

newsletter

MONTHLY LEGAL UPDATE | UKRAINE |

6 OCTOBER 2014

IN THIS ISSUE:

Doing Business Ratification of the Association Agreement	p. 1
Doing Business The Law on Lustration	p. 2
Doing Business Special Status of Donbas Region	p. 2
Doing Business Reduction in the Number of Supervising Authorities	p. 2
Banking and Finance NBU Tightens Exchange Control on Trade and Capital Flow Transactions	p. 3
Banking and Finance Building Resilient Financial System	p. 3
Banking and Finance Overview of the Legislative Initiatives	p. 4
Energy Implementation of EU Directive 2009/28/EC on the Promotion of Use of Energy from Renewable Sources	p. 5
Food and Beverages A new Ukrainian Food Safety Law	p. 6

DOING BUSINESS

Ratification of the Association Agreement

On 16 September 2014, the Ukrainian Parliament, simultaneously with the European Parliament in the live video session, ratified the Association Agreement. Now, the Association Agreement is to be ratified by the EU member states (the ratification is expected to be completed by the end of 2015).

Notwithstanding the fact that it has not yet been ratified by many EU member states, the Agreement (its political framework provisions) will apply as of 1 November 2014, while the economic chapter will become effective and will be implemented in Ukraine as of 1 January 2016 (the deferral was agreed due to the pressure of Russia). At the same time, the EU has undertaken, subject to the approval of the EU Council of Ministers, to unilaterally lift customs duties with regard to the Ukrainian goods imported into EU. While the Russian Federation insists on numerous (over 2,000) amendments into the text of the Association Agreement both Ukraine and the EU rejected a possibility of amending the already ratified instrument.

The Law on Lustration

On 16 September 2014 the Parliament passed the Law On Purging of the Government (commonly referred to as the “Lustration Law”) aimed at barring officials who have been involved in corruption, human rights violations (particularly, in repressions against participants of the mass protests of winter 2013-2014 in Ukraine) and treason from working in governmental authorities and agencies. The law introduces a mandatory clearance procedure for a number of categories of persons holding or seeking a position at the government. A failure to receive clearance will be the ground for immediate dismissal of such person and will prevent that person from seeking a position in the government or municipal authorities for 10 years. The Lustration law was much praised by the public; however, it attracted considerable criticism for being non-selective, potentially affecting more than 1 million people, and lacking a central authority responsible for consistent implementation of the Law.

The law is still to be signed by President (who has already confirmed his preparedness to sign) and will become effective on the day of its official publication.

Special Status of Donbas Region

On 16 September 2014, following the Minsk ceasefire talks on the military conflict in the East Ukraine, the Parliament passed the Law On the Special Regime of Local Self-Government in Certain Districts of Donetsk and Luhansk Oblasts. The Law, in particular, grants municipal authorities broad powers in appointing heads of the prosecutor’s offices and courts and requires Ukrainian central government to deal with the regional authorities (including the issues of funding) on the basis of specially negotiated agreements. Moreover, the Law prohibits criminal prosecution and administrative sanctioning of “participants of the events in the territory of Donetsk and Luhansk oblasts” (which has been understood as declaration of amnesty to the terrorists). One of the most controversial (and most criticized) provisions of the law authorizes municipal authorities to create local militias, which is believed to legalize the groups of gunmen who are currently considered by the government as terrorists and unlawful combatants.

While it is still unclear which territories of Donetsk and Luhansk oblasts will fall within the scope of the Law (nor is it clear who will determine such territories), the law apparently aims at covering the regions where the antiterrorist operation is underway and which are de facto not controlled by the Ukrainian government (including the cities of Donetsk and Luhansk).

The law will enter into force as of the day of its official publication, unless vetoed by the President.

Reduction in the Number of Supervising Authorities

On 10 September 2014 the Cabinet of Ministers of Ukraine adopted Resolution on the Optimisation of Central Executive Authorities No. 442 which significantly modifies the system of central executive authorities by way of liquidation and reorganisation of a number of state services and inspectorates.

In particular, the Government of Ukraine has liquidated the following state agencies:

- The State Agricultural Inspectorate of Ukraine which was one of the most troublesome state inspectorates for the business community. Its powers will be divided between the State Service for Food Safety and Consumer Protection (seeds certification), the State Ecological Inspectorate (control over land laws compliance, land use and land protection, soil fertility), the Ministry of the Interior of Ukraine (vehicles registration) and the State Service for Transportation Safety (control over vehicles operation);

- The State Inspectorate of Ukraine for Price Control which powers with regard to control over prices will be delegated to the State Statistics Service. Most likely, the State Statistics Service will be empowered to request regular information about prices and mark-ups on socially important food products from companies distributing them;
- The State Service of Ukraine for Personal Data Protection which powers were earlier delegated to the Ombudsman.

The Resolution also covers the State Agency for Land Resources of Ukraine and the State Inspectorate for Protection of Consumer Rights which will be reorganised by way of transformation into the State Service for Mapping, Geodesy and Cadastre and the State Service for Food Safety and Consumer Protection, respectively.

New regulations limiting the powers of supervising authorities are to be expected.

