

newsletter

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DOING BUSINESS

Anti-corruption laws reinforced

On 12 February 2015 the Ukrainian Parliament passed a law amending certain laws regulating activities of the National Anticorruption Bureau of Ukraine and the National Corruption Prevention Agency (the 'Law').

These two new authorities responsible for implementation of anti-corruption policies and investigation of corruption-related crimes were established by the Law on Prevention of Corruption dated 14 October 2014 which will enter into force on 26 April 2015 and which left the status and the scope of competences of those anti-corruption bodies to be regulated by further laws.

The Law introduced numerous amendments into a number of other acts of legislation regulating prevention of corruption, such as the Criminal Code, the Code of Administrative Offenses, the Commercial Code, the Code of Civil Procedure, the Code of Criminal Procedure, etc.

In particular, the Law clarifies the scope of corruption related crimes, introduces reporting a crime (except for corruption-related crimes classified as grave) by the perpetrator as a ground for exemption from liability, extends liability for commercial graft (bribery) also to persons who are not employees but work for companies as contractors and removes the value threshold for criminally punishable bribes (now 1.5 minimal monthly wages).

Additionally, the Law introduces a new chapter to the Code of Civil Procedure allowing the General Prosecutor's Office to reclaim to the state budget any assets owned by civil servants which are deemed unjustified, i.e., which cannot be explained by servants' legitimate income (a concept known in international law as 'illicit enrichment').

Also, the Law vests very broad powers in the National Anti-Corruption Bureau related to investigation of corruption. For this purpose, the Bureau will be staffed with detectives authorized to pursue broad investigatory actions against public officials (including the Prime Minister, ministers, other high officials as well as all judges). A special anti-corruption prosecution department is established under the General Prosecutor's Office, which will be tasked with prosecuting corruption-related offenders. This unit will be staffed by officers who have not previously worked in any anti-corruption authorities (at least 5 years prior to the Law entering into force).

The Law still awaits signature by the President and for the most part will enter into force upon its official publication, unless vetoed by the President.

Judicial reform underway: Supreme Court's powers expanded

On 12 February 2015 the Ukrainian Parliament passed the Law on Ensuring the Right to a Fair Trial (the "Law") which amends the effective laws governing judiciary in Ukraine broadening the Supreme Court's powers and raising its importance as the highest judicial body and the last instance for dispute resolution.

Generally, the Law preserves the current 4-level system of judiciary with the Supreme Court at the top as a de facto 4th instance court. At the same time, in contrast to the present rather unusual procedure when the review of a case by the Supreme Court must be allowed by the relevant cassation court (i.e., by the court whose decision is to be reviewed, effectively making it a judge in its own case), under the Law the Supreme Court will get the right to grant such access.

The Supreme Court will have jurisdiction to review decisions of the cassation court(s) on the existing grounds of non-uniform application by the cassation court(s) of substantive rules of law in similar disputes as well as confirmation by an international judicial body (primarily, by the European Court of Human Rights) of a breach by Ukraine of its international obligations when adjudicating a case. At the same time, the Law introduces new grounds for extraordinary review: non-uniform application by the cassation court(s) of procedural rules as well as a failure by a cassation court to follow the rulings of the Supreme Court with regard to application of substantive laws in similar cases.

Thus, the Law will increase the importance of the Supreme Court as a judicial body competent to ensure uniform application of law, with its decisions being binding on lower courts in analogous disputes.

Besides considerably expanding the powers of the Supreme Court, the Law also introduces a number of notable changes in the procedures for judicial self-governance aimed at raising the level of independence of the judiciary, by amending the Law on the Higher Council of Justice and fully restating the Law on Judiciary and the Status of Judges.

The law was signed by the President and will partially enter into force immediately and partially within 30 days after its official publication.

BANKING AND FINANCE

Free exchange rate and new foreign exchange limitations

On 5 February 2015 the National Bank of Ukraine (the "NBU"), following the recommendations of the IMF, made a painful decision to abolish the indicative FX rate and moved towards a freely floating exchange rate. Simultaneously, the NBU raised the discount rate by 550bp (to 19.5%) in order to target inflation expectations. Just a few weeks after the NBU's shift in the exchange rate policy, the national currency fell to the record low and lost more than 40% of its value.

