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## Legal Alert – 14 June 2013

### ANTICORRUPTION LEGISLATIVE DEVELOPMENTS

We continue keeping you updated on the anticorruption legislative developments.

In 2013 the Ukrainian parliament (the “**Rada**”) has been very active adopting new anticorruption laws to meet the goals of the 2013 Plan of Priority Steps for Ukraine's European Union Integration approved by Ordinance No. 73-r of the Cabinet of Ministers of Ukraine dated 13 February 2013.

Another reason for these active efforts is a new (third) GRECO (Group of States against Corruption) Report concerning Ukraine's compliance with recommended steps in March of 2013. According to the Report, only 14 of the 25 recommended steps submitted by Ukraine have been partly accomplished, which efforts, in the opinion of GRECO are insufficient, and for this reason GRECO insists that Ukrainian public authorities take resolute measures to implement the outstanding recommended steps, and report on implementation by 31 December 2013.

The following three important anticorruption laws were recently adopted by the Rada, signed by the President and took effect:

- (1) Law "On Amendments to Certain Legislative Acts of Ukraine Harmonizing National Legislation with the Criminal Convention on Fighting Corruption" dated 18 April 2013 ("**Law No. 221-VII**");
- (2) Law "On Amendments to Certain Legislative Acts of Ukraine regarding the Implementation of the State Anti-Corruption Policy" dated 14 May 2013 ("**Law No. 224-VII**");
- (3) Law "On Amendments to Certain Legislative Acts of Ukraine Harmonizing with the Criminal Procedural Code of Ukraine" dated 16 May 2013 ("**Law No. 225-VII**").

Below please find a brief overview of the most important amendments to the anticorruption legal framework introduced by the above Laws:

- (1) Law No. 221-VII and Law No. 225-VII

Law No. 221-VII was adopted to implement the GRECO recommendation to revise administrative liability for corruption offences so that it is stipulated clearly that corruption acts must qualify as criminal offences, or at least a clear distinction is made between these two different procedures (administrative and criminal).

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The Law No. 221-VII replaces the term "bribe" with "unlawful benefit" - money or another property, benefits, exemptions, services, intangible assets promised, proposed, given or received without legitimate grounds.

One of the most important amendments is that Art. 172-2 "*Failure to comply with official position usage restrictions*" and Art. 172-3 "*Proposing or providing an unlawful benefit*" were deleted from the Code of Administrative Offences and appeared in Chapter XVII of the Criminal Code "*Crimes in official public services activities*": an unlawful benefit received (proposed) by an official/State-owned entity employee, and proposing the unlawful benefit to such persons is now qualified as a criminal offence.

It is important that Art. 354 "*Bribing an employee of a State-owned enterprise, institution or organization*" has been restated: any employee of a State-owned enterprise, institution or organization, as well as the person offering an unlawful benefit to the employee, will be punished if the unlawful benefit is more than UAH 286.75. Art. 368 "*An official accepting a proposed/promised unlawful benefit, or the unlawful benefit being received by the official*" has also been restated: accepting a proposal/unlawful benefit in any amount by an official is a criminal act.

The person who offered, promised or gave an unlawful benefit will not be punished if he/she was acting under the influence of extortion, or if the person voluntarily reported the offence to law-enforcement bodies.

It is interesting to note that Law No. 221-VII includes a longer list of the persons stipulated by Art. 4 of the Law of Ukraine "On the Fundamentals of Preventing and Combating Corruption in Ukraine": officials and employees of legal entities may be held liable for corruption if they receive an unlawful benefit. It is not clear, however, how employees of private companies may be held liable for receiving an unlawful benefit taking into account that such an offence is not stipulated by the Criminal Code nor the Code of Administrative Offences.

According to the amendments stipulated by Law No. 225-VII, the person who was notified that he/she was suspected of a corruption crime (previously, a resolution ordering that the person be treated as an accused was required), should generally be suspended in his/her position, unless the Constitution and laws of Ukraine stipulate otherwise.

(2) The most important amendments stipulated by Law No. 224-VII and Law No. 225-VII include the following:

- grounds for dismissing an individual who committed a corruption offence (introduced to all relevant laws, including to the Labour Code) are specified as follows: "entry into force of a court decision according to which an employee is prosecuted for a corruption offence involving the failure to comply with the restrictions set forth in the Law of Ukraine "On the Fundamentals of Preventing and Combating Corruption in Ukraine ".

- list of the individuals subject to corruption offences:

- (a) the following new categories added - regular and senior officials of Internal Ministry units, State Criminal Enforcement Service units, Ukrainian State Service of Special Communications and Information Protection units, tax militia units, senior officials of civil

protection bodies and units; and public authorities of the Autonomous Republic of Crimea;

(b) was stated that short-term service military officers are not prone to corruption offences;

(c) provisions regarding public law legal entity officials were amended – provisions stating that they must receive their salaries from the State budget were deleted – now all public law legal entity officials are liable for corruption offences irrespective of the fact whether they get salary from the State budget or not;

- some of the definitions have been corrected: the list of **closely related persons** has been expanded to include husband, wife, father, mother, stepfather, stepmother, son, daughter, stepson, stepdaughter, brother, sister, grandfather, grandmother, grandfather, great-grandmother, grandson, granddaughter, grandson, granddaughter, foster father/mother or adopted, guardian, trustee, persons under guardianship or trusteeship, as well as the persons living together or related by jointly maintained household and have mutual rights and obligations are individuals prone to corruption offences, including the individuals who are not married but live together; the definition of **family members** now includes adult children and parents;

- new definitions are introduced, such as conflict of interests, declaration subjects, authorized units;

- the restrictions are introduced concerning work of closely related persons and the persons resigned from their positions; control before taking the position, financial and internal control have been enhanced; procedures for declaring incomes by declaration subjects are specified;

- the procedure for carrying out anticorruption expert evaluation of regulations has been made more specific: such evaluation is carried out by the Ministry of Justice, except for the anticorruption expert evaluation of the draft regulations submitted to the Rada by the People's Deputies, which expert evaluation is carried out by the Rada Anticorruption Committee. Anticorruption expert evaluation results must be published in case the factors that promote or may promote corruption are discovered.

- information about the persons held liable for corruption offences, except for the information about the staff of search/investigation or intelligence or counter-intelligence units, is included in the Single State Register of the Persons Who Have Committed Corruption Offences, which Register is developed and maintained by the Ministry of Justice. Regulations for this Register and the procedure for developing and maintaining the Register are approved by the Ministry of Justice.

Please also note that an important Bill No. 2990 dated 14 May 2013 stipulating criminal liability of legal entities (for money laundering, drug traffic proceeds, terrorist activities, bribery, offering/promising unlawful benefits to public officials, the persons who render public services) was adopted by the Rada and submitted on 3 June 2013 to the President for signing. If signed, it will take effect on 1 September 2014.

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