

NEWSLETTER

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ANTITRUST LAW

Recommendations on calculation of fines by the AMCU

On 15 September 2015, the Antimonopoly Committee of Ukraine (AMCU) announced the first official version of Recommendations on approaches for calculation of fines for

competition law infringements (Recommendations). The provisions of these Recommendations will be later taken as a basis for significant legislative changes aimed at regulation of calculation of fines.

Thus, the AMCU laid grounds for a reform of its activities in relation to adoption of decision on liability for breach of competition law, which will result in, inter alia:

- AMCU's decisions will become more predictable for business;
- any possibility of abuse of power while making such decisions is significantly decreased;
- creation of a precedent to the state authorities exercising disciplinary powers on how to regulate their activities in order to reform Ukrainian legislation for bringing it to the EU standards.

The Recommendations lay down the core principles of adoption of the AMCU's decision, i.e. the principles of proportionality, reasonableness and non-discrimination towards commercial entities. Thus, despite being broadly interpreted, such definition obliges the AMCU not to apply the formalistic approach in its decision-making process, as it often used to be done.

There is separation of all infringements into several groups depending on the level of their seriousness with fixed limits of liability. Thus, as each group has its own 'percentage limits', it is possible to see the upper limit of a fine in each case. For the most serious infringements, such as abuse of a monopoly position, the base amount of fine is 45% from the proceeds acquired in the result of infringement.

The list of mitigating and aggravating circumstances, which will respectively lower or increase liability during decision-making of the AMCU, was specified. The mentioned novelties, though not new for the law generally, for the first time allow commercial entities to refer to certain materials of the case and will encourage them to cooperate with the AMCU.

Our law firm is especially pleased to note that elaboration of our lawyers was directly incorporated into the concept of development of this document, which will help business in its cooperation with the competition law authority of Ukraine, and also will send a solid signal to the Western investors on gradual reform of the functioning of the Ukrainian authorities in line with the best practices of the European state authorities.

CURRENCY LEGISLATION

Updated NBU's restrictions on the currency market

On 4 September 2015, the Resolution of the National Bank of Ukraine "On stabilization of credit and currency control markets of Ukraine" No. 581 dated 3 September 2015 came into force, extending restrictions on currency market until 4 December 2015. At the same time, some provisions of the Resolution No. 581 amended several restriction measures aimed at stabilization of the situation on the currency market of Ukraine.

Thus, the NBU cancelled the mandatory requirement of provision of the certificate on absence of tax debt from the Fiscal Service of Ukraine to a bank in case of purchase and transfer abroad of foreign currency under import transactions in the amount of over USD 50,000.

Pursuant to the adopted Resolution, the upper limit of cash issued by banks to legal entities and individual entrepreneurs per one banking day remains the same in the amount of UAH 300,000 (approx. USD 13,870). The exceptions include payment of salaries, costs of business travels, social payments and payments of the guaranteed sums to the depositors by the Deposit Guarantee Fund.

The banks are still prohibited to sell foreign currency to clients (except individuals) that have funds in foreign currency on current and deposit accounts with this or other banks. However, this restriction is not applicable when the aggregate amount of client's funds in foreign currency is less than USD 25,000. 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 refuses to register amendments to loan agreements with non-residents in relation to shortening the maturity period under such agreements or their early performance.

According to the Resolution No. 581, the NBU has also resolved that changes to a loan agreement in foreign currency between the resident-borrower (except for authorized banks) 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. However, this prohibition shall not apply to:

- cases where substitution of the primary borrower is due to acquisition and / or liquidation;
- agreements executed between the residents and the international financial organizations, wherein Ukraine is a member, and agreements with the international financial organizations in relation to which Ukraine has agreed to ensure the same legal framework as provided to the other financial organizations.

The NBU has also prolonged its restrictions, inter alia, in relation to:

- 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, withdrawal 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. The upper limit amount was increased from UAH 15,000 per day to UAH 20,000 (approx. USD 925). This restriction is not applicable to transfer of funds received as salary payments by non-residents in Ukraine;
- 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).

Cash under electronic means of payment is issued only in UAH on the territory of Ukraine.

The Resolution No. 581 also prohibits authorized banks from purchasing foreign currency under import of goods transactions, if customs clearance of such goods was completed prior to 1 January 2014, and the borrower and/or lender was substituted. Such obligations shall be fulfilled by the residents out of their own funds in foreign currency. However, this prohibition does not apply to import transactions on purchase of essential goods (gas, oil, electricity, coal, etc.).

Pursuant to the Resolution No. 581, purchase and transfer of foreign currency is prohibited, except if they are performed on the basis of an individual licence of the NBU and the total amount of such transactions shall not exceed USD 50,000 (or the equivalent in any other currency at the official exchange rate established by the NBU at the day of transaction) per calendar month per one individual licence.

In addition, provisions of the Resolution No. 581 stipulate that settlements under export and import of goods transactions, specified in Articles 1 and 2 of the Law of Ukraine “On the procedure of settlements in foreign currency”, shall further continue to be carried out within 90 calendar days.

