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# REAL ESTATE & CONSTRUCTION

## Improvement of the Registration Procedure for Real Estate and Title Thereto

- On November 29, 2011 the President of Ukraine instructed the Cabinet of Ministers of Ukraine to prepare a draft law on amendments to certain legislative acts till 30.01.2012, in order to improve the procedure for state registration of land plots, other real estate and title thereto.

Thus, procedure for state registration of land plots and titles thereto shall be simplified by eliminating the double submission of necessary documents for primary registration with the State Land Cadastre and the State Register of Real Estate Title. The State Register of Real Estate Title and Encumbrances shall be kept by the State Registration Service (Ukrgosreestr) and the land cadastre is kept by the State Land Resources Agency (Goskomzemagenstvo). At this, a significant part of information from the Register of real estate title will be duplicated by primary registration in the land cadastre (next transfer of title to land plots will be registered only with the State Registration Service).

It is also proposed to entitle notaries to submit applications for registration of title to real estate based on written consent of the real estate purchaser (in particular, by certification of deal or in case of inheritance). Such expansion of notaries' functions will make life of real estate purchasers easier because notaries would become some kind of a "one-stop" solution for them.

## Most Important in the New Draft Law on the Land Market

### *New:*

- Abolishment of the moratorium for sale of agricultural land postponed till 01.01.2013.

- Purchasers of agricultural land – citizens of Ukraine, the state represented by the State Land Bank and territorial communities represented by local self-government authorities. Foreigners, stateless persons and legal entities have no such right.
- Maximum area of land plots for commercial farming in ownership of one person shall not exceed 100 ha (including affiliated person or joint property).
- Limitations for lease of land plots for commercial farming – 6000 ha in one district and not more than 5% of agricultural land in the region for one person (including affiliated persons).
- Pre-emption right for purchase of agricultural land only for owners of adjacent land plots and co-owners of land plots subject to alienation. The state and lessee do not have such right any more.
- Transfer of title to agricultural land does not terminate usufruct rights. The new owner acquires all rights and obligations of the lessor under a lease agreement.
- The State Land Bank only can be a pledge holder of land plots for commercial farming and farms.
- The term and list of documents in order to coordinate sale of not agricultural land plots to legal entities with foreign element are determined

### *Old:*

- 10-years moratorium for change of designation of agricultural land plots purchased from state or municipal ownership;
- Draconian duties for alienation of agricultural land in first 5 years after purchase;
- Obligation of a purchaser of land plots for commercial farming to submit a declaration on sources of the funds;
- Nullity of deals on purchase of land plots for commercial farming without prior concentration clearance of the AMCU, if required by the law.

## Changes as to Registration of Real Estate Title

- The Parliament of Ukraine adopted the Law of Ukraine “On Amendments to Certain Laws of Ukraine to Ensure Exercise of Rights to Real Estate and their Encumbrance by State Registration” which comes into force on December 31, 2011. This Law postpones coming into force of provisions on change of the procedure for state registration of real estate title and of the Law “On State Land Cadastre” till 01.01.2013.

The new registrar (Ukrgosreestr) was not ready to work under new rules either in the context of normative, material or functional supply or experience in keeping respective registers. Such delay will give it more time to create a respective normative, material and technical basis and to regulate issues of transfer of existing databases etc.

Currently, a real estate title is registered with following registers: Register of Real Estate Title, Register of Prohibition on Alienation of Real Estate Objects, State Mortgage Register, and State Land Register.

Therefore, during next year title and usufruct rights (servitudes, permanent use) to land plots, land plot lease agreements will be still registered with territorial bodies of the Goskomzemagency, and title and usufruct rights (lease, rent) to buildings and structures, title to unfinished construction objects etc. – with respective bureaus of technical inventory.

## President Vetoed Amendments to the Housing Code Adopted by the Parliament of Ukraine

- The President of Ukraine vetoed amendments to the Housing Code, in particular amendments to Article 6. The President of Ukraine proposed to dismiss the Law of Ukraine “On Introduction of Amendments to Article 6 of the Housing Code of the Ukrainian SSR as to Determination of Living and Total Space of Residential Houses”.

Position of the President of Ukraine is based on the fact that by introduction of the notion “living space” as provided by this Law after adoption of respective changes to the Tax Code of Ukraine as to taxation of residential real estate tax payers having houses or apartments of the same general space and approximately the same paying capacity will pay different taxes based on planning of residential real estate

objects. In addition, there is a possibility of re-equipment or re-planning of residential houses or premises.

Let us remind you that pursuant to provisions of the Tax Code of Ukraine (par. 265.3.1 par. 265.3. Article 265), basis for taxation is living space of a residential real estate object.

According to the President of Ukraine basis for taxation should be the general space of a residential real estate object due to which amendments to the Housing Code shall be dismissed.

## More Control over Conclusion of Land Plot Pledge and Mortgage Agreements

- Adoption of the Law “On Amendments to Certain Legislative Acts of Ukraine as to Increase of Control over Conclusion of Land Plot Pledge and Mortgage Agreements” by the Parliament of Ukraine which makes a cadastre number an obligatory condition for pledge of a land plot or rights thereto constitutes a continuance of the state policy for regulation of relations by civil transactions with land plots.

Previously (in December 2009) cadastre number of a land plot was an essential (obligatory) condition of agreements on transfer of ownership rights to a residential house, building or construction located on such a land plot. Respective amendments were made then to the Civil and Land Codes of Ukraine.

Further on, as of August 2011 cadastre number became obligatory for land plot lease agreements as well. Now other corporeal rights to land plots, in particular, mortgage rights, are next.

In general, these amendments seem logical and consistent, lie in the framework of changes in the procedure of registration of ownership rights, corporeal rights and encumbrances, and facilitate stability of civil transactions. There is also a real possibility to prevent abuse and to eliminate problems due to lack of strict connection of land plots as mortgage objects to their location in kind (afield).

Still, in short term perspective these novelties will cause certain complications and additional expenses for owners and users of land plots which have not been assigned with a cadastre numbers yet.

## **New Methodology for Normative Monetary Appraisal of Non-Agricultural Land Plots**

- The Cabinet of Ministers of Ukraine with its Resolution dd. 23.11.2011 No. 1278 approved the Methodology for normative monetary appraisal of non-agricultural land plots (except lands of settlements).

The normative monetary appraisal is carried out in order to determine rate of the land tax, the state duty in case of exchange, inheritance or transfer by gift of land plots pursuant to the law, rate of lease rent for land plots of state or communal ownership, losses of agricultural or forestry production and for purposes of development of indexes and mechanisms for economic stimulation of an efficient use and protection of lands.

Upon results of a normative monetary appraisal of land plots within a district a technical documentation with normative monetary appraisal of district lands is composed and approved by the local councils. Results of a normative monetary appraisal of a single land plot are executed and provided by the territorial body of the Goszemagenstvo in form of an excerpt from the technical documentation with normative monetary appraisal of district lands.

It shall be noted that provisions of this Resolution of the Cabinet of Ministers of Ukraine will come into force only as of January 1, 2013.

## **The Parliament Prolonged Moratorium for Alienation of Agricultural Land**

- The Law of Ukraine “On amendments to Section X “Transitional Provisions” of the Land Code of Ukraine” as to prohibition of alienation and change of designation of agricultural land” was adopted by the Parliament of Ukraine on 20.12.2011 and prohibited to alienate and to change designation of land plots for commercial and individual farming and to contribute rights to land plots to charter capitals of business companies till January 1, 2013.

It shall also be noted that the new version of the provision prohibits alienation of land plots for commercial farming till January 1, 2013 and is not connected to enactment of laws on land cadastre and land market due to coming into force of different provisions at different times.

## The Parliament of Ukraine Took as Basis the Draft Law “On Private Deposit Insurance System”

- The draft law basically envisages creation of another supervising body for banks in addition to NBU. The Private Deposit Insurance Fund (hereinafter – the Fund) shall assume functions on temporary administration of problematic and liquidation of insolvent banks. At the same time, the Fund shall be authorized to adopt regulatory legal acts being binding for banks, to carry out audits in all banks without exception regarding their participation in the system for private deposit insurance and to require NBU to take measures against banks as provided by the Law of Ukraine “On Banks and Bank Activity”.

The draft law also envisages that any decisions regarding initiation of temporary administration or liquidation of a bank will be made by NBU and work regarding temporary administration or liquidation of a bank will be carried out by the Fund. The draft law stipulates that within 3 months after enactment of this law NBU shall carry out evaluation of banks with temporary administration introduced before enactment this law. If upon results of such evaluation a bank will be declared insolvent, such bank shall become subject to a temporary administration according to the rules of this draft law. A bank liquidation procedure which was started before enactment this law shall be completed according with the legislation which was in force prior to enactment of this law.

An important provision of this draft law is that NBU and the Fund are entitled to make propositions as to amendments to the regulatory legal acts of each other.

The draft law also means to exclude application of the Law of Ukraine “On Reinstating Debtor’s Solvency or Declaring it Bankrupt” to banks.

In our opinion, adoption of a single law designed for regulation of administration and liquidation of problematic banks taking into account priority of protection of private investors’ interests is a positive and reasonable step. At this stage is most important to restore public trust in banks and to keep the balance between interests of borrowers and creditors.

Currently it is difficult to assess influence of the draft law on the banking sphere. Nevertheless it shall be noted that according to the draft law the Fund shall obtain wide powers and a lot will depend on the efficiency of their exercise.

## Explanations as to Application of International Financial Reporting Standards

- With its joint letter dd. 07.12.2011 the National bank of Ukraine, the Ministry of Finance of Ukraine and the State Statistics Service of Ukraine explained procedure for application of international financial reporting standard (hereinafter – IFRS).

