

Ukraine

Legal Provisions

Complied by:

International law firm Integrates

Kiev, November 2015

GENERAL REMARKS

On 27 June 2014, the EU-Ukraine Association Agreement was signed by the European Union Heads of State and Government and Ukrainian President in Brussels, as well as ratified by the Verkhovna Rada and the European Parliament on 16 September 2014.

The Association Agreement establishes a new attainment in the EU-Ukraine contractual relations, aiming at political association and economic integration and leaving open the way for further progressive developments.

The key parts of the Association Agreement focus on support of core reforms, economic recovery and growth, governance and sector cooperation in the following areas: energy, transport and environment protection, industrial cooperation, social development and protection, consumer rights protection, education and culture. The Agreement also puts a strong emphasis on the following values and principles: democracy and the rule of law, respect for human rights and fundamental freedoms, good governance, a market economy and sustainable development.

The EU-Ukraine Association Agreement includes the Deep and Comprehensive Free Trade Area (the "DCFTA") provision. The DCFTA offers Ukraine an opportunity to modernize its trade relations and economic development. Pursuant to the DCFTA Ukraine shall harmonize its customs law with EU standards via removal of customs tariffs and quotas, norms and regulations in various trade-related sectors, creating the comfortable conditions for conducting business in key sectors of the Ukrainian economy. The DCFTA is supposed to enter into force on 31 December 2015.

In performance of its obligations under the EU-Ukraine Association Agreement, Ukraine has started to harmonize the tax, labor, trade, customs, corporate, banking laws and regulations in line with EU standards. For this reason, numerous new laws and regulations establishing deregulation and

providing liberalization of business environment have been recently developed and adopted by state authorities.

During last two years the Verkhovna Rada of Ukraine has adopted numerous anti-corruption laws, among others: the Law of Ukraine "On the Fundamentals of Anticorruption Policy in Ukraine (Anti-Corruption Strategy) to Be Effective within 2014-2017"; the Law of Ukraine "On the National Anticorruption Bureau of Ukraine"; the Law of Ukraine "On Prevention of Corruption"; the Law of Ukraine "On Amendments to Certain Legislative Acts with Respect to Determination of Ultimate Beneficiaries of Legal Entities and Public Officials"; the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine with respect to the Facilitation of Conditions for Conducting Business (Law "On Deregulation")". Abovementioned laws provide the following essential changes: establishing state anti-corruption authority, reducing corruption in investigations against state officials on alleged corruption offences, providing public access to companies' and real property's registers.

Some new amendments were introduced to the state registration of legal entities regarding improvement of registration procedures. For the purposes of performance of the amendments, the Ministry of Justice of Ukraine and the Cabinet of Ministers have launched online service for registration of legal entities as well as to obtain electronic extracts from the companies' register. Besides, the Law of Ukraine "On State Registration of Legal Entities and Individual-Entrepreneurs" provides the possibility to register company or amendments to the statutory documents outside the places of registered address of legal entities and registered place of living of individual-entrepreneurs in case of armed conflict, temporary occupation, widespread violence, massive human rights violations as well as emergencies and disasters. Such measure was established due to military conflict in the East of Ukraine.

Significant changes were introduced into banking legislation. In particular, the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine regarding the Liability of Bank's Related Persons" extends the list of bank's related persons. Moreover the Criminal Code of Ukraine was added by new article "Leading bank to insolvency". Such provision formally tightens liability of the bank's related persons and imposes criminal liability on them for actions leading banks to insolvency.

As to antitrust legislation, a positive fact is that the Antimonopoly Committee of Ukraine adopted and published "The Recommendations on Methodology for Calculating Fines for Violation of Competition Laws". The Recommendations definitely bring more clarity as to the AMCU's approaches to calculating fines. Specifically, they set up the criteria for the AMCU to determine the basic fine amount that may be adjusted depending on aggravating or mitigating circumstances applicable to the particular case. The Recommendations also provide for the amnesty in relation to merger clearance violations given the company applies to the AMCU to obtain merger clearance within a year from the date of the Recommendations' publication. In such case the AMCU will issue merger permit for the past deal and will impose the fine in the amount of:

- UAH 20 400 (approx. EUR 800) – given the company files with the AMCU before 15 March 2016;
- UAH 102 000 (approx. EUR 4000) – given the company files with the AMCU between 16 March 2016 and 15 September 2016.

