

# NEWSLETTER

MONTHLY EDITION | UKRAINE

25 APRIL 2018

## CONTENTS

<b>Currency legislation</b>	Current foreign exchange regulations in Ukraine	2
	Foreign investors to get dividends for previous years	2
<b>Doing business</b>	New system of control over food quality and safety introduced in Ukraine	3
	Amendments to legislation in the field of highways construction and operation	4
<b>Migration regulations</b>	Fines for the violation of rules of stay in Ukraine by foreigners increased	6
<b>DLF News</b>	DLF attorneys-at-law to participate in the 10th Annual CBBL Conference in Hamburg on 24 May 2018	7
	DLF attorneys-at-law at the Spring Meeting of DIRO legal network in Vienna on 17-18 May 2018	7

## CURRENCY LEGISLATION

### Current foreign exchange regulations in Ukraine

According to Resolution No. 410 *On settlement of the situation on monetary and currency markets of Ukraine* of 13 December 2016, taking into account the changes introduced by Regulation of the Management of the National Bank of Ukraine No. 31 of 29 March 2018, the following restrictions apply to the Ukrainian financial and currency markets:

- mandatory sale of the foreign currency proceeds received by legal entities at 50%;
- restriction on purchase of cash in foreign currency by natural persons in the amount of UAH 150,000 per day;
- prohibition to settle payments with natural persons in the amount exceeding UAH 50,000 per day;
- restriction on settlements for operations with export-import of goods to 180 days;
- restriction on early repayment of loans granted by non-residents;
- term of UAH reservation for purchase of foreign currency on the interbank currency market on one day;
- restriction on mutual settlement of claims under export contracts.

Regarding the repatriation of dividends, pursuant to Resolution No. 410, the amount of dividends that can be repaid to foreign investors for corporate rights and shares for the period before 2017 should not exceed USD 7,000,000 per one calendar month.

According to the Resolution of the Management of the National Bank of Ukraine dated back to 2 March 2018, the discount rate is set at 17% per annum.

The Verkhovna Rada of Ukraine is currently discussing the *On the Currency* draft law, the adoption of which will have a significant impact on the foreign exchange regulations reform.

### Foreign investors to get dividends for previous years

On 3 March 2018, Resolution of the NBU №19 dated back to March 1, 2018 *On Introducing Changes to Some Regulatory and Legal Acts of the National Bank of Ukraine* came into legal force. Foreign investors got the opportunity to receive dividends under corporate rights and shares accrued for the previous years, as well as to external credits and loans early repay in a foreign currency.

Hence, Ukrainian companies will be able to pay dividends to foreign investors in a foreign currency in the amount of up to USD 7 million (or equivalent in another foreign currency) per month regardless of the period the dividends were accrued for. A limit of USD 5 million per month used to be established for 2014-2016-year dividends, this limit reached USD 2 million per month for 2013 year dividends and the period before 2013.

The NBU also extended the list of transactions of companies exempt from requirement to obligatorily sell currency earnings. Thus, the requirement of compulsory selling of 50% of currency proceeds will not be applied to the funds engaged by the resident company in the form of external credits or loans for its bonds redemption in a foreign currency before non-residents or empowered banks in terms of other credits or loans.

Besides, the National Bank of Ukraine enlarged possibilities of early external credits and loans repayment in a foreign currency. Now resident borrowers will be able to early repay credits and loans within a monthly 2 million dollar limit per one resident borrower under credit or loan agreements being served within one authorized bank.

## DOING BUSINESS

### **New system of control over food quality and safety introduced in Ukraine**

On 4 April 2018, the Law of Ukraine *On the State Control over Compliance with Legislation on Food Products, Feeds, Animal By-products, Animal Health and Animal Welfare*, passed on 18 May 2017, enters into force. The Law was adopted with the aim of harmonizing Ukrainian legislation in the field of state control over food safety and quality with the EU Regulations (EC) No 854/2004 and (EC) No 882/2004 of the European Parliament and of the Council, Commission Regulation (EC) No 669/2009 and Council Directive 97/78/EC.

The Law contains a number of changes, in particular, those regarding the procedure, grounds and documentation of food companies inspections, establishes a mechanism for public control and updates the amounts of and grounds for penalties for violating legislation on food quality and safety.

A major innovation of the Law is the risk-based approach of market operators inspections. That is, the lower the danger of the market operator's activities, the lower the frequency of inspections carried out by the controlling authorities. The companies are inspected depending on the degree of risk of their activities for human life and health. The degree of this risk is to be assessed according to the criteria laid down in a normative act of the Cabinet of Ministers of Ukraine. An example of such a normative act is the Resolution of the Cabinet of Ministers of Ukraine No. 402 of 17 June 2015, approving the criteria for the assessment of the degree of risk of operations subject to state veterinary and phytosanitary control and supervision and determines the frequency of regular inspections by the State Veterinary and Phytosanitary Service of Ukraine.

