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# REGULATORY

## Further simplifying of business activity in Ukraine

- On 30 December 2009 the Law of Ukraine On Amending Some Laws of Ukraine Concerning Simplification of Business Environment in Ukraine of 15 December 2009 N 1759-VI (the Law) became effective.

The Law provides for a decrease in the LLC's minimum authorized capital, which should now amount to not less than a half of one minimum wage (effective as of the date of incorporation). Thus as of 01 January 2010 the minimum authorized capital of a LLC shall amount to UAH 869 (theretofore the minimum authorized capital of a LLC amounted to 100 minimum wages). The lawmakers believe that such changes will simplify the process of establishment of a LLC (since they reduce the minimum required investment for its establishment). On the other hand an introduction of such a marginal authorized capital for LLC will lead to a significant decrease in the confidence in this legal form on the part of counteragents and will make the parties introduce additional security arrangements for fulfillment of contractual obligations.

The Law also provides for a number of changes in licensing procedures. Thus from now on, licenses will be issued for an unlimited term. However the Cabinet of Ministers can limit the license term for certain types of activity but this term should not be less than five years. The specified changes although simplify the conditions for doing certain types of business but simultaneously they significantly reduce consumer protection (for the relaxation of control over enterprises).

A positive novel of the Law is that a single term for issuance of licenses has been established - ten business days. Another term can be established exclusively by law (not an internal deed of a respective ministry or any other authority).

Introduction of a "tacit approval" principle is another essential innovation in this respect. This principle means that if within the established by legislation term no permit or refusal was issued or forwarded to the applicant, in ten days of the term established for the adoption of a respective decision, the decision is considered to be positive

and a business entity accrues the right to perform corresponding actions or engage in corresponding types of activity.

One more important thing is that the Law limits the term of state property lease contracts, and it will now last for 5 years, unless a lessor desires to conclude a contract for a shorter period. This will contribute to steadiness of lease relationships and respectively to greater stability of the business on the one hand, but can lead to complication of conclusion of state property lease contracts on the other hand.

The Law also up to 01 January 2011 introduces a moratorium on performance of state control measures in the sphere of economic activity by state and municipal authorities, their officers or officials in respect of "small business" enterprises (except for some types of inspections by tax and consumer protection authorities and the State Pension Fund of Ukraine). These changes are aimed at some relief of pressure on the business by different regulatory authorities (which in practice often entail additional expenditures for enterprises)

In whole the Law can in a certain way improve the business environment in Ukraine but save for the license activities these changes are not radical enough to significantly increase Ukraine's attractiveness for foreign investors who expect more essential changes and facilitation from Ukrainian authorities.

## Change of license validity terms

Due to adoption and coming into force of the Law "On amendments to certain laws of Ukraine on simplification of business conduction conditions in Ukraine" the Cabinet of Ministers of Ukraine brought into compliance with this Law its decree dd. 29.11.2009 #1755 "On validity terms of licenses for conduction of some types of economic activity, amount and payment of fee for its issue". The respective decree of the Cabinet of Ministers came into force as of 19.01.2010.

According to these amendments the most licenses have unlimited validity term and the fee for their issue is paid in the amount of one minimal wage.

The government stipulated that validity term of licenses for conduction of economic activity shall be unlimited. Nevertheless, there are some exceptions:

1. 5 years validity term is provided for licenses for following economic activity:
  - 1) production of industrial explosives;
  - 2) production of highly dangerous chemicals;
  - 3) mining of minerals from deposits of national importance and included to the State Fund of mineral deposits;
  - 4) exploitation, production, implementation, certificated testing, import, export of holographic protective elements;
  - 5) production of securities blanks, strictly accountable documents;
  - 6) transportation of oil, oil products through main pipelines, transportation of natural gas, oil gas and coalbed methane through pipelines and their distribution;
  - 7) supply of natural gas, coalbed methane on regulated and unregulated tariffs;
  - 8) storage of natural gas, coalbed methane in volumes exceeding the level provided by licensing conditions;
  - 9) transactions in the sphere of hazardous waste management.
2. 12 years validity term, as previously, for licenses for conduction of activity as to organizing and conduction of lotteries issued by the Ministry of Finances in the process of re-execution of registration certificates.
3. 5 years validity term (before changes – 3 years) for production of perfumes and cosmetics with use of ethyl alcohol.