In particular, the letter provides that as of 01.01.2012 the IFRS and consolidated accounts shall be obligatory applied by public joint stock companies, banks and insurance companies. For other companies (economic entities, except for budget institutions) which can decide on reasonability for application of international standards at their discretion, apply them on the voluntary basis.

Companies which exercise their business activity under types of activities list of which is determined by the Cabinet of Ministers of Ukraine shall prepare their financial reporting and consolidated accounts beginning with the date as determined by the Resolution of the Cabinet of Ministers of Ukraine dd. 30.11.2011 No. 1223 “On Amendments to the Financial Reporting Procedure”.

It shall be noted that companies prepare their financial reporting and consolidated accounts for 2011 according with the national accounting standards and banks – according with regulatory legal acts of the National bank of Ukraine.

Moreover, an important issue is the date of switch to IFRS. Companies are allowed to choose such date: either 01.01.2011 or 01.01.2012. Banks, however, switch as of 01.01.2011.

The letter also envisages peculiarities of financial reporting and consolidated accounts according with IFRS within first accounting periods; information to be stated in the financial reporting depending on date of switch to IFRS and other issues regarding procedure for application of international standards.

## Procedure for Foreign Currency Swap Exchange Transactions Adopted

– The National Bank of Ukraine adopted procedure for foreign currency swap exchange transactions with banks approved by Resolution of the Board of Directors of NBU dd. 05.12.2011 No. 434. It shall be reminded that swap transactions between NBU and banks are conducted in foreign currency of 1st group of the Classifier of foreign currencies and bank metals as approved by Resolution of the Board of Directors of NBU dd. 04.02.1998 No. 34.

Swap exchange transactions between NBU and a bank are carried out after signing an additional consent on swap agreements to the general agreement on exchange transactions on the interbank currency market of Ukraine.

NBU can decide to support a banks' liquidity by means of a swap transaction, provided a bank adheres to main requirements:

- Period of activity – at least one year after obtaining bank license and general currency exchange license;

- General license for currency exchange transactions permitting foreign currency trade on the currency market of Ukraine;
- On-time repayment of NBU loans and interests thereon.

A bank entitled to swap transactions with NBU shall submit an application for participation in a swap transaction. NBU, in its turn, examines submitted applications and satisfies such applications which comply with requirements of this Procedure.

It shall be noted that NBU is entitled to early termination of swap transactions with a bank based on terms determined in the General agreement on exchange transaction on the interbank currency market of Ukraine. In particular, in case a bank violates established economic norms or exercises risky activity, violates currency legislation, violates legislation on prevention and fight against legalization of illegal income (money laundering) and terrorist financing, makes suspicious transactions, does not fulfil its obligations under agreements with NBU.

Swap transaction is terminated as of the date of crediting of the whole amount of funds to NBU and bank's accounts according to conditions of such swap transaction.

## STOCK MARKETS / INVESTMENT

### A Single Stop Solution for Investors Introduced in Ukraine

– On November 11, 2010 the President of Ukraine Victor Yanukovich signed the Law “On Preparation and Implementation of Investment Projects under Principle of a “Single Stop Solution” which was adopted as of October 21, 2010 and shall come into force as of January 1, 2012. The law determines legal and organizational principles for relations connected to preparation and implementation of investment projects under “single stop solution” principle – this is a way of counteraction of an authorized body and an investor in order to prepare and to issue a set of documents entitling to implement an investment project. It states that this law shall be applied to central executive bodies in the sphere of investment activity, authorized bodies and applicants.

The central executive body in the sphere of investment activity is the State Agency for Investment and National Projects of Ukraine. As of December 1, 2011 InvestUkraine as the special division of the Agency provides high-quality services to investors through mechanism of the “single stop solution”. Therefore, the “single stop solution” was implemented even a month before determined time.

The goal of this project is to make procedure for obtaining of approval documents simpler for investors. The “single stop solution” allows cutting the term for obtaining documents from 2 years to 6-9 months. InvestUkraine uses a practical model for investment process which consists of 7 steps: application processing, market analysis, investment offers, site visits, deal structuring, project implementation and post-investment support. It means free of charge assistance by obtaining all necessary approvals for

a start-up, in particular: informational, analytical, legal services, support by organization of visits, services on selection of premises for investment, support by contacts with state local authorities. It is expected that 2 milliard euro of direct investment can be brought through “single stop solution” already in 2012.

The “single stop solution” mechanism has been successfully implemented in Sumy, Lviv and Cherkassy regions already.

## **Amendments Regarding Issue of Government Domestic Loan Bonds**

- The Law of Ukraine “On Amendments to Article 10 of the Law of Ukraine “On Securities and Stock Market” dd. 09.12.2011 No. 4093-VI came into force according to which nominal value of government domestic loan bonds of Ukraine can be set out in foreign currency. Besides, the Law also provides that sale of government domestic loan bonds of Ukraine shall be made in national and foreign currencies and sale of government external bonds of Ukraine – in the currency of the debt.

Adoption of this Law will allow issuing government domestic loan bonds of Ukraine in foreign currency and exercising more effective debt policy.

## **Establishment of the National Securities and Stock Market Commission of Ukraine**

- The President of Ukraine with its Decree No. 1061/2011 “On Liquidation of the State Securities and Stock Market Commission” dd. 23.11.2011 liquidated the State Securities and Stock Market Commission. With its Decree No. 1063/2011 “On National Securities and Stock Market Commission” the President established the National Securities and Stock Market Commission” and approved Provisions on it.

Such transformation is caused by adoption of the Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine as to National Commissions for State Regulation of Natural Monopolies in the Sphere of Telecommunication and Information Systems, Securities and Financial Services Markets” No. 3610-VI dd. 07.07.2011.

The National Securities and Stock Market Commission” (hereinafter – Commission) consists of the Head and 6 members appointed by the President of Ukraine for 6 years (not more than 2 terms on the row).

The approved Provision on the Commission contains a detailed list of powers, including powers to approve single provisions for joint stock companies (information disclosure according with international financial reporting standards, procedure for registration of a joint stock company with single shareholder, procedure for establishment of a joint stock company due to reorganization, procedure for increase/decrease of the authorized capital, procedure for annulment of shares bought out by the company etc.).

Moreover, which is also very positive, there is a direct provision that the Commission shall explain procedure for application of the legislation on securities and joint stock companies and provide interpretations of its provisions.

### Liability for Violation of the Personal Data Protection Law Introduced as of January 1, 2012

- It shall be reminded as of 01.01.2011 the Law of Ukraine “On Personal Data Protection” dd. 01.06.2010 No. 2297-VI (hereinafter – Personal Data Protection Law) is in force which obliges to protect confidential and personal data of individuals from illegal or unauthorized processing.

The main requirements of the Personal Data Protection Law is necessity to register all personal data bases with the State Personal Data Protection Service of Ukraine and to approve and adhere to the procedure of personal data processing procedure and to obtain consent of an individual for processing of its personal data.

Violation of the law results in liability as provided by the law.

It shall be noted that as of January 1, 2012 the Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine as to Increase of Liability for Violation of the Personal Data Protection Law” dd. 02.06.2011 No. 3454-VI came into force. Pursuant to this law there will be amendments to the Code of Administrative Offences of Ukraine and the Criminal Code of Ukraine. In particular, there is administrative liability for following actions:

- non-provision or untimely provision of information to the subject of personal data about its right, goals of personal data collection and person entrusted with such data;
- non-provision or untimely provision of information to the State Personal Data Protection Service of Ukraine about changes in data submitted for state registration of personal data bases;
- avoidance of state registration of personal data bases;
- non-adherence to the procedure for protection of personal data which caused an unauthorized access thereto;
- non-fulfilment of legal requests of the State Personal Data Protection Service of Ukraine as to elimination of violations of the Personal Data Protection Law.

The fine amount for violations differs from 100 to 1,000 tax-free allowances (UAH 1,700 – UAH 17,000).

Amendments to the Criminal Code of Ukraine introduce liability for illegal collection, storage, destruction, distribution and change of confidential information on individuals which is, basically, any personal information about such individual.

#### ***Punishment:***

- Fine in amount of 500-1,000 tax-free allowances (UAH 8,500-17,000) or
- Correctional works up to 2 years; or
- Custody for up to 6 months; or
- Custodial restraint up to 3 years.

Pursuant to the Personal Data Protection Law control over adherence to this Law within framework of powers as provided by the Law shall be exercised by the State Personal Data Protection Service of Ukraine and other state or local self-government authorities.

According with the position and explanations of the State Personal Data Protection Service of Ukraine submission of an application regarding registration of personal data bases by owner of such bases to the State Personal Data Protection Service of Ukraine till January 1, 2012 is not considered to be an avoidance of state registration of personal data bases. Audits of owners of personal data bases will be carried out within powers entrusted with the State Personal Data Protection Service of Ukraine. A draft of the order of the Ministry of Justice of Ukraine “On Approval of the Provision on Procedure for Control of the Adherence to the Personal Data Protection Law Carried out by the State Personal Data Protection Service of Ukraine” was elaborated and is currently subject to public discussion.

# Explanation of the Ministry of Justice of Ukraine Regarding Provisions of the Personal Data Protection Law of Ukraine

- On December 21, 2011 an explanation of the Ministry of Justice regarding the Law “On Personal Data Protection” (hereinafter – the Law) was published on the official web-site of the Ministry.

