

## newsletter

MONTHLY LEGAL UPDATE | UKRAINE |

8 JULY 2015

### IN THIS ISSUE:

<b>Dispute Resolution</b>   Changes to the rules governing court fees	p. 1
<b>Banking and Finance</b>   Transactions with Subordinated Creditors	p. 2
<b>Banking and Finance</b>   Reform Sampling	p. 2
<b>Banking and Finance</b>   Foreign Currency Consumer Loans	p. 2
<b>Real Estate</b>   State registrars will render fast-track services	p. 3
<b>Renewable Energy</b>   Green Tariff: The Parliament cancelled local content requirement	p. 3
<b>Pharmaceuticals</b>   New rules for recycling and destruction of pharmaceutical drugs	p. 3
<b>Public Regulatory</b>   Certification of certain products abolished	p. 4

### DISPUTE RESOLUTION

#### Changes to the rules governing court fees

Ukraine undertook towards the IMF and other international donors to improve the financial fit out of the court system. To this end, the Parliament adopted on 22 May 2015 the new law raising the upper limits of court fees and slightly amending the existing rules on court fees. The law introduces a differentiation between court fees' rates for individuals and legal entities, where court fees for legal entities will be higher compared to those for individuals. Besides, the law introduces mandatory payment of court fees *inter alia* for governmental authorities. Since governmental authorities were exempt from court fees in the past, they often used lawsuits and appeals without any legal grounds simply to postpone enforcement of unfavourable court decisions.

The law envisages harmonization of the minimum amounts of court fees payable to courts of first instance in all jurisdictions, while removing some of statutory ceilings for them. In commercial proceedings the statutory ceiling will remain fixed; however, it will be raised from 60 minimum wages (at present) to 150 minimum wages (a little less than EUR 8,000). The rates of court fees for appeals will be increased approximately twofold: (i) from 50% of the initial court fee rate (calculated when filing a lawsuit) to 110% of such a rate for the court of second instance; and (ii) from 70% of the initial court fee rate (calculated when filing a lawsuit) to 120% of such a rate for the court of third instance.

The law has been awaiting Presidential approval for over a month now and should come in force as of 1 September 2015, if signed.

## **BANKING AND FINANCE**

### **Transactions with Subordinated Creditors**

In the rush to restore the confidence of depositors, the National Bank of Ukraine this time focused on subordinated creditors in its Board Resolution No.380 dated 16 June 2015. First, unaffiliated creditors are rewarded with non-interrupted payment of the interest. Second, lenders related to the borrowing bank have to not only subordinate interest payment when the borrowing bank is in crisis, but also limit their appetite with 1/10 of the maximum interest rate allowed by the regulator for subordinated loans denominated in Hryvnia; this combines nicely with the maximum interest of 12-month LIBOR on USD and EUR loans. As a next step, it would be reasonable for the NBU to lift the interest cap for unaffiliated lenders or, if not possible, to establish it pro rata the cap on senior loans.

### **Reform Sampling**

The Ukrainian Parliament has strengthened the institutional capacity of the banking regulator in draft laws Nos. 2742 and 2743 (both are under the President's consideration) that respond to the demands of international creditors and, potentially, may light the way for reform of other regulators.

In particular, the National Bank of Ukraine will set up an independent internal audit body, reduce members of the NBU Council with reduced conflict of interests, less political and business involvement of its members. Finally, the composition of the Council will be reset within two months from the effective date of the law. The Board will become responsible for remuneration of the Council members and reimbursement of their costs, whereas the Chair of the NBU Board will notify the President and the Parliament of the circumstances prompting termination of the membership in the Council.

The Board of the NBU will be reduced and is enabled to form committees on Banking Supervision, Payment Systems Oversight, and Assets and Liabilities Management. Members of the Board will have limited terms of their services and will be dismissed if they compromise their "impeccable reputation".

As a perk, directors, officers and servants of the NBU will be exempt from personal liability for political decisions and protected by the government-sponsored legal aid and insurance programmes.

The NBU is no longer will be planning income (to finance state budget) but will form reserves for interventions in case of crises. The NBU's commercial operations have been expanded by the freedom to acquire and dispose of assets constituting collateral under security provided by Ukrainian banks for the stabilisation or refinancing programmes.