In contrast to the previous procedure, under which the companies were warned about the inspections beforehand, according to the new law, state inspections will be carried out without a warning (notice) to the market operators, except in cases of audits and in other cases where the warning is a prerequisite for ensuring the state control effectiveness. The Law also requires the use of a state control act when carrying out audits and inspections of market operators. The inspectors of the State Service on

Food Safety and Consumer Protection shall carry out inspections in accordance with the said act which will include an exhaustive list of issues and will make it impossible to inspect the issues, not specified therein. At the same time, the state control act shall be made available in advance.

The Law also provides for new sanctions for quality regulations violations. In general, depending on the violation, the fine ranges from 10 to 50 minimum wages (as of 1 April 2018, the minimum wage is UAH 3,723) for legal entities and from 6 to 40 minimum wages for individual entrepreneurs. Thus, the inspector shall, when establishing the production factors, posing a threat to human life and health, decide on the temporary cessation of production and circulation of food products. In the event of failure to comply or delay in compliance with the state inspector's decision on the temporary cessation of production and circulation of food products, legal entities must pay a fine of 50 minimum wages and individual entrepreneurs must pay a fine of 40 minimum wages.

Another innovation of the Law is the inspectors' obligation to issue orders for certain violations to remedy violations of quality regulations instead of imposing fines. For example, should a market operator for the first time in 3 years produce or place on the market food or feed products using non-registered equipment or use non-registered sanitary products, sanitary objects or feed additives, the inspector shall, instead of imposing a fine, issue an order to the market operator to remedy violations of food and feed legislation without drawing up a protocol.

## **Amendments to legislation in the field of highways construction and operation**

On 25 March 2018, the Law of Ukraine *On Amendments to Several Legislative Acts of Ukraine in the Field of Highways Construction and Operation*, passed on 27 February 2018 (hereinafter the Law), entered into force. The amendments aim at improving the legal framework for the construction and operation of public highways of national importance under the concession model.

It should be noted that until now, the existing legislation has had some problems which the adopted law is set to solve, namely:

- there were insufficient guarantees to protect private investors;
- there was no clear delimitation of powers between the state authorities authorized to take decisions in connection with the determination of concession objects and the conduct of concession tenders.

Certain amendments having been made to the Laws of Ukraine *On the Concessions*, *On the Concessions for Highways Construction and Operation*, *On the Highways*, *On the Sources of Financing of the Ukrainian Road Industry*, *On the Alienation of Privately Owned Land Plots or Other Real Estate Located on These Land Plots to Be Taken for Public Needs or for Reasons of Public Necessity*, it is provided that:

- concessions can be granted exclusively for the construction and operation of public highways of national importance. However, the public toll roads remaining state-owned, may not be privatised, and no actions that could result in the alienation of the roads owned by the state can be taken in relation to these;
- following the decision on the construction and operation of roads for which a concession can be granted, the executive authorities may not take any actions in relation to the use of land plots designated for the construction and operation of these roads and/or transfer of title to them to individuals or legal entities;
- resolutions on conducting concession tenders shall be adopted by the Cabinet of Ministers of Ukraine; these shall specify, in particular, the technical parameters of the roads, the basic financial indicators of the highway concession, the maximum duration for which the concession is granted, the maximum compensation for the concessionaire and an alternative toll-free route. As an alternative, toll-free passage of motor vehicles along the roads shall be ensured during the entire term of operation of the toll road;
- the Cabinet of Ministers of Ukraine determines the maximum toll price for a single trip on the concession toll road to be charged, taking into account the inflation rate;
- under certain conditions, the concession grantor has to pay compensation to the concessionaire;
- roads or road sections will be declared toll roads only if they are substantially improved and an alternative toll-free route is provided for vehicles;
- in case only a part of the land plot is alienated for the purpose of construction, repair, reconstruction and maintenance of roads, bridges, elevated highways and objects necessary for their operation, the possibility of using the remaining land plot shall be determined by the owner and the entire land plot shall be sold, should the owner so desire;
- resolutions of the competent executive bodies or local self-government authorities on the acquisition of land plots or other real estate located on these land plots for the purpose of constructing, repairing, reconstructing and maintaining roads, bridges, elevated highways and objects necessary for their operation, shall be valid for an unlimited period of time.

The compensation to the concessionaire is provided by law under the following conditions:

- the right to compensation for a part of the revenue not received in full amount, the amount of which shall be stipulated in the concession agreement;
- the concessionaire is entitled to compensation only if the annual revenue generated by the concessionaire from the operation of the concession object in the respective reporting year is less than the planned annual revenue;
- the compensation amount is based on the results of the reporting year and may not exceed 15 percent of the planned revenue for the respective year in accordance with the contract.

It is planned that the implementation of the Law will contribute to promoting investment in the transport industry in particular and the country in general in the field of

construction and operation of public roads of national importance, which should ensure the maintenance and timely repair of these roads and the improvement of their technical condition.

