

# NEWSLETTER

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## CURRENCY LEGISLATION

### Introduction of additional measures to prevent capital outflow

On 20 August 2015, the National Bank of Ukraine adopted the Resolution No. 551, which amended its Resolution No. 354 dated 3 June 2015. The amendments are aimed at introduction of additional measures to prevent capital outflow.

Thus, the National Bank of Ukraine resolved that changes to the loan agreement in foreign currency between the resident-borrower (other than authorized bank) and the

non-resident-lender in relation to substitution of the lender and / or borrower in the obligation under this loan agreement shall not be registered.

In addition, prohibition of registration also applies to the loan agreements in foreign currency between the residents in case of assignment of the right of claim under this agreement by the resident-lender to non-resident.

The Resolution of the National Bank became effective on 22 August 2015.

## DISPUTE RESOLUTION

### The Supreme Court's practice in commercial disputes

The commercial disputes chamber of the Supreme Court of Ukraine formed its legal opinions issued in the judgments of the second half of 2014 following review of court rulings on the grounds of unequal application of substantive law by the cassation courts.

Below are some opinions in relation to disputes on:

#### *Execution, change, termination of agreements*

Thus, pursuant to clause 2 of Article 651 of the Civil Code of Ukraine, the agreement may be changed or terminated upon the court judgment on demand of one of the parties to the agreement, in case of significant breach of the agreement by the other party and in other cases specified by the agreement or law. Significant breach is a breach by the party, in result of which the other party is greatly deprived of what was expected upon execution of the agreement.

In particular, it is permitted to terminate the agreement due to significant breach of its terms, e.g. failure to pay indebtedness or termination of financing.

#### *Recognition of transactions as void*

By virtue of Article 39 of the Law of Ukraine on commercial entities dated 19 September 1991, there is no requirement to adopt the resolution of the general meeting on decrease of the charter capital of the entity upon alienation of property of such entity. Thus, it is wrong practice to regard resolution of the general meeting of the entity as mandatory in case of alienation of property of the entity.

In addition, alienation of property that is included in the charter capital does not indicate that the charter capital of the entity is decreased.

#### *Corporate relations*

Participation in the management of the entity through activities in the highest body of the entity (the general meeting) is one of the guaranteed rights of the participants of the entity. Failure to notify a participant on holding of the general meeting in accordance with the procedure prescribed by the charter is the gross violation of the

participant's rights, which might serve as the ground to recognize resolutions of the general meeting of the entity as void. Failure to notify a participant on convocation and holding of the general meeting of the entity, at which such participant was excluded from the participants of the entity, is unconditional violation of his / her rights specified in Article 10 of the Law of Ukraine on commercial entities dated 19 September 1991.

## PHARMACEUTICALS

### Registration of medical products procured by specialized organizations

The Cabinet of Ministers by virtue of its Resolution No. 597 dated 12 August 2015 amended the Procedure for state registration (re-registration) of medical products. The changes became effective on 1 September 2015 and are valid until 31 March 2019.

According to the amendments, the Ministry of Health performs the state registration of a medical product, which is subject to procurement, upon the results of procurement procedure conducted by a specialized organization (e.g., specialized funds, organizations and mechanisms of the UN, the International Dispensary Association) on the basis of the application and conclusion of the State Expert Center of the Ministry of Health following expert evaluation of the registration materials.

The following shall be attached to such application submitted to the Ministry of Health:

- materials of the drug master file submitted for registration of the medical product to the regulatory authority of the country where such product is registered or to the World Health Organization (WHO) in case of requalification of the medical product;
- assessment report on the medical product issued by the regulatory authority of the country where such product is registered or by the WHO in case of requalification of the medical product;
- methods of the quality control (information on control) of the medical product (final product);
- instruction for use of the medical product or information on use of the medical product;
- translations of the labelling text on the drug package and instruction for use of the medical product or information on use of the medical product in Ukrainian, certified by the authorized person of the applicant.

No duty for the state registration of such medical product shall be paid.

## **REAL ESTATE**

### **Disclosure of information on immovable property owners**

On 14 July 2015, the Verkhovna Rada of Ukraine adopted the Law on strengthening of transparency in the area of ownership relations in order to combat corruption, which strengthens transparency in relation to owners of vehicles, immovable property and land plots.