Previously, the general validity term of licenses was 5 years. Exceptions were provided only for organization and conduction of lotteries and production of perfumes and cosmetics with use of ethyl alcohol (3 years).

## The Cabinet of Ministers of Ukraine approved a list of products subject to state price control

- The Cabinet of Ministers of Ukraine by its Resolution No. 40 dd. 20 January 2010 approved a list of products eligible to state price control in 2010-2011.

Thus the list for 2010-2011 shall include hard and soft wheat, wheat and rye mixture seed (meslin), winter and spring rye, barley, and wheat and rye flour, price control of which shall be performed from 1 July 2010 to 30 June 2011; (beet) sugar – from 1 September 2010 to 31 August 2011; maize – from 1 October 2010 to 30 June 2011; milk powder – from 1 April to 31 December 2010; butter – from 1 April to 31 December 2010.

Thus for 2009/10 marketing year the list of products subject to state price regulation shall include: hard and soft wheat, wheat and rye mixture seed (meslin), winter and spring rye, barley, and wheat and rye flour, maize and beet sugar.

To recap, the Cabinet of Ministers annually determines a list of products subject to state price control, for which minimum and maximum intervention prices shall be fixed. The government depending on the situation performs through the Agrarian Fund procurement or realization of these products.

## Restrictions on entering Ukraine by foreigners

- 22 January 2010 the Verkhovna Rada of Ukraine adopted in first reading the draft law On Amendments to Certain Legislative Acts of Ukraine on Migration.

The draft law N 2232 has been developed to strengthen the struggle against unlawful migration. In particular it is proposed to disallow foreigners and stateless persons to enter Ukraine if they discredited the state of Ukraine, abased dignity of the Ukrainian people, are ill with an infectious or other dangerous disease or arrived from a country with especially complex epidemiological situation, submitted deliberately unreliable information or faked-up documents; did not perform their financial

obligations to Ukraine; or do not have enough funds to finance their stay in Ukraine etc. The draft law also envisages a list of grounds for the reduction of the term of temporary stay in Ukraine and expelling foreigners from the country.

Entities for Committing Corrupt Offences, and On Amendments to Some Legislative Acts of Ukraine concerning Liability for Corrupt Offences from 1 January 2010 to 1 April 2010. Until entering into effect of these legislative acts the Law of Ukraine On Combating Corruption shall be applied.

## Change in state duty rates

- A number of amendments to the Decree of the Cabinet of Ministers of Ukraine On State Duty became effective on 01 January 2010.

Thus the Law dd. 05 March 2009 N 1110-VI significantly reduces the state duty rate for issuance of certificates of inheritance. From the effective date of Article 13 of the Law On Income Tax imposing a tax on income gained by inheritance, a considerable state duty for issuance of a certificate of inheritance (0.1 or 0.5 of the inheritance amount depending on the degree of kindred), looked actually like the second tax. Lawmakers corrected this “oversight”, which had cost quite a lot for heirs, having reduced the rate to UAH 34 (2 citizens’ untaxed minimum incomes).

State duty for registration of derivative securities has been introduced. Its amount pursuant to the Law dd. 19.03.2009 N 1161-VI totals to 50 citizens’ untaxed minimum incomes (UAH 850). The same Law determines the ceiling state duty rate for registration of issue of securities – five minimum wages (in the amount of the wage established at 1 January of the year of state duty payment). The rate itself did not change and still amounts to 0,1% of the issue nominal value.

At last a part of applicants in special cases on declaring a person as deceased were exempted from the state duty. Pursuant to the Law of 25 June 2009 N 1568-VI this applies to cases on declaring a person as deceased as a result of extraordinary situations of anthropogenic and natural nature.