BANKING AND FINANCE

The National Bank of Ukraine (the NBU) announced its plans to cancel the Decree on the Currency Control and Currency Regulations as well as mandatory registration of cross-border loans; however, this reform is subject to, on the one hand, stabilising the security situation in Ukraine, and, on the second hand, elimination of money laundering banks from the banking sector.

Meanwhile, the exchange controls have been tightened to the detriment of corporate sector and individuals.

NBU Tightens Exchange Control on Trade and Capital Flow Transactions

On 22 September 2014 the National Bank of Ukraine adopted Resolution No. 591 On Amending Certain Legislative Acts of the National Bank of Ukraine ("Resolution No. 591"), which will come into force on 23 September amending its Resolutions 515 and 540 adopted in August. As originally intended, the amended Resolutions will lose effect on 22 November 2014 and 2 December 2014, respectively, unless extended by the NBU.

An overview of the key aspects of this enactment was circulated in on our client alert as of 25 September 2014. For more details please follow the [link](#) to access the overview. On October 3, however, the NBU amended these resolutions (Resolution No.626): on one hand, it explicitly allowed payments for (i) certain services such as telecommunication, transportation and tourism, payment systems, medical services to individual patients, (ii) certain goods (without their customs clearance in Ukraine) such as commercial sea ships and aircraft, and (iii) goods imported over 180 days ago, when these transactions (a) involve a foreign export credit agency or (b) use a letter of credit issued before adoption of Resolution 540. Conversely, on the other hand, the regulator restricted operations by individuals with precious metals; more importantly, in backward reasoning of many Ukrainian banks, payments for other services may be prohibited when they are not expressly allowed. We do not expect, however, this restriction to apply widely to the interest under loan arrangements, since cross-border loans were dealt with separately in section 1 of Resolution No. 540.

Building Resilient Financial System

In parallel with soliciting support of its "temporary" administrative measures, the National Bank of Ukraine has undertaken quite a few regulatory steps to discipline the banks active on the market:

- amended rules for stabilization loans issued to banks (Resolutions No. 596 dated 24.09.14 and 589 dated 18.09.14);
- published its analysis of the FX market manipulating practices and threatened the alleged participants with penalties (Letter No. 29-209/55222 dated 29.09.14);
- introduced an 'indicative' currency exchange rate published in the Thomson Reuters data system (Letter No. 24-008/54205 dated 24.09.14);
- extended to three years the term for "repeat violation" that can result in declaring the bank insolvent (Resolution No. 593 dated 22.09.14);
- issued a roadmap for restructuring of the refinancing granted to the banks earlier, which also increases market elements in evaluation of the security granted for the benefit of the National Bank of Ukraine. The final maturity of such loans may not be extended beyond the end of 2018 (Resolutions Nos. 602 dated 25.09.14, 589 dated 18.09.14, and No. 551 dated 04.09.14);
- limited the scope of security for refinancing in 4Q 2014 (Letter No. 19-015/55285 dated 29.09.14) and expanded criteria for eligibility (Resolution No. 582 dated 18.09.14); eased refinancing of the Deposit Guarantee Fund (Resolutions Nos. 587 dated 18.09.14 and 612 dated 29.09.14);
- restricted lending practices and acquisition of securities by banks; prohibited distributions to related parties (dividends, bonuses, share redemptions, capex, other transactions with insiders) until 1 January 2015 (Resolution No. 529 dated 26.08.14 as amended by Resolution No. 607 dated 25.09.14, Letter No. 40-117/50904 dated 11.09.14);
- held several foreign currency auctions based on the Dutch system and explained several policies related to the new rules on the market (Resolution No. 592, Letters Nos. 24-011/53220 and 48-304/53428, all dated 22.09.2014, Resolution No. 548 dated 03.09.14);
- explained the rules on mobile branches (Resolution No. 578/ДЦК Letter "B" dated 17.09.14) and transfers between the temporarily occupied Crimea and the non-occupied Ukraine (E-Notice: No. 29-213/51623 dated 15.09.14);
- amended the monetary strategy for 2014 and approved the strategy for 2015 introducing inflation targeting (Decisions of the NBU Board Nos. 27 and 28, both dated 11.09.14);
- expanded the purposes of the foreign currency-denominated loans but restricted offsetting in cross-border transactions and introduced the T+2 regime for purchase of foreign currency instead of the same day clearance (Resolutions Nos. 534 dated 28.08.14, 540 dated 29.08.14, 557 dated 09.09.14 and 591 dated 22.09.14).

Overview of the Legislative Initiatives

Bill no. 4437a is scheduled for consideration during the plenary session; the proposed amendment requires disclosure of the information about the management, registration details and financial reports of financial company on its web-site as well as in the database administered by the regulator.

The Verkhovna Rada will also consider bill No. 4390a on consumer finance, which is based on Article 11 of the effective Law On Protection of Consumer Rights but strives to provide more details on the procedure, rights and obligations of the finance providers.

