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## Judicial and Enforcement Systems

The Ukrainian parliament recently passed draft laws to radically reform the judicial and enforcement systems of Ukraine. The reforms will be implemented through the laws outlined here.

### Courts and Judges

The new laws<sup>1</sup> are designed to reform the judicial system as a whole, as well as to significantly enhance judges' independence and limit their immunity in cases of malpractice. Some of the major changes in the judicial system that will positively affect companies doing business in Ukraine include:

- Levels of the judicial system will decrease from a four tier to a three tier system, which will shorten the time span for resolving disputes. A court case can be heard and appealed through three courts – local courts, courts of appeal and the Supreme Court of Ukraine – *in contrast to the prior four instances*.
- Specialized high courts, namely the High Intellectual Property Court and the High Anticorruption Court, will be created as courts of first instance. Such specialization will help achieve increased competence and shorter terms for dispute resolution.
- Only lawyers admitted to the Ukrainian Bar will be allowed to represent parties before courts. This requirement will become effective for representation in the Supreme Court – from 1 January 2017, in courts of appeal – from 1 January 2018, and in courts of first instance – from 1 January 2019. Presently, any individual, regardless of whether or not s/he has a law degree and/or is admitted to the bar, is allowed to represent clients before courts (except for criminal proceedings during pre-trial investigations and court hearings).
- The laws are expected to become effective on 30 September 2016.

### Enforcement System

From 6 October 2016, the enforcement system will undergo a number of important changes, including<sup>2</sup>:

- Introducing a combined enforcement system through modernizing state enforcement officers and introducing private enforcement officers (private bailiffs).
- Generating an open, unified register of private enforcement officers. Such private enforcement officers are required to obtain professional liability insurance. Their fees consist of a mandatory basic fee set forth by the Cabinet of Ministers and an additional fee, which may be agreed between a private enforcement officer and a creditor. Such additional fee may not be charged to a debtor.
- Private enforcement officers are not entitled to enforce certain decisions, including amongst others, involving claims against the state of Ukraine, state and local authorities, companies with the state interest exceeding 25% and confiscation claims, as well as awards of the European Court of Human Rights, decisions of Ukrainian administrative courts and others.
- Generating an open, automated system for enforcement registration.
- Generating an open, unified debtor register.

The reforms will create competition in the enforcement system, streamline the formalities in its procedures and, consequently, enhance the effectiveness of the entire judicial system.

<sup>1</sup> Draft Law of Ukraine on Judiciary and Status of Judges, dated 30 May 2016 No. 4734; Law of Ukraine on Amendments to the Ukrainian Constitution (in the Sphere of Justice), dated 2 June 2016 No. 1401-VIII.

<sup>2</sup> Law of Ukraine on Enforcement Proceedings, dated 2 June 2016, No. 1404-VIII; Law of Ukraine on Bodies and Individuals to Enforce Court Decisions and Decisions of Other Bodies, dated 2 June 2016 No. 1403-VIII.

## Investment Activities

### Cancellation of Mandatory State Registration of Foreign Investments in Ukraine

On 25 June 2016, the new law that cancels mandatory state registration of foreign investments in Ukraine came into effect.<sup>3</sup>

State registration is considered redundant, since investment contributions are indicated in the statutory documents, which are in turn entered into the state registers.

All foreign investors will enjoy equal benefits and guarantees, provided for under the Law on the Regime of Foreign Investments. Such benefits include, amongst others, guarantees against nationalization, foreign investments return upon termination of investment activities, compensation of damages caused by state bodies or state officers.

## Regulatory

### NBU Eases Currency Restrictions

The National Bank of Ukraine (NBU) continues gradual liberalization of limitations introduced in 2014-15 to stabilize the situation in Ukraine's monetary and currency markets. The NBU, with Resolution No. 342 dated 7 June 2016, cancels and/or softens a number of restrictions in the currency market, specifically:

- Effective 13 June 2016, NBU allows repatriation of dividends to foreign investors, accrued in 2014-2015, subject to the following conditions:
  - Dividends may only be repatriated by an issuer of corporate rights or shares, on which dividends are paid; a depository institution, maintaining a securities account of a foreign investor (depositor); or a foreign investor itself.
  - During a calendar month, dividends may be repatriated in the following amounts: (i) a larger of the two of US\$1 million or 10% of the total dividends to be paid; or (ii) if such 10% exceed US\$5 million, the total amount repatriated may not exceed US\$5 million.
  - Repatriation of dividends may only be performed through one and the same bank.
- The limit for purchase of foreign currency by an individual in one bank is increased from UAH6,000 (approx. US\$240) to UAH12,000 (approx. US\$480) per day.
- The limit for cash withdrawal in foreign currency by a bank client from its bank accounts is increased from the equivalent of UAH50,000 (approx. US\$2,000) to UAH100,000 (approx. US\$4,000) per day.
- The limit for cash withdrawal from bank accounts in national currency has been completely removed (previously, there was a limit of UAH500,000 (approx. US\$20,000) per day).