According to the Ministry documents of notarial records management and notary’s archives as provided by Article 14 of the Law of Ukraine “On Notariat” are not considered to be personal data bases in the meaning of the law. At this, there is no argumentation for such conclusion. Pursuant to Part 5 Article 14 of the Law of Ukraine “On Notariat” documents of the notarial records management and notary’s archives are property of the state, belong to and are used by a private notary. Due to Article 21 of the same Law “On Notariat” the Ministry of Justice itself is the body which controls organization of notariat in Ukraine. It is obvious that the Ministry of Justice is the state authority which shall exercise rights and obligations of the state as owner of the documents of notarial records management and notary’s archives. In such case, based on the assumption that the very person which is owner of documents containing personal data comprising personal data base is the owner of the personal data base, it means that the Ministry of Justice shall be owner of the personal data bases belonging to the notaries.

At this, the Ministry of Justice overlooks somehow the question whether a private notary or an attorney-at-law could be an owner or an administrator of personal data bases as a matter of principle. According to the conclusion the Ministry of Justice has not doubts that they can. Still, Article 4 of the Personal Data Protection Law states that only companies, institutions, organizations, state or local self-government authorities and private entrepreneurs can be owners or administrators of personal data bases. Therefore, neither notaries nor attorneys-at-law can be owners or administrators of personal data bases because they are not included to the list of persons established by the Law (pursuant to the current legislation neither notaries nor attorneys-at-law are considered to be private entrepreneurs).

Special attention shall be given to the conclusion of the Ministry of Justice that “if private entrepreneurs conclude agreements for exercise of works or provision of services with individuals such agreements do not constitute personal data bases and are no subject to state registration”. It is clear that an agreement itself is not a

personal data base (taking into account the definition of the case given by the Law). It means that from a formal point of view there is nothing wrong with such conclusion. Nevertheless, in our opinion the Ministry of Justice means that even an organized set of such agreements containing personal data of individuals is not a personal data base. Argumentation of this conclusion is hard to understand because there is none provided and the Law states to the contrary. At this, there is a question why nothing is said about legal entities concluding agreements with individuals. In such case, though, there is no difference between a private entrepreneur and a legal entity.

Special attention shall be given to the conclusion of the Ministry of Justice regarding administrators of personal data bases. Thus, pursuant to the Law, to which the Ministry of Justice refers its conclusion, an individual or a legal entity entrusted by the owner of a personal data base or the law to process such data can be an administrator of a personal data base.

The Ministry of Justice gives an example that a branch or a representative office of a legal entity is an administrator of a personal data base of such legal entity. Such example of the Ministry of Justice is puzzling because pursuant to Article 95 of the Civil Code of Ukraine branch or representative offices are no legal entities. We assume that employees of the Ministry of Justice should know this.

In our opinion, the Law “On Personal Data Base Protection” in the current version requires an immediate follow-up revision with engagement of qualified lawyers because its influence on the society is too significant. And if one year after enactment of the law even the Ministry of Justice does not understand all its details, what can be said about ordinary people. They can be only pitied.

Currently, the situation is so intense that people’s deputies paid attention and within 2 days proposed two draft laws in order to postpone enactment of amendments to the Criminal Code of Ukraine and the Code of Administrative Offences of Ukraine. Thus, the draft law No. 9624 dd. 20.12.2011 postpones enactment of amendments to the Criminal Code of Ukraine and the Code of Administrative Offences of Ukraine till July 1, 2012.

Second Draft Law No. 9624-1 dd. 21.12.2011 envisages that amendments to the Criminal Code of Ukraine and the Code of Administrative Offences of Ukraine shall come into force 6 months after approval and enactment of the Procedure for personal data processing (most likely it means the Standard Procedure which pursuant to the Personal Data Protection Law shall be approved by the State Personal Data Protection Service).

In our opinion provisions of the second draft law are more reasonable.

## Amendments to the License

### Obtaining Procedure

- On December 22, 2011 the Parliament of Ukraine adopted the Draft Law No. 9022 “On Amendments to Certain Legislative Acts of Ukraine” which excluded an excerpt from the Unified State Register of Legal Entities and Private Entrepreneurs from the list of documents to be submitted to a licensing body in order to obtain a license. The draft law envisages that information necessary for issuance of approval documents and licenses, in particular, availability of an entry about termination or being in the process of termination of a register person in the register shall be freely accessible.

Therefore, the procedure of license obtaining became simpler because a licensing body will obtain all information from the register on its own and the applicant is not obliged to obtain an excerpt any more (procedure for obtaining which is even more complicated than for an extract from the register).

### Change of Requirements to M&A Deals

- On January 8, 2012 provision of the Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine as to Regulation of the Financial Services Market Regulation” dd. 02.06.2011 No. 3462-VI came into force.

Pursuant to the novelties a legal entity or an individual intending to acquire an essential equity in a financial institution and to increase it to directly or indirectly hold or control 10, 25, 50 or 75% of the authorized (charter) capital of such financial institution or voting rights under acquired shares in the bodies of such financial institution of the stock market is obliged to obtain a written consent of the National Securities and Stock Market Commission (hereinafter – the Commission) if otherwise is not provided by the laws on regulation of certain financial services markets.

It shall be noted that pursuant to the Law an essential equity is a direct or indirect, sole or joint holding of 10 or more per cent in the authorized (charter) capital or voting rights under acquired shares of legal entities or a possibility of essential influence on management or affairs of a legal entity independent from a formal holding.

In order to obtain mentioned consent a respective legal entity or an individual shall submit to the Commission information as provided by the regulatory legal acts of such authority, in particular information on its own fi-

ancial situation and goodwill and on ownership structure (for a legal entity). Financial situation according to the Law is complex of indexes which indicate current and potential financial capacity, including level of liquidity, paying capacity and financial stability, availability of own circulation assets (equity capital) and their effective use, appraisal of capabilities of the applicant to give financial support to the financial institution in the future, if necessary.

### Explanations of the Supreme Economic Court of Ukraine as to the Position of the Supreme Court of Ukraine Regarding Law Application Practice

- In its letter No. 01-06/1642/2011 dd. 24.11.2011 the Supreme Economic Court of Ukraine laid down legal position of the Supreme Court of Ukraine as to the practice of application of certain legislative provisions concerning, in particular, corporate relations. In general, it shall be noted that expressed positions are obvious in many respects.

Thus, it was precised that withdrawal notice of an LLC's shareholder is subject to notarization. Simple written withdrawal notice is not considered to be a duly notification of the company and, respectively, does not constitute a sufficient basis for a general shareholders' meeting to make a decision on shareholder's withdrawal, make respective payments and to amend constitutional documents. Proceeding from the argumentation of the Supreme Court of Ukraine (references to rules for exercise of notarial actions) only withdrawal notice of an individual-shareholder is subject to obligatory notarization.

Moreover, due to direct references thereto in the legislation, the Highest Economic Court of Ukraine listed circumstances which make decisions of an LLC's general shareholders meeting void:

- 1) making decisions without quorum necessary for meeting conduction or decision making;
- 2) non-adherence to legal requirements or the company's charter during meeting's convocation or conduction which caused violation of rights or legal interests of its shareholders. In this case the Supreme Court of Ukraine used an unfortunate cumulative wording, since due to the current court practice the court should have examined in what way presence of not notified shareholders would influence the decision making. Indirectly this is confirmed by the fact that

decision of the Supreme Court of Ukraine to which the letter refers concerns lack of notification of shareholders holding 50 or more per cent of votes and decision making without a quorum.

It shall be noted that decision of the Highest Economic Court of Ukraine, revision of which was refused by the Supreme Court, stated a third reason for declaring decisions of an LLC's general shareholders' meeting void – making of decisions on issues not included to the agenda of the general shareholder's meeting. Pursuant to the Law of Ukraine “On Business Companies” issues not included to the agenda of a meeting can be only made provided consent of all shareholders present at the meeting. The Supreme Court of Ukraine made an important remark from the point of view of regulation of powers of an executive body that in relation with third persons limitation of powers as to representation of a legal entity is not valid except for cases if a legal person proves that such third person knew or should have known about such limitation (which is provided in Article 92 of the Civil Code). The Supreme Court differentiates in this aspect a corporate dispute between a company and its executive body (in case of excess of powers) and a civil dispute about rescission of an agreement. Therefore (as shown in the example of the decision of the Supreme Court of

Ukraine), if decision of the general meeting about appointment of the director is void but the counteragent did not or could not know about this at conclusion of an agreement, agreements signed by such director on behalf of the company could not be declared null and void due to the reason that the court will declare meeting's decision about appointment of the director null and void.

Separately, the Highest Economic Court of Ukraine highlighted the fact that decisions about JSC's reorganization shall adhere to requirements of the Law of Ukraine “On Business Companies” and of the Procedure on Deregistration of Share Issues and Annulment of Share Issue Registration Certificates. Otherwise decisions on reorganization will be illegal.

It shall be noted that the Supreme Court of Ukraine determined that shareholders of a business company are not entitled to go to court for protection of rights and interests of other shareholders of a business company and the company itself (beyond relations of representation) or to motivate their claims with violation of rights of other company's shareholders. Therefore, if a company or a shareholder whose rights are violated itself is not going to address the court another shareholder cannot do this for him.

## ANTITRUST & COMPETITION

### Extension of Powers of the Antimonopoly Committee of Ukraine

- On December 7, 2011 the Parliament of Ukraine introduced Draft Law No. 9553 “On Amending Certain Laws of Ukraine Regarding the Improvement of Measures to Protect from Unfair Competition”. Among other things, the Draft Law is expected to amend the laws of Ukraine “On Antimonopoly Committee of Ukraine” and “On Protection from Unfair Competition” to entrust the Antimonopoly Committee of Ukraine (AMCU) with collecting samples of goods, raw stock, materials, intermediate products, and component parts from business entities engaged in trade and services for examination.

