

# NEWSLETTER

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## CORPORATE LAW

### Uncontested recovery of indebtedness in relation to dividends

The Cabinet of Ministers of Ukraine by way of its Resolution No.347 dated 27 May 2015 amended the List of documents under which the recovery of indebtedness is made in an uncontested manner based on an executive writ of a notary. The List is supplemented by the section on the procedure of uncontested recovery of indebtedness in relation to dividends due by joint stock companies.

In accordance with the new provisions, in order to obtain an execution writ the documents confirming the indebtedness in relation to dividends shall be submitted to a notary. Such documents include, inter alia:

- an extract from the minutes of the general meeting of a joint-stock company, on which it was resolved to pay dividends, or an extract from the articles of association of a joint-stock company, which provide for payment of dividends on preferred shares;
- an extract from the list of persons entitled to receive dividends, which contains information on inclusion of the recoverer on such list;
- an extract from the depositor's securities account, which confirms its rights to shares and rights under shares at the relevant moment;
- notification sent to persons entitled to receive dividends, including information on the date, amount, procedure and terms of its payment;
- a copy of a written request, certified by a recoverer, for elimination of a violation that resulted in non-payment of dividends, which was sent to the debtor.

## CURRENCY LEGISLATION

### Update on currency restrictions of the NBU

On 4 June 2015, the Resolution of the National Bank of Ukraine "On stabilization of credit and currency control markets of Ukraine" No. 354 dated 3 June 2015 came into force, extending restrictions on currency market until 3 September 2015. However, some provisions of the Resolution No. 354 eased the restriction measures.

Thus, the upper limit of cash issued by banks to legal entities and individual entrepreneurs was increased. As of now, the limit is UAH 300,000 (approx. USD 14,280; EUR 12,500) per day (previously UAH 150,000 (approx. USD 7,140; EUR 6,250)). The exceptions include payment of salaries, costs of business travels and other social payments.

The banks are still 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. However, now this restriction is not applicable when the aggregate amount of client's funds in foreign currency is less than USD 25,000 (previously USD 10,000). Such amount does not include those funds property rights to which are under pledge; and funds on the accounts with banks in temporary administration or liquidation.

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.

Residents are still 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 also extended prohibitions on, inter alia:

- purchase of foreign currency for the purposes of repatriation of dividends to foreign investors abroad;
- purchase of foreign currency 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;
- purchase of foreign currency 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);
- 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 715; EUR 625) per day (UAH 150,000 (approx. USD 7,150; EUR 6,250) per month). This restriction is not applicable to transfer of funds received as salary payments by non residents;
- 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 140; EUR 125).

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.

In addition, provisions of the Resolution No. 354 provide that settlements under import and export of goods transactions pursuant to the Law of Ukraine "On the Procedure for Settlements in Foreign Currency" shall continue to be carried out within 90 days.

The NBU's Resolution No. 355 dated 3 June 2015 eased the procedure for authorized banks' control exercised over transactions of residents in relation to contracts for works, services, intellectual property rights by increasing the threshold for obtaining a price evaluation act for contracts for works, services, intellectual property rights with non-residents from EUR 25,000 to EUR 50,000.

## **DOING BUSINESS**

### **Requisition of vehicles for army needs allowed**

On 17 June 2015, the Cabinet of Ministers by way of its Resolution No. 405 amended the Regulations on military transport duty, according to which the military commissariats are allowed to requisition vehicles for the needs of the army.

According to the amendments, the military can make free collection of vehicles and equipment of citizens, enterprises, institutions and organizations of any type of ownership for the needs of the Armed Forces of Ukraine.

Therefore, the directors of enterprises, institutions and organizations shall biannually (before 20 June and 20 December) submit information to the military commissariats on the availability of vehicles and equipment, their condition, and information on the citizens who work with such vehicles and equipment at the enterprises, institutions and organizations. Return of the vehicles and equipment by the military units is performed through the military commissariats, which requisitioned such vehicles and equipment, within 30 calendar days following the announcement of demobilization.

The Resolution also specifies the procedure for compensation of damage to the vehicles and equipment, which was caused due to their mobilization.

According to the Resolution, the enterprises, institutions and organizations that perform mobilization tasks under the agreement with the Ministry of Defence or those whose vehicles and equipment are enrolled into performance of the mobilization tasks, could be exempt from transfer of their vehicles.

In addition, the enterprises, institutions and organizations of high public need could also be exempt from transfer of their equipment to the military. The list of such enterprises is approved by the Cabinet of Ministers upon submission from the Ministry of Defence.

The Regulations on military transport duty shall not apply to diplomatic missions and consular offices of foreign countries, representative offices of foreign and international organizations, foreign nationals and stateless persons.

Resolution No. 405 shall be published and come into force on 7 July 2015.

## **LABOUR LAW**

### **Notification form on hiring employees approved**

On 17 June 2015, the Cabinet of Ministers of Ukraine by way of its Resolution No. 413 approved the new form of notification to the State Fiscal Service on hiring employees. Such notification is submitted by the owner of the enterprise, organization or its authorized body or individual entrepreneur to the local authorities of the State Fiscal Service at the place of their registration as taxpayers of the unified social tax.

