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## Legal Alert – 13 June 2011

### INCOTERMS-2010

On 26 May 2011 a Presidential Decree No. 589/2011 took effect, which abolished two earlier Presidential Decrees (Decree No. 567/94 dated 4 October 1994 and Decree No. 505/95 dated 1 July 1995) establishing that Ukrainian business entities entering into contracts governed by Ukrainian law had to apply Incoterms (international unification rules for various basis of delivery terms that are widely used in international commerce) and provided for publishing of such rules in the "Uriadovyi Kuryer" newspaper.

Incoterms is updated approximately every 10 years, and the last version of Incoterms published in "Uriadovyi Kuryer" was Incoterms-2000.

On 1 January 2011 new version Incoterms-2010 took effect (International Chamber of Commerce publication No. 715), but because older Incoterms-2000 were the last to be published in "Uriadovyi Kuryer" newspaper, Ukrainian business entities could not apply the new version.

We note that besides the traditional application of Incoterms in international contracts for sales of goods, in Ukraine Incoterms are also applied in domestic contracts governed by Ukrainian law, which is expressly stipulated by p. 4 of Art. 265 of the Commercial Code of Ukraine.

We note that after Decree No. 589/2011 was published the problem connected with impossibility of application of new version of Incoterms-2010 has been formally eliminated.

At the same time Decree No. 589/2011 obliged the Cabinet of Ministers to elaborate and submit to the Parliament, within three months, a Bill on amendments to some legislative acts regarding application of Incoterms. Therefore, it is quite possible that Ukraine will soon have a Law providing for a special procedure for applying Incoterms rules, in particular those which are not published in the official publication.

As for contracts entered into based on Incoterms-2000, if parties to a contract agreed upon application of that version of the rules in the contract, they may continue their cooperation based on respective terms.

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Incoterms-2010 stipulate application of 11 commercial rules (instead of 13 rules stipulated by Incoterms-2000). Allocation of costs between a seller and a buyer in the course of goods delivery upon EXW, FCA, FAS, FOB, CPT, CIP, CFR, CIF, DDP terms of Incoterms-2010 is the same as allocation of such costs under similar goods delivery conditions according to Incoterms-2000.

Incoterms-2010 contain 2 groups of rules (Incoterms-2000 had 4 groups):  
1) rules for any modes of transport;  
2) rules for sea and inland waterway transport.

Also, Incoterms-2010 introduce new terms: DAT (delivered at terminal) and DAP (delivered at place). Said terms have replaced DAF, DES, DEQ and DDU terms stipulated by Incoterms-2000.

Upon DAT rule a seller must ensure transportation of goods to the terminal agreed upon by the parties and unloading of such goods at that terminal (same as upon DEQ rule of Incoterms-2000). At the same time the "terminal" in Incoterms-2010 means any place, both sheltered and not, such as quay, train, container yard, automobile or railway terminal or cargo terminal at an airport. The seller is not obliged to enter into insurance contract.

Upon DAP rule a seller must ensure transportation of goods to the place agreed upon by the parties without unloading the goods from the transport vehicle at such place (like in DAF, DES and DDU rules of Incoterms-2000). A seller is not obliged to enter into insurance contract.

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