It is important to note that the sampling procedure described above shall be applied only to identify and stop

violations under Article 15.1 of the Law of Ukraine “On Protection from Unfair Competition” during scheduled inspections or if AMCU authorities detect respective attributes of violation. The procedure of sampling shall be developed by the Cabinet of Ministers of Ukraine. Sampling shall be done at the expense of the state budget. Only if the fact of a violation committed by a business entity is proved as provided for by Article 15-1, the entity shall reimburse the said costs to the state budget.

Should the Draft Law be adopted, AMCU will have additional access to the territory of a business entity that stores, manufactures, sells, etc. goods, raw stock, etc. In this connection, the guarantees of rights to intellectual property should be strengthened. On the other part, being able to conduct appropriate examinations, AMCU will also be able to make carefully reasoned decisions. However, the main concern is the question of the institution that will carry out such examinations, which may cause the abuse of this provision in practice.

# LITIGATION

## Online Payment of Court Fees

- Online receipt is undoubtedly a convenient instrument for payment of court fees. Due to an extensive list of court fees as provided in the Decree of the Cabinet of Minister of Ukraine “On State Duty” and currently stipulated by the Law of Ukraine “On Court Fee” dd. 08.07.2011 court proceedings participants often made mistakes by calculation of court fees. If court determines that a court fee was not paid or not completely paid it does not proceed with an application following Article 121 of the Civil Procedural Code of Ukraine and returns such application to the applicant pursuant to Article 63 of the Economic Procedural Code of Ukraine. On practice such mistakes could turn out costly for an applicant and complicate defence of its legal rights.

At this, respective novelty does not solve some current issues of the court fee payment. For instance, afore mentioned Law does not determine single court fee rates for claims regarding protection of business reputation of a business entity or an individual submitted by an economic court. This issue is subject to Informational letter of the Highest Economic Court of Ukraine “On certain issues of practical application of the Law of Ukraine “On Court Fee” dd. 21.11.2011 No. 01-06/1625/2011. Thus, this fee rate is determined based on non-proprietary nature of such claims and according to the rate stated in subparagraph 2 paragraph 2 Article 4 of the Law of Ukraine “On Court Fee”. If there are non-proprietary and proprietary claims in one case the court fee shall be paid according to the rates stipulated for proprietary and non-proprietary claims.

Moreover, respective software has some technical defects. For example, by calculation of a fee for an appeal petition receipt determines payment purpose as filing of a claim. This could be confusing for courts but we hope this problem will be solved soon.

## Informational Letter of the Highest Economic Court of Ukraine Regarding Legal Position Stated by the Supreme Court of Ukraine in Resolutions Based on Court Decision Revisions

- The Highest Economic Court of Ukraine published its Informational letter dd. 24.11.2011 No. 01-06/1642/2011

(hereinafter the Informational letter), adopted in addition to the Informational letter of the Highest Economic Court of Ukraine dd. 15.03.2011 No. 01-06/249.

This Informational letter notifies about legal position of the Supreme Court of Ukraine stated in resolutions made in course of revision of decisions of economic courts due to the procedure provided in Section XII-2 of the Economic Procedural Code of Ukraine and gives, practically, thematically organized excerpts from resolutions of the Supreme Court of Ukraine.

Conclusions and legal positions reached by the Supreme Court are especially valuable, in particular due to the fact that the Supreme Court of Ukraine engages in revision of court decision on economic cases in exceptional cases. Such cases include, in particular, different application by courts of cassation of the same material law provisions which results in making different court decisions in similar legal relations or if an international court jurisdiction of which is recognized by Ukraine establishes that Ukraine violated its international obligations during court hearings. Moreover, in order to engage the Supreme Court of Ukraine in revision of court decisions a special procedure for submission and admission of cases by the Highest Court of Ukraine to revision by the Supreme Court of Ukraine shall be complied with. The Supreme Court of Ukraine acts as an arbiter for cassation instances regarding selection of a more “correct” application of legal provisions if there are several variants for applications of a certain legal provision. Decisions of the Supreme Court made in course of revision of court decisions due to different application of same material law provisions by courts of cassation instance in similar legal relations are obligatory for all subjects of state power which apply regulatory legal acts containing such legal provision in their activity and for all courts of Ukraine. Courts are obliged to bring their court practice in compliance with decisions of the Supreme Court of Ukraine.

The fact that in its Information letter the Supreme Court of Ukraine finally resolved some issues of corporate relations is especially important because corporate relations, in particular, lack clear regulation of certain aspects. Lack of clear rules makes room for abuse and is one of the limiting factors for development of the investment potential of the country.

Such aspects of corporate relations which were regulated by the Supreme Court of Ukraine and stated in the Informational letter do not contain categorical conclusions which could result in change of the established practice of application of certain legal provisions. It is rather an attempt to eliminate an unreasonable alternative interpretation of certain provisions regulating corporate relations.

## The European Court of Human Rights Approved the Right of a “Law Specialist” Having no Attorney-at-Law License to be Criminal Defence Counsellor

- On November 24, 2011 the European Court of Human Rights (hereinafter ECtHR) published its decision in case “Zagorodny v. Ukraine” which determines that not admission of a “law specialist” who has no attorney-at-law license as a defence counsellor in a criminal case constitutes a violation of right to fair trial as provided in par. 1 and 3 Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms. At this, the court stressed out that such situation is inconsistent with principle of legal certainty which, in its turn, constitutes a component of the principle of the supremacy of law.

The Court has noted many times that right to a fair trial as guaranteed by Article 6 §1 of the Convention shall be construed according to the Preamble to the Convention which declares supremacy of the law. At this, one of the main aspects of the supremacy of the law is the principle of legal certainty.

The right to trial comprises the requirement of Article 6 (1) to court proceedings. Procedural requirements, on their own, are not sufficient to determine full content of Article 6(1); this are simple guarantees, the same as such distinguishing a court trial from other methods for recognition of a person’s legal status. These very requirements in connection with access to courts are the essence of the supremacy of the law. Guarantees will mean less if access thereto is not part of Article 6(1).

Thus, a borrower concluded an agreement about legal assistance in criminal proceedings against it with a lawyer who had its own legal practice but was not an attorney-at-law. Due to it this defence counsellor chosen by the defendant was not admitted to participate in this criminal trial.

Issue of admission of a lawyer who has no attorney-at-law license as a defence counsellor in a criminal trial is a very problematic and up-to-date matter for the sphere of right protection. Pursuant to Article 59 of the Constitution of Ukraine every person is entitled to legal assistance and each person is free to choose its defence counsellor.

Pursuant to Article 44 of the Criminal Code of Ukraine, persons having Ukrainian attorney-at-law license and other specialists in law who pursuant to the law have the right to give legal assistance in person or on behalf of a legal entity are admitted as defence counsellors. The same requirements are applied to a defence counsellor for a witness during interrogation of or other procedural actions with such witness.

Still, despite the legislative right of a law specialist to defend persons in criminal trials law enforcement authorities often do not admit lawyers without attorney-at-law license to criminal cases either as defence counsellors to defendants (accused) or as defence counsellor’s to witnesses referring to Part 2 Article 59 of the Constitution of Ukraine which determines that in Ukraine there is advocacy for purposes of securing the right to defence against prosecution and the right to legal assistance during trials in courts or other state authorities.

Decision of the Constitutional Court of Ukraine dd. 16.11.2000 No. 13-пн/2000 declares provision of part one Article 44 unconstitutional because it limits the right of a defendant to choose any other law specialist, except an attorney-at-law, who pursuant to the law is entitled to give legal assistance in person or on behalf of a legal entity as its defence counsellor at its discretion. In case Zagorodny v. Ukraine the European Court of Human Rights refers to this very decision of the Constitutional Court of Ukraine. Even after introduction of respective amendments to Article 44 of the Criminal Procedural Code of Ukraine in practice lawyers without attorney-at-law license are not always admitted as defence counsellors in criminal cases.

Thus, in the aforementioned decision the Constitutional Court of Ukraine determined that provisions of international legal acts providing right of each defendant to defend itself or use assistance of a legal counsellor chosen at its discretion out of lawyers who can provide effective legal defence are reproduced in provisions of part one Article 59 of the Constitution of Ukraine which ensure right of any individual to legal assistance and free choice of a defence counsellor.

Provisions of part two Article 59 of the Constitution of Ukraine stating that in Ukraine there is advocacy for ensuring rights to defence cannot be construed as right of the defendant to choose only an attorney-at-law, i.e. a person with attorney-at-law license pursuant to the Law of Ukraine “On Advocacy” dd. 19 December 1992, as its defence counsellor.

Therefore, the Constitution Court of Ukraine determined principles for defence rights guarantee as stipulated in international legal acts and reflected in Article 59 of the Constitution of Ukraine. The Court explained that defence of a defendant (accused) shall not be limited only to attorneys-at-law and such limitation is an obvious violation of Article 59 of the Constitution of Ukraine. At this, even if there is a special law such limitation does not comply with the Constitution and is, respectively, illegal.

At this, despite this decision of the Constitutional Court, in 2003 Plenum Session of the Supreme Court of Ukraine adopts resolution No. 8 “On Application of Laws Ensuring Defence Rights in Criminal Proceedings” which states that in order to determine whether law specialists are entitled to provide legal assistance as defence counsellors in

criminal trials it shall be determined which law exactly entitles them to participate in criminal trials as defence counsellors. The Supreme Court of Ukraine recognizes as correct practice of such courts which in absence of a special law do not admit such specialists (lawyers without attorney-at-law license) as defence counsellors in criminal cases which, per se, abolishes conclusions of the Constitutional Court of Ukraine regarding application of Article 59 of the Constitution of Ukraine, and, as known, provisions of the Constitution are directly applicable provisions.

