

NEWSLETTER

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CONTRACT LAW

Sanctions of the Ministry of Economic Development and Trade

One of the most common types of violation of currency legislation of Ukraine is breach of import-export transactions procedure. Breach of this procedure is not always a consequence of a fault of a business entity, including a foreign company. Also, it is worth mentioning that sanctions for breach of import-export transaction procedure may significantly complicate activities of a foreign company and block its supplies to Ukraine.

The procedure for import-export transactions is specified in the Law of Ukraine "On the Procedure for Settlements in Foreign Currency". This law stipulates that the proceeds of entities which perform foreign economic activity shall be credited to their currency accounts in the authorized banks within the period of debt repayment, specified in the contract, but not later than 180 days following the prepayment. In addition, the National Bank of Ukraine is entitled to introduce other terms for settlements for up to six months. During the last two years the National Bank of Ukraine has been using its right regularly by prolonging validity of its restrictions, under which the period for settlements in foreign economic activity is reduced to 90 calendar days.

In practice, this means that if within 90 calendar days following the prepayment date the goods fail to pass customs clearance on the territory of Ukraine or are supplied in volumes different from those for which prepayment was made, the special sanctions may be applied to entities which perform foreign economic activity pursuant to the Law of Ukraine "On the Procedure for Settlements in Foreign Currency".

Read more on the [sanctions of the Ministry of Economic Development and Trade](#)

CORPORATE LAW

General meeting quorum reduction in LLC

On 24 November 2015, the Verkhovna Rada of Ukraine amended the Law of Ukraine "On commercial entities" in relation to the LLC general participants' meeting quorum reduction for the purposes of improvement of Ukrainian investment climate and better protection of LLC participants' rights concerning management of the company.

The law amended Article 60 of the Law of Ukraine "On commercial entities" in relation to the quorum of general meeting of participants of LLC, reducing it from 60% to 50%. In other words, the founder (participant) of the company who owns 50%+1 votes/shares is independently and solely able to call for general meeting, to hold general meeting and to resolve the majority of issues regarding the company's economic activity. Respectively, the owner of 49% of votes is not capable to influence

the general meeting by its absence and to block adoption of decisions at such meeting.

In accordance with these changes, the LLC general participants' meeting shall be considered as authorized if there are participants (their representatives) present who jointly own more than 50% of votes/shares.

According to the Parliament's rationale, previous wording of Article 60 of the Law of Ukraine "On commercial entities", pursuant to which the LLC participants' general meeting had quorum on condition of presence of participants (their representatives), who jointly own more than 60% of votes/shares, provided the owner of 40% of votes/shares with the opportunity to paralyze management activity of general meeting. Owners of 40% of votes/shares were able to block the activities of the supreme management body of LLC by not attending the general meeting. Thus, the previous high quorum requirement for general meeting created risks of violation of the majority participants' right to take part in LLC management.

The law also specified that the constitutional documents of entities without state participatory interest in their capital might provide for other percentage of votes of participants (their representatives) necessary for passing resolutions at the participants' meetings of LLCs.

In case of restatement of statutory documents and creation of new business structures, the issue of determination of number of votes required for quorum shall be approached with great care. After all, amendment of the habitual 60% votes/shares quorum threshold could significantly affect the management system of the company.

We are planning to cover this matter in detail in further issues of our newsletter. In particular, DLF attorneys-at-law will provide insights on various aspects of the LLC general participants' meeting quorum reduction in relation to new investment prospects of such innovations, possible risks to be considered during corporate structuring and company management in Ukraine, including in case if management over the assets in Ukraine is performed by foreign holding companies.

Prohibition to make changes to the Unified State Register on the basis of copied documents

On 24 November 2015, the Verkhovna Rada of Ukraine adopted the law in relation to prohibition to make changes to the Unified State Register of Legal Entities and Individual Entrepreneurs (USR) on the basis of copies of documents.

