

NEWSLETTER

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CORPORATE LAW

Law on anti-raiding adopted

On 6 October 2016, the Verkhovna Rada of Ukraine adopted the Law of Ukraine "On amendments to several legislative acts concerning introduction of European standards of protection of property rights and economic interests of citizens and investors", focused on liquidation of schemes of illegal takeover and aimed to promote the protection of property rights in Ukraine.

In particular, the Law of Ukraine "On state registration of legal entities, individual entrepreneurs and community groups" was amended with a rule, which provides that the authenticity of the signatures of the founder (participant), authorized persons or chairman and the secretary of the general meeting, affixed on the decision of the authorized body of legal entity administration, on charter document, conveyance act and divided balance sheet of the legal entity, on a statement declaring participant's withdrawal from the company, submitted for state registration of changes of the legal entity, must be notarized.

Thus, the public and charitable organizations are not subjected to notarize signatures on the decision of changes introduction in charter documents, unless they themselves set such a requirement in their charter documents.

Among the changes introduced to the Law of Ukraine "On State Registration of Rights to Immovable Property and Their Encumbrances", the following innovations should be mentioned:

- the registrar is obliged to inform the owner of the property for which the registration action will be committed on receipt of document package for performance of the registration action;
- the statement of the real property owner prohibiting registration actions in the State Register of Rights and the renewal of registration actions only by court decision, which came into force, or by statement of the owner, should be mandatorily registered;
- the term for filing complaints on commissions or omissions of the State registrar to the Ministry of Justice of Ukraine and its territorial bodies was increased from 30 calendar days to 60 calendar days;
- the Ministry of Justice of Ukraine was authorised to monitor the registration actions in the Unified State Register of Rights to Immovable Property;
- the State registrar is obliged to use data from the State Land Cadastre, Unified Register of Documents, which entitle to perform preparatory and construction works and certify commissioning of completed constructions;
- an extract from the State Registry of Rights should be provided in paper form.

Criminal and administrative liability was strengthened. In particular, in the Criminal Code the liability for following crimes was strengthened:

- for the takeover of entire property complex, its part or buildings, objects, structures, land, construction objects and other objects and illegal termination

or restriction in activity in these objects and access restriction to them in the absence of extortion, the fine is set between UAH 17000 and UAH 51000 (approximately, USD 655 and USD 1960, respectively);

- for the forgery of documents, seals, stamps and forms, sale or use of forged documents, stamps, seals of state registrar, body of state registration of rights, a person, authorized to perform state functions on registration of legal entities and individual entrepreneurs and community groups, by state enforcement officer, private executive, the fine is UAH 17000 (approximately, USD 655), or arrest for up to six months, or imprisonment for up to two years;
- for misuse of state registrar, body of state registration of rights, a person, authorized to perform state functions on registration of legal entities and individual entrepreneurs and community groups, by state enforcement officer, private executive in order to obtain ineligible advantage for himself or others, if it has caused substantial harm to legally protected rights or interests of individual citizens, to state or public interests or to the interests of legal entities – judicial restraint for up to three years with disqualification to hold certain positions or to practise certain professions for up to ten years.

The Code of Administrative Violations strengthened responsibility of officials who violate statutory deadlines for state registration of individuals and legal entities or community groups, or break the established order of state registration of rights on immovable property; such violations provide for fines from UAH 34 to UAH 68.

Also, amendments were made to the Law of Ukraine "On Notary". The legislative body specified the basis for annulment of licence for provision of notarial service, and empowered the Ministry of Justice to prepare a submission to the High Qualification Commission of Notaries to annul the licence for provision of notarial service.

This law came into force on 2 November 2016.

DOING BUSINESS

The Cabinet of Ministers approved the practice for organic production

On 31 August 2016, the Cabinet of Ministers of Ukraine by its Decree No. 587 approved the rules for organic production, which defined the basic requirements for the production of organic products of vegetable origin and agro-technological features of their production.

Thus, in the process of organic production, the manufacturer must provide:

- the execution of economic activities that do not create negative impact on ground condition and soil fertility, improves fertility and other quality indicators, etc.;
- minimal use of resources that are not renewable and products of non-agricultural origin;
- the use of biologization advantage by expanding seeding of perennial grasses and implementation of bacterial preparation, by increasing the area of crops, planted for green manure;
- the use of manufacturing processes that do not bring hazard impact on environment and human health;
- disposal of waste and by-products of vegetable origin in the production of organic products;
- registration of local or regional ecological balance data when selecting products (raw materials) for production.

