

# NEWSLETTER

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## **CORPORATE LAW**

### **Payment of dividends by joint stock companies**

On 12 April 2016, the National Securities and Stock Market Commission by way of its decision No. 391 approved the procedure for payment of dividends by joint stock companies.

Pursuant to the procedure, a joint stock company may pay dividends either directly to its shareholders or through the depository system of Ukraine. The method for payment is determined by the general meeting of shareholders and is used for the whole issuance of shares.

In particular, dividends are paid directly to the shareholders under the procedure established by the supervisory board of the company within the term of:

- six months following the date of the decision of the general meeting of shareholders on payment of dividends under ordinary shares;
- six months following the end of reporting year under preference shares.

Persons entitled to dividends shall be notified about the date, amount, procedure and term for payment. Payment can be made fully or in parts. Payment of dividends in parts is made simultaneously to all entitled persons on a pro rata basis.

## **CUSTOMS LAW**

### **The Cabinet of Ministers approved 'single window' system at customs**

On 25 May 2016, the Cabinet of Ministers of Ukraine approved establishment and concept of functioning of the automated 'single window' system at customs, which is an electronic data exchange system aimed at facilitation of customs procedures and elimination of corruption practices at customs points.

Thus, the 'single window' system provides for less customs procedures and establishment of unified database, which allows various control authorities to automatically exchange information in relation to goods passing through the territory of Ukraine.

Thus, all types of customs control specified in Ukrainian legislation will be made by way of electronic data exchange, which results in transferring from paper documentation and significant simplification of customs registration of goods.

## DISPUTE RESOLUTION

### New category of commercial disputes

On 1 May 2016, the Law of Ukraine regarding certain changes in relation to protection of investors' rights became effective. The Law provides for changes in the Commercial Procedural Code of Ukraine and introduces the new category of disputes: disputes between commercial entities and their officials regarding reimbursement of losses made to such commercial entity by its officials' actions.

Thus, the claimant in such disputes is the commercial entity. The right to file a claim on behalf of the commercial entity is exercised by the shareholders, who aggregately own at least 10 per cent of the share capital.

Inclusion of such category of disputes into the Commercial Procedural Code of Ukraine will facilitate protection of foreign investors' rights, in particular against *mala fide* actions of the directors.

[More on the Law regarding protection of investors' rights in Ukraine](#)

## DOING BUSINESS

### Single price for gas for citizens and entities

Pursuant to the Resolution of the Cabinet of Ministers of Ukraine No. 315 dated 27 April 2016, the new tariff price for gas for citizens is established in the amount of UAH 6879 per thousand cubic meters as of 1 May 2016. The same price was established for sale of gas for the needs of communal heat energy providers.

Taking into account that the prices for gas for citizens were subsidized from the state budget, and they did not correspond to the market prices, such increase significantly affects the households, as it will result in growth of cost of heating and hot water supply.

Following increase of tariffs for gas for citizens such tariffs now correspond to the price of gas for the entities, which has been established in the amount of UAH 6800-7500 for quite a long time. Alignment of prices for gas should trigger more economical and effective use of energy resources as well as implementation of energy efficiency systems and use of alternative sources of energy. The latter is especially important in relation to potential development of biomass energy given the fact that Ukraine has vast volumes of agricultural land.

The widely unpopular move of the Government of Ukraine is aimed at, inter alia, gradual encouragement of population to economical use of energy resources. Therefore, along with increase of gas prices, the Government also seeks to secure implementation of 100% accounting for all energy resources, to fund measures

regarding reduction of energy consumption via implementation of energy efficiency as well as to establish the Fund for Energy Efficiency.

## **LABOUR LAW**

### **New conditions for probation period**

On 17 May 2016, the Verkhovna Rada adopted changes to the Labour Code of Ukraine in relation to probation period.

Thus, the Law extended the list of categories of employees which are not subject to probation period. These include:

- individuals elected for the position;
- winners of a tender for the vacancy;
- individuals who had internship before admission to work with separation from main job;
- pregnant women;
- single mothers with a child under 14 years old or disabled child;
- individuals with whom a labour agreement is concluded for a term of up to 12 months;
- individuals for temporary or seasonal work;
- internally displaced persons.

In addition, the Law specifies that probation period does not include days when the employee was actually not working irrespective of any reason. Also, the employer has a mandatory obligation to notify the employee within three days about termination of a labour agreement due to failure to pass probation period or due to non-compliance of the employee to his/her position.