It is also worth mentioning that in August 2014 the Verkhovna Rada of Ukraine adopted the Law of Ukraine “On Sanctions”, aimed to provide special measures against countries, foreign legal entities and individuals involved in terrorism and other activities that threaten national interests, sovereignty and territorial integrity of Ukraine. The Law stipulates that sanctions could be applied against foreign state, legal entity, legal entity under control of foreign legal entity or individual, foreigners, stateless persons, and persons engaged in terrorist activity. For this purpose, the National Security and Defense Council of Ukraine (the “NSDCU”) has issued the order with a list of companies and individuals against whom the sanctions shall be applied. The Law establishes the following sanctions: freeze of assets, limitation of trading activities, prohibition to participate in privatizations, termination of licenses and other sanctions, established under the principles of abovementioned Law. In performance of the Law and the order of the NSDCU, Ukrainian State Aviation Administration decided to cancel all the air traffic between Ukraine and the Russian Federation starting from 25 October 2015.

GENERAL REMARKS BY THE EMBASSY OF SWITZERLAND TO UKRAINE:

Considering the ever-changing legal norms it is strongly recommended - prior to the conclusion of any legal transaction - to review the current law situation and consult a trustworthy lawyer.

CUSTOMS

The principal law governing customs regulations in Ukraine is the Customs Code of Ukraine, dated 1 June 2012 as further amended.

It establishes different types of customs regimes: import/export, re-import/re-export, transit, temporary export/import, processing of goods in/outside the customs territory of Ukraine, bonded warehouses, special customs zones, duty-free trade stores, and rules related to the destruction of goods and to abandonment of goods in favor of the state. An importer/exporter of goods is required to file a customs declaration and submit it to the customs authorities prior to customs clearance of goods. The customs declaration usually includes description of the goods, customs value, volume, customs regime.

In November 2015, the Verkhovna Rada of Ukraine adopted the Law of Ukraine “On Ratification of the Protocol Amending the Marrakesh Agreement Establishing the World Trade Organization”, aimed to ensure accomplishment by Ukraine of internal procedures necessary for the entry into force of the Trade Facilitation Agreement. The ratification of the Protocol and application of the Agreement would enable to reduce time and costs of customs control, promote the cooperation between participants of private and state sectors, improve the transparency and efficiency of state agencies activities, encourage the development of small and medium-sized businesses.

In performance of the EU-Ukraine Association Agreement, Ukraine undertakes to strengthen collaboration in area of customs and trade relations in order to provide balance between simplicity of trade and its safety.

IMPORT AND EXPORT REGULATIONS

The majority of goods may be imported into and exported from Ukraine without any restrictions. Nevertheless, certain types of goods, for example, medicines and disks for laser reading systems, some metals, cosmetics and hazardous products may be imported into and exported from Ukraine subject to receipt of respective licenses. The quota regime may also apply to import and export of certain products.

CURRENCY REGULATIONS

The national currency of Ukraine is hryvnia (UAH). Foreign currency may be used for domestic operations in Ukraine subject to receipt of the NBU's individual licenses. The foreign currency may be purchased and transferred abroad only in a limited number of cases allowed by law. Settlements under foreign economic agreements (agreements between residents and non-residents of Ukraine) may be exercised in foreign currency without license.

The proceeds under export contracts shall be credited into Ukrainian exporters' bank accounts within 90 days from the customs clearance. Similarly, should Ukrainian importer make advance payment for the goods/services, such goods shall be imported within 90 days from the date of payment.

In order to stabilize national currency and take necessary measures regarding circulation of foreign currency during crisis period in Ukraine, the National Bank of Ukraine regularly issues orders which have temporary status. On 4 December 2015 the National Bank of Ukraine issued Resolution № 863 "On Settlement of the Situation in the Monetary and Foreign Currency Markets of Ukraine", which sets up, among others:

1. requirement for mandatory conversion of 75% of foreign currency earnings into national currency;
2. prohibition for banks to purchase and transfer foreign currency for cross-border payment of dividends to foreign investors;
3. prohibition for banks to purchase and transfer foreign currency to foreign investors in connection with sale of corporate rights (decrease of a company's charter capital or the foreign investor's withdrawal as a participant / shareholder in a company);
4. restriction for banks to sell foreign currency (not exceeding UAH 3000 for one individual per day).

Should the foreign economic agreement on performing works, rendering services, using IP rights provide for payments abroad in the overall amount exceeding EUR 50000 per year, Ukrainian resident shall receive respective certificate issued by the State Analytical Centre for Monitoring of the External Commodities Markets.

Another important amendment applies to e-commerce activity. Recently the National Bank of Ukraine has amended Resolution "On Electronic Money in Ukraine". The NBU has simplified the procedure of obtaining cross-border payments by residents and implemented conditions for using of basic services

of international internet payment systems while executing cross-border transactions by residents, in particular:

1. transfer of funds abroad using payment cards for settlements, or crediting funds to e-wallets to be used for further settlements;
2. the receipt of funds by residents (both individuals and individual entrepreneurs) for sold goods/services from non-residents;

Ukrainian laws provide for rather strict foreign currency control. Ukrainian residents in breach of foreign currency rules may be brought to liability starting from imposition of financial sanctions to restriction of foreign economic activity.