Moreover, during adoption of this Resolution of the Plenum Session of the Supreme Court of Ukraine amendments to Article 44 of the Criminal Procedural Code of Ukraine came into force which in their essence are also a law pursuant to which persons with attorney-at-law license and other specialists in law who according with the law are entitled to provide legal assistance in person or on behalf of a legal entity are admitted as defence counsellors.

At this, in our opinion, provision of Article 44 of the Criminal Procedural Code of Ukraine “law specialists which pursuant to the law are entitled to provide legal assistance” cannot be construed as such requiring adoption of a special law in order to enable people to exercise their right to a defence counsellor represented by a lawyer who is not an attorney-at-law. The person’s right to a defence counsellor is not absolute, of course, but as the European Court of Human Rights stated in other decisions, including decisions concerning Ukraine (*Croissant v. Germany*, 25 September 1992, *Shabelnik v. Ukraine*) such right can be limited only due to compliance of such necessity with interests of the justice, as for instance, if it is necessary for a defence counsellor to have higher education. In decision in case *Zagorodny v. Ukraine* the European Court of Human Rights determined that lack of legal clarity regarding the right to free choice of a defence counsellor in criminal proceedings by lack of a respective special law constitutes a violation of the human right to fair trial.

Therefore, the European Court of Human Rights determined that refusing a person who is not an attorney-at-law to participate as defence counsellor in criminal proceedings based on lack of a special law which would entitle thereto is incorrect.

Pursuant to the Law of Ukraine “On Enforcement of Decisions and Application of Practice of the European Court of Human Rights” enforcement of a decision of the ECtHR is, in particular, taking of general measures directed at elimination of a system-based problem as stated in the Decision and its cause, in particular: amendments to the current legislation and practice of its application; amendments to the administrative practice.

Therefore, we hope that in the nearest future this situation will be corrected with amendments to the current legislation or, at least, amendments to the established law application practice.

## Changes Regarding Legal Status of Members of the Highest Qualification Commission of Judges of Ukraine

- The Parliament of Ukraine adopted the Law of Ukraine “On Amendments to the Law of Ukraine “On Judicial System and Status of Judges” (based on the Draft Law No. 9514).

Pursuant to novelties term of office of members of the Highest Qualification Commission of Judges of Ukraine (HQCJ of Ukraine) was increased to six years.

This Law also regulates issues how members of the HQCJ of Ukraine shall be provided for in case of termination of powers on the position from which they were assigned and reasons for termination of powers of members of the HQCJ of Ukraine.

It shall be noted that the procedure for termination of powers of members of the HQCJ of Ukraine was not regulated on legislative level. In its turn, adoption of such amendments is aimed at development of legal regulation for this sphere of work of members of the HQCJ of Ukraine.

## New Procedure for Legal Proceedings Execution

- The Parliament adopted changes regarding procedure for execution of legal proceedings (based on Draft Law No. 9535). In particular, amendments concern procedure and terms for appeal or cassation appeal against court decisions and revision of court decision due to newly discovered circumstances and provisions regarding court composition as well.

Pursuant to provisions of the adopted Law “On Amendments to Certain Legislative Acts (As To Improvement of Procedure for Legal Proceedings Execution)” provisions of economic and civil proceedings are amended with provisions that a judge who participated in court consideration in the first, appeal, cassation instance, revision of the case by the Supreme Court of Ukraine, is not entitled to participate in consideration of application regarding case revision due to newly discovered circumstances.

Besides, provisions of civil and economic proceedings are amended with provision regarding obligation of a court to invite other persons (not a party to the proceedings) if by acceptance of the claim, preparation of the case for

hearing or during its hearing it is determined that court decision could influence rights and obligations of such persons. Such persons shall be invited to participate in court proceedings as third persons without independent claims as to the dispute object.

Limitation of action as stipulated by the Civil Code of Ukraine were changed as well, in particular, limitation of action regarding claims on rescission of deals executed by force or deceit and regarding claims on application of consequences of a void deal do not fall under special limitation of action anymore.

Besides, application regarding revision of a decision of the economic court due to newly discovered circum-

stances which were or could not be known at the time of case consideration can be submitted not later than within three years after enactment of the decision.

In its turn, time-limit was introduced for state authorities and local self-government authorities, state prosecutor and other subjects of power after which no appeal or cassation appeal can be accepted into proceedings of a court of appeal or cassation instance irrespectively reasons for term default.

The law also regulates other issues connected to terms and procedure for addressing courts of different instances, activity of courts by consideration of cases falling into their competence.

## LABOR LAW

### Entry and Residence Regulations for Foreigners in Ukraine

- On December 26, 2011 the Law of Ukraine “On Legal Status of Foreigners and Stateless Persons” No. 3773-VI adopted by the Parliament of Ukraine on 22 September 2011 entered into force. The Law extends and regulates in detail the grounds for the entry of foreigners, their residence and the ban on their entry. Now the requirement and the ways for foreigners to confirm their financial security during their stay in Ukraine have been fixed at legislative level.

Apart from the previously specified procedures to reduce the temporary stay period in the territory of Ukraine and the expulsion therefrom, procedures for voluntary and forced return of foreigners and stateless persons have been added, whereas forced expulsion is now permitted by decision of the administrative court only, for which the Code of Administrative Court Proceedings was amended accordingly.

The new rules oblige foreigners and stateless persons to provide their biometric data for recording at border control points when passing the border control. However, these provisions will take effect after the introduction of a national biometric verification and identification system.

### International Labor Organization Ratified Convention on Occupational Safety and Health and Production Environment

- On November 2, 2011 the President signed the Law of Ukraine “On Ratification of ILO Convention No. 155 1981 “On Occupational Safety and Health and Production Environment”, which entered into force on December 6, 2011. The Convention was ratified in accordance with the Action Plan for implementing the General Agreement on regulation of the basic principles and rules of implementation of socio-economic policy and industrial relations in Ukraine for 2010-2012.

The Convention itself provides a generalized view on what the policy in the field of health and safety should be and shall apply to all workers in all sectors of economic activity of the participating countries.

The Convention obliges each Member State, with respect to national conditions and consultations with representatives of employers and employees, to develop, implement and periodically review national policy on occupational safety and health as well as the work environment to prevent accidents or health damage resulting

from work or related thereto by minimizing the causes of hazards peculiar to production environment. To implement this policy the states develop proper regulations and provide an adequate system of inspection, control and sanctions for violations of law, as well as take steps to integrate issues of occupational safety and health and production environment in education and training programs.

The Convention obliges employers directly to provide the security of workplaces, machinery, equipment and processes within their control, as well as the safety of chemical, biological and physical agents under their control. Employers should cooperate with employees' representatives and provide them with all the information, consult and train them in terms of occupational safety and health, as well as provide all employees with protective clothing and equipment.

For Ukraine, the Convention will enter into force in 12 months after the date of its registration for ratification instrument.

## **New Procedure Approved for Investigation and Record-keeping of Accidents, Occupational Diseases and Industrial Accidents**

- By its Decree No. 1232 dated November 30, 2011 the Cabinet of Ministers approved a new Procedure for the investigation and record-keeping of accidents, occupational diseases and industrial accidents, which will replace the current one from January 1, 2012. No radically new changes have been made in the existing procedure for investigation and record-keeping of accidents, occupational diseases and industrial accidents.

The range of persons subject to the Decree has been supplemented by individual entrepreneurs, members of a farm enterprise, members of a personal farm enterprise, as well as by employees of diplomatic services working at foreign diplomatic institutions. Participation in sports and other mass events and actions undertaken by an enterprise itself or by decision of supreme bodies with the employer's appropriate solution (order, regulation etc.) has been added to the circumstances under which the insured event of state social insurance of citizens from accidents and occupational diseases occurs.

From now on the accidents investigation commission includes necessarily a representative of the Fund of Social Insurance against Industrial Accidents and Occupational Diseases (hereinafter the Fund) at the location of the enterprise.

The terms for some stages of establishing and investigating accidents and occupational diseases have been significantly shortened.

The employer bears the costs of creating appropriate conditions for the work of commissions to involve experts and specialists, and is obliged to organize the delivery of a deceased employee's body, to conduct its identification and pay the related costs.

The new Decree has somewhat changed the procedure for investigating the circumstances of occupational diseases occurrence. Now the person in charge of investigation is the Chief State Medical Officer of the Autonomous Republic of Crimea, region or city, respectively.

The CMU has devoted a great deal of attention to protecting the rights of victims of industrial accidents or occupational diseases. Head of the commission is now obliged to inform in writing the victim or the person authorized by it of its rights and invite it to cooperate from the beginning of the commission's work. The report of the medical expert commission of a specialized occupational healthcare establishment on an employee's occupational disease (absence thereof) shall be issued to the employee against receipt. If a special investigation is conducted in the case of death of an employee during job performance, the appropriate investigation file should contain, among other things, the protocol of the meeting of the special committee's members with members of the victim's family or an authorized person.

The new procedure lays out the situation where an accident occurred to an individual entrepreneur or a self-employed person. If such a person was voluntarily insured by the Pension Fund of Ukraine (subject to payment of the fee for obligatory state social insurance against industrial accidents and occupational diseases), the Fund organizes investigation at the place of accident. If such a person is not insured by the Pension Fund, investigation shall be organized by a territorial body of the State Mining Technical Supervision Service at the place of accident. The fact of the victim's employment relations with an employer without appropriate documents furnished by the employer but the victim's actually being admitted to work is confirmed in the established manner by the State Inspectorate of Ukraine on Labor Issues on the request of the special commission's chairman or judicially.

