

newsletter

MONTHLY LEGAL UPDATE | UKRAINE |

2 JULY 2014

IN THIS ISSUE:

Signing of the Association Agreement with the European Union	p. 1
A New Draft Law to Regulate Economic Activities in Crimea	p. 2
Land Liquidation of the State Land Bank	p. 3
Land New Simplification Wave Covering the Procedure for Registration of Land Plots and Rights to Them	p. 4
Energy Draft New Rules for Gas Industry Functioning during Russia's Gas Cut Off	p. 4
Energy Draft Law on Concession of Gas Distribution and Storage Networks	p. 5
Banking and Finance Measures to Improve the Health of the Banking System	p. 5
Banking and Finance Financial Services Extending to the Corporate Sector	p. 6
Banking and Finance Legislative Call for Reform in the Banking Sector	p. 7

SIGNING OF THE ASSOCIATION AGREEMENT WITH THE EUROPEAN UNION

On 27 June 2014, Ukraine and the European Union signed a third, final part of the Association Agreement (the Association Agreement between the European Union and the European Atomic Energy Community and their member states, of the one part, and Ukraine, of the other part). The third element deals with the core economic issues such as free trade between EU and Ukraine. Pursuant to the Association Agreement, Ukraine commits itself to implementation of numerous measures, including changes in laws, regulations and administrative practices.

The Association Agreement, to become effective has to be ratified by all its signatories (27 EU Member States, the EU as well as Ukraine) and will enter into force 1 month after the deposit of the last instrument of ratification (approval). However, Ukraine will be able to implement the treaty unilaterally upon its ratification by the Ukrainian Parliament, and some parts of the Association Agreement will apply provisionally, even without being ratified by all the EU members. At the same time, EU urged Ukraine to ratify the Association Agreement as soon as possible, before September 2014, particularly in view of expiry on 1 November 2014 of a unilateral preferential regime which was temporarily granted by EU to Ukraine in March 2014, upon signing of the political chapter of the Association Agreement.

The Association Agreement, once entered into force, will replace the Partnership and Cooperation Agreement between the European Communities and Ukraine of 1994. A more detailed analysis of the Association Agreement provisions will be provided in the next issue of the newsletter.

A NEW DRAFT LAW TO REGULATE ECONOMIC ACTIVITIES IN CRIMEA

On 19 June 2014, the Ukrainian Parliament voted in the first hearing for the draft law “On the Tax and Customs Control in the Free Economic Zone Crimea and on the Particularities of the Pursuit of Economic Activities within the Temporarily Occupied Territory of Ukraine” (the “Draft”). It was also decided that the Draft be prepared for the second and third hearings under the shortened (expedite) procedure.

The Draft has been developed to implement the economic bloc of the Law “On Ensuring the Rights and Freedoms of Citizens and the Legal Regime in the Temporarily Occupied Territory of Ukraine” No. 1207-VII dated 15 April 2014 (the “Occupied Territories Law”). On 15 April 2014 when voting on the Occupied Territories Law the Parliament decided that the provisions on the pursuit of the economic activities within Crimea were to be removed from the final version of the draft, to be addressed in a specifically adopted law.

Indeed, the Draft introduces provisions on the business activities within Crimea which were removed from the Occupied Territories Law. However, the scope of the draft is much wider and goes beyond a mere implementation of the Occupied Territories Law. Among other things, the Draft purports to introduce the following:

Establishment of the Free Economic Zone in the Territory of Crimea

The Draft proposes to declare Crimea and Sevastopol “free economic zones” (FEZ) for 10 years, under the management of the state-owned FEZ Management Company; even lifting of the Russian occupation will not automatically lead to the end of the FEZ regime. The FEZ is to be administered by the Crimean FEZ Management Company.

Generally, Crimea will be exempt from Ukrainian taxation (with some exceptions, such as excises). However, any goods brought in or out of the FEZ will be subject to the same customs clearance, sanitary and phytosanitary, ecological, radiological control and other similar measures applicable to the goods imported to, or exported from, Ukraine. The Draft specifically stipulates that no transit customs regime will apply to such goods.