The resolution is effective from 9 June 2016 and until 14 September 2016, inclusive.

### NBU Softens Restrictions of Export and Import Transactions

NBU Resolution No. 339, dated 7 June 2016, removes a requirement to obtain a price evaluation act for certain export and import transactions from the State Research and Information Center for Monitoring International Goods Markets (*Derzhzovnishinform*), which is used to confirm compliance of contract prices with market prices for works, services and IP rights.

Thus, a price evaluation act is no longer needed for:

- Payments by resident borrowers in favor of the International Bank for Reconstruction and Development (IBRD) and the European Bank for Reconstruction and Development (EBRD) under agreements on preparation of projects in public, municipal and private sectors that could be potentially financed by these banks, as well as under other agreements with the EBRD and the IBRD.
- Payments by resident borrowers under contracts for the performance of works and/or services required for the projects financed by the IBRD or the EBRD, entered into in accordance with the EBRD Procurement Policy and Rules.

NBU no longer requires residents to submit notarized copies of documents to obtain approval for export and import transactions and for transactions involving payments for works, services and IP rights provided by non-residents. Documents may be certified by a resident itself.

### NBU Amends Control Procedures for Export and Import Transactions

NBU Resolution No. 347, dated 16 June 2016, simplifies control mechanisms over export and import transactions through the changes, including the following:

- Banks may exercise control over export and import transactions under agreements executed in electronic form based on the documents filed to the banks in electronic form.
- Banks are allowed to accept an invoice, without any other documents required before, as evidence of performed works, provided services, and transferred IP and/or other rights (if this is provided by a respective agreement agreement).

### NBU Interest Discount Rate Decreased

Effective 24 June 2016, the NBU interest discount rate is decreased from 18% to 16.5% per annum.<sup>4</sup>

### Simplification of Medicinal Product State Registration in Ukraine

On 19 June 2016, a new law simplifying the procedure of state registration of medicinal products in Ukraine came into effect.<sup>5</sup>

<sup>3</sup> Law of Ukraine on Amendments to Certain Legislative Acts in part of Cancellation of the Mandatory State Registration of Foreign Investments, dated 31 May 2016 No.1390-VIII.

<sup>4</sup> NBU Regulation on the Interest Discount Rate, dated 23 June 2016 No.88-RSh.

<sup>5</sup> Law of Ukraine on Amending Article 9 of the Law of Ukraine on Medicinal Products in part of Simplification of Medicinal Products Registration, dated 31 May 2016 No. 1396-VIII.

The law provides the following changes:

- Medicinal products previously registered by the EU, the US, Switzerland, Japan, Australia and Canada authorities are allowed to be registered in Ukraine under a simplified procedure, which shortens a registration term (from one month to seven business days), reduces a number of required documents, and no longer requires to provide clinical trials materials and results of their expertise.
- The state registration procedure for all other medicinal products is amended as well. Information about applications submitted for state registration, including its processing status and issued decisions, will be publicly available online. The registration term is shortened from one month to 10 business days.
- The State Register of Medicinal Products will include information on a product prior registration, re-registration, registration cancellation and for medicinal products previously registered by the EU, the US, Switzerland, Japan, Australia, and Canada authorities – details of registration effective in these territories.
- The list of grounds to deny registration is amended and includes the incomplete set of submitted documents; unreliable or incomplete information in such documents; a discrepancy in manufacturer details, etc.

## Law on Financial Restructuring

On 14 June 2016, the Ukrainian Parliament adopted the Law on Financial Restructuring.<sup>6</sup> The law will take effect three months after it has been signed by the president and published, and will remain effective for the next three years (save for certain amendments made by the law to the existing legislation).

The law provides the procedure of voluntary out-of-court financial restructuring of legal entities' debts if at least one of such debts is towards Ukrainian or foreign financial institution and/or international financial organization, which extended loans under agreements registered with NBU.

The restructuring may be commenced only by a debtor, not by creditors, in relation to any of its debts apart from employment related debts and debts before debtor shareholders. During the restructuring process, a moratorium on fulfilment and enforcement of debtor's obligations subject to restructuring will be in effect for the restructuring period but no more than 90 days.

Financial restructuring is considered finalized if the debtor and its involved creditors agree on the restructuring plan. If no plan is agreed within 90 days after commencement, the procedure terminates automatically.

Financial institutions and state entities cannot act as debtors for restructuring their debts.

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<sup>6</sup> Draft Law of Ukraine on Financial Restructuring, dated 30 November 2015 No. 3555.

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