

Legal Alert – 31 July 2012

## ANTICORRUPTION LEGISLATIVE DEVELOPMENTS



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We continue to keep you updated on anticorruption legislative developments.

The Parliament of Ukraine has adopted the Law “On Code of Conduct” (for state officials) No. 4722-VI which came into effect on 13 July 2012 (the “**Code of Conduct**”).

On 10 July 2012 the Ministry of Justice of Ukraine (“**MinJust**”) issued the Clarification (the “**Clarification**”) to the Law of Ukraine “On the Fundamentals of Prevention and Combating of Corruption in Ukraine”.

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For more details please find the information below.

**I. Code of Conduct.** The Code of Conduct defines the main rules of behavior of persons authorized to perform responsibilities of the state or any local government (“**Government Officials**”), while performing their official duties, in particular:

- 1) **Legitimacy** – Government Officials should fully comply with the requirements of the law and generally accepted ethical standards of conduct.
- 2) **Priority of interests** – all Government Officials should act only in the interests of the state or the community whose interests they represent.
- 3) **Political objectiveness** - Government Officials should act without any political subjectiveness, their own political prejudice, or opinions. This does not apply to persons who occupy political or elected posts.
- 4) **Tolerance** - Government Officials should be tolerant and respect the political views, and the ideological and religious opinions of other persons.
- 5) **Objectiveness** - Government Officials should act objectively in spite of own interests, political or religion opinions, or any other views or beliefs.
- 6) **Competence and efficiency** - Government Officials should perform their duties consciously, competently, timely and are not allowed to abuse and/or inefficiently use state or community property.
- 7) **Positive Reputation of the Government** - Government Officials should promote positive reputation of the government and public authority and promote the strengthening of peoples’ trust in the government.
- 8) **Privacy** - Government Officials should not disclose or use confidential information which becomes known or available due to the performance of their duties, except as established by law.
- 9) **Avoidance of execution of illegal decisions or orders** - Government Officials should refrain from complying with decisions or orders, which are contrary to the law or can harm the rights, freedoms or interests of persons, legal entities, or state or public interests, notifying in writing their superiors.
- 10) **Prevention of conflict of interests** - Government Officials should use all available methods to prevent the conflict of interests.
- 11) **Prevention of obtaining improper advantages** - Government Officials should refrain from obtaining improper advantages or gifts (donations). This provision does not apply when a gift presented to a Government Official is in line of general notion of hospitality and the value of such gift does not exceed 50% of the minimal wage as fixed on the day when the one-time gift was accepted (from 1 July 2012 – approx. 55 Euro), provided that the total cost of the gifts received by the same Government Official from one source during a year doesn’t exceed the minimal wage as fixed on 1 January (in 2012 - 1073 UAH, approx. 100 Euro).

**Liability for violations of rules of ethical conduct.** Government Officials are liable for the violations of the Code of Conduct. The legislation provides for disciplinary, administrative, criminal and material liability, taking into account the specifics of the legal status of Government Officials, defined by the Constitution of Ukraine and by the laws of Ukraine.

**II. MinJust Clarification.** MinJust issued the Clarification for the purpose of providing additional explanations on the Law of Ukraine "On the Fundamentals of Prevention and Combating of Corruption in Ukraine" (the "**Law**").

**Background check of applicants.** The Law<sup>1</sup> specifies rules for conducting background checks of people who apply for positions associated with the responsibilities of state or local governments. In practice, however, a number of problems and delays arose with the processing of the background checks, which are addressed in the Clarification.

**Publication of income statements.** Under the Law income statements have to be published in an official publication (newspaper, journal) of relevant state bodies /local authorities within 30 calendar days from the date of filing. However, not all state bodies and authorities have respective publications available. In addition, the legislation does not clearly define the source of funding for the publication of this data. One solution to such problems could be the possible disclosure of such information on the official websites of the authorities. This measure has already been proposed in the Draft Law "On Amending Certain Legislative Acts of Ukraine in connection with the adoption of the Law of Ukraine "On Information" (as amended) and the Law of Ukraine "On Access to Public Information" № 10455 dated 11 May 2012 (it is currently pending in the Verkhovna Rada).

**Definition of "official".** The definition of "official" should be addressed on the basis of law enforcement practices, which stipulate that the main criteria for classifying a person as an official are the availability of organizational-administrative or administrative-economic responsibilities in his/her activities. Under the court practice<sup>2</sup> the organizational-administrative responsibilities shall be responsibilities for the managing of industry, staff, and production of individual employees at enterprises, institutions or organizations of any kind of ownership. These responsibilities are performed, in particular, by heads of ministries and other central executive bodies, state, collective or private enterprises, institutions and organizations, their deputies, heads of structural units (heads of departments, heads of divisions, laboratories, etc.), their deputies, and persons who manage areas of work (masters, foremen, team leaders, etc.). Administrative-economic responsibilities are understood as responsibilities for managing or the disposal of state, collective or private property (establishing procedures for the storage, processing, implementation of control over these operations, etc.). Heads of economic, supply, financial departments and services, heads of warehouses, shops, workshops, studios, their deputies, and heads of divisions of enterprises, departmental inspectors and controllers are vested with such authority.

**Definition of "legal entity of public law".** According to part 3 of Article 81 of the Civil Code of Ukraine, a legal entity of public law is established either by a regulatory act of the President of Ukraine, a government agency, the authority of the Autonomous Republic of Crimea or a local authority.

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<sup>1</sup> Art.11 of the Law and Order of the President of Ukraine № 33 dated 25 January 2012 On Procedure of conducting a background check information about individuals who apply for positions related to the performance of functions of the state or local government.

<sup>2</sup> Resolution of the Supreme Court of Ukraine from № 5 "On judicial practice in cases of bribery" dated 26 April 2002.

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