The People's Deputies voted for consideration of yet another bill No. 4391a on the protection of financial services consumer in the near future. The law, along with various improvements of the consumer's substantive rights and administrative penalties imposed on financial institutions for non-compliance, would introduce class action in Ukrainian courts. The National Commission for the State Regulation of the Financial Services Markets, the National Bank of Ukraine and the National Commission for the State Regulation of Securities and the Stock Market will be empowered to initiate such actions on behalf of consumer groups.

In September, the government introduced bill No. 5067, which restates the effective anti-money laundering law and further expands the powers of the government and the guiding practices for corporate business; the bill also modifies mandatory monitoring subjects and the know-your-client policies; the Cabinet of Ministers will obtain the power to issue regulations, some in conjunction with the National Bank whereas the anti-money laundering agency will have executive functions only.

Also this month, the Cabinet of Ministers initiated the law on expansion of the regulatory and supervisory tools available to the National Commission for the State Regulation of the Financial Services Markets. The competence of the regulator follow the path similar to the one made by National Bank of Ukraine in July this year. In particular, the National Commission will be able to suspend or revoke licences, introduce and effect the external administration, amend the companies' register and recover the assets milked by dishonest management. Sabotage of the external administration will be subject to a fine imposed by a local court of general jurisdiction.

ENERGY

Implementation of EU Directive 2009/28/EC on the Promotion of Use of Energy from Renewable Sources

In light of gas supply shortages and anticipated step-by-step transition to energy generation from renewable sources the Government of Ukraine adopted the Resolution on Approval of the Action Plan (the "Action Plan") for Implementation of EU Directive 2009/28/EC on the Promotion of Use of Energy from Renewable Sources (the "EU Directive").

The EU Directive sets a 20% minimum share of energy from renewable sources in the overall energy consumption and a 10% share of energy from renewable sources, in particular, from biofuel to be consumed in the transport sector. These targets should be reached by the EU Member States by 2020.

For reaching the above targets the EU Member States have to simplify authorisation procedures, diversify energy sources, explore new renewable sources such as sea waves, marine currents, tides, ocean thermal energy gradients or salinity gradients, increase energy efficiency of buildings and move to decentralised energy generation.

In spite of the ambitious goals of the Government of Ukraine to encourage renewable energy consumption by way of implementation of the EU Directive, in fact, the Action Plan does not include any actions for the implementation of the EU Directive by Ukraine. The Action Plan only provides for reporting obligations of Ukraine and obligations to provide required information to the Energy Community Secretariat and to publish information about the volume of renewable energy generation and other relevant information on the official web-sites of the state authorities in charge.

A more detailed implementation plan with the list of actions to be taken for the implementation of the EU Directive is expected to be adopted in the nearest future.

FOOD AND BEVERAGES

A new Ukrainian Food Safety Law

A new version of the Law of Ukraine on Food Safety (the "New Law") was officially published on 19 September 2014. According to the official text of the New Law it will come into effect on 20 September 2015.

Among other things, the New Law simplifies labelling of alcoholic beverages by reducing the number of obligatory elements to be indicated. More specifically, unlike the current law the following information will no longer be required to be indicated with respect to alcoholic beverages:

- Name, address and phone number of the production site (separately from the producer's address);
- Energy and nutrition values indicating content of protein, carbohydrates and fats in specified units in 100 grams of the product;
- Date of expiry;
- Production batch number.

Further, the New Law introduces a new regime of GMO labelling. Under the current Food Safety Law, it is mandatory to place a specific mark "GMO free" mark in case if products are indeed free of any genetically modified ingredients. The New Law will require quite the opposite: to have a "contains GMO" label in all respective cases. At the same time, the New Law cancels the state registration requirement with respect to GMO-containing food products (it is required to register GMO components, though).

Other novelties of the New Law include:

- Possibility of direct application of EU directives, provided absence of equivalent Ukrainian rules;
- Recognition of private laboratories certified by foreign accreditation bodies (members of ILAC) to certify food safety in Ukraine;
- Possibility to block imports of food products produced at foreign production facilities not in line with Ukrainian standards;
- New state registration formalities for "newest food products", food additives, flavourings, enzymes and pot water were introduced and some of the existing ones were amended;
- New state requirements for productions facilities/operators of the food industry were introduced and some of the existing ones were amended;
- Criminal liability for turnover of dangerous food products was strengthened (up to 10 years of imprisonment). ■

RESIDENT PARTNERS

BERTRAND BARRIER
barrier@gide.com

DR JULIAN RIES
julian.ries@gide.com

DR OLEKSIY FELIV
oleksiy.feliv@gide.com

You can also find this legal update on our website in the News & Insights section: gide.com

This newsletter is a free, periodical electronic publication edited by the law firm Gide Loyrette Nouel (the "Law Firm"), and published for Gide's clients and business associates. The newsletter is strictly limited to personal use by its addressees and is intended to provide non-exhaustive, general legal information. The newsletter is not intended to be and should not be construed as providing legal advice. The addressee is solely liable for any use of the information contained herein and the Law Firm shall not be held responsible for any damages, direct, indirect or otherwise, arising from the use of the information by the addressee. In accordance with the French Data Protection Act, you may request access to, rectification of, or deletion of your personal data processed by our Communications department (privacy@gide.com).