## The effective date of the anticorruption law has been carried over

- On 30 December 2009 the Law of Ukraine On Amending Some Laws of Ukraine concerning Preventing and Counteracting Corruption came into effect. The law carries over the date of coming into forth of the laws On the Principles of Preventing and Combating Corruption, On the Liability of Legal

## CORPORATE LAW

### Removal of the member of executive body from his office

- On 12 January 2010 the Constitutional Court of Ukraine adopted a decision in a case involving constitutional appeal of the LLC “International financial and legal consulting” about official clarification of Part 3 Article 99 of the Civil Code of Ukraine. The regulation in question envisages that “members of the executive body can be removed from their offices any time unless constituent documents provide for grounds for removal of the members of executive body from their offices”.

According to the Constitutional Court’s decision regulations of Part 3 Article 99 of the Civil Code of Ukraine shall be construed as the right of a competent body of the company any time and on any ground to remove a member of executive body from his office subject to no such grounds are determined in the constituent documents of the company. In the opinion of the court the removal of a member of executive body from his office envisaged by Part 3 Article 99 of the Civil Code of Ukraine is not deemed as dismissal of an employee from his office in the context of Article 46 of the Labor Code of Ukraine.

The necessity to construe Part 3 Article 99 of the Civil Code of Ukraine was caused by ambiguous judicial practice on issues concerning removal of members of executive body from their offices. One courts considered such removal in the context of Article 46 LC that is as dismissal of members of board of directors from their work. This lead to violation of the ownership right established by Article 41 Constitution of Ukraine, since company members could not prevent or cease improper usage of company’s property having deprived members of executive body of the rights.

# TAX

## The procedure for the execution by tax service authorities of materials on administrative offences

- The State Tax Administration of Ukraine by its order of 28 October 2009 N 585 (became effective on 11 January 2010) approved the Regulations on execution by authorities of the state tax service of materials on administrative offences. Now the execution of materials on administrative offences, revelation of which had been entrusted to the authorities of the tax service, shall be performed not only in pursuance of the Code on Administrative Offences (CoAO), the Law On State Tax Service in Ukraine and other regulatory acts, but also in compliance with this document.

The protocol on an administrative offence shall be compiled in duplicate in respect of each person, who committed an administrative offence. Protocol details shall be completed in the state language. The cases on administrative offences shall be considered by a head or deputy head of the tax service authority. The term of consideration may not exceed 15 days of the date of receipt of the protocol and other case papers. The person who considers the case can make a decision on exemption of the infringer from liability having made a verbal reprove which should be motivated in detail in the resolution on an administrative offence. The resolution on imposing an administrative penalty can be challenged in a higher body or in court. The tax service authorities are obliged to consider a complaint filed in connection with such resolution within 10 days of the date of filing.

Pursuant to Article 255 CoAO the tax service authorities are empowered to execute protocols on administrative offences on cases concerning violation of intellectual property rights (Article 51-2 CoAO), violation of the settling procedure (Article 155-1 CoAO), violation of rules for accrual, payment and accounting of taxes (Article 163-1 163-4), violation of the procedure for performing economic activity (Article 164 CoAO), storage and transportation of alcoholic and tobacco products without excise marks (Article 164-5) and adulterated alcoholic drinks and tobacco products (Article 177-2). Pursuant to Article 234-2 CoAO the tax service authorities shall consider cases concerning evasion from filing

an income declaration (article 164-1) and violation of the procedure for filing financial statements and maintaining accounting in the process of liquidation of a legal entity (Article 166-6).

## DISPUTE RESOLUTION

### Automated allocation of cases in administrative courts

- On 01 January 2010 the Law of Ukraine On Amending Certain Legislative Acts of Ukraine regarding Introduction of the Automated Document Circulation System in Administrative Courts No. 1475-VI of June 5, 2009 which provides for introduction of the automated document circulation system in administrative courts with the purpose of ensuring an objective and unprejudiced allocation of cases among judges, presenting to respective persons information on the progress of consideration of cases, centralized keeping of wordings of court decisions, rulings and other procedural documents, registration of incoming correspondence, and preparation statistic data etc. came into effect.

