



Ukraine Legal Market News

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Construction Works Permits Issuance

The Cabinet of Ministers of Ukraine adopted the Resolution On Certain Issues of Construction Permits and Preliminary Construction Permits Issuance No. 1104 dated 30 September, 2009 (hereinafter – the “Resolution”).

The Resolution approved the following new procedures considered the cornerstone regulations of the Ukrainian Construction Laws:

- The Procedure for Construction Works Permit Issuance;
- The Procedure for Preliminary Construction Works Permit Issuance;
- The Registry for the Construction Works Permits;
- The List of Constructions Works that Do Not Require the Construction Works Permit Issuance.

The above Resolution materially amends the Ukrainian Construction Laws, in particular, the Regulation sets forth the shortened terms of Construction Works Permits issuance for the Euro-2012 objects. The Regulation establishes the Registry for the Construction Works Permits with publicly available access to information on issued and cancelled permits.

The Resolution is effective since 26 October, 2009.

Procedure for Option Certificates Issue

The Resolution of the State Commission on Securities and the Stock Market of Ukraine No.572, dated June 16, 2009 On Adoption of the Procedure for Registration of the Option Certificates Issue and Offering Circular thereof (hereinafter – the “Procedure”) has become effective as of October 10, 2009.

According to the mentioned above Resolution the outdated regulations of the State Commission on Securities and the Stock Market of Ukraine on issuance of the stock derivatives which were introduced in 1999, became inoperative. The procedure for issue, registration and circulation of one type of derivatives (i.e. the option certificate) has been introduced.

Pursuant to the Procedure the option certificate shall be treated as a standard document certifying its holder’s right to purchase from the option issuer (call option) or to sell to the option issuer (put option) the underline asset under the terms and conditions provided for by the respective option certificates offering circular.

It should be also mentioned that for the first time this Procedure provides for that both types of option certificates (i.e. with or without the underlying asset delivery) can exist.

Changes to the Maximum Permitted Interest Rates under the Foreign Borrowings

Pursuant to the Regulation of the National Bank of Ukraine No.614, dated October 15, 2009, the maximum permitted interest rates (hereinafter the “maximum permitted rates”) under the 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) which were introduced by the Regulation of the National Bank of Ukraine No.363, dated August 3, 2004, have been changed.

The maximum permitted rates that had been effective prior to October 27, 2008, shall be reapplied as of November 15, 2009. In particular the following restrictions are imposed:

- (i) for the fixed rate:
- with the loan term less than 1 year – not exceeding 9.8% per annum;
 - with the loan term from 1 year up to (but excluding) 3 years– not exceeding 10% per annum;
 - with the loan term more than 3 years – not exceeding 11% per annum;
- (ii) for the floating rate:
- 3M Libor for USD plus 750 basic points.

The Constitutional Court of Ukraine Acknowledged a Right of Any Person to Legal Assistance

The decision of the Constitutional Court in case No.1-23/2009, dated September 30, 2009 was officially published (i.e. came into effect) on October 23, 2009.

The Article 59 of the Constitution of Ukraine on human right to legal assistance was officially interpreted by this decision.

According to the mentioned decision every person has a right to legal assistance in any relations with any state, non-state authorities, legal entities and individuals. This legal assistance may be performed in any form and substance.

Such legal assistance may be provided by lawyer as well as another person who is not restricted by virtue of law in providing of such assistance.

Thus, persons testified as witnesses have a right to legal assistance of an attorney.

Administrative Legal Proceedings Practice

The Highest Administrative Court of Ukraine (hereinafter – the “HACY”) in view of the results of court practice analysis in administrative cases in letter dated October 05, 2009 No. 1292/13/13-09 emphasized that in many cases the courts unreasonably refused the plaintiffs in initiating of administrative case making reference to the absence of public legal relations.

The HACY noticed that public dispute where one of the parties is a person that performs managing administrative functions according to the respective laws including the execution of delegated thereto authorities shall be resolved pursuant to the rules of administrative legal proceedings.

Therefore, the actions and decisions of enterprises, organizations and institutions performed by them in the

course of administrative functions may be appealed in administrative court (for example actions of Bureau of Technical Inventarization etc.)

Court Practice on Bank Deposits

On October 2, 2009 the Luts'kyi City-District Court of Volyns'ka Region passed a decision in case No. 2-7447/09 that compels TOVARYSTVO Z OBMEZHENOYU VIDPOVIDALNISTYU “Ukrainian Industrial Bank” to return bank deposit to the plaintiff.

The Court noticed that the bank unreasonably motivated the refusal in repayment of deposit making reference to introduction of temporary administration and moratorium regarding repayment of deposits according to the Law of Ukraine On Banks and Banking Activities. In case of disputable relations it is required to follow Civil Code provisions of Ukraine as regulatory legal act that has the superior legal force.

Pursuant to the Part 2 Article 1060 of the Civil Code of Ukraine the bank is obliged to repay the deposit or its part on the first demand of depositor.

Therefore, in the court's opinion, the banks are not entitled to refuse the depositors on their demand in returning bank deposit pursuant to introduction of temporary administration and moratorium regarding repayment of deposits.

Harmonization of the Law On Securities and Stock Market with the Joint Stock Companies Law

Verkhovna Rada of Ukraine adopted the Law of Ukraine On Amendments to the Law of Ukraine On Securities and Stock Market regarding the Issuer's and Investor's Actions, dated June 11, 2009 (hereinafter - the “Law”). The Law was officially published on October 30, 2009.

Pursuant to the Law the main part of the changes were made for harmonization of the Law of Ukraine On Securities and Stock Market with the Law of Ukraine On Joint Stock Companies. In particular, in accordance with the Law joint stock companies shall issue registered shares only, private placement of shares shall be made among 100 persons maximum, shares may be issued in book-entry form only.

The Law is effective since October 30, 2009. However, provisions regarding the form of the shares will become effective as of October 29, 2010.

The KPD Consulting Law Firm News

On October 7, 2009 Kyrlyo Kazak, a partner at KPD Consulting Law Firm, on invitation of the National Centre for the Training of Bank Personnel of Ukraine prepared and performed a workshop Labor Relations – Legal Regulation. Changes to the Payment for Work System – Legal Aspects.

The workshop covered issues with respect to concept and types of the labor agreement, when the labor contracts can be applied, issues concerning trial period, employing procedure, transferring into another work and dismissal (particularly on the initiative of the employer due to personnel reduction). Furthermore, the workshop covered outstanding issues as well as typical mistakes of employer while employment and dismissal, procedures and terms for paid and unpaid leave, issues concerning consideration of labor disputes, grounds and types of liabilities for labor violation (disciplinary, financial, administrative and criminal).

20-21 of October, 2009 Vladislav Kysil, a partner at KPD Consulting Law Firm, the head of Real Estate practice, on invitation of Prodexpo 2009* (Real Estate Conference and Exhibition, Athens, Greece) acted as a guest speaker at the panel discussion focused on Ukrainian real estate market. Due to Mr. Kysil's broad professional experience, his presentation covered outstanding issues with respect to the Ukrainian construction law amendments, land law novelties as well as issues concerning securing of obligations in real estate transactions in Ukraine.

** Prodexpo 2009 is the most important event in Greece for the Real Estate sector. During last few years, Prodexpo has expanded its focus and apart from Greece's Real Estate Market includes more areas of the South Eastern European and Mediterranean Regions, such as Bulgaria, Serbia, Montenegro, Romania, Cyprus, Ukraine and Turkey.*