Thus, if during registration of vehicles, immovable property and land plots a person wilfully indicates false data about oneself, such person will be fined in the amount from one to three non-taxable minimum incomes of citizens. For the repeated violation, the fine is from three to six non-taxable minimum incomes of citizens (as of now the non-taxable minimum income of citizens amounts to UAH 17 (approx. EUR 0.71).

The Law provides that information on vehicles and their owners, contained in the Unified State Register, which is operated by the State Automobile Inspection of the Ministry of Internal Affairs, will be public and open.

For individuals and legal entities information from the abovementioned register is provided through search by the subject (the owner of a vehicle) in electronic form via the official website of the State Automobile Inspection of the Ministry of Internal Affairs subject to identification of the person by digital signature.

Also, such information can be accessed in paper form by submitting application in person or by post to the State Automobile Inspection of the Ministry of Internal Affairs.

In addition, data on the owners of immovable property will be disclosed. Such information could be obtained in electronic form via the official website of the Ministry of Justice. Information on owners of land plots is accessible to individuals and legal entities subject to identification of the person by digital signature.

The Law becomes effective on 6 October 2015.

## **RENEWABLE ENERGY**

### **Feed-in tariff for households**

On 25 August 2015, the Resolution No. 2046 of the National Commission for State Energy and Public Utilities Regulation dated 20 July 2015 became effective. The Resolution establishes the amount of feed-in tariff for households, which produce electricity from solar or wind energy by means of electricity facilities with capacity of up to 30 kW.

The feed-in tariff for households that generate electricity from solar energy by means of electricity facilities mounted (installed) on roofs and / or facades of households (houses, buildings and premises) depending on the commission date of electricity objects is as follows (in UAH, without VAT):

Commission date	Feed-in tariff
01.04.2013-31.12.2014	8.5716
01.01.-30.06.2015	7.7093
01.07.-31.12.2015	4.7877
01.01.-31.12.2016	4.5432
01.01.2017-31.12.2019	4.3244
01.01.2020-31.12.2024	3.8868
01.01.2025-31.12.2029	3.4621

The feed-in tariff for households that generate electricity from wind energy depending on the commission date of electricity objects is as follows (in UAH, without VAT):

Commission date	Feed-in tariff
01.07.2015-31.12.2019	2.7800
01.01.2020-31.12.2024	2.4968
01.01.2025-31.12.2029	2.2266

It is worth mentioning that the National Commission for State Energy and Public Utilities Regulation quarterly converts the feed-in tariff (which is fixed in euro) into national currency on the basis of the average official currency rate of the National Bank of Ukraine.

More on the [specification procedure for the feed-in tariff and premium to the feed-in tariff in case of use of equipment of Ukrainian origin](#)

## TAX LAW

### Clarification for transfer pricing rules

On 13 August 2015, the Law on changes to the Tax Code of Ukraine in relation to transfer pricing dated 15 July 2015, which provides for improvement of transfer pricing rules in Ukraine, came into force.

Changes to the Tax Code of Ukraine introduce new rules of transfer pricing on certain matters.

Thus, the volume of controlled transactions with one counterparty, upon reaching of which the taxpayers shall submit the report on controlled transactions to the central executive authority that performs state tax and customs policy, was increased from UAH 20,000,000 to UAH 50,000,000 (approx. USD 2,315,000; EUR. 2,052,000).

In addition, the provisions on VAT taxation of transfer pricing rules were excluded from the Tax Code of Ukraine.

It is worth mentioning that in accordance with the amendments, business transactions specified in sub-clauses 39.2.1.1 – 39.2.1.3 and 39.2.1.5 of clause 39.2.1 of the Tax Code of Ukraine are deemed to be controlled, if simultaneously the following conditions are met:

- taxpayer's annual income from any activity, according to accounting rules, exceeds UAH 50,000,000 (excluding indirect taxes) for the appropriate tax (reporting) period;
- volume of such business transactions of the taxpayer with each counterparty, according to accounting rules, exceeds UAH 5,000,000 (excluding indirect taxes) for the appropriate tax (reporting) period.

Changes to the Tax Code of Ukraine also provide for decrease of penalty for failure to declare controlled transactions from 5% to 1% of the amount of undeclared controlled transactions.

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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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