There has been established a possibility to change or cancel a previously made diagnosis by a specialized occupational healthcare establishment on the basis of additionally provided information, or research and re-examination results.

No significant changes have been made in the forms of documents. The form H11B is not envisaged in the new wording. Now if the commission finds the accident unrelated to production, the statement shall be made in the form H-5. In the event of a disaster, accident or incident on transport the appropriate conclusion shall be made in the new form T-1.

## **Amendments to Procedure of Granting Subsidies to Employers by the Fund of Social Protection of Disabled Persons in Creating Special Jobs for Disabled Persons Registered with the State Employment Service**

- On November 23, 2011 the Cabinet of Ministers of Ukraine adopted Resolution No. 1234 “On Amendments to the Procedure for Granting Subsidies to Employers by the Fund of Social Protection of Disabled Persons in Creating Special Jobs for Disabled Persons Registered with the State Employment Service”. The Resolution outlines the above Procedure as of December 27, 2006 as amended.

The subsidy funds under the new Procedure will be submitted not only to accommodate the existing jobs, but also to create new special jobs for disabled persons. Jobs created through subsidies will not be taken into account in calculating the standard of jobs for disabled persons until the completion of the contract of employment and the provision of subsidies.

The range of those who will not receive subsidies so far covers employers to whom financial sanctions have been

applied within the last three months in connection with arrears of taxes and duties, of single fee, for incompliance with the job standard for disabled persons or for violation of labor legislation, as well as employers who have reduced the number of employed persons with disabilities by more than 10 percent over the last year.

According to the new wording of the Procedure the mechanism for review of documents for granting subsidies has been simplified. Instead of the Employment center, the documents shall be filed with a local office of the Fund of Social Protection of Disabled Persons. The list of documents has been considerably changed, whereas the question of granting subsidies will now be treated quicker.

Among other things, the agreement shall additionally stipulate the period of no less than 90 calendar days for commissioning a special job for a disabled person and the procedure for returning subsidies in the event of employment contract termination or misuse of a subsidy.

New in this wording are the provisions on the procedure and term for employers' returning subsidies in the event of early contract termination, ending of disability or employment of another disabled person instead of a dismissed one.

The maximum size of grants for creating a special job for a disabled person has been increased to 100 minimum wages.

The decision came into force on December 9, 2011 after its official publication.

## Changes to the Tax Code

- In December the President of Ukraine signed *the Law of Ukraine “On Amendments to the Tax Code of Ukraine for Promoting Investment in Domestic Economy”* No. 4057-VI, adopted by the Parliament on November 17, 2011.

In particular, the law supplements the Tax Code of Ukraine by a number of rules governing the tax aspects of the transfer of state and municipal enterprises (IPC) to lease or concession, and equating the tax consequences of such transfer to the tax consequences of restructuring. In addition, dividends are exempt from income tax advance payment for those enterprises which, in turn, are also exempt from paying income tax. It is unlikely that the introduction of these standards would result in some tangible promotion of investment activities.

The Tax Code is also supplemented by separate regulations governing the taxation of income from insurance activities that are in no way related to the investment as such. At the same time, the rules specifying the procedure of exchange rate differences tax accounting and the provisions for removing equipment and its components for the production of energy from renewable energy sources from the list of transactions subject to VAT, which were contained in the draft law (and that could be recognized in some degree as stimulating investments, or at least as advantageous for certain categories of investors) have not been supported by the deputies in the final vote and, as a result, are missing in the adopted law. Evaluating the foregoing changes we may qualify them as single non-systemic improvements of the Tax Code, the results of which will be perceptible from January 1, 2012 for a number of taxpayers only.

On December 22, 2011 the Parliament of Ukraine adopted *the Law of Ukraine “On Amendments to the Tax Code of Ukraine (regarding certain issues of tax payment in terms of production sharing agreements)”* (Draft Law No. 9358 as of 28.10.2011). Whereas before the adoption of the said law legislation provided for tax payment under production sharing agreements in cash only, now the investor is given an opportunity to pay taxes either in cash or in kind by transferring to the state part of products it received into ownership as a result of production sharing. This opportunity extends to all taxes to be paid by an investor, namely: value added tax, corporate profit tax and royalties for mining. In this case the relevant provision should be introduced to production sharing agreement.

The law had already been submitted for signing to the President of Ukraine. If signed, it will take effect after its publication. However, it should be noted that an addi-

tional condition for the implementation of its provisions is the adoption of the relevant provision regulating the payment mechanism and procedure for charging taxes paid in kind.

The Parliament has adopted *the Law of Ukraine “On Amendments to the Tax Code of Ukraine (concerning the taxation of transactions with precious metals, with the participation of the National Bank of Ukraine, some issues of tax payment in terms of production sharing agreements)”* (Draft Law No. 9441 dated 10.11.2011).

The Law provides for the exemption from taxation of incomes derived from delivering scrap precious metals to NBU, as well as of income received by individuals from transactions with debt securities issued by the NBU. Thus exempt from VAT are transactions for the supply of precious metals to NBU (including their import to Ukraine), for providing services related to exploration, extraction, production and use of precious metals, as well as operations for importing precious metals needed to manufacture bullion coins, which the NBU plans to release. In such a way the legislator creates a more favorable tax treatment of transactions aimed at NBU's replenishing gold and foreign exchange reserves of the state. It is assumed that the law, if signed by the President, will enter into force on 1 January 2012.

*The Law of Ukraine “On Amendments to the Tax Code of Ukraine for Supporting Agricultural Producers”* (Draft Law No. 9345Д as of 19.12.2011) adopted by the Parliament sets out clause 1, subclause 2 section XX “Transitional Provisions” of the Tax Code in a new extended wording regulating the procedure of levying value added tax from processing enterprises' operations for the supply of products made from milk and meat provided in live weight by agricultural producers.

In particular, the Law meant to clarify the mechanism of compensation payment to farmers for the milk and meat they sell to processing plants provides that the latter shall transfer a certain part of the positive difference between tax liability and tax credit in terms of delivering such products to a special fund of the State Budget of Ukraine. Further the VAT amounts are supposed to be used exclusively to compensate agricultural producers in the manner that has yet to be developed by the Cabinet of Ministers of Ukraine, whereas the basic principles and rules of compensation are now laid out directly in the Tax Code. To implement the provisions of the law the Form of calculating the amounts of compensation and procedure for its completion as well as the Report sheet on amounts paid for compensation and the procedure for its completion must also be developed.

Prior to the adoption of the said Law paragraph 1 subsection 2 section XX “Transitional Provision” of the Tax Code contained only a rule regarding the transfer of VAT to the special budget fund, whereas the Cabinet specified it by its Resolution. In particular, in 2011 this regulation was performed in accordance with the Resolution of the Cabinet of Ukraine No. 181 as of 02.03.2011 “On Approval of the Payment Amounts for Providing State Support to Livestock Industry for 2011”.

The amendments, provided they are signed by the President, shall also enter into force on 1 January 2012, while the first compensation payment to agricultural producers will be made no earlier than one month following the period in which regulations establishing the statutory forms will come into effect. The unusual speed in the adoption of the law is worth noting – it was actually passed on the third day after the submission of the draft law to the Parliament.

The Parliament also adopted *the Law of Ukraine “On Amendments to the Tax Code of Ukraine Concerning the Revision of Rates of Certain Fees and Taxes”* (Draft Law No. 9356 dated 08.11.2011), whereby the rates of excise tax on alcohol and a range of alcoholic beverages, tobacco, petroleum products, and certain categories of vehicles are changed from January 1, 2012. Also, the law has increased the fee rate for the first registration of vehicles and environmental tax rates, charges for the use of mineral resources, the tax rate for land use without regulatory pecuniary valuation, the fee for the use of radio frequency resource, the fee for the use of water and forest resources. At the same time, raising the rates on ethyl alcohol, other alcohol distillates and alcoholic beverages has been delayed for three months, which are calculated from the date of publication of the adopted law.

On December 22, 2011 *the Law of Ukraine “On Amendments to the Final Provisions of the Law of Ukraine On Amendments to the Tax Code of Ukraine regarding the issues of taxation of natural gas and electricity”* (Draft Law #9582 dated 13.12.2011) extending the term of the amended Law to June 30, 2012.

The parliamentarians paid no attention to Draft Law No. 9504 dated 25.11.2011 On Amendments to the Tax Code of Ukraine concerning the abolition of the requirement of primary documents for individual entrepreneurs who have chosen a simplified system of taxation, accounting and reporting, which is suggested to abolish the duty of single tax payers who are not subject to VAT, to keep account of revenues, expenditure and other indicators based on primary documents, ledgers, financial statements, as well as Draft Law No. 9549 dated 07.12. 2011 On Amendments to Article 75 of the Tax Code of Ukraine (regarding actual inspections), which are proposed to amend subclause 75.1.3 of clause 75.1 of Art. 75 of the Code, under which no actual inspections of entrepreneurs that have chosen a simplified system and pay a single tax with no separate registration as VAT payers shall be conducted until December 31, 2012.

## Other Legislative Acts that Entered into Force at the End of the Year

- On December 9, 2011 the *Procedure for applying tax lien by state tax authorities*, approved by Order of the Ministry of Finance No. 1273 as of 11.10.2011 entered into force. The new Procedure establishes the term for providing consent to substitute the subject of tax lien by a state tax authority, which will be 10 days after the receipt of the taxpayer’s written request for substitution, whereas the previous Procedure did not contain such a term. However, there are no other conceptual differences between the old and the new procedure.