Restrictions on Travel to Crimea

In line with the provisions of the Occupied Territories Law, the Draft allows any Ukrainian citizens to freely enter FEZ Crimea upon a mere presentation of a valid national passport. At the same time, foreigners are allowed to travel to Crimea upon presentation of a passport or a residence permit. In this part, however, the Draft does not conform to the Occupied Territories Law which specifically requires that foreigners seeking to enter Crimea through specially established check-points, apart from the valid passport, shall also possess a special permit, under the procedure to be introduced by the Cabinet of Ministers of Ukraine.

It is unclear, whether the FEZ Crimea Draft will be amended to be brought in conformity with the Occupied Territories Law in this regard (travel of foreigners), or the access of foreigners to Crimea will be eased. Nor the Cabinet of Ministers has so far developed a procedure on the conditions of travel to Crimea by the foreigners.

Restrictions on Economic Activities in Crimea

The FEZ Crimea Draft does not prohibit any business activities in Crimea or activities of the companies registered in the mainland Ukraine with the Crimean companies. Instead, a number of specific restrictions are introduced:

- any Ukrainian licenses or permits issued to the Crimean companies will remain valid until their expiration; however, expired licenses or permits will not be subject to any extension until the end of the Crimean occupation;
- companies registered in Crimea will not be eligible to take part in any public procurement tenders; the goods originating from Crimea will not be allowed for public procurement in the mainland Ukraine;
- exports from Ukraine to Crimea will be possible only upon a 100 per cent pre-payment basis (which shall also cover any applicable accompanying expenses under the INCOTERMS terms of delivery)
- sale of military goods or goods with a dual purpose to the Crimean entities will be prohibited.

Restrictions on Transactions with Real Estate

With regard to the titles in property, the Draft generally reiterates the approach of the Occupied Territories Law: any immovable property in Crimea is governed by the laws of Ukraine and is deemed to be owned by those persons who owned the property at the moment of the beginning of the Russian occupation (under the Draft, it is 27 March 2014). Any transfers of immovable property in Crimea are allowed and recognized only if in compliance with the Ukrainian laws and are registered in the mainland Ukraine.

At the same time, the Draft expressly prohibits and deems null and void any transactions with real estate (either private or public) vis-à-vis companies owned or controlled by the Russian government, and transactions with land plots - also vis-à-vis citizens or residents of Russia.

Importantly, this prohibition concerns not only sale but also any other transactions (contracts) with the property, including easements, leases, rent, etc.

Restrictions on Payments and Bank Transfers

The Draft provides a number of restrictions on payments within the FEZ. Most notably, Russian Rubles will be allowed for payments in cash only, while any money transfers are to be performed either in Ukrainian Hryvnias (UAH) or in freely convertible currencies (such as EUR or USD).

The Draft also purports to prohibit any transfers of Russian Rubles through the FEZ border or exchange of UAH for Russian Rubles.

It is yet unclear when the Draft will be returned to the Parliament for the second and third hearing. It is expected that the Draft will undergo considerable revision in view of numerous comments and proposals from interested parties. However, its adoption (with amendments) appears to be undoubtful.

LAND

Liquidation of the State Land Bank

On 17 June 2014 the Parliament of Ukraine, in line with the recommendations of the World Bank, adopted the Law On Amendments to Certain Laws (Regarding Operation of the State Land Bank), according to which JSC State Land Bank, which has not even come to life yet, will be liquidated. The Cabinet of Ministers of Ukraine, as the founder of the State Land Bank, will

be in charge of the liquidation procedure which can be launched subject to a positive opinion of the National Bank of Ukraine.

The State Land Bank was established by the Cabinet of Ministers of Ukraine in July 2012 with the charter capital in the amount of UAH 120 million and the state as a sole shareholder. The State Land Bank was supposed to become the title holder of most of agricultural lands in Ukraine (approx. 10 million ha) and the principal financial institution for financing farmers and small agricultural enterprises by way of providing low-interest loans secured by agricultural lands.

Public funds used by the Cabinet of Ministers of Ukraine for formation of the charter capital of the State Land Bank will be paid back to the state. The Law also deleted all provisions regarding the State Land Bank from the Land Code of Ukraine and the Law of Ukraine On Banks and Banking Activity.