## **MIGRATION REGULATIONS**

### **Fines for the violation of rules of stay in Ukraine by foreigners increased**

On 27 February 2018, the Parliament of Ukraine adopted the Law of Ukraine *On Introducing Changes to Some Ukrainian Legislative Acts Related to Ensuring the State Border Security*. The Law increased the fines rates for the violation of rules of stay in Ukraine by foreigners, envisaged fines for the violation of entry to Ukraine ban by foreigners and for the violation of ATO zone demarcation line crossing rules, as well as increased fines for the violation of rules of the Ukrainian state border crossing.

Thus, the Law stipulates an increase in fines for resistance to border service people and public organizations representatives protecting the border. In particular, the fine in the amount of UAH 850 up to 1,700 (UAH 85 up to 170 before) is provided for malicious disobedience of legal instruction or demand of either a military man or a Ukrainian State Border Guard Service officer in the course of his/her performing duties, while he/she is protecting the border. The fine of UAH 1,700 up to 5,100 (UAH 170 up to 340 before) is envisaged for a repeat offence or an offence, committed by a group of persons.

The Law also provides for fines for foreigners violating the rules of stay in Ukraine and transit moving through its territory. Now fines will constitute UAH 1,700 up to 5,100 (UAH 510 up to 850 now). Such increased fines also target to foreigners non-observing the established registration order or foreigners living in Ukraine with invalid or expired documents, as well as foreigners violating the established period of stay in Ukraine.

The fine in the amount of UAH 3,400 up to 5100 (it used to constitute UAH 1,700) is envisaged for the violation of order of temporarily occupied territories entry, if committed repeatedly by a group of persons or within a year, the sum will reach UAH 8,500. These fines may be imposed only within three months since the violation was detected and not later than in a year since it was committed.

Illegal entry to the antiterrorist operation zone is punishable by the fine in the amount of UAH 510 up to 850, if committed repeatedly within a year or by a group of persons, the sum will constitute UAH 850 up to 1,190.

If a foreigner was trying to enter the temporarily occupied territory or leave it with breaches, he/she will be banned from entering Ukraine for a 3-year term. In case of the ban violation the term will increase by another 10 years.

## **DLF NEWS**

### **DLF attorneys-at-law to participate in the 10th Annual CBBL Conference in Hamburg on 24 May 2018**

On 24-26 May 2018, the 10th Annual Conference of CBBL (Cross Border Business Lawyers), one of the largest networks of German speaking lawyers abroad, is to be held in Hamburg. DLF attorneys-at-law exclusively represents Ukraine in the network.

On 24 May 2018, the CBBL Foreign Law Forum will take place under the title of Management, Control and Executive Liability Worldwide. The forum will be held in the venerable Reichshof Hotel in Hamburg. Within several panel discussions, the CBBL lawyers from around the world will share their practical experience related to the top management employment in their respective countries and debate both with each other and with the audience.

The detailed forum agenda is available upon request. The event visitors are not restricted to CBBL members, everyone is welcome to participate. The forum puts German speaking CBBL-lawyers from over 40 countries at your avail.

On this occasion, Igor Dykunsyy, LL.M., partner at DLF attorneys-at-law, is available for personal meetings in Hamburg from 22 to 26 May 2018. To arrange an appointment with Igor Dykunsyy, please, contact Khrystyna Khariv (khrystyna.khariv@DLF.ua).

### **DLF attorneys-at-law at the Spring Meeting of DIRO legal network in Vienna on 17-18 May 2018**

On 17-18 May 2018, the Spring Meeting of DIRO, one of the leading networks of German-speaking lawyers in Europe, is to be held in Vienna at Le Meridien Hotel. The DIRO-lawyers will gather to discuss the issues of Euro business law, compliance, data protection, international labour law, cross-border insolvency and restructuring, etc.

DLF attorneys-at-law, represented by Igor Dykunsyy, LL.M., will participate in the meeting as an exclusive DIRO-member for Ukraine. If you would like to arrange an appointment with Igor Dykunsyy in Vienna on 17-18 May, please, contact Khrystyna Khariv (khrystyna.khariv@DLF.ua).

**Contact Persons:**

Igor Dykunskyy, LL.M.,  
Partner  
[igor.dykunskyy@DLF.ua](mailto:igor.dykunskyy@DLF.ua)

Dmitriy Sykaluk,  
Senior Associate  
[dmitriy.sykaluk@DLF.ua](mailto:dmitriy.sykaluk@DLF.ua)

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.

The newsletter is a free monthly electronic publication. To unsubscribe, please, send a short e-mail at [info@DLF.ua](mailto:info@DLF.ua)

---

**DLF attorneys-at-law**

IQ Business Centre | 13-15 Bolsunovska Street | 04050 Kyiv, Ukraine | [www.DLF.ua](http://www.DLF.ua) [info@DLF.ua](mailto:info@DLF.ua) |  
T +380 44 384 24 54 | F +380 44 384 24 55