On December 16, 2011 the Order of Ministry of Finance of Ukraine No. 1394 dated 7 November 2011 *“On Approving the Provision on Registration of VAT Payers”* entered into force. The Provision adopted instead of the previous one also sets the rules for registration, reregistration, deregistration of VAT payers, maintaining their register, assigning an individual tax number, publishing data from the registry, issuing and replacing VAT payer certificates. It should be noted that the Provision synchronizes the procedure for registering an individual or business entity using a simplified system of taxation as a VAT payer with its registration as a single tax payer. The entrepreneur shall submit an application for using the simplified tax system with single tax payment at a rate of 3% of income with additional VAT payment simultaneously with an application to be registered as a VAT payer supported with the documents confirming the existence of grounds envisaged by clause 181.1 of Article 181 or clause 182.1 of Article 182 of the Tax Code of Ukraine for mandatory or voluntary VAT registration. If such an entrepreneur has no grounds for being registered as VAT payer, the tax authority also refuses the applicant the Certificate of VAT payer and the payment of a single tax at the selected (3%) rate.

On December 19, 2011 the Order of the Ministry of Finance No. 1379 dated November 1, 2011 came into force, which *approved the new Tax Invoice form and the Procedure for its completion*. In particular, several line titles have been changed in the new form, the column Product Code according to the Ukrainian Classificatory of Foreign Economic Activity Products has been introduced into the Tax Invoice form and annexes thereto, which is required by the new paragraph “i” clause 201.1 Article 201 of the Tax Code of Ukraine. The Procedure for completion has been supplemented by the requirement to complete the Tax Invoice in Ukrainian, and to indicate the name of the company (head office) under the charter documents and the branch name (if the invoice is completed by the branch). The most discussed issue of the named Order is not the novelties introduced to the form of the Tax Invoice itself, but the fact of its approval by the Ministry of Finance of Ukraine, whereas in accordance with clause 201.2 of Article 201 of the Tax Code of

Ukraine the approval of a Tax Invoice form and procedure for its completion falls within the competence of the central body of the State Tax Inspection, which the Ministry of Finance is not.

Effective as of December 23, 2011 is the NBU Decree No. 400 dated 15 November 2011 **“On Approving the List of Generic Transactions for Cash and Settlement Services, Which Are Not Subject to Taxation in Accordance with Subclause 196.1.5 of Clause 196.1 of Article 196 Title V of the Tax Code of Ukraine”**. By the said Decree the NBU has approved a comprehensive list of operations for cash and settlement services that are not subject to VAT. The list includes transactions for opening, closing and re-assigning accounts in national and foreign currency, transactions for settlements with clients, cash servicing transactions, transactions with promissory notes, transactions with special means of payment (including payment cards), transactions with electronic money, and many others.

In December, the State Tax Service of Ukraine (STS) published its letter No. 6727/7/15-3417-26 as of 19.11.2011 **“On VAT Penalties for Breach of Contract”** outlining the interpretation of certain rules and definitions of tax legislation.

Thus, the STS of Ukraine expressed the opinion that the fines stipulated in a contract as liability for late payment for products shall be treated as an increase in compensation for the product itself. The STS of Ukraine has concluded that the amount of the penalty increases the negotiated cost of products, thus increasing the tax base for VAT. This means that VAT must be accrued on the penalty with a respective Tax Invoice (adjustment calculation) issuance. Such an interpretation in general runs counter to all economic principles and common sense, so we may just “suggest to develop” the creative approach of the STS of Ukraine: if a fine is compensation for the cost of products, then the recipient of the fine is obliged to include the amount of fine in the revenue, whereas the payer has the right to refer it to deductible expenses for corporate income tax purposes. This means that paying fines becomes more advantageous for unscrupulous debtors as it was before: now a fine is not only liability for the failure to meet the commitments, but also expenses reducing the amount of taxable income, as well as giving the right for tax credit...

# HEALTHCARE AND PHARMACEUTICS

## Restriction of Medicinal Products Advertising

- On January 10, 2012 the President of Ukraine signed the Law of Ukraine No. 4196-VI “On Amendments to Some Laws of Ukraine in the Healthcare Sector on Strengthening Control over the Circulation of Medicines, Food Products for Special Dietary Use, Functional Foods and Dietary Supplements” providing, among other things, for the possibility to restrict advertising of certain OTC, if such are included in the list of medicinal products prohibited for advertising (the List). The provisions that prohibit advertising the above medicinal products will take effect in 6 months after the date of their publication.

The selection of OTC to be included into the List must be based on the criteria approved by the Ministry of Healthcare of Ukraine. According to the Law, the decision to classify medicinal products as medicinal products prohibited for advertising shall be made during state registration/re-registration of medicinal products with entering the appropriate information in the State Register of Medicinal Products. In this case, medicinal products already registered in Ukraine before the entry into force of the provisions of the Law may be advertised only after appropriate amendments are made in the State Register of Medicinal Products of Ukraine. Accordingly, after the entry into force of the Law all medicinal products advertising will be actually banned, whereas pharmaceutical companies will have to apply to the Ministry of Healthcare for making amendments in the Register. This legislation novelty will make pharmaceutical companies spend a lot of time and money for the termination of contracts with advertising media and will entail slump in sales, bureaucratic costs when submitting documents to the Ministry of Healthcare, etc.

Moreover, the new wording of the Law actually provides for a selective approach to medicinal products manufacturers and thereby creates a fertile ground for corruption. The key question is how transparent the criteria will be for selecting medicinal products prohibited for advertising. In addition, manufacturers of OTC will not be placed in equal conditions, which, of course, will restrict competition in the OTC market.

## President Signed the Law Extending the List of Medicinal Products That Can Be Imported to Ukraine without Registration

- On December 7, 2011 the President of Ukraine signed the Law of Ukraine “On Amendments to Article 17 of the Law of Ukraine “On Medicinal Products” No. 4056-VI dated 17.11.2011 to ensure the implementation of pharmaceutical development of medicinal products and research study (the Law). The Law comes into force on the day following the day of its publication. According to the Law, unregistered medicinal products may be imported to the territory of Ukraine for preclinical and clinical studies; for registration in Ukraine (samples in dosage forms); exhibiting at trade shows, fairs, conferences, etc. without the right to sell them; individual use, as it was before, as well as for pharmaceutical development and research study.

The adoption of the Law is aimed at regulating the legal gap regarding the importation of unregistered medicinal products by pharmaceutical manufacturers for pharmaceutical development, inter alia. for the development of new research series technology, development and validation of analytical quality control methods (of substances, including pellets, premixes and in-bulk products); for research study. Obviously, the missing regulations on the issue had negative consequences for domestic producers developing medicinal products, as the samples of substances and in-bulk products are used by pharmaceutical manufacturers at the stage of pharmaceutical development, which is impossible without a certain amount of research material.

Since the acquisition of samples of raw materials by local producers is aimed, primarily, to choose the best suppliers of raw materials in terms of quality and safety of products, the state registration of such samples is not necessary in the selection stage.

The adoption of the Law confirms the direction of the public health policy to support and promotion of domestic medicinal product manufacturers. Permission to import unregistered medicinal products for pharmaceutical development and research is another step in creating an enabling environment for Ukrainian manufacturers to produce new qualitative and safe medicinal products.

## Application of Standards Regarding Medicinal Product Series Certification

- The State Service of Ukraine on Medicinal Products (the Service) informed by its letter dated 02.12.2011 that the Regulation CT-H MO3Y 42-4.4:2011 “Medicinal Products. International harmonized requirements for series certification” establishes requirements regarding the contents of series certificates on medicinal product, intermediate products, unpackaged or partially packaged products, as well as on active pharmaceutical ingredients and studied medicinal products that are used for approved clinical trials. The Regulation is mandatory for use by all domestic business entities manufacturing medicinal products.

In addition, the Service recommends applying the requirements of the Regulation CT-H MO3Y 42-4.4:2011 to the products that are imported to Ukraine as well.

## New License Terms for Business Activities in Manufacturing Medicinal Products, Wholesale and Retail in Medicinal Products Enter into Force

- On December 29, 2011 the new License Terms of business for the production of medicinal products, wholesale and retail in medicinal products (hereinafter the License Terms) entered into force in Ukraine. The License Terms have been approved by Order of the Ministry of Healthcare of Ukraine No. 723 dated 31.10.2011.

It should be noted that the changes concern representatives of all segments of the pharmaceutical market: manufacturers, distributors, and pharmacies.

One of the major innovations in manufacturing medicinal products is the extended definition of “manufacturing”, which lists in detail the stages of the manufacturing process. Thus, according to the definition “medicinal products manufacturing” is the activity associated with the mass production of medicines, which includes all or at least one stage of the process, including procurement of materials and products, prepacking, packaging, and/or labeling, storage, appropriate control, release (sale) authorization as well as wholesale (distribution) of own products.

It is known that many international pharmaceutical companies started to seriously consider the localization of production in this country after the announcement of the Draft Concept of State Target Program “Development of import-substitution industries in Ukraine and the substitution of imported medicinal products by domestic ones, including biotech drugs and vaccines for 2011-2021 years” in the spring of 2011. The Program received much critical feedback from market players. At the same time, participants in the pharmaceutical market had actively discussed the question that in the future it will be required to carry out several stages of the manufacturing process in the territory of Ukraine for medicinal products to be considered as manufactured in Ukraine. As suggested by the above definition of medicinal products manufacturing, the described approach has not yet been reflected in the current wording of license terms. However, we cannot rule out that such an approach, following the practice of the Russian Federation, will be changed in future.

