

Legal Alert – 30 December 2015

**AMENDMENTS TO THE UKRAINIAN LEGISLATION REGARDING
BANKING, LIMITED LIABILITY COMPANIES & THE UKRAINIAN-
CYPRIOT DOUBLE TAXATION AVOIDANCE CONVENTION**



Dear Colleagues, our legal team wishes you the very best for 2016! We hope to stay in touch with you, and will keep you posted on the latest legal developments in Ukraine. This is our final Legal Alert this year, but we will be back with the summary of the new tax legislation in early 2016.

Happy Holidays!

I. THE NBU BAN ON REPLACING A LENDER OR A BORROWER (INCLUDING THROUGH THE ASSIGNMENT OF A CLAIM) IN CROSS-BORDER LOAN AGREEMENTS WAS EXTENDED.

As discussed in our Legal Alert dated 9 September 2015, and in our Legal Update dated 27 October 2015, on 20 August 2015 the National Bank of Ukraine (the "NBU") introduced a ban on replacing a party (a lender or a borrower), including through the assignment of a claim, in cross-border loans. This ban was further prolonged until 4 December 2015.

On 4 December 2015 the NBU issued the Resolution of the Board of the NBU No. 863 "On Regulating the Situation on the Monetary and Currency Markets of Ukraine" ("**Resolution 863**"), in which it liberalized some of the restrictions, but kept in place the ban on replacing a party in cross-border loans and some other restrictions.

Resolution 863 prolongs through 4 March 2016 the ban on replacing a party (a lender or a borrower), including through the assignment of a claim, in cross-border loans, as well as on assignment of local loans, denominated in foreign currency, to non-resident entities. Such changes to loan agreements still cannot be registered with NBU.

According to the Resolution 863, the NBU will not register:

- amendments to loan agreements regarding the replacement of a lender and/or a borrower under cross-border loan agreements with Ukrainian borrowers; and
- assignment of rights under local loan agreements by a Ukrainian lender to a non-resident entity.

The exemptions from the above ban are allowed in the following cases:

- cross-border loan agreements where the borrower is a Ukrainian bank;
- loan agreements between Ukrainian borrowers and international financial institutions;

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- loan agreements where the change of the initial debtor or creditor is made due to its merger with the new debtor or creditor, or due to the initial debtor's or creditor's liquidation;
- transactions if the lender(s) and/or the borrower(s) are affiliated through corporate control (the NBU can decide on registration of each specific transaction on an *ad hoc* basis);
- loan agreements under which loans have been issued to a resident through participation of a foreign export credit agency.

As a separate matter, now the incoming foreign currency shall not be mandatorily sold in the amount of 75% of the incoming amount if it were received from a foreign creditor as a compensation of the Ukrainian resident's obligations towards a non-resident exporter under a foreign economic contract, provided such money was not transferred to the account of the resident, under the condition that such loans have been issued to a resident through participation of a foreign export credit agency. We assume this relaxation concerns a specific case, where the foreign entity-exporter opened an account in the Ukrainian bank.

II. MINIMUM AMOUNT OF VOTES REQUIRED FOR A QUORUM AT THE GENERAL MEETING OF A LIMITED LIABILITY COMPANY WAS REDUCED.

Article 60 of the Law "On Economic Societies" was amended to reduce the number of votes required for a quorum at the General Meeting of a Limited Liability Company (hereinafter – "LLC"). Earlier the required number was more than 60% of the Company Participants' votes. Now the required number of votes is more than 50%.

Also, the Charter of an LLC is now allowed to provide for another (smaller or higher) number of votes, than the number of votes established under the law. This particular provision is not applicable to the LLCs, in which the State is a participant.

The relevant changes were introduced by the Law No. 816-VIII dated 24 November 2015 and took effect as of 13 December 2015.

The Charters of the LLCs, which conflict with these new provisions, shall be applicable in the part, which does not conflict therewith. That is, if an LLC charter specifies that a number of votes required for a quorum is more than 60%, and if such an LLC does not have the State as its participant, the provision concerning the quorum specified in such charter will remain valid as it will not be in conflict with the law. If an LLC has the State as its participant, the provision of its charter, which specifies that the number of votes required for a quorum is more than **60%**, will become null and void, and the provision of the law, which specifies that the number of votes required for a quorum is more than **50%** will be applied. Also, the LLCs (without the State as their participant) can now amend their charters to specify a higher or a lower quorum of the General Meeting of the LLC Participants.

The amendments are also applicable to the Economic Societies (Companies) with Additional Liability.

III. AMENDMENTS TO THE UKRAINIAN-CYPRIOT DOUBLE TAXATION AVOIDANCE CONVENTION

On 11 December 2015 a protocol was signed amending the Convention between the Government of the Republic of Cyprus and the Government of Ukraine for the Avoidance of Double Taxation

and the Prevention of Fiscal Evasion with Respect to Taxes on Income dated 8 November 2012.

The key changes are as follows:

- Dividends: Currently in order to be eligible for the application of a favourable 5 % rate, the taxpayer needs to either (a) own at least 20 % of the shares in the company paying the dividends or (b) invest at least 100,000 Euro in the authorised capital of the company. After the change takes effect, the tax payer must meet both of these criteria.
- Interest: The withholding tax rate on interest payments is increased from 2 % to 5 %.
- Capital gains: Currently any gains derived from the sale of shares or other corporate rights are tax exempt. After the change takes effect, gains derived from the sale of shares or other corporate rights are tax exempt only if such shares or other corporate rights derive more than 50% of their value directly or indirectly from immovable property located in Ukraine (in case of sale of shares or corporate rights of a Ukrainian company).

The new rules can be expected to enter into force not earlier than on 1 January 2019, provided that prior to this date the changes are ratified by the Ukrainian and Cypriot parliaments.