On 23 February 2015 the NBU revealed additional measures to support the national currency and imposed, by its Resolution No 124, the following limitations on the foreign exchange market:

- legal entities and individuals are no longer allowed to buy foreign currency on the interbank market with the use of national currency borrowed from the commercial banks, except for individuals to repay consumer loans issued by Ukrainian banks;
- any advance payments under import contracts exceeding USD 50,000 (or its equivalent in any other foreign currency) are subject to the NBU's confirmation after a thorough review. Commercial banks are obliged to prepare a register of advance payments and transmit it together with all underlying documents by electronic means for the NBU's approval. Confirmed advance payments can be made by commercial banks not earlier than on the fourth banking day from the day when the register was submitted;
- any advance payments under import contracts exceeding USD 500,000 (or its equivalent in any other foreign currency) are only allowed where such payments are made with the use of a letter of credit provided, however, that:
 - the letter of credit is confirmed by a "first class bank" which rating is certified by one of the leading international rating agencies (Fitch IBCA, Standard & Poor's, Moody's);
 - the foreign currency is purchased to provide financial collateral for the issuance of the letter of credit or to pay a commission of foreign banks involved in the transaction; and
 - the letter of credit is payable only against due delivery of the documents in accordance with its terms.

In accordance with NBU Resolution No 124 it applies to:

- import contracts signed before NBU Resolution No 124 took effect if the aggregate value of unpaid goods to be shipped under such contracts exceeds either USD 50,000 or USD 500,000 (or its equivalent) accordingly; and
- advance payments to the benefit of one non-resident under different import contracts if the aggregate amount of payments to be made by a resident under such contracts during one month exceeds either USD 50,000 or USD 500,000 (or its equivalent) accordingly.

On 25 February 2015, following unprecedented devaluation of national currency, the NBU suspended, with immediate effect, all transactions on the interbank FX market for the period of three (3) banking days but unexpectedly lifted the suspension on the same day in the evening.

In addition, pursuant to NBU Resolution No 130 dated 24 February 2015, as amended on 25 February, the 'freezing period' during which banks' clients should deposit Hryvnias onto the special analytical account to buy foreign currency was extended from 2 to 3 banking days (T+3 to T+4).

REAL ESTATE

Deregulation Law

On 12 February 2015, the Verkhovna Rada of Ukraine adopted draft of Law of Ukraine no. 1580 on Simplification of Conditions for Business Activities (Deregulation) (hereinafter - the "Deregulation Law"). The Deregulation Law will come into force after signing by the President of Ukraine and publishing.

The Deregulation Law concerns the following real estate issues:

- *The Land Code of Ukraine* is amended with a new type of a land easement. The land easement can be set in case of placement of temporary structures (street furniture).
- *The Law of Ukraine on Land Lease* is amended with a reduced list of essential provisions of a land lease agreement which were limited to:
 - Lease object (cadaster number, location and area of the land plot);
 - Duration of a land lease agreement;
 - Land lease payment (the amount of lease payment, indexation, payment provisions, procedure for and terms of payments, change of lease payments and responsibility for non-payment).

Before the Deregulation Law land lease agreements were required to contain 15 essential provisions (barely reasonable and pretty cumbersome) and 5 mandatory integral annexes.

Other provisions may be included into the land lease agreement upon mutual consent of the contracting parties. Further, the standard form lease agreement, approved by the Cabinet of Ministers of Ukraine, will not be obligatory anymore.

In accordance with general rule these amendments must be applied only to the agreements signed after the law becomes effective.

- *Agricultural land*

The Deregulation Law introduces several novelties concerning agricultural land. The minimum duration of lease of agricultural land, designated for commercial agriculture, private farming or farming, cannot be less than 7 years. Previously, there was no minimum duration for land leases (while the maximum duration remains 50 years). The law further expressly allowed leasing out agricultural land designated for private farming to companies for commercial agriculture without changing the designation. The novelty is favourable for many agricultural holdings, which lease land plots from numerous individuals without changing their designation.