During the production of organic products, the use of organic fertilizers should contribute to optimizing plant nutrition and soil fertility restoration, providing a self-supporting balance of nutrients in the soil, increasing of yield and quality of crop production.

Also, the Resolution prohibits using chemical fertilizers, pesticides, GMOs and their derivatives, products produced from GMOs and preservatives during organic production.

LABOUR LAW

Granting additional leave to certain categories of workers

On 21 October 2016, the Ministry of Social Policy of Ukraine published the Letter on granting leave to certain categories of workers. In this Letter, the Ministry considered the issue of granting additional leave to employees whose work is associated with increased neuro-emotional and intellectual load or performed in special natural geographical and geological conditions and conditions with increased health risk stipulated by clause 1 of the Article 8 of the Law of Ukraine “On leave”.

Thus, the work that is associated with increased neuro-emotional and intellectual load also includes work on electronic computing and computing machines (including personal computers). For performance of this work, the law provides for granting annual additional leave to employees for the special nature of work for up to 4 calendar days.

This provision of the Law of Ukraine “On leave” was often questioned by specialists, since the list of professions and positions, work on which is associated with increased neuro-emotional and intellectual load was approved in 1997, when technical specifications of personal computers were absolutely different.

However, due to the publication by the Ministry of Social Policy of Ukraine of the new Letter this provision of the Law of Ukraine "On leave" should be considered relevant today. In addition, it should be noted that the effect of this provision applies to all workers regardless of the position held (profession), who use personal computer in their work.

REAL ESTATE

Moratorium on alienation of agricultural land extended

On 6 October 2016, the President of Ukraine signed the Law on amendments to the provisions of the Land Code of Ukraine regarding extension of the prohibition on alienation of agricultural land. According to the Law, the moratorium on sale of agricultural land is extended until 1 January 2018.

The Law provides that before the law, which regulates the circulation of agricultural land, becomes effective, but not earlier than 1 January 2018, the sale and purchase of agricultural land is not allowed.

The Law came into force on 2 November 2016.

RESTRUCTURING

Law on financial restructuring adopted

The Law of Ukraine "On Financial Restructuring", drafted to overcome the negative effects in financial sector, caused by the crisis in the economy of Ukraine, and for the purpose of Ukraine's obligations fulfilment towards international financial organizations, came into force on 19 October, 2016. The law will be valid until 19 October 2019.

The Law provides for recovering of economic activity for debtors, who are in financial distress by means of restructuring of their financial obligations and/or commercial activity. A possibility was implemented in Article 6 of the Law of Ukraine "On Restoring Debtor's Solvency or declaring it Bankrupt".

The Law, in particular, provides:

- conditions for participation of the debtor and creditors in the procedure of financial restructuring as well as the participation of the Deposit Insurance Fund and state banks in such procedure;
- basic principles of cooperation between the creditors in the process of financial restructuring;
- debtor's obligation to provide information and to hold an inspection of its business activity;

- conditions for receipt of financing in the process of financial restructuring by the debtor.

The application features of the new Law are:

- restructuring is carried out without legal recourse by way of negotiations between the debtor, its affiliated parties and creditors involved;
- the debtor is exclusively a legal entity with a debt to at least one financial institution, which is not related to the debtor and initiates the procedure of financial restructuring according to the Law. In this case, financial institution or public enterprise cannot be a debtor;
- a forfeit (fine, penalty) and other economic or financial sanctions (as opposed to the liability in bankruptcy) are included to financial obligation of the debtor;
- debtor has the right to enforce the law in case if its activity is recognized to be perspective, that is, if the involved creditors have signed an agreement on restructuring. In addition, the report on financial and economic activity inspection confirms the prospects;
- the total duration of the procedure of financial restructuring should not exceed 180 days;
- debtor is not entitled to apply for restructuring within 18 months after the beginning of the financial restructuring procedure, upon its preliminary statement, or after the initiation of financial rehabilitation of the debtor before proceedings commencement in the bankruptcy case;
- if the application for restructuring was submitted by several debtors who are related between each other and have at least one common creditor, a financial institution, the financial restructuring of such debtors can be performed in one procedure with written approval of involved creditors - financial institutions;
- signing of the Framework Agreement, which regulates the principles and basics of coordination between the financial institutions. Upon this, the Framework Agreement draft is developed and published by the NBU and financial institutions are joined to it pursuant to the NBU's notification;
- if several financial institutions are involved in the procedure, they have the right to establish a coordination committee. Other creditors have the right to establish a committee of creditors;
- if application for proceedings commencement in the bankruptcy case of the debtor was submitted to the commercial court as of the date of beginning of the procedure of financial restructuring, involved creditor or debtor have the right to apply for the court for suspension of bankruptcy procedure before the court made the decision on proceedings commencement in the bankruptcy case.