The financial stability, which will put the end to restrictive measures in the currency market and in the banking system, has got its first definition in the law, full of subjective factors and only indirectly correlating with a sustainable growth of the economy.

### **Foreign Currency Consumer Loans**

On 2 July 2015 the Parliament adopted the Law On Restructuring of Foreign Currency Loans (Draft law no. 1558-1), pursuant to which Ukrainian commercial banks are obligated to convert foreign currency consumer loans into Hryvnias at the NBU's exchange rate which was effective on the date when the underlying loan agreements were signed. Besides, the law also provides the borrowers with unprecedentedly favourable restructuring terms, including rescheduling of

interest payments, write-off of penalties, fixed interest rates and other borrowers friendly incentives.

The law was called “populist” and has been severely criticized by the banking community for its devastating impact on a fragile banking system. If the law takes effect commercial banks will reportedly sustain billions in losses. However, according to the statement recently made by the President, he will use his veto power as the law is inconsistent with the undertakings assumed by Ukraine towards the IMF

## **REAL ESTATE**

### **State registrars will render fast-track services**

The Government of Ukraine offers an alternative to standard real rights registration procedure to applicants who wish to complete such registration in short terms. In particular, an enterprise as a single real estate property may be registered within 5 working days. Same applies to registration where a new title certificate shall be issued. In other cases real rights registration shall be completed within 3 working days. State registration of encumbrances will take up to 2 hours while a paper form extract from the State Register of Real Rights to Immovable Property will be issued in an hour as of the moment of registration of the relevant application.

According to the Resolution of the Cabinet “On Rendering Fast-Track Services on Registration of Real Rights to Immovable Property” No. 190 dated 8 April 2015 which came into force on 22 June, all these fast-track services except for the registration of encumbrances will cost the double of the regular fee.

## **RENEWABLE ENERGY**

### **Green Tariff: The Parliament cancelled local content requirement**

The Law of Ukraine on Amendments to the Certain Laws of Ukraine Securing Competitive Conditions of Generation of Energy from Alternative Energy Sources (the “Law”) adopted by the Parliament on 4 June 2015 confirms firm commitment of Ukraine towards development of alternative energies and will be of great interest to renewable energy producers who will be released from burdensome requirements to keep certain level of local content production.

In particular, the local content requirement will finally be cancelled and replaced with an incentive markup to be paid to the energy producers who utilized local production. The mark-up will be set by the Energy Commission (NERC) and will be added to the green tariff rate. The mark-up will be differentiated (5% or 10%) and will depend on proportion of use of equipment of Ukrainian origin (30% or 50%). The mark-up will apply to facilities to be commissioned from 1 July 2015 till 31 December 2024. Private households will not be eligible for the mark-up.

The Law changes the definition of biomass covering also products (not only waste) and introduces separate green tariff rates for energy producers using geothermal sources.

## **PHARMACEUTICALS**

### **New rules for recycling and destruction of pharmaceutical drugs**

The Ministry of Healthcare has made further attempts for proper regulation on recycling and destruction of the pharmaceutical drugs in Ukraine which still lack mechanisms for tracking the process. With the new Rules, which entered into force on 19 June 2015, defective pharmaceutical drugs (including those expired), as well as unregistered and falsified, must be

delivered as waste to companies licensed to handle hazardous waste. Therefore, unlike the previous regulation, the Rules now prohibit recycling and destruction of pharmaceutical drugs by the manufacturer or supplier which makes it easier for the authority to control the proper execution of the recycling and destruction.

## **PUBLIC REGULATORY**

### **Certification of certain products abolished**

On 5 June 2015, the regulation on mandatory certification of products was amended to cancel the certification requirement for a number of products, which are produced mostly abroad. The amendment is aimed at making the domestic distribution of the respective products less burdensome as far as conformity to the national laws is concerned.

More specifically, the following products no longer require certification:

- Shampoo, liquid soap and similar products;
- Baby food;
- Child wear (the certification requirement was postponed since December 2013);
- Baby carriages.

The above exemption was enacted with immediate effect, i.e. starting from June 2015.

Besides, with respect to transportation vehicles, including personal vehicles, trucks, buses, as well as car spare parts the certification requirement will cease to exist from 1 January 2016. ■

---

## **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](http://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](mailto:privacy@gide.com)).