In particular, the Law provides that changes to the USR in relation to the information on the legal entity and its constitutional documents shall be made exclusively on the basis of the originals (or notarized copies) of the resolutions of managing bodies of the entity. Previously, it was possible to make such changes on the basis of the copies of relevant documents.

The Law became effective on 13 December 2015.

CURRENCY LEGISLATION

NBU made some minor changes to the currency restrictions

By its Resolution “On stabilization of credit and currency control markets of Ukraine” No. 863 dated 4 December 2015 the National Bank of Ukraine again prolonged restrictions on the currency market. However, some restrictions were lifted.

Thus, the mandatory requirement to sell 75% of the foreign currency proceeds shall not apply to loans granted to a resident borrower under loan agreements involving a foreign export-import agency to fulfil its obligations under an import contract with a non-resident. This provision shall apply only in cases, where a foreign lender transfers funds under an import contract with a borrower without these funds being credited to the resident borrower's account.

In addition, the mandatory sale of foreign currency shall not apply to funds deposited as public procurement bidding security (tender guarantees or pledges) pledged by a non-resident to participate in the public procurement bidding process, which should facilitate non-residents' access to public procurements.

Nevertheless, due to unstable situation on the currency market, no significant easing of currency restrictions took place, particularly in relation to payment of dividends in foreign currency, repayment of loans to non-residents and abolition of the mandatory requirement to sell 75% of the foreign currency proceeds, which were expected by the market players.

DOING BUSINESS

Deregulation in agriculture

On 8 December 2015, the Verkhovna Rada of Ukraine adopted the law on changes to the laws of Ukraine in relation to deregulation in agriculture, which aims at reduction of regulatory and licensing procedures for doing business in agriculture industry, in particular in the areas of veterinary medicine, pesticides and agricultural chemicals, livestock, food products, fisheries, natural resources, etc.

Thus, 22 outdated or overlapping licensing procedures were cancelled, in particular registration of typical fertilizers and fertilizers that do not contain potentially harmful contaminants, certification of breeding business, registration of foreign trade agreements regarding fishery products, etc.

The law simplified procedure for registration of water use and circulation of fertilizers and plant protection means, and cancelled a quarantine permit for their import, which may result in the possibility of attraction of new suppliers and positive impact on the price at the domestic market.

As of now, the license for industrial fishing, except inland waters and rivers, is required only for fishing outside the jurisdiction of Ukraine. In addition, in the sphere of subsoil use it is now possible to use groundwater for up to 300 cubic meters at one water intake without obtaining a permit.

The law also limits the controlling powers of the state authorities in order to reduce expenses of agricultural business and risks of corruption.

Changes in the procedure for public procurement

On 25 December 2015, the Verkhovna Rada of Ukraine adopted the law which provides for the public procurement to be made in electronic format. This law was adopted pursuant to the Association Agreement between Ukraine and the EU in part of implementation of some EU directives.

Thus, pursuant to provisions of the law, the system of electronic procurement is introduced, which shall ensure rapid exchange of documents and information, disclosure of all proposals of participants following completion of the auction, and is designed to create a model of e-procurement involving state and private business and reduce corruption during such procedures.

In addition, the law stipulates that public procurement shall be conducted via two competitive regulation procedures, namely open tender and competitive dialogue, and one non-competitive procedure, which is a negotiation purchase procedure. Open tender is held using a mandatory auction on the lowest price and non-price based criteria. If the customer is unable to specify the necessary technical or qualitative characteristics of the products and specify the type of work or services, and in cases where negotiations with the participants of public procurement is required, the competitive dialogue procedure shall be applied. Negotiation purchase procedure shall be applied without prior publication, with publication of the notice of intention to conclude the agreement following negotiation with the participant of public procurement.

The law will come into force in two stages: from 1 January 2016 the provisions of the law shall apply to all central authorities and state entities operating in certain industries, and from 1 January 2017 to all customers of public procurement.

