

Ukraine Legal Market News

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Changes to currency control regulations

The National Bank of Ukraine (hereinafter the “NBU”) introduced amendments to currency control regulations effective as of October 2008. The following documents were adopted: Regulation No.216 dated July 28, 2008 On Adopting Procedure of Processing Documents on Transfer, Write Off and Arrest of Funds in Foreign Currencies and Bank Metals by Banks and Amendments to Certain Regulations of the NBU; Regulation No.294 dated September 25, 2008 On Amendments to Regulation of the NBU No.363 dated September 03, 2004. The following NBU’s innovations may be mentioned.

At last the NBU formalized a right of contractual withdrawal in foreign currency in favor of the bank and third persons as well.

Henceforth, any person acting as a surety may pay in foreign currency (including payment overseas) for discharging the borrower’s obligations under loan agreements as well as foreign economic contracts. Heretofore, such payments have been allowed for banks only. However, the payment oversea for the mentioned persons (i.e. non banks) can be made out of their own (not purchased or borrowed) funds only.

At long last the NBU allowed purchase of foreign currency for creditors non-residents in case of sale of collateral for UAH. To this effect a creditor non-resident shall enter into agency agreement on sale of the pledged property with a resident of Ukraine. The latter may dispose the collateral for UAH, afterwards purchase foreign currency and transfer it overseas to foreign creditor.

There were introduced changes to the maximum permitted rates of interest under loan agreements between Ukrainian borrowers and foreign lenders (only for loans nominated in foreign currency of the 1st group of Classifier of Foreign Currencies and Bank Metals). Currently the value of interest rate for loans with maturity in excess of one year is not limited. For the loans with a term not exceeding one year the maximum permitted rate (irrespective of its type) constitutes 11 per cent per annum.

Joint Stock Companies

Verkhovna Rada of Ukraine has enacted the Law of Ukraine On Joint Stock Companies No. 514-VI dated September 17, 2008 (the “Law”). The Law was officially published in the “Uryadovyi Kur’er” No. 202 dated October 29, 2008.

Pursuant to the Law essential changes to establishing procedure and activities of joint stock companies (the “JSC”) have been introduced. In particular, the Law contains definition of the term “affiliate persons”; divides JSC into two types: private and public, instead of closed and open. In accordance with the Law shareholders of a private JSC shall have the preemptive right on acquisition of the shares only if the preemptive right is provided for by the JSC’s charter. The Law also stipulates the procedure for exercising of the preemptive rights and the consequences of its infringement.

The Law specifies the stages of the JSC’s incorporation in details and content requirements for the JSC’s charter. It is also provided that the shares may be issued in book-entry form only.

The JSC’s charters and internal regulations shall be amended accordingly to the Law’s requirements prior to May 01, 2011.

The Law in general will become effective as of April 30, 2009. However provisions regarding the form of the shares will be effective since October 30, 2010.

Amendments to the Ukrainian Construction Permits and Licensing Procedure

Under the Law of Ukraine On Amendments of Certain Laws on Support of Construction dated September 16, 2008 No.509-IV (published on 14 October 2008) Verhovna Rada of Ukraine has dramatically amended the land legislation and the procedure of construction permits obtaining as well.

Particularly, starting from April 2009 the following documents: (i) the initial permit for construction and (ii) the architectural-planning assignment (APZ, abbreviation

in Ukrainian) will be replaced with unified document the “terms and conditions for construction on the land plot”.

The Law establishes more transparent rules for charging of so-called investor’s contribution for infrastructure development. Pursuant to the Law such contribution shall be decreased by the amount of investor’s cost and expenses incurred in connection with development of infrastructure outside the construction site.

Procedure for completed building putting into operation will be amended starting from April 2009 as follows. In accordance with the Law the putting into operation of constructed building will require the “compliance certificate” to be issued by the State Architectural and Construction Inspection.

The Law of Ukraine On Amendments of Certain Laws on Support of Construction is effective since October 14, 2008 (certain provisions of the Law will come into force on April 15, 2009)

Amendments to the Commercial Procedure Code of Ukraine

Pursuant to the Law of Ukraine On Amendments to the Article 67 of the Commercial Procedure Code of Ukraine with Respect to Provisional Remedies No.513-VI dated September 17, 2008, it was banned to use the following provisional remedies:

- prohibition of holding a general meeting of shareholders or participants of business companies and passing resolutions thereby;
- prohibition of providing registers of holders of the registered securities and disclosing information on shareholders (participants) of business companies by issuers, registrars, custodians and depositories for holding of the general meeting of a business company;
- prohibition of shareholders’ or participants’ participation in the general meetings, determination of the competence of such meetings.

The mentioned law is effective since October 15, 2008.

