

On 2 March 2015 the Verkhovna Rada adopted the Law of Ukraine on licensing which significantly simplified receipt of licenses, reduced the number of economic activities subject to licensing, established control in the licensing area. The Law will become effective on 1 July 2015.

The number of economic activities which require licensing was halved, including some that were consolidated. No licensing is required for, inter alia, construction activities (except for the objects of IV and V levels of difficulty), trade in pesticides and agrochemicals, processing of blood and its components, processing of scrap ferrous and non-ferrous metals.

The Law allows an applicant to submit its application to the licensing authority electronically via means of telecommunication in accordance with the requirements of laws on electronic documentation submission.

As of now, the licensing authority issues the license in electronic form. Nevertheless, the licensing authority, if requested by the applicant or the licensee, may issue the license (its copy) in paper form.

The license, irrespective of the type of economic activity, may be issued for unlimited term. A one-off payment in the amount of one minimal wage is required for issuance of the license. Renewal of the license is free of charge.

## **Business deregulation plan is approved**

On 18 March 2015 the Cabinet of Ministers of Ukraine approved the Business Deregulation Plan. The Plan contains 171 initiatives aimed at facilitation of doing business in Ukraine.

Among the main points of the Plan the following are worth mentioning:

- decrease in the number of controlling authorities and reduction of their powers;
- simplification of procedure for obtaining building permits;
- abolishment of the mandatory certification of food products;
- possibility to submit applications for registration of the land lease rights in electronic form;
- simplification of tax reporting forms and procedures for the customs clearance of goods;
- seizure of the entity's servers by the law enforcement authorities only after the appropriate court decision;
- transfer of powers with regards to the issuance of permits to the local authorities;
- simplification of documentation preparation required for participation in state procurement procedures;
- development of electronic commerce market.

In addition, the effect of the Law of Ukraine on principles of state control in the economic activity area was extended by the Cabinet of Ministers to the tax authorities. This might help protect entrepreneurs from any possible abuse of power by the controlling authorities during inspections.

## **LABOUR LAW**

### **New conditions for reducing Single Social Contribution rate**

On 2 March 2015, the Verkhovna Rada amended the Law on Single Social Contribution.

New conditions for lowering the coefficients (0.4 in 2015 and 0.6 in 2016) of the Single Social Contribution rates were introduced.

The rates of the Single Social Contribution are applied with lower coefficients to salary or remuneration under civil agreements if the employer satisfies all of the three following conditions:

- the accrual base of the Single Social Contribution per one insured person in the reporting month increased at least by 20 % compared with average monthly accrual base of the Single Social Contribution for 2014 per one insured person. Previously the accrual base comprised all insured persons at an enterprise and had to be increased by 30 % or more;

- after application of the coefficient for the average payment per insured person in the reporting month it will be not less than the average payment per insured person in 2014. Previously the average payment per insured person after application of the coefficient had to be at least UAH 700 (approx. USD 30);
- the number of insured persons in the reporting month does not exceed 200 % of the average number of insured persons in 2014. This condition is not applicable to individual entrepreneurs and persons that employ other persons under employment agreements (contracts).

The abovementioned amendments came into force on 13 March 2015.

### **Salary compensation to mobilized servicemen**

On 4 March 2015 the Cabinet of Ministers of Ukraine through the adoption of the Resolution No. 105 approved the Procedure for payment of compensations of the average salary to mobilized servicemen from the state budget to entities, institutions and organisations.

According to the Procedure, the average salary is paid by the entity, which gets compensation from the departments of the Ministry of Social Policy.

The procedure for submission of documents on the basis of which the entity is compensated and the procedure for calculation of the average salary of employees shall be carried out in accordance with the Resolution of the Cabinet of Ministers No. 100 dated 8 February 1995.

### **Social security of demobilized servicemen improved**

On 18 March 2015 the Verkhovna Rada adopted the Law on improvement of social security of demobilized servicemen.

The Law provides that the workplace is reserved for a mobilized serviceman for a period of 18 months (previously 12 months).

Also, the Law stipulates that servicemen after demobilization are entitled to annual vacation or monetary compensation for all unused days of annual vacation.

## **PHARMACEUTICALS**

### **Simplification of state registration of drugs**

On 18 March 2015 the Cabinet of Ministers of Ukraine adopted Resolution No. 125 and amended the Procedure of state registration (renewal) of drugs.

The adopted resolution cancelled the requirement of registration renewal of drugs every 5 years, and also simplified procedure for expert evaluation of the registration file for the original drugs registered with the European Medicines Agency.

Also, the resolution simplified the state registration of drugs designed exclusively for treatment of tuberculosis, HIV/AIDS, viral hepatitis, cancer and rare (orphan) diseases which are registered as drugs with the competent authorities of the USA, Switzerland, Japan, Australia, Canada or EU.

Decision on registration or registration refusal for such drugs is made by the Ministry of Health of Ukraine within seven days following conclusion of documentation expert evaluation, except for cases specified as grounds for full or partial prohibition of application of a drug by way of termination of the registration document.

## **REAL ESTATE**

### **Procedure for approval of land management project is simplified**

The amendments to Article 186<sup>1</sup> of the Land Code of Ukraine regarding simplification of the procedure for approval of the land management project introduced on 11 February 2015 became effective on 12 March 2015. Such amendments were due to the need to eliminate delays during the procedure for approval of the land management projects.

As of now, the executive authorities in their conclusion to refuse approval of a land management project on allotment of a land plot shall provide the exhaustive list of defects of the land management project and provide reasonable term to cure such defects. Upon written request of the developer of a project such term might be extended.

The executive authorities may refuse approval of a land management project on allotment of a land plot only when the defects specified in the previous conclusion were not cured. It is forbidden to refuse approval due to other reasons or specify other defects.

In addition, it is worth mentioning that repeated refusal does not disqualify the developer of a land management project on allotment of a land plot to cure the defects of the project and submit it for approval.

## **TAX LAW**

### **Military duty tax base expanded**

Changes to the Tax Code of Ukraine, which were introduced on 2 March 2015, became effective on 13 March 2015. Tax base of the military duty was expanded.

As of now, in addition to the previously defined incomes of individuals, the following is subject to the military duty:



- dividends accumulated for a taxpayer in the form of shares (ownership interests, stocks) issued by a resident legal entity, provided that such accumulation does not alter in any way the proportions (ownership interests) of participation of all shareholders (owners) in the charter capital of the issuer, and as a result of which the charter capital of the issuer is increased for the overall nominal value of the accumulated dividends;
- income received by a taxpayer as interest accrued on the securities issued by the Ministry of Finance of Ukraine, and on debt obligations of the National Bank of Ukraine;
- income received by a taxpayer for submitted (sold) recycled materials, household waste, ferrous scrap metals, including used electric lead acid accumulators (code 8548 10 21 00 in accordance with the Ukrainian Classification of Foreign Economic Activity Products), remains and scrap of electric accumulators containing lead (code 8548 10 91 00), and scrap of precious metals sold to the National Bank of Ukraine;
- income received from transactions with currency valuables (except for securities), connected with transfer of ownership on such currency valuables, apart from incomes, taxation of which is directly specified by other norms;
- investment income received from transactions with debt obligations of the National Bank of Ukraine and treasury obligations of Ukraine issued by the Ministry of Finance of Ukraine.

We remind that the rate of the military duty is set at 1.5 % of the taxation object. This temporary duty is introduced until the decision of the Verkhovna Rada on completion of the reform of the Armed Forces of Ukraine.

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