Also, it is worth mentioning that the NBU has started the gradual easement of the credit and currency policy. This is confirmed by the decrease of the discount rate from 30% to 27% as of 28 August 2015 and further reduction of the discount rate to 22% as of 24 September 2015. Change of the discount rate will affect the amount of penalties established by the parties in their respective agreements as the amount of penalties depends on the discount rate of the NBU.

CUSTOMS LAW

Abolishment of special duties on imported cars

Pursuant to the Notification of the Interdepartmental Commission on International Trade dated 10 September 2015, the special duties on import of cars (regardless of their country of origin or export), which were introduced in 2013 for a term of three years, will be cancelled on 30 September 2015.

Thus, as of 30 September 2015 no special duty of 2.15% will apply to cars with an engine capacity of 1-1.5 liters, as well as no special duty of 4.32% will apply to cars with an engine capacity of 1.5-2.2 liters.

DOING BUSINESS

Adoption of the law on electronic commerce

On 3 September 2015, the Verkhovna Rada adopted the Law of Ukraine “On Electronic Commerce” which is bound to regulate online commerce and trade over the Internet as well as use of electronic money. The Law became effective on 30 September 2015.

The Law aims at ensuring the legal framework for remote execution and implementation of contracts in Ukraine with the use of electronic communication means and technologies.

Provisions of the Law regulate relations on remote execution of sale and purchase of electronic goods or delivery of goods, performance of works and rendering of services.

Execution of an electronic contract takes place at the time of receipt by the offeror of the offeree’s consent on conclusion of the agreement. Such consent might be sent by any of the following means: by way of a duly signed electronic message, by way of filling in of a signed electronic application form; by way of performing of actions which serve as a consent for execution of the electronic agreement, if such actions are fully defined in the information system containing the offer to execute the contract and are logically connected with such offer.

An important innovation of the Law is the regulation on the signature in the area of the electronic commerce, which allows the use of a digital signature of one-time electronic identifier (a special code forwarded to the offeree’s mobile phone or e-mail).

The Law equates a duly signed electronic contract to a contract in writing. Thus, the electronic documents might serve as evidence in a court trial and shall be deemed as written evidence.

We would like to note that the provisions of the Law are not applicable to transactions for which a special procedure of transfer of ownership is established under the law, transactions with the state authorities, transactions requiring notary certification or state registration, representation before courts, or transactions in relation to betting, gambling or lotteries.

Ensuring transparency of media ownership

On 3 September 2015, the Verkhovna Rada of Ukraine adopted the Law on changes in relation to ensuring transparency of media ownership and realization of principles of state policy in the areas of television and radio. The Law became effective on 1 October 2015.

Pursuant to the changes, the Law obliges information activity subjects (television and radio broadcasters and programme service providers):

- to disclose information on the actual ownership structure and provide information on the ultimate beneficiary owner (controller) of the company;
- to announce information on the actual owners of television and radio broadcasters and programme service providers on their websites.

In addition, the Law prohibits establishment and activity of television and radio broadcasters whose shareholders are legal entities registered in the offshore zones specified by the Cabinet of Ministers of Ukraine.

Television and radio broadcasters, which are not in breach of requirements in relation to disclosure of the actual owners, have preferences on tenders for licenses from the National Council of Television and Radio Broadcasting of Ukraine.

The adopted Law will contribute to the matter of transparency of ownership of television and radio broadcasters and programme service providers. The Law also introduces more exact and transparent procedures in relation to licensing by the National Council of Television and Radio Broadcasting of Ukraine.

LABOUR LAW

Procedure for temporary stay of foreigners on the territory of Ukraine approved

On 8 September 2015, the Order of the Ministry of Internal Affairs of Ukraine No. 884 dated 20 July 2015 “On approval of the Procedure of calculation of term for temporary stay of foreigners in Ukraine who are the citizens of states with visa-free entry procedure” became effective.

Pursuant to this Procedure the citizens of states with visa-free entry procedure may temporary stay on the territory of Ukraine for not more than 90 days within 180 days, if otherwise is not specified by international treaties of Ukraine.

Upon entry of a foreigner to the territory of Ukraine calculation of the permitted term of stay is made by the officer of the State Border Service at the checkpoint (controlling point) by deducing 180 days from the actual date of entry. The decision on refusal to cross the border of Ukraine is made in the event if the foreigner exceeds the permitted term of stay.

During the foreigner’s stay on the territory of Ukraine calculation of the permitted term of stay is made by the officers of the State Migration Service by deducing 180 days from the date of control. It is deemed that the foreigner is not in breach of the permitted term if within 180 days he / she stayed on the territory of Ukraine for not more than 90 days.

If the officer of the State Migration Service or the border officer detects that the foreigner exceeded the permitted term for stay on the territory of Ukraine, he / she shall file a report on administrative offence in relation to such person.

We note that the new entry rules are applicable to the citizens of EU-states, Andorra, Vatican, Iceland, Liechtenstein, Monaco, San Marino, Norway, Switzerland, Canada, USA, and Japan.

Increase of minimum wage

Pursuant to the Law of Ukraine on changes to the state budget for 2015 dated 17 September 2015, as of 1 September 2015 the minimum wage increased to UAH 1378 (approx. USD 64) per month.

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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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