The notification shall be submitted by one of the following ways before the employee starts to work under the employment agreement:

- electronically using digital signature of the responsible person in accordance with the requirements of legislation on electronic document circulation and digital signature;
- as a hard copy along with the electronic copy;
- as a hard copy if the employment agreements were executed with no more than five persons.

Please note that legal entities and individual entrepreneurs, which use hired labour, are liable for hiring employees without execution of an employment agreement

(contract). In case of failure to notify the State Fiscal Service on hiring an employee a penalty is imposed in the amount of 30 minimal salaries as specified by the law for each such employee. As of today, the minimal salary amounts to UAH 1,218 (approx. USD 55; EUR 50).

Resolution No. 413 came into force on 3 July 2015.

## RENEWABLE ENERGY LAW

### Feed-in tariff reform

On 4 June 2015, the Verkhovna Rada adopted the Law of Ukraine in relation to changes regarding energy production from alternative energy sources. This Law changed procedure for establishment of the feed-in tariff, cancelled the local content requirement and specified the appropriate premium to the feed-in tariff in case of use of equipment of Ukrainian origin. The Law was submitted to the President for signature and will come into force the next day after its publication.

#### *Main novelties*

The feed-in tariff continues to be fixed in euro until 2030, and its amount is specified by multiplication of the retail tariff for consumers of the second voltage type as of January 2009 (UAH 0.5846, at that time EUR 0.05385) by the feed-in tariff coefficient for the relevant type of alternative energy. However, now the National Commission for State Energy and Public Utilities Regulation will quarterly (used to be monthly) convert the feed-in tariff into national currency on the basis of the average official currency rate of the National Bank of Ukraine. All generated electricity, except for volumes for own needs, will be paid under the feed-in tariff.

The households may now be equipped not only with solar power plants, but also with wind turbines with capacity of up to 30 kW, but exceeding capacity allowed under the agreement on electricity use.

The feed-in tariff for electricity generated from geothermal energy is introduced.

#### *Feed-in tariff*

The feed-in tariff continues to depend on the commission date of the electricity generation object, including phase of construction of the electricity station (launching complex), that produces electricity from alternative energy sources. The certificate issued by the authorized body, which certifies compliance of the constructed object with the project documentation and its operational readiness, or the registered declaration on operational readiness of the constructed object serve as confirmation of the fact and date of commission.

The feed-in tariff for solar plants of industrial purpose was decreased. Such decrease took place due to cancellation of tariff coefficient (1.8) applied to the peak period.

The feed-in tariff for electricity generated from wind power remained unchanged and depends on single unit capacity of the wind turbine.

The feed-in tariff for electricity generated from biogas and biomass was increased. Biomass was legally defined as non-excavated biologically renewable substance of organic origin, which is capable of biological decomposition, such as products, waste, fishery, forest and agriculture (crop and livestock) residue and residue from the technologically connected industry areas, as well as components of industrial or domestic waste capable of biological decomposition.

As the feed-in tariff coefficient has increased, the feed-in tariff for electricity generated by hydro plants is now significantly higher.

The feed-in tariff is as follows (EUR):

Type	Capacity (kW)	Commission date				
		01.07.-31.12.2015	2016	2017 - 2019	2020 - 2024	2025 - 2029
Ground-mounted solar power plant		0.1696	0.1599	0.1502	0.1352	0.1201
Rooftop solar power plant		0.1804	0.1723	0.1637	0.1475	0.1309
Wind turbine	<600	0.0582			0.0517	0.0452
	600-2000	0.0679			0.0603	0.0528
	>2000	0.1018			0.0905	0.0792
Biomass		0.1239			0.1115	0.0991
Biogas		0.1239			0.1115	0.0991
Hydro plant	<200	0.1745			0.1572	0.1395
	200-1000	0.1395			0.1255	0.1115
	1000-10000	0.1045			0.0942	0.0835
Geothermal energy		0.1502			0.1352	0.1201
Solar power for private household	<30	0.2003	0.1901	0.1809	0.1626	0.1449
Wind turbine for private household	<30	0.1163			0.1045	0.0932

*Premium to the feed-in tariff for the use of equipment of Ukrainian origin*

The law cancelled the local content requirement. As of now, the use of equipment of Ukrainian origin will be stimulated by the relevant premium to the feed-in tariff (throughout all term of its validity), if the electricity objects (phases of construction, launching complexes) are commissioned between 1 July 2015 and 31 December 2024. However, such premium to the feed-in tariff is not applicable to electricity objects of private households.

If equipment of Ukrainian origin is used at least on the level of 30%, the premium to the feed-in tariff will be 5%. If equipment of Ukrainian origin is used at least on the

level of 50%, the premium to the feed-in tariff will be 10%. The Law provides a list of equipment that qualifies for the feed-in tariff premium.

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