The aim of introduction of such system is first and foremost the unprejudiced consideration of administrative cases that is ensured by choosing the judge, who will hear the case. Furthermore introduction of this system is aimed at strengthening of the struggle against corruption in the judicial system, since allocation of cases before the Law was performed by presiding judges that was a lever for exerting pressure on persons, who applied to court to protect their rights, as well as on judges themselves.

### International private law issues

- On 21 January 2010 the Verkhovna Rada of Ukraine adopted as a whole the Law On Amending Certain Legislative Acts of Ukraine concerning bringing to conformity with the provisions of the Law of Ukraine On International Private Law (Draft Law N 2438 as of 25 January 2010 did not come into effect).

The Law introduces amendments to the Labor Code, Economic Procedural Code, Economic Code,

Administrative Proceedings Code, as well as to the Law On Enforcement Proceedings with the purpose to bring their provisions to conformity with the Law On International Private Law. The Law On International Private Law had also been amended.

In particular, the law restates Section XV of the Economic Procedural Code of Ukraine, whereby the procedure for conducting proceedings with foreign economic entities involved is established. Article 390 of the Civil Procedural Code of Ukraine, which provides for conditions of recognition and enforcement of decisions of foreign courts, has been restated.

Pursuant to the law legal relationships, whereto a citizen of Ukraine residing outside Ukraine is a party, shall also be regulated by the Law of Ukraine On International Private Law (Article 1 of the Law On International Private Law as amended).

## BANKRUPTCY

### Initiation of insolvency proceedings of mining enterprises

- On 31 December 2009 the Law On Amendments to the Law of Ukraine On Reestablishing Debtor's Solvency or Declaring It a Bankrupt N 1790-VI dd. 23 December 2009 became effective. The Law prolongs up to 01 January 2013 the regulation prohibiting to institute insolvency proceedings in respect of mining enterprises in which the state owns more than 25 percent of the authorized capital, since according to the previous wording par. 6 Clause 1 Section VII "Final provisions" of the Law On Reestablishing Debtor's Solvency or Declaring It a Bankrupt such moratorium expired on 01 January 2010.

## ENVIRONMENT

### New rules for waste handling

- On 21.01.2010 the Parliament of Ukraine passed the Law "On amendments to certain legislative acts of Ukraine in the sphere of waste handling" (draft law #2459 as of 25.01.2010 has not come into force yet)

The legislative act introduces changes to the Administrative Violations Code of Ukraine, the Laws "On waste", "On local state administrations", "On local self-government in Ukraine", "On police".

These amendments take in consideration recommendations of the Parliament of Ukraine (decree dd. 6.10.2005 #2967-IV), in particular as to implementation of separate household waste collection and bringing to liability for violations in the sphere of waste handling etc.

The Law introduces the system of separate household waste collection and provides for liability for violations in this connection. If current version of the Administrative Violations Code stipulates a fine for violations by waste handling in the amount of 1 to 5 tax-free allowances for citizens and 5 to 8 tax-free allowances for officers, the norm which has been adopted today provides for a fine in the amount of 20 to 80 tax-free allowances for citizens, and 50 to 100 tax-free allowances for officers.

The Law also specifies the terminology in the sphere of waste handling in order to adjust it to European terminology. Such term as waste sorting is introduced, e.g. its mechanical distribution according to physicochemical properties and technical components in order to prepare it for utilization. Burning of household waste without previous sorting is prohibited.

For identification and accounting of unowned waste the Council of Ministers of Autonomous Republic of Crimea, regional, Kyiv and Sevastopol city administrations as well as self-government authorities will establish permanent commissions for issues of handling unowned waste, which shall be responsible for identification of amounts, composition, properties and environmental hazard level of waste and, if necessary, engage law-enforcement agencies, respective specialists and experts for identification of the owner of the waste. It is provided that enterprises, institutions and organizations in the sphere of waste handling will be entitled to participate at tenders for provision of services in the sphere of waste handling/management on certain territories.

