

newsletter

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DOING BUSINESS

The role of private persons and companies in fighting corruption strengthened

On 22 May 2015, the Parliament by passing a new law (On strengthening of the role of civil society in fight against corruption related crimes) gave broad powers to the community members in tackling corruption-related offenses and cooperating with the authorities. Any person, legal entity or NGO (a so-called 'public accuser' or a 'prosecutor for the community'), either those who directly suffered from the act of corruption or who learned of such an act, will now be able not merely to report the alleged offense to the authorities but also to actively participate in criminal investigation, and will be vested with broad procedural powers (will be able to submit evidence, challenge decisions of investigators or prosecutors, access the case materials, support the prosecution side in the court, etc.). In parallel, the law is purported to allow the use by public accusers of covert technical devices (such as microphones ('bugs'), spy-cameras, etc.) deeming such 'private' recordings a reliable evidence in corruption-related investigations.

The law awaits signature of the President, and if signed will become effective immediately upon official publication.

Deadline for disclosure of ultimate beneficial owners extended

On 21 May 2015 the Parliament adopted Law no. 475-VIII extending the deadline for disclosure by legal entities of their ultimate beneficial owners (controllers) (the "UBOs") to a state registrar until 25 September 2015. The main reason for such extension was the failure of a large number of companies to disclose information about the UBOs by the previous deadline (25 May) due to the state registrars being overworked and ambiguity of the law.

The procedure for such disclosure was also improved by way of introducing a possibility to declare absence of UBOs for companies which do not have natural persons as beneficiaries, and exempting the following legal entities from the obligation:

- Companies owned exclusively by natural persons, provided that such natural persons are the UBOs; and
- State and municipal enterprises, religious organisations.

We believe that such amendments will facilitate compliance with the legal requirements and allow avoiding administrative fines for a failure to disclose the UBOs in time.

BANKING AND FINANCE

Moratorium on Foreign Debt Payments

On 28 May 2015 the President of Ukraine signed Law № 436-VIII, adopted by the Parliament on 19 May 2015, which enables the Government to impose a moratorium on its liabilities under sovereign borrowings. The foreign liabilities, which are mainly concerned, include sovereign bonds issued back in 2005 - 2013. The most part of the affected bonds in the amount of USD 8.9 billion are held by T. Rowe Price, TCW Group, BTG Pactual Europe and Franklin Templeton Investments, which formed a committee to work a restructuring deal out with Ukraine.

Law No. 436-VIII entitles the Government to suspend coupon payments and principal repayments until a restructuring deal with the bondholders has been reached. Moreover, the state assets are granted with immunity against any attachments and court judgments. The restructuring offer made to the bondholders includes a principal reduction and a bond exchange offer on rescheduled terms. The bondholders are opposing to any principal debt reductions pointing out that the rescheduling and lower interest will suffice to meet the objectives of the country.

It is believed that the law is aimed at incentivising the bondholders to accept a debt haircut under a threat of even bigger losses if Ukraine defaults. However, even if the deal is reached, Russia, being the largest bondholder after Franklin Templeton, may bring a court action if Ukraine suspends payments. Earlier, Russia has refused offers to renegotiate the USD 3 billion note that matures in December and is not part of the restructuring negotiations at the moment. It is vital for Ukraine to strike the deal with the creditors by mid-June to receive the next IMF tranche under a USD 17.5 billion bailout package negotiated earlier this year.

Extension of exchange control limitations

By its Resolution No. 354 dated 03 June 2015 the NBU has extended the existing exchange control restrictions provided for by NBU Resolution No. 160 dated 3 March 2015, including a ban on prepayment of foreign loans, transfer of dividends abroad and obligatory sale of 75% of foreign currency proceeds, for the next 3 months until 3 September 2015. Regulation No. 354

reproduces NBU Resolution No.160 dated 3 March 2015 almost in its entirety, however, introducing certain liberalizing moves. In particular, the cap for cash withdrawals has been increased from UAH 150,000 to UAH 300,000 per day. In another move, the NBU has relaxed its requirements for companies to use their own foreign currency to make payments under import contracts if the company has USD 10,000 or more on its bank accounts by increasing the previous threshold from USD 10,000 to USD 25,000. As a result, more companies should now be able to purchase foreign currency for such purposes instead of using their own limited foreign currency resources.

