LEGAL ASPECTS OF DOING BUSINESS IN UKRAINE:
OVERVIEW OF RECENT AMENDMENTS OF UKRAINIAN LEGISLATION

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CURRENCY REGULATION
07.02.2019 the Law of Ukraine # 2473-VIII dated 21.06.2018 “On currency and currency transactions” entered into force

For implementation of the mentioned Law, on 04.01.2019 8 main NBU regulations were published:

- “On Approval of the Regulation on the Ukrainian FX Market Structure, on Rules and Procedure for Foreign Currency and Banking Metals Trading in the FX Market of Ukraine”
- “On Approval of the Regulation on the Operations with Currency Values”
- “On Approval of the Regulation on Transfer of the Currency Values across the Border”
- “On Approval of the Regulation on the List of Protection Measures, Procedure for their Implementation, Continuation, and Early Termination”
- “On Approval of the Regulation on Protection Measures and Procedures for Certain Foreign Currency Transactions”
- “On Approval of the Regulation on the Procedure for the Provision of Information by Banks to the NBU regarding Agreements under which Residents Take Responsibility to Fulfill Debt Obligations to Nonresident Creditors under Loans Taken out by Residents”
- “On Approval of the Regulation on the Procedure for the Banks’ Currency Supervision of Residents’ Compliance with Settlement Deadlines for Goods Export and Import Operations”
- “On Approval of the Regulation on the Conduct by Authorized Institutions of the Analysis and Verification of Documents (Information) Related to FX operations”
CANCELLED:

- Individual licensing on currency operations (should be replaced by e-limits: EUR 2,000,000 per year for legal entities; EUR 50,000 per year for individuals)
- Currency control for export and import operations up to UAH 150,000
- Termination of foreign economic activity as sanction for violation of payment terms
- Limitation on preschedule repayment of external loan obligations
- Registration of external loan obligations
ALLOWED:

- Operations via current accounts of non-resident legal entities in Ukrainian banks.
- Free operating the foreign accounts of legal entities (except of money transferring on such accounts from Ukraine).
- Online sale and purchase of currency by individuals (up to UAH 150,000 per day).
- Investment in Ukraine not only in first group currencies (EUR/USD), but in second group of currency classification as well.
OTHER NOVELTIES:

- The settlement deadline for export-import agreements **was increased up to 365 days**.

- The limit on foreign currency transfer abroad without opening a bank account **was increased from UAH 15 000 up to UAH 150 000 per year**.

- The movement of currency values across the border was unified (for legal entities and individuals).
STILL EXISTING RESTRICTION:

- Limited repatriation of dividends: up to EUR 12 000 000 per month
- Limited repatriation of investments: up to EUR 5 000 000 per month
- Prohibition of mutual offset on export-import operations
- Mandatory sale of 30% of foreign currency earnings
EXPEDIENT CHANGES:

Gradual weakening of currency control:

- **cancelation of settlement deadline** for operations under export-import agreements;
- decreasing of the limit of **mandatory sale of currency earnings**;
- establishing clear and understandable mechanisms for defining the **maximum percent rate under external loan agreements**;
- reducing the list of operation, which are subject to financial control.
CORPORATE REFORM.
HEADLINERS
WHAT HAS CHANGED?

• Fundamental reform of the Institute of Limited Liability Companies (Adoption of the Law of Ukraine No. 2275-VIII of 02.06.2018 "On Limited and Additional Liability Companies");


• Introduction of the "corporate agreement" (Article 7 of the Law "On LLC and ALC") as an effective mechanism for regulating the relations between the parties.
RESTRICTIONS OF PRESSURE ON BUSINESS
STEP 1:

The Law of Ukraine №2213-VIII dated 16.11.2017 “On Amendments of certain legislative acts on ensuring the rights of criminal proceedings participants and other persons during pre-trial investigation”:

• obligatory video capture of the search;
• right to attorney during a search;
• right to receive an extract from the Unified Register of Pre-Trial Investigations within 24 hours from the moment the information was entered into the register;
• prohibition of the seizure of computer equipment (except of individual cases);
• closure of criminal proceedings that have been opened regarding the same act;
• appeal against the inaction of the investigator / prosecutor regarding the non-execution of actions within the term specified by the law;
• appeal to the investigating judge against the decision of the prosecutor about refusal to satisfy the complaint about non-observance of reasonable terms by the investigator / prosecutor.
STEP 2:


- increasing personal liability of the investigator / prosecutor for the damages caused by the unlawful actions during the pre-trial investigation;
- finalizing the mechanism of closing the unreasonable criminal proceedings;
- expanding the list of court order of the investigating judge:
  - on the continuation of temporary suspension of the powers;
  - on the closure of proceedings in connection with the expiration of the terms of the investigation;
  - on the refusal to satisfy the complaint against the decision of the investigator / prosecutor to not close the criminal proceedings in connection with the availability of a decision on similar facts.
TAXATION – EXPECTING THE FUNDAMENTAL CHANGES
WITHDRAWN CAPITAL TAX—PERSPECTIVES
(only if the law will be adopted)

Draft Law on amendments to the Tax Code of Ukraine regarding the withdrawn capital tax

Business shall pay the tax not from the profit, but from the withdrawal of money from the company. The base rate shall amount to 15% of the dividend payment transactions.