License terms in the field of distribution include provisions for wholesalers’ mandatory compliance with the requirements of Good Distribution Practice (GDP), which have a positive impact on the wholesale trade in medicinal products in Ukraine. Given that the realities of the domestic wholesale market do not meet the generally accepted European practice of having a small number of suppliers in the market, the requirement of compliance with GDP can serve as an effective filter for small wholesalers who do not have direct contracts with manufacturers and spread counterfeit products on the domestic market of medicinal products. On the other hand, the rule is anticompetitive as it would facilitate withdrawal of bona fide small wholesalers from the market, thus clearing the way for large market players.

For pharmacies, one of the most commented novelties of License Terms is the direct rule regarding prohibition of medicinal products marketing via the Internet as well as by mail. The entry into force of this provision eliminates the existing network of online pharmacies. On the one hand, it will protect individuals from purchasing counterfeit products and the uncontrolled OTC consumption. On the other hand, this innovation will create inconveniences for patients who are unable to have medicinal products ordered at a pharmacy delivered.

Another evidence of the state policy aimed at the eradication of self-treatment is the requirement of License Terms prohibiting any form of prescription drugs advertising in the pharmacy hall, which fully complies with the requirements of Article 21 of the Law of Ukraine On Advertising No. 270/96-VR dated 03.07.1996. Moreover, the placement of prescription drugs on counters, in glass cases or open storages in pharmacy service rooms is prohibited. The result is that the end user receives much less information about prescription drugs. Besides, the License Terms establish that related products must be

placed away from medicinal products. Such changes require rearrangements in sales area of pharmacies.

In addition, the License Terms determine the smallest area of 30 sq. m instead of 40 sq. m required under previous License Terms for pharmacies located in villages. It should also be noted that the list of institutions allowed to sell medicinal products in accordance with the established list, if there are no rural pharmacies or their subdivisions, was supplemented by paramedical, paramedical and obstetric posts, outpatient departments, and general practice (family medicine) outpatient departments. The employees of such establishments with higher education will be able to sell drugs on the basis of agreements concluded with a licensee (i.e. a pharmacy which has a license to medicinal products retail). Given the above, it is necessary to emphasize the general trend of the draft License Terms to strengthen and expand the pharmacy network in rural areas.

In general, we believe that the provisions of the new License Terms tighten the requirements to the business procedure for medicinal products manufacturing, wholesale, and retail trade. At the same time, the current wording of the law is much better than the previous drafts, as it does not include several provisions that were highly-resonant for the pharmaceutical public. Thus, the earlier wording was supposed to abolish trade in medicinal products through pharmacy kiosks, as well as to provide for the possibility for entrepreneurs to establish no more than one pharmacy and only with the relevant pharmaceutical education and compliance with eligibility requirements. The most resonant innovation, which the Ministry of Healthcare refused, was the provision which provided for the possibility of revocation of a license for violation of legislation on mark-ups for prices of medicinal products.

## ENERGY

### Kyoto Protocol Extended for 5 Years

- On December 10, 2011 Kyoto Protocol member states reached a basis agreement called Durban Platform.

Kyoto Protocol is an international agreement on reduction of greenhouse emissions into atmosphere main goal of which is to achieve stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate. Within the framework of the first protocol's implementation stage (till 2012) 37 industrialized countries committed themselves to reduce greenhouse emissions for 5% in average based on their 1990 emission quantities.

It was expected that the Durban conference will result in signing of a framework agreement but last minute the parties agreed to prolong Kyoto Protocol for second commitment period. Parties to this second period will turn their economy-wide targets into quantified emission limitation or reduction objectives and submit them for review by May 1, 2012. The general goal of the second period is reduction of greenhouse gases emission for 25-40%. Ukraine obliged to cut its emissions for 20% till 2020 compared to 1990, and for 50% - till 2050. Next climate conference in Qatar will approve these quantity goals for emission reduction as amendments to the Kyoto

Protocol. The second period will continue till 2017 and the new climate protocol shall come into force as of January 1, 2020. It means that member-states will have 3 years for its ratification.

Conference participants have also adopted a road map for a universal international treaty. Work will begin on this immediately under a new group called the Ad Hoc Working Group on the Durban Platform for Enhanced Action.

At the same time, Russia, Canada, Japan and New Zealand refused to take part in second stage when penalties for violation of an approved emission schedule are introduced. USA which signed but have not ratified the Kyoto Protocol will not participate in the second period.

Canadian government decided that Canada should withdraw from the Kyoto Protocol and become the first country to do so. The government calculated that otherwise the country would have to pay a fine for non-adherence to emission reduction norms as required for 2012 in amount of 14 milliard Canadian dollars. Canada has claimed many times already that Kyoto Protocol is not functioning because it does not include two major polluters – USA and China.

Therefore, current protocol members – EU countries and some other states are accountable for 16% of the world carbon dioxide emissions.

At the same time, such industrial states as China or India have no clear limitation of emission volumes.

An explanatory note to the Draft Law states that conduction of design and survey works in order to determine energy potential will allow a realistic determination and evaluation of an energy potential of renewable energy sources in order to make a decision on feasibility of construction of electric power objects on the respective territory.

234 people's deputies instead of minimum required 226 voted in favour of the draft law.

## **Draft Law on Amendments to Certain Legislative Acts of Ukraine (on Works for Energy Potential Determination) Adopted in First Reading**

- On December 9, 2011 the Parliament of Ukraine adopted in first reading the draft law on introduction of amendments to certain legislative acts of Ukraine (on works for energy potential determination) initiated by the people's deputy from Party of Regions Alexander Kozub.

The draft law envisages amendments to Article 99 of the Land Code of Ukraine and Article 14 of the Law of Ukraine "On Lands of Electric Powers and Legal Regime of Special Zones at Energy Objects" according to which owners or users of land plots shall be entitled to request creation of such servitudes as right of construction and maintenance of electric power lines, telecommunication lines, pipelines, other lines, construction of devices, buildings for conduction of design and survey works in order to determine energy potential. Electric power transmission objects, devices or buildings for conduction of design and survey works can be located on land plots of all land categories without change of their designation.

## **Term for Sale of Energy Companies Prolonged till End of 2012**

- On December 21, 2011 the Cabinet of Ministers of Ukraine adopted its Resolution No. 1309 "On Amendments to Certain Acts of the Cabinet of Ministers of Ukraine" which prolongs term for sale of state shares in energy generating and energy supply companies till December 31, 2012.

Privatization of energy companies' shares will bring private investors to the energy industry which will facilitate reconstruction and upgrade of equipment of energy generating and energy supply companies and, therefore, will decrease number of accidents in companies and ensure an uninterrupted work of the Unified Energy System of Ukraine.

Let us remind you, that the State Property Fund of Ukraine prepares sale and sells shares in 13 energy generating and energy supply companies. Thus, auctions on sale of shares in Dneprenergo and Donetskoblennergo will take place on January 11, 2012, auction on sale of Zakarpatohlennergo – January 20, 2012; Vinnitsaoblennergo – February 3, 2012; Chernovtsyoblennergo – February 7, 2012.

# PRIVATE PUBLIC PARTNERSHIP

## Changes in Stimulating Investment in the Domestic Economy

- Draft Law No. 9341 “On Amendments to the Tax Code of Ukraine Concerning the Promotion of Investment in the Domestic Economy” adopted on November 17, 2011 provides for a number of changes aimed directly at improving the investment climate in terms of public-private partnership.

First of all the positive change associated with the adoption of this draft law is the exclusion of from the list of transactions subject to VAT charges on the amount of rent or concession fees under state or municipal property lease (concession) agreements. Appropriate changes were made in subclause 196.1.15 Article 196 of the Tax Code of Ukraine, according to which the lease (concession) payment transaction under leases (concessions) of state or municipal property, in which lessors or conessor are state or local authorities, will no longer be subject to VAT.

At the same time, the draft law amends Article 98 of the Tax Code, which will effectively create additional risks and commitments for investors. Thus, in case of a decision on reorganization or if an integral property complex or a state or utility company are transferred to lease or concession, the concessionaire or lessee acquires the rights and obligations regarding the repayment of financial obligations or tax debt incurred by such a company prior to its transfer, in proportion to the carrying value of the property under lease or concession under the distribution balance or deed of assignment (transfer). In this case the lessee or concessionaire receives such duties with the right to receive (receive back) overpayment and unrecovered taxes (fees), which the state or municipal company had at the time of the transfer of the integral property complex of the structural unit to lease or concession.

Thus, the additional barrier for concluding public-private contracts will be a private partner’s duty to carry out a comprehensive assessment of risks in connection with the liability to repay money or tax debt obligations

of state or municipal companies through legal and economic analysis of the consequences of the transition of such obligations. In addition, the question arises whether the transfer of such liabilities is appropriate in concluding relatively short-term lease agreements on public and municipal integral property complexes, as compared with concession.

The corresponding changes in tax laws shall enter into force on January 1, 2012.

## New Tariff Setting Procedure for Housing Services

- On December 22, 2011 the Parliament of Ukraine adopted Draft Law No. 8641-д amending the tariff setting procedure.

First of all, the draft law removes the acts establishing prices/tariffs for housing services from the scope of the Law of Ukraine “On the Principles of State Regulatory Policy in the Sphere of Economic Activity”. Thus, such acts will not require the analysis of regulatory action, nor will they require the publication of draft acts to receive comments and suggestions from individuals and legal entities, or an open discussion with representatives of the public. On the one hand, it will simplify the procedure for approval of tariffs for housing services. On the other hand, the procedure will become less transparent for consumers.

The law has also changed the notification procedure for changes in tariffs for housing services. Thus, the consumer notification period in case of change of prices / tariffs for housing services has been reduced from 30 to 15 days. The requirement for notifications to specify the reasons for such changes has also been abolished.

The Law, if signed by the President of Ukraine, shall enter into force on the day following the day of its publication.