LABOUR LAW

Minimum wage in 2016

Pursuant to the Law of Ukraine “On the state budget for 2016” dated 25 December 2015, the minimum wage in Ukraine for 2016 is set at the following amounts: UAH 1378 (approx. USD 59) from 1 January, UAH 1450 (approx. USD 62) from 1 May, UAH 1550 (approx. USD 66) from 1 December.

Licensing conditions for intermediation in employment abroad

On 16 December 2015, the Cabinet of Ministers of Ukraine adopted its Resolution No. 1060 «On approval of Licensing conditions for commercial activity in the form of intermediation in employment abroad», which became effective on 23 December 2015.

This Resolution established the exhaustive list of documents, which shall be attached to the application for acquisition of a license for commercial activity in the form of intermediation in employment abroad, as well as the exhaustive list of the mandatory requirements necessary for implementation during performance of such activity.

In particular, the Resolution provided that the licensee, prior to conclusion of the agreement on provision of intermediary services of employment abroad, shall provide the prospective employee on the free of charge basis with general information about the possibility of employment with the appropriate foreign employer, character of the work, conditions of employment and living in the country of employment. In addition, the intermediary shall examine the qualification documents of the prospective employee and the intermediary services of employment abroad are provided only upon conclusion of the relevant agreement in two counterparts (one for each party).

TAX LAW

Changes in tax legislation

On 24 December 2015, the Verkhovna Rada of Ukraine adopted the Law of Ukraine “On changes to the Tax Code of Ukraine and certain acts of Ukraine in relation to balancing the budget revenues in 2016”. The changes affected almost all important taxes and procedures relevant for business. The law came into force on 1 January 2016.

Thus, for the entities using the simplified tax system the maximum income was decreased to UAH 5 million (previously UAH 20 million). Moreover, the unified tax rate was increased for taxpayers of the third group from 2% to 3% (in case of payment of VAT) and from 4% to 5% (in case of inclusion of VAT to unified tax).

The flat rate of 18% for personal income tax was introduced instead of previous 15% and 20%. As before, the personal income tax rate of 5% is applied to dividends.

The flat rate of the single social contribution of 22% is established. However, the maximum base for single social contribution was increased from 17 to 25 minimum wages.

Reform of the tax legislation also envisaged reimbursement of VAT from the state budget, in particular, publication of the official information on reimbursement. Starting from 1 January 2016 there are two registers: for those whose export volume exceeds 40% and all other.

Concerning the real estate tax, the maximum threshold rate was increased from 2% to 3% of the minimum wage for one square meter of household and/or commercial property, and the additional tax rate in the amount of UAH 25,000 was introduced for apartments of more than 300 square meters and houses of more than 500 square meters.

Changes of the tax legislation also affected the agricultural producers. Thus, under such changes, the special tax regime for agricultural producers is valid until 1 January 2017. The differentiated proportion of declared VAT sums on the special accounts of the agricultural producers and state budget was introduced. Under transactions with livestock, 20% shall be transferred to the budget and 80% to the special VAT account. Under transactions with grain and industrial crops, 15% shall be credited to the special account of the agricultural producer and 85% to the state budget. Under performance of other transactions with agricultural goods/services, 50% shall be transferred to the state budget and to the special VAT account.

In relation to other changes, it is worth mentioning that the additional import duty in the amount of 5% and 10% was cancelled as of 1 January 2016. However, the military duty of 1.5% will remain in 2016. Zero rate of import duty is applied to vehicles with electric engines.

Contact Persons:

Igor Dykunskyy, LL.M.,
Partner
igor.dykunskyy@DLF.ua

Andrii Zharikov, LL.M.,
Associate
andrii.zharikov@DLF.ua

This newsletter is intended to provide a brief overview of current changes to the Ukrainian legislation and should not be viewed as legal advice. For more details or if you would like a specific advice, please, e-mail the named contact persons or use our contact form.

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DLF attorneys-at-law

Torus Business Centre | 17d Hlybochytska Street | 04050 Kyiv, Ukraine | www.DLF.ua | info@DLF.ua
T +380 44 384 24 54 | F +380 44 384 24 55