New Simplification Wave Covering the Procedure for Registration of Land Plots and Rights to Them

Extraterritorial registration of titles to agricultural lands

According to the Order of the Ministry of Justice of Ukraine On Measures for Registration of Rights to Agricultural Lands No. 845/5 dated 28 May 2014, effective as of 3 June 2014, titles to agricultural lands may be registered in the State Register of Real Rights to Immovable Property not only by state registrars of local offices of the State Registration Service, having jurisdiction over the territory where the land plot is located, but also by other registrars within the same district. This should save time for applicants when submitting documents to state registrars.

Notification about the registration decision via SMS/e-mail

The Ministry of Justice of Ukraine by its Order On Amendments to the Order of the Ministry of Justice of Ukraine No. 595/5 dated 17 April 2012 (No. 748/5 dated 12 May 2014, effective as of 20 May 2014), also adopted a simplified procedure for notification of applicants about decisions taken by state registrars. In particular, registration applications submitted to state registrars will be revised to feature a new 'telephone number/ e-mail of the applicant' field (only a telephone number could have been indicated earlier) which will allow applicants to receive information about registration or refusal of registration via SMS or e-mail.

Free registration of land plots

On 5 June 2014 the Parliament of Ukraine adopted the Law On Amendments to the Law of Ukraine On State Land Cadastre (On Abolishment of the Fee for Making Records into the State Land Cadastre and Amendments Thereto), which abolished the fee for registration of land plots in the State Land Cadastre and the requirement to submit a document confirming fee payment when applying for registration of a land plot in the State Land Cadastre.

ENERGY

Draft New Rules for Gas Industry Functioning during Russia's Gas Cut Off

The draft law No. 4117a "On Specifics of Functioning of Energy Sector during Special Period" was included into the Parliament's agenda upon initiative of the Cabinet of Ministers of Ukraine.

The draft law is aimed at ensuring supply of households with gas produced locally in Ukraine in view of Russia's gas cut off decision.

More specifically, it is envisaged to oblige private gas producing companies to priority supplies of gas to the centralized fuel deposit, in line with directives issued by a special regulator. These priority supplies shall supersede contractual obligations of the gas producing companies towards their industrial customers in Ukraine.

In case of voting the draft law will significantly limit the scope of commercial operations on the national gas market of Ukraine. Besides, the importance of alternative energy sources / energy saving programs for the local industrial producers will increase further.

Possibility for the draft law to be voted by the Ukrainian parliament depends on a global political compromise between the key powers in Ukraine, in view of the EU Association as well as still-possible gas deal with Russia.

Draft Law on Concession of Gas Distribution and Storage Networks

The draft law No. 4116a "On Reform of the Energy Sector" was included into the Parliament's agenda upon initiative of the Cabinet of Ministers of Ukraine.

The draft law provides for the possibility of lease / concession (but not ownership) of the national gas distribution network as well as gas storage facilities. Further, the draft law limits possibilities for non-US / non-EU companies to participate in the concession tender.

Besides, the draft law stipulates for "reasons of economic security" to be one of effective selection criteria. It is worth noticing that provisions of this kind never existed in the Ukrainian concession laws.

Similarly to the previous draft, the possibility for the draft law to be voted by the Ukrainian parliament depends strongly on more global political compromise within Ukrainian elites, which is yet to be reached.

BANKING AND FINANCE

Measures to Improve the Health of the Banking System

Liquidity of banks

In June 2014, the National Bank Ukraine introduced several measures to afford banks additional flexibility in managing their liquidity, which replaced emergency measures enacted earlier:

- the amount of mandatory reserves to be maintained with the NBU was further lowered from 50% to 40% of the previous reporting period (amended resolution No. 371 dated 19 September 2013) effective as of 31 May 2014;
- the refinancing rate was reduced from the triple to the double NBU discount rate (19 per cent per annum) and, in addition, the NBU allowed partial release of collateral granted by banks in favour of the NBU as security under refinancing loans proportionally to the repaid amount (amendments to the NBU Resolution No. 48 dated 6 February 2014 On the Mechanism for Operational Support of Banks' Liquidity);
- NBU Resolution No. 91 dated 24 February 2014 On Approving the Regulation on Granting by the National Bank of Ukraine of Loans to Ukrainian Banks for Maintaining Liquidity was cancelled on 28 May 2014 by NBU Resolution No. 318.