Other transactions, that shall be considered as equal to the withdrawal of capital:
• payment of royalty,
• interest and insurance payments to non-residents,
• financial aid to a related party,
• transfer of funds to an account of the taxpayer in a foreign bank,
• investment abroad.

The tax rate for these operations shall amount to 20%.

The tax rate for repayment of debts to related non-resident parties shall amount to 5%.
PROGRESSIVE PERSONAL INCOME TAX (only if the Law will be adopted)

Draft Law on amendments to the Tax Code of Ukraine (regarding the introduction of a progressive scale for PIT)

*Living wage for able-bodied persons in the table is indicated as of 28.03.2019

<table>
<thead>
<tr>
<th>Income (LW- living wage per month AP – able-bodied persons)</th>
<th>Income tax rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>up to 3 LW for AP (5763 UAH)</td>
<td>5 %</td>
</tr>
<tr>
<td>3 - 10 LW for AP (5763-19210 UAH)</td>
<td>15 %</td>
</tr>
<tr>
<td>10 - 20 LW for AP (19210-38420 UAH)</td>
<td>18 %</td>
</tr>
<tr>
<td>20 - 50 LW for AP (38240-96050 UAH)</td>
<td>22 %</td>
</tr>
<tr>
<td>50 - 100 LW for AP (96050-192100 UAH)</td>
<td>27 %</td>
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<tr>
<td>100 - 300 LW for AP (192100-576300 UAH)</td>
<td>33 %</td>
</tr>
<tr>
<td>300- 500 LW for AP (576300-960500 UAH)</td>
<td>40 %</td>
</tr>
<tr>
<td>Over 500 LW for AP (over 960500 UAH)</td>
<td>48 %</td>
</tr>
</tbody>
</table>
OTHER AMENDMENTS
introduction of the recovery of solvency of an individual;

cancelation of the threshold for bankruptcy opening, cancelation of necessity to collect the arrears in the court procedure before the bankruptcy;

electronic sale of property through CETAM \ ProZorro under control of the court for the sale of the most valuable assets and confirmation of the initial price by the creditors committee or the court;

extension of the rights of secured creditors, including proving them with the right to file an application to open a bankruptcy case, to vote in representative bodies (meeting and creditors committee), to foreclose on secured objects beyond the moratorium imposed by the court and before the liquidation procedure;

special mode for repayment of problem foreign currency mortgage loans: cancelation of the moratorium on foreclosure on mortgage apartments, a five-year period of preferential terms of restructuring (when a part of the debt shall be postponed, and a part shall be written off)
SECTOR – PUBLIC AUTHORITIES

FIGHTING CORRUPTION

Were established:

• National Anti-Corruption Bureau of Ukraine;
• Specialized Anti-Corruption Prosecutor’s Office;
• Anti-Corruption court

NECESSARY CHANGES IN THE SECTOR:

• Formation of the Supreme Court on Intellectual Property;
• Consideration of the possibility of extending the moratorium on inspections of public authorities;
• Reformation of the State Labour Service inspections (reducing the size of sanctions and powers of the controlling bodies)
Regulation of CMU – Doing Business related matters

27.03.2019 Resolution of the Cabinet of Ministers of Ukraine was adopted, which:

• provides modernization of the model charter and bringing it in line with the requirements of Law of Ukraine “On Limited and Additional Liability Companies”, as well as speeding up registration of the LLC online;

• introduces a unified transparent and loyal for business procedure for the assignment of postal addresses to construction objects and objects of real estate;

• allows banks to obtain information from state registers regarding individuals, who applied for credits (providing such a possibility will reduce the cost of credit);

• launches a new electronic service for registration of the facility’s readiness for commissioning (this will minimize the personal contact of the developer with officials);

• simplifies the import of auto parts;

• improves environmental control of discharge of water containing pollutants.
EXPECTATIONS AND TRENDS

Automation of the online services in the field of state registration and provision of services by public authorities

Development of a clear and transparent system of participation in tenders, public procurements

Simplification of the procedure of connection of objects to electric networks and other communications

Improvement and simplification of the processing regime

Strengthening anti-raidering legislation
EXPECTATIONS AND TRENDS

- Harmonization of the Ukrainian legislation with the legislation of the European Union, development of technical regulations on different types of goods for simplification of export
- Simplification and increasing transparency of customs procedures
- Continuation of currency liberalization
- Development of corporate reform
- Strengthening anti-corruption measures and mechanisms
REFORMS IN UKRAINE: GENERAL OVERVIEW
MAIN INSTITUTIONAL CHANGES:

- National Anti-corruption Bureau
- "New" police
- Judicial reform, i.a. Supreme court
- National Agency for the Detection and Management of Assets
- Specialized Anti-corruption Prosecutor's Office
- Anti-corruption court
- State Bureau of Investigations
- Decentralization
PUBLIC PROCUREMENT REFORM:

prozorro

public e-procurement system
is a result of collaboration between Ukrainian government, business sector, and civil society
was developed by Transparency International Ukraine with a help of volunteers, NGOs, business community and state bodies of Ukraine, the WNISEF fund, the EBRD, and other partners

is an online platform aiming to provide additional transparency in the electronic public procurement system.
is a unique database of real assessment of procurers, contractors and certain tender
NEW OPEN SOURCES:

- Register of real estate and land plots owners
- Information on ultimate beneficial owners of the companies
- Documents on urban planning
- Information on public procurement
- Information on using the public funds
- Information on ultimate beneficial owners of the media
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We will be happy to work with you!