The Law provides for the establishment of the Supervisory Board, which appoints and forms the Registry, Arbitration Committee and approves the list of arbitrators.

The Registry deals with administrative and procedural issues, and develops recommendations. The Arbitration Committee solves disputes during the procedure of financial restructuring.

In order to initiate the procedure:

- the debtor should file the application to the Registry;
- involved creditors should give their consent, signed by financial institutions, which own at least 50 percent of the total number of claims of financial institutions.

After procedure initiating, a moratorium is to be introduced and the debtor's restructuring plan is to be developed. The plan is to be approved at the meeting of creditors involved. The debtor and the creditors involved are obliged to conclude negotiations and approve the restructuring plan in 90 days following the date of financial restructuring procedure conduction. This term may be extended for another 90 days.

It should be noted, that the Law introduces amendments to a number of laws, including the Law of Ukraine "On Banks and Banking Activity", which introduces the possibility of banking secrecy disclosure: banks that participate in the process of financial restructuring, have the right to give the information containing banking secrecy against the debtor, its guarantor (property guarantor), related parties of the debtor, without their consent, to other participants in financial restructuring procedure and also to bodies that provide the procedure of financial restructuring.

Also, for a duration period of the restructuring plan, the NBU does not apply interventions for violation of economic norms, making financial restructuring favourable for banks.

In general, it can be said, that the Law enables prospective debtors to resume their economic activities without use of complicated and long bankruptcy procedure. In addition, the Law protects the interests of financial institutions, giving them certain advantages over other creditors and establishing uniform rules of interaction.

TAX LAW

Clarification regarding the tax consequences of dividend reinvestment

On 6 October 2016, the State Fiscal Service of Ukraine issued a letter, which provided explanations on income taxation of dividend reinvestments, targeted at increasing the company's share capital.

Thus, reinvestment of dividends, which in particular, were charged to non-residents, is one of the possible ways of company's share capital replenishment. It should be noted that the tax consequences of such transactions depend on whether the capitalization of dividends is performed by non-resident individual or legal entity.

In the context of non-resident legal entity, the non-resident owner of equity rights should contribute advanced instalment of income tax to the budget, as well as, unless otherwise provided by international agreements, so-called withholding tax of 15%. Thus, income of a non-resident of Ukrainian origin in the form of dividends is subject to taxation irrespective of such income usage, including reinvestment.

With regard to non-resident individuals, a completely different procedure of reinvested earnings taxation is provided. Consequently, non-resident individuals' income in the form of dividends is subject to taxation on the same basis as income of residents (with some exceptions). Thus, a non-resident, the owner of equity rights, shall pay individual income tax (the rate is 18% or 5%) and military fee of 1.5%.

DLF-PUBLICATIONS

Taxes in Ukraine



This brochure deals with general information about tax rates, objects and bases of taxation in Ukraine, as well as peculiarities of taxation of certain categories of taxpayers. Taxation of non-residents is considered in detail.

[View the brochure Taxes in Ukraine \(pdf\)](#)

M&A transactions in Ukraine: antimonopoly aspects



This brochure provides a detailed description of the legal basis for the antimonopoly control over economic concentrations in Ukraine, in particular, it deals with the structure and functions of the controlling authorities and principles of their functioning, covering the thresholds required for exercising of such control, liability for breach of antimonopoly law, etc.

[View the brochure M&A transactions in Ukraine: antimonopoly aspects \(pdf\)](#)

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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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