## BANKING & FINANCE

### Prohibition on unilateral increase of loan rates

- The Parliament of Ukraine passed the Law “On amendments to certain legislative acts of Ukraine” (draft law #3524-1 as to 25.01.2010 has not come into force yet) prohibiting financial institutions to increase loan rates and amount of other payments provided by loan agreements in unilateral procedure.

The Law introducing amendments to the Civil Code of Ukraine and the Law “On financial services and state regulation of financial services markets” prohibits financial institutions to unilaterally increase the loan rates and amount of other payments stipulated by the loan agreement.

According to the Law “financial institutions are not allowed to require advanced loan repayment and to terminate concluded loan agreements in unilateral procedure if the borrower does not agree with the proposition of the financial institution to increase the loan rate or amount of any other payments provided by the loan agreement or repayment schedule”.

## AVIATION

### State support for aircraft industry

- On 20.01.2010 the Parliament of Ukraine adopted the Law “On amendments to certain legislative acts of Ukraine on state support of the aircraft industry in Ukraine” (law draft #2515 as to 25.01.2010 has not come into force yet).

In particular, the Law provides that temporarily, for the period till 31.12.2015 in order to establish proper conditions for facilitation of Ukraine’s fulfillment of its obligations under international agreements, special conditions as to the import duty for goods according to the list and special conditions as to the payment of the land tax, VAT and profit tax shall be applied to the enterprises working in the aircraft industry (falling under provisions of Article 2 of the Law “On development of the aircraft industry”).

It is planned to introduce respective amendments to the Laws “On state support of the aircraft industry in Ukraine”, “On Single customs tariff”, “On land fee”, “On value added tax”, “On companies’ profit tax”, “On settlements in foreign currency”.

The adoption of this Law shall strengthen financial and production resources of enterprises in the aircraft industry, expand the scope of production of newest competitive airplanes for satisfaction of economic and defensive needs of Ukraine, facilitate promotion of new airplanes on the external markets.

## REAL ESTATE

### Moratorium for land plot sale

- On 19.01.2010 the Parliament of Ukraine has repeatedly adopted the Law “On amendments to par. 14 and 15 section X “Transitional provisions” of the Land Code of Ukraine” on terms for land plot sale” (draft law #3425 as to 25.01.2010 has not come into force yet), thus overcoming the presidential veto, previously interposed on this law.

The legislative act stipulates the term of moratorium for alienation of land plots of agricultural purpose provided by par. 14 and 15 section X “Transitional provisions” of the Land Code of Ukraine. According to the law the moratorium shall cease to be effective after coming into force of the laws on state land cadastre and on land market, but not earlier than 01.01.2012.

### Changes to the registration procedure for real estate title

- The Ministry of Justice has elaborated and published on its official site the decree draft of the Ministry of Justice “On adjustment of relations as to state registration of real estate title”.

Elaboration of the decree draft is explained by necessity to adjust norms of the Temporary provisions on procedure of state registration for real estate title approved by the order of the Ministry of Justice as of February 7, 2002 #7/5 to the changes introduced to the legislative regulation of relations connected, in particular, to enforcement of mortgage object by means of extrajudicial procedure on the basis of an

agreement; after definition of such object as unfinished construction object; with exclusion of disputes as to real estate, including land plots, from jurisdiction of arbitration courts.

The draft decree introduces amendments to the Temporary provisions on procedure of state registration for real estate title directed at bringing of its provisions into correspondence with changes introduced to legislative acts, in particular, the Civil Code of Ukraine, the Law of Ukraine “On mortgage”, and the Law of Ukraine “On arbitration”.

The draft decree provides for: regulation of the state registration procedure for title to unfinished construction objects and real estate mortgaged on basis of such title documents as mortgage agreement with clause on satisfaction of mortgagee claims executed or changed after coming into force of the Law of Ukraine “On prevention of influence of the world financial crisis on the development of the construction sector and residential building”; exclusion from the List of title documents on the basis of which the state registration of real estate title is conducted of arbitration awards.