REGISTRATION PROCEDURE FOR PRODUCTS

There are no uniform rules and procedures for products registration in Ukraine. There are not so many types of products to be registered with the state authorities as a precondition to introduction into civil turnover. For example, the medicines shall be obligatory registered with the Ministry of Healthcare of Ukraine.

STANDARDS, TECHNICAL RULES, LABELLING REGULATIONS

There are certain types of goods (for example, some detergents, special equipment for self-defense, fire-fighting items, agricultural equipment, food products) that shall be mandatory certified and accompanied by UkrSEPRO certificate (conformity certificate) which confirms that imported goods meet Ukrainian technical standards and requirements. The goods to be certified may not be imported without UkrSEPRO certificate. The state authority responsible for the products certification is the State Inspection of Ukraine for Consumer Rights Protection.

Labelling shall provide the customers with necessary and accurate information about the goods so that the customer could be able to make a conscious choice. Labelling shall not contain any misleading information. As a general rule, the information on products shall contain among others: name of the products, data on the main products' characteristics, data on any hazardous components of the products, data on the manufacturer/seller of the products, date of manufacturing, data on storage conditions, date of consumption (service life). The Antimonopoly Committee of Ukraine and the State Inspection of Ukraine for Consumer Rights Protection exercise active control over compliance by legal entities with requirements on labelling of goods. As the practice shows, the amount of fines imposed on legal entities for failure to comply with legislative requirements regarding labelling of goods may be rather significant.

TAXES

The principal legislative act which regulates taxes and duties is the Tax Code of Ukraine. Among the general taxes Ukrainian legislation stipulates income taxes (corporate income and personal income tax), property tax, land tax, military tax, customs duty, state duty and VAT. Tax rate of corporate

income tax (CIT) is equal to 18%. Certain types of businesses (e.g. insurance, banks, etc.) are taxed under special regimes, which may provide lower tax rates. The standard rate of VAT is 20%. Special VAT regime in the amount of 7% may be applied to domestic supplies and import of medicines registered in Ukraine as well as to supplies of medical products and medical equipment for clinical trials authorized by the state authorities. Zero rate VAT is applicable to exports, supply of some services and supply of some goods. Personal income tax amounts to 15 and 20% (depending on rate of remuneration or pension) and 5 % (for dividend income).

Recently, the Cabinet of Ministers of Ukraine has adopted a regulation which defines the order of electronic administration of VAT. The regulation establishes completely electronic recording, registration of tax invoices and correction's calculation.

COMMERCIAL LAW

The Commercial Code of Ukraine is the basic legal act regulating commercial relations in Ukraine. The Code set forth the main principles of economic activity in Ukraine and regulates economic relations arising between legal entities and other participants of economic relations. Furthermore the Code declares freedom of commercial activity as one of the fundamental principles. Restriction of competition, abuse of dominant position, unfair competition, illegal use of intellectual property objects and business reputation are directly prohibited by the Code. It should be noted that there are some discrepancies between provisions of the Commercial Code of Ukraine and the Civil Code of Ukraine that may lead to uncertainty of legal regulation of particular relations.

One of the major recent amendments applies to franchise agreements. Recently, the Verkhovna Rada of Ukraine has adopted the law which cancels mandatory state registration of franchise agreements. Previously, obligation for registration of franchise agreement was stipulated in the Civil Code of Ukraine and the Commercial Code of Ukraine but procedure of registration did not work in practice due to limited authorities of state registrar.

SETTING UP COMPANIES

In accordance with the Ukrainian law the business may provide their activity through the form of joint stock company (JSC), limited liability company (LLC), additional liability company, general partnerships, limited partnerships, production cooperatives. Foreign investors tend to set up companies in form of LLC and JSC due to their simplicity and operational advantages. Foreign individuals and corporations are allowed to the same scope of rights as Ukrainian nationals and corporations. All the companies shall be registered with the state registrar, tax authority, state pension and social insurance funds. In addition, for JSC the registration of shares in the National Securities and Stock Market Commission is required.

In 2015 the Verkhovna Rada of Ukraine adopted amendments to the Law of Ukraine "On Joint Stock Companies" introducing essential changes into the rules on payment of dividends, submission of proposals to the agenda of General Shareholders' Meeting, definition of quorum of General

Shareholders' Meeting and Supervisory Board. Quorum was decreased to 50%+1 votes to be eligible in all issues on the agenda.

Moreover the Verkhovna Rada of Ukraine has adopted amendments to the Law regarding mandatory disclosure of ultimate beneficial owners of legal entities. According to the Law, all legal entities shall identify their ultimate beneficial owners, keep records on such persons and update them on a regular basis, as well as to disclose such information to the state registrars.

