

## client alert

LEGAL UPDATE | UKRAINE

25 SEPTEMBER 2014

### NBU TIGHTENS EXCHANGE CONTROL ON TRADE AND CAPITAL FLOW TRANSACTIONS

On 22 September 2014 the National Bank of Ukraine (NBU) adopted Resolution No. 591 "On Amending Certain Legislative Acts of the National Bank of Ukraine (the "**Resolution No. 591**") which amends the currency control rules, inter alia, prohibits certain payments in foreign currency. The Regulation came into force on 23 September; some of its provisions lose effect on 21 November 2014 and the rest - on 2 December 2014, unless extended by the NBU.

#### **REDUCED CONVERSION OF THE FOREIGN CURRENCY PROCEEDS**

Under Resolution No 591 the amount of foreign currency proceeds to be mandatorily sold by legal entities and entrepreneurs on the interbank market has been decreased from 100% to 75% of all proceeds. It is highly likely that the NBU will further drop the obligatory sale of foreign currency proceeds to 50% if the volatility of foreign exchange market improves.

#### **TRADE AND CAPITAL FLOW TRANSACTIONS**

Resolution No 591 provides that residents and non-residents cannot make the following transfers in foreign currency:

- payments for import of goods shipped to a third country (bypassing customs territory of Ukraine);
- payments for imported goods if more than 180 days have lapsed from their customs clearance;
- transfer of foreign currency proceeds received from the sale of Ukrainian shares on a non-regulated market to overseas bank accounts. The receivables from the shares traded on the stock exchange and treasury bonds are exempted from the prohibition, moreover, the proceeds can be transferred to investment accounts opened in Ukraine;
- transfer of foreign currency proceeds from the sale of corporate rights (participation interest) in the charter capital of the Ukrainian companies to overseas bank accounts. Investment account remains the only possible destination to complete the transfer, however, the transfer from the investment account to the foreign bank account is prohibited;
- transfer of dividends to overseas accounts if they were paid by the companies whose shares are not in the stock exchange's listings;

- transfers (both inbound and outbound) under the individual licences issued by the NBU - except under the licences for the allocation of foreign currency by residents on their own accounts outside Ukraine.

Until 2 December 2014 at least, investors will be unable to repatriate the proceeds overseas; sellers on credit, lessors cannot recover the scheduled payments on equipment and other articles imported over 180 days ago and, sold or leased in Ukraine.

In addition, the corporate sureties will have no possibility to pay under suretyship given as security for the obligations of non-resident debtors (borrowers) - even if they obtain the NBU licence as currently contemplated. If the debtor is resident in Ukraine, the surety with insufficient foreign currency proceeds will be unable to use the licence in order to cover the gap with Ukrainian Hryvnia.

## FX CASH TRANSACTIONS

Individuals (resident and non-resident in Ukraine) can purchase cash foreign currency up to the equivalent of UAH 3000 in one bank per day, - except where the currency is used to repay foreign currency-denominated bank loan of the same bank.

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In our view, these foreign exchange restrictions go far beyond what can be justified with the fight against capital outflow and the reasonable interpretation of the National Bank's competence under the laws of Ukraine. The restrictions on repatriation of the proceeds from sales of shares, corporate rights and dividends contradict investment protection treaties and the laws on foreign investment. The restriction regarding the payment for goods, delivered more than 180 days ago interferes into the commercial contracts and destroy credibility, as no supplier can risk that his customer waits 180 days to avoid the payment.

Should you need any support regarding payment requirements we will be happy to assist.

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