The Law becomes effective upon its signing by the President.

## **REAL ESTATE**

### **Consequences of failure to perform normative monetary evaluation of land**

On 11 May 2016, the Supreme Court of Ukraine at its joint meeting of civil and criminal chambers decided the matter on invalidation and cancellation of resolution of the district state administration and invalidation of the land lease agreement.

Thus, the Supreme Court established that upon execution of the land lease agreement the normative monetary evaluation of land, which serves as the basis for determination of rent for state and municipal land, was conducted with violations of the

current requirements and procedure, which resulted in failure of the lease agreement to comply with the requirements of the effective legislation.

Therefore, a legal position was adopted by the court under which the obligation to pay rent is mandatory and established by legislation and, consequently, cannot be specified, deviated or terminated upon the parties' decision.

The Supreme Court also stated that failure to conduct or violations in performing of normative monetary evaluation of state and municipal land upon execution of land lease agreements served as the basis for invalidation of such agreements.

## **RENEWABLE ENERGY**

### **Sale of 'green' energy generated by the households**

On 15 April 2016, the restated Procedure for sale, accounting and payments for electricity generated from alternative energy power facilities of private households became effective. This procedure specifies the process of commissioning generating facilities of private households, procedure for accounting and sale of generated electricity.

The Law of Ukraine 'On electricity' provides for the possibility for households to be equipped with solar and wind power facilities with capacity of up to 30 kW.

Private households are entitled to set up electricity generating facilities with capacity of up to 30 kW and sell electricity produced from solar or wind energy under the feed-in tariff to the electricity distribution company in the amount that exceeds monthly consumption of electricity by such private households.

Generation facility at a private household is deemed to be commissioned as of the date of submission (sending) of the respective notification to the electricity distribution company. The latter shall examine capacity of a generation facility at the household within three business days following receipt of the respective notification.

If within the household there are several commissioned generating facilities, to which several coefficients of feed-in tariff apply, such household shall establish special commercial accounting for each such generating facility as well as special commercial accounting for electricity consumed by the household.

[More about feed-in tariffs for electricity generated from alternative energy sources in Ukraine](#)

## **TAX LAW**

### **Peculiarities of taxation of abroad employment intermediaries**

In its letter No. 8923/6/99-99-19-03-02-15 dated 20 April 2016 the State Fiscal Service of Ukraine clarified peculiarities of taxation of abroad employment intermediaries. Thus, the procedure for VAT taxation of transactions regarding intermediary abroad employment services depends on the place of rendering such services.

Pursuant to Article 186.3 of the Tax Code of Ukraine, the place for rendering services in connection to hiring of personnel is the place of registration of the recipient of such services. In other cases, pursuant to Article 186.4 of the Tax Code of Ukraine, the place of rendering services is the place of registration of the supplier.

## **DLF PRACTICE**

### **DLF attorneys-at-law obtained approval for concentration**

On 15 April 2016, DLF attorneys-at-law successfully obtained approval for economic concentration (M&A) for a transaction, which encompassed acquisition of banking assets of the European banking and insurance group by one of the largest banks in Hungary.

It is worth noting that the mentioned M&A transaction was carried out exclusively on the territory of Hungary, but due to the fact that the purchaser's group is active on the banking market of Ukraine such economic concentration required a preliminary approval by the Antimonopoly Committee of Ukraine (the AMCU).

The distinctive feature of approval of this M&A transaction was that the AMCU had followed the opinion of DLF's lawyers and had not performed comprehensive analysis of the group structure of the seller, thus corresponding its policy with the EU antimonopoly authorities. We note that the antimonopoly regulation of the EU and most of its member states does not consider the seller's group (the party that alienates its assets and, therefore, lessens its market share) as the party to economic concentration.

Therefore, DLF attorneys-at-law practically notes the positive change of the AMCU policy in relation to analysis of the seller's group structure, which pursuant to the EU-Ukraine Association Agreement shall be consistent with the policy of the EU antimonopoly authorities.

In addition, we also note significant decrease of other minor bureaucratic procedures in consideration of the economic concentration filing by the AMCU authorities, which confirms actual and ongoing reforming of the AMCU activity in line with the position of the newly appointed head of the AMCU and its key staff.

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