Additionally, in December 2015 the significant amendments came into force to the Law of Ukraine "On Commercial Companies". In particular, the quorum of General Members' Meetings was reduced to 50%.

JOINT VENTURE OPPORTUNITIES

Unincorporated joint ventures and partnerships exist as investment vehicles, but have uncertain legal status and are not widely used. Joint ventures typically involve the establishment of a separate legal entity (JSC or LLC) in Ukraine. However, the Civil Code does recognize the concept of a joint venture without the need to establish a separate legal entity. In such cases, the relationship between the parties will be governed by the agreement. Such agreements are commonly referred to as "joint activity agreements".

The use of joint activity agreements is still relatively unexplored. There are no minimum capital requirements or capital impairment rules with which to contend. A partner may still withdraw by giving three months' notice, but legislation considers that this could be treated as a breach of contract and that it may necessitate the payment of damages.

PROMOTION OF INVESTMENT

Ukraine guarantees protection of foreign investments and it should be taken into account while structuring investment into Ukraine. The special legal act governing protection of foreign investments in Ukraine is the Law of Ukraine "On the regime of foreign investment". The law stipulates that foreign investments are protected in Ukraine and may not be nationalized as well as foreign investors have the right to claim for reimbursement of damages, including loss profit, incurred in connection with acts or omission by the state bodies or state officials of Ukraine. The compensation to be paid to foreign investors shall be prompt, adequate and effective. In order to be protected, investment shall be registered with respective City or Regional Council, where company is located.

It should be mentioned that Ukraine grants protection to foreign investments under more than 70 bilateral investment treaties. According to the information provided by the International Centre for Settlement of Investment Disputes, Ukraine is as a respondent state to 4 cases initiated in 2015.

ENTRY CONDITIONS, WORK PERMITS, RESIDENCE PERMITS, LABOUR LAW

Nationals of many countries do not need visa to enter Ukraine and stay up to 90 days (please see full list of countries at www.mfa.gov.ua/ua/consular-affairs/entering-ukraine/visa-requirements-for-foreigners). The nationals of other countries shall have a valid passport and visa to visit Ukraine.

In order to have legal grounds for presence on the territory of Ukraine for more than 90 days temporary or permanent residence permit is required. Each type could be issued depending on purposes for staying in Ukraine, for instance: employment, education, marriage, international technical support, scientific, cultural or religious activity.

To be legally employed in Ukraine a foreign national is required to obtain individual taxpayer's code and work permit. Work permit could be issued for 1 year term with the option of annual renewal. In order to obtain work permit, the employer shall, among others, give formal justification of necessity to hire non-resident to respective State Employment Center.

The significant changes were introduced to regulations on mobilized employees. As an illustration, they have been vested with the guarantees to keep their job position and receive average earnings during the whole period of mobilization.

On 1 January 2015, amendment to the Labor Code of Ukraine regarding mandatory notification of the recruitment came into force. This amendment requires an employer to notify the relevant department of state fiscal service regarding recruitment an employee. The employers may submit such notice via: electronic notification with a digital signature; hard copy with an electronic copy; or just hard copy (in case if employer provides such notice regarding to five employees).

In addition, the Verkhovna Rada of Ukraine has recently adopted an amendment to the Labor Code of Ukraine, which prevents discrimination in case of employment. In other words, the amendment prohibits any form of employment discrimination, in particular violation of the principle of equality of rights and opportunities, direct or indirect restriction of the rights of employees on the grounds of race, skin color, political, religious and other beliefs, sex, sexual orientation, ethnic, social and foreign origin, age, health, disability, family and property status, family responsibilities, place of residence, language and other characteristics which are not connected with type of work.

Ukrainian labor law is being developed. In November the Verkhovna Rada of Ukraine has approved the Draft of the new Labor Code of Ukraine at first reading, that may cause the significant changes in the labor regulations in the coming months or years.

PROCEDURES FOR COLLECTING PAYMENT

Procedures for collecting payments in Ukraine may be conducted through the pre-judicial proceedings (negotiations, mediation) or court proceedings. In Ukraine mediation is a pre-judicial form of dispute settlement involving a third neutral and impartial party - a mediator who helps the parties to reach a certain agreement. Court proceedings are also remedy for debt collecting, though court proceedings can be still time-consuming and unpredictable. After consideration of dispute the court shall issue decision with order to enforcement via arresting assets, bank accounts etc. In other words, both pre-

judicial and court proceedings may be effective remedies, which allow to regulate relations between borrowers and creditors.

DISCLAIMER:

Every effort has been made to ensure that the information contained is as accurate and up to date as possible. However, this information is not a legal advice and provides only general overview of Ukrainian laws. If you have any specific questions about any legal matter you should consult your legal counsel. You should never delay seeking legal advice, disregard legal advice, or commence or discontinue any legal action because of information on this website.

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Date: 23.11.2015

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