- *The Housing Code of Ukraine* is amended as follows:

The layout of interior planning of apartments in the residential buildings and private houses (which do not affect capital constructions and common engineering systems) may be changed without a permit. After the layout has been changed, the apartment is not required any legalization procedures.

- *Duplication of Powers in the Construction Sphere*

The Deregulation Law decentralizes construction permitting. The role of local authorities will change from passive observers to active players on the regulatory side of the construction market. In particular, local authorities will be empowered to register declarations on commencement of preparatory/construction works in case of construction

of facilities of I-III category of complexity and issue construction permits in respect of facilities of IV-V category of complexity. Additionally, local authorities will be in charge of commissioning and will become the supervising authority dealing with architectural and construction control.

Until now, all these powers fell within the competence of the State Architectural and Construction Inspection of Ukraine (the "Inspection") as a central executive body.

Minimum lease payment for state and municipal land plots

The State Fiscal Service of Ukraine (hereinafter - the "SFS") issued an official explanation with regard to the lease payment for state and municipal land plots.

The SFS clarified that the amount of the lease payment for state and municipal land plots cannot be lower than 3% of the regulatory reference value of the land plot, as it is provided by the Tax Code of Ukraine that came into force on 01.01.2011.

The SFS does not deny that the land lease payment is established by the land lease agreement. However, lessees, that concluded land lease agreements before 01.01.2011 and/or that pay land lease payments lower than 3% of the regulatory reference value, were invited to meet with local offices of the State Fiscal Service and submit revised calculations of the land lease payments with the amount not lower than 3% of the regulatory reference value.

The explanation of the SFS is based on the resolution of the Supreme Court of Ukraine, which ordered administrative courts to take into account the above mentioned position in tax litigations. Hence, the land users have to be ready to reconsider the lease payment upon request of the tax authority.

Parliament adopts the law simplifying the procedure for approval of land allotment projects

The Ukrainian Parliament voted to approve draft law no. 1025-1 aimed at simplifying the procedure for approval of land allotment projects. The draft law is awaiting the signature of the President. In line with the novelties, land allotment projects may be rejected only for valid reasons. The competent authority will be required to list all of the shortcomings of the project (rather than simply reject it), and the applicant would have the right to correct such shortcomings within a reasonable period of time.

If signed by the President, the law is expected to make the approval process much quicker and eliminate the corrupt practices associated therewith.

REGULATORY

State Registration of Business

Official publications, in particular, about company's liquidation or reorganization, will be placed on the web-site of the State Registration Service of Ukraine instead of the specialized printed bulletin. This will result in getting easier access to the information.

The new law established electronic exchange of information between the state registrars, licensing authorities and National Commission for Securities and Stock Market of Ukraine as well as reduced the term of such information exchange to 24 hours.

Information about licenses and other permits will be recorded in the Unified Register of Legal Entities and Private Entrepreneurs (the "Register").

Statements from the Register can be obtained in paper or electronic forms. Statements will be issued and registration actions will be completed by the state registrars within 24 hours.

Companies' establishment will be registered within one day (previously - 3 days).

Administrative services

The law provides for elimination of licensing centers and transfer of its functions to the centers of administrative services. There will be no obligation get licenses or permits through licensing centers (so called "single window" approach).

The businesses can choose between obtaining licenses and permits either directly through a competent authority, or through the centers of administrative services. The list of such licenses and permits will be approved by the Cabinet of Ministers of Ukraine (the "Cabinet of Ministers").

Commercial Issues

Franchising agreements will not be subject to mandatory state registration any longer. Notably, such registration was not technically possible before, although it was required starting from January 2004. In the past, such law requirement and lack of registration mechanism caused disputes on validity of the franchising agreements.

New entry rules for Russian citizens

Starting from 1 March 2015 citizens of the Russian Federation will be able to enter, exit, transit, stay and travel within Ukraine only on the basis of passports valid for international travel (foreign passports).

The Cabinet of Ministers of Ukraine by its Resolution dated 30 January 2015 suspended the provisions of the Agreement between the Government of Ukraine and the Government of the Russian Federation on visa free travel for citizens of Ukraine and the Russian Federation dated 16 January 1997 which permitted citizens of the Russian Federation to enter, exit, transit, stay and travel within Ukraine on the basis of a national passport of the citizen of the Russian Federation or, for children under 14, a birth certificate confirming the citizenship of the Russian Federation.