In addition, from now on only those import contracts with the price exceeding EUR 50,000 (previously - EUR 25,000) will require an expert opinion with respect to the price, meaning in practice some activation of trade.

Raid on related parties

The regulator continues offensive against the incompliant owners and management of the bank to enhance trust in system, ensure their dedication / professionalism and prevent divesting of assets through deals with directly or indirectly controlled entities.

Now, each bank has to report related parties monthly; the National Bank of Ukraine issued Regulation No. 315 (effective as of 15 May 2015) implementing provisions of the recent IMF and NBU sponsored law No. 218-VIII dated 2 March 2015. Importantly, the regulation sets the rules for the NBU to determine related parties on its own and gives the affected bank 15 days to appeal or else the list of the reported parties must be supplemented. The first report should have been made by 29th of May, while next one must be submitted within the first 10 days after the reported calendar month. Furthering the new standard of the arm's length dealing, the NBU has also restated the methodology for the normative on exposure to related parties (N9), which cannot exceed 25% of the regulatory capital (regulation No. 312 dated 12 May 2015, becomes effective as of 15th of this June). Moreover, the NBU replaced the regulation on disclosure of bank's shareholding structure with a concise and inquisitive procedure; banks should file with the NBU updated data before the end of May; actual data on the owners must be maintained on the web-page of the banking institution (regulation No. 238 dated 21 May 2015). The banks with intransparent shareholder structure may be listed as troubled (insolvent), will not be granted re-financing, licenced for general operations with the currency values or can be treated as insolvent by the regulator (regulation No. 332 dated 22 May 2015).

Law on Fixed-term (Small) Deposits

A law (passed by the Verkhovna Rada on 14 May 2015) on conditions of repayment of fixed-term deposits has been actively discussed and characterized as anti-savers. Indeed, restatement of Article 1060 (on the deposit type) of the Civil Code of Ukraine will affect all fixed-term deposits: customers will be unable to withdraw their money early, will have to share the risks of the bank and, potentially, will receive a premium for longer cooperation. The law, however, allows early repayment of deposits through agreement of the parties. It looks like banks may concede to early termination by large depositors with a strong bargaining position, while small depositors will remain the riskiest group of investors. We believe that banks may retain their existing deposit products, which foresee, in case of early termination, lower interest rate or even a penalty.

ENERGY

Ukraine makes significant progress in its gas sector

The Energy Community's voice has finally been heard: after one year of all-around discussions the Ukrainian Parliament has adopted a new Law on Natural Gas Market which came into force on 9 May 2015. The initial draft of the Law was prepared directly by the Energy Community Secretariat and mainly reflects the Third Energy Package requirements.

The new Law provides for free access to the Ukrainian gas transportation system by any eligible party, secures non-discriminatory access to the gas market by all gas producers including biogas and gas from biomass, gives freedom of choice of gas suppliers to the gas consumers as well as separates activities of vertically integrated gas companies (unbundling). Meanwhile, small distribution system operators which have less than 100,000 consumers will be exempt from the unbundling requirements.

The Ukrainian Energy Commission (NERC) as a national energy regulator will get more powers and should become an independent market regulator which should make Ukrainian gas market more transparent.

By opening its gas market Ukraine demonopolises its gas sector, introduces fair competition into the market and confirms its commitments to integrate with the EU gas market.

PHARMACEUTICALS

Tax and customs exemptions for import and supply of certain medicines

In March 2015 Ukraine launched the regulatory reform in the sphere of state procurement of medicines and medical devices (the "medical products") by allowing their purchase through reputable international procurement organizations such as WHO, UNICEF etc. This should allow reducing corruption risks, ensuring transparency of the procurement procedure, shortening terms of supply, and lowering prices of medical products for Ukrainian patients.

Staying on the path of lowering prices, on 9 April 2015 the Parliament by Law no. 332-VIII amended the Tax Code of Ukraine to provide for temporary exemption from the 7% Ukrainian VAT of import and supply of medical products procured based on agreements with qualified international organizations under budget-funded healthcare programmes. Import of such medical products should also be exempted from the 5% additional import duty. Both exemptions apply until 31 March 2019.

The list of particular medical products allowed for procurement through international organizations and respective procedures are to be approved by the Cabinet of Ministers of Ukraine. ■

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