NBU strengthens control over stability of banks

On 3 June 2014 the NBU adopted additional criteria for “weak (problem) banks” in accordance with Article 75 of the Law of Ukraine On Banks and Banking Activity (Resolution No. 332):

- the bank’s failure, without good cause, to comply with an order and/or directive of the National Bank of Ukraine (with regard to elimination of violations of the banking laws and regulation);
- inadequate reporting negatively affecting compliance with any capital or liquidity ratio - unless the bank has corrected the reporting at its own initiative;
- failure to furnish information, documents (their copies) or written comments on the bank’s activity to the NBU’s officers or agents;
- criminal conviction of the manager and/or controller of a bank becomes final and binding;
- conflict of interests of the management and/or shareholders of a bank that “*negatively affects the efficiency of the management... or may threaten interests of depositors and creditors of a bank*”;
- non-disclosure of owners of a substantial shareholding;
- non-compliance with the NBU directive to remove a bank’s officer or suspend voting by a holder of a substantial shareholding stake;
- final and binding judgment that can negatively affect the bank’s reputation and/or trigger losses of more than 1 per cent of the bank’s assets.

Notably, the NBU allowed itself a discretion to apply or not to apply such additional criteria, whereas the criteria provided directly by the Law of Ukraine on Banks and Banking Activity are mandatory.

Financial Services Extending to the Corporate Sector

The National Bank of Ukraine has revamped the rules for operation of UAH accounts by international financial institutions that are not banking institutions, and repealed regulation No. 504 dated 22 November 2010, which was heavily criticized by its beneficiaries. Effective as of 24 June 2014, Regulation 286 dated 28 May 2014 allows IFIs to:

- issue bonds denominated in Ukrainian Hryvnia;
- issue loans and loan facilities denominated in Ukrainian Hryvnia;
- issue guarantees and suretyships denominated in Ukrainian Hryvnia, where the principal debtor is a resident in Ukraine and the beneficiary (creditor under the principal obligation) is also a resident in Ukraine;
- transact in Ukrainian Hryvnia with respect to the security obtained under loans;
- freely convert Ukrainian Hryvnia into foreign currency and contrariwise,

provided that transactions correspond to the goals and objectives of the relevant IFI. The list of permitted operations is not exhaustive and, therefore, IFI can plan complex transactions based on regulation 286 and the current bank account agreement negotiated with a Ukrainian bank.

The issue of bond securities must be approved by the Ministry of Finance and the use of proceeds from their placement must be approved by the Cabinet of Ministers of Ukraine.

The regime of accounts is currently available to International Financial Corporation (IFC), private sector pillar of the World Bank and Nordic Environmental Finance Corporation (NEFCO) but can be extended by the NBU based on intergovernmental agreements.

Financial monitoring issues

The regulator has recommended that banks consult the list of Ukrainian and Russian citizens connected to the crisis in Ukraine and subject to the sanctions of the EU and the USA (letter No. 48-304/30750 dated 16 June 2014). In the view of the NBU, banks should conduct additional financial monitoring and suspend operations involving such people. In addition, the NBU has simplified the rules for obtaining information about suspicious financial transactions (letter No. 48-404/28680 dated 05 June 2014).

Legislative Call for Reform in the Banking Sector

On 17 June 2014 bill No. 4938 “On Amending Certain Legislative Acts of Ukraine regarding Prevention (Minimization) of Negative Influence at Stability of Banking System” (the “Draft Law”) passed the first reading in Verkhovna Rada of Ukraine. If passed in whole and signed by the President of Ukraine in the current wording, the Draft Law will introduce, among other, important novelties in regulation of liquidity and control over stability of the banks, in particular with respect to:

- Deposit Guarantee Scheme, Bad bank, toxic assets, criteria for the insolvent (problematic) bank;
- Sources of external funding, capacity and conflict of interests rules for the Individual Deposit Guarantee Fund;
- Currency exchange manipulation, rules and guarantees for the systemic bank, criteria for invalidity of the ailing bank contracts.

We plan providing analysis of the Draft Law in the next issue of the newsletter. ■

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).

GIDE LOYRETTE NOUEL

вул. Володимирська, 4 - Київ 01001 / 4, Volodymyrska Street - Kyiv 01001 | тел. / tel. +38 (044) 206 0980 - факс / fax +38 (044) 206 0981
ukraine@gide.com - gide.com