The suspension is introduced for an unlimited period, until the Government decides that there is no need to ensure state security, preserve public order or protect the health of citizens anymore.

LABOUR

Employment of Foreigners

On 28 January 2015 the Cabinet of Ministers issued Regulation No. 42 on Deregulation of Business Activities (the "Regulation").

According to the Regulation employment centers will not verify whether there is demand on the local market for foreigners who have diploma from any university mentioned in one of the below rankings:

- Times Higher Education;
- Academic Ranking of World Universities by the Center for World-Class Universities at Shanghai Jiao Tong University;
- QS World University Rankings by Faculty;
- Webometrics Ranking of World Universities.

The amended provisions also read that employment of foreigners in the IT industry is always treated as justified to the extent where such employees will be employed as managers or professionals in IT companies or otherwise will be engaged in production of copyrighted work.

A work permit will be issued or extended within 7 business days (previously - 15 calendar days).

The state fee for issue of the work permit will amount to 4 minimum salaries (about 180 Euros). No state fee is to be paid for the extension of the work permit.

Reserving Qualified Employees Liable for Military Service Proposed

On 13 February 2015 the Draft Law on Amendment of Certain Legislative Acts of Ukraine regarding Certain Aspects of Mobilization and Ensuring Economic Stability of Enterprises of the Real Economy Sector No.2127 was registered in the Parliament.

The Draft Law proposes amendments to the Laws of Ukraine on Military Duty and Military Service, and on Mobilization Preparation and Mobilization, which would allow employers in certain important sectors of economy (industry, agriculture, transport and communications) to reserve their key employees who are liable for military service by paying mobilization compensation in the amount of 50 minimum wages per person to the defense fund of the Ministry of Defense of Ukraine.

The decision on reserving an employee is supposed to be taken by the company's commission and formalized in an agreement on reservation for a special period to be concluded between the company and the military enlistment office. The draft amendments lay down a number of conditions for applicability of the reservation procedure. In particular, mobilization compensation may not be paid if the employee has been working for less than one year, or is not a permanent employee, or if the company is undergoing bankruptcy, liquidation, reorganization or recovery procedure, and/or is economically inactive.

Draft Law No. 2127 is now considered by relevant committees of the Parliament. We will keep you informed about further developments in this regard.

PHARMACEUTICALS

The Procedure for Conducting Clinical Trials Amended

The Ministry of Healthcare of Ukraine (the MoH) by its Order No. 966 dated 18 December 2014 amended the Procedure for Conducting Clinical Trials of Pharmaceutical Drugs and Examination of Materials of Clinical Trials approved by Order No. 690 of the MoH dated 23 September 2009. The amendments entered into force on 17 February 2015 and addressed primarily the sections specifying the procedure for examination of materials of clinical trials and the amendment of materials of clinical trials.

Amendments as of 18 December 2014 provide for a more active role of the MoH in the course of conducting of clinical trials. Now, to initiate a clinical trial, an applicant must first apply to the MoH as the central executive body in the sphere of health protection and, upon issuance by the MoH of a referral letter to the State Examination Centre of the MoH (the Centre), within 30 days may submit the materials of clinical trials to the Centre. The examination of materials by the Centre is done within 47 days upon submission of all materials and must be followed by the issuance of a positive or negative opinion. Based on the opinion of the Centre the MoH within 5 days must adopt a decision on conducting of clinical trials or refusal to conduct clinical trials.

In a similar way, should there be a need to make a material amendment to the materials of a clinical trial, an applicant must first apply to the MoH. The Centre examines the materials upon receipt of the referral letter of the MoH and issues its opinion (positive or negative) regarding the amendment. Such opinion serves as a basis for adoption by the MoH of a decision on approval of the material amendment or refusal to approve it.

Taking into account the above changes, Order No. 966 also revised certain annexes to the Procedure for Conducting Clinical Trials of Pharmaceutical Drugs and Examination of Materials of Clinical Trials thus approving the forms of cover letters and applications to the MoH in both above mentioned cases. ■

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