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## **Legal Alert – Major Legislative Changes in Investment, Currency and Banking Regimes 7 December 2009**

The Law of Ukraine “On Amending Certain Laws of Ukraine with the Purpose of Overcoming Negative Impacts of the Financial Crisis” (hereinafter – the “**Law**”) took effect on 24 November 2009, introducing a number of important changes to Ukraine’s investment and currency regimes. At the outset, we note that some of these changes will negatively affect the business environment and will result in increased bureaucratic red tape and unnecessary barriers and costs in the areas of currency regulation, investment and the financial sector. We provide a brief overview of the key changes introduced by the Law below.

It is also important to note that a new Draft Law on Amending Certain Legislative Acts of Ukraine (related to overcoming negative consequences of financial crisis) No. 5378 dated 4 December 2009 was just introduced to the Verkhovna Rada (the Parliament), which proposes to un-do the negative effects of the Law. The Law, however, already took effect, and the pending new Draft Law must be adopted as soon as possible in order to minimize the negative effects of the Law.

### **I. Currency Control Regulation**

The Law tightens the archaic rule on the mandatory timeframe for receipt by Ukrainian businesses of foreign currency proceeds from sales (in case of export contracts) or goods (in case of import contracts). This rule was designed in early 90-s, allegedly to prevent capital flight, and while failing in this task it put a tremendous financial burden on legitimate business operations. Initially, the mandatory timeframe imposed on Ukrainian businesses for bringing into Ukraine hard currency proceeds (or goods, in case of import) was merely 90 days, but later this rule was relaxed by extending this timeframe from 90 to 180 days. Nevertheless, the business community still insisted on cancellation of this rule altogether. Instead, the Law restores the draconian 90-day timeframe and increases the sanctions for noncompliance. For example, a Ukrainian exporter, after exporting goods to a foreign customer, is responsible for obtaining full payment from the customer for these goods within 90 days. In case the customer fails to provide full payment for any reason, the Ukrainian exporter is subject to severe fines and sanctions.

In particular, according to the Law, the mandatory timeframe for settlement under foreign-economic contracts is reduced from 180 to 90 days, meaning that in import transactions the goods/services must be received by a Ukrainian importer within 90 days after the date of the advance payment, and in export transactions foreign currency proceeds should be received by a Ukrainian exporter within 90 days after the date of delivery of the goods/services. In case of breach of this 90-day rule, the Ukrainian party shall be subject to a rather severe penalty of *0.3% of the amount of the delayed payment or delivery for each day of the delay*.

It is not expressly stated in the Law whether the 90-day timeframe will retroactively apply to existing foreign-economic contracts, but such risk cannot be excluded.

## **II. Foreign Investment Regime**

The Law restores the burdensome rule on mandatory conversion of monetary foreign currency investments into Ukrainian companies into local currency. This rule was first introduced by the National Bank of Ukraine in late 2004, creating severe obstacles to foreign investment, and was successfully challenged in court by investors. Later, this rule was cancelled. The Law now again requires monetary foreign currency investments to be made only through investment accounts opened in Ukrainian banks, with mandatory conversion in Ukrainian Hryvnias (UAH). This rule also extends to purchasing ownership interests (in limited liability companies) and shares (in joint-stock companies) because such actions are also considered investment activity. In other words, investment operations, including with securities, between non-residents outside Ukraine, must be “domesticated” by the same procedure of opening “investment” accounts in Ukraine, converting foreign currency into UAH, etc.

State registration of foreign investments now becomes mandatory for monetary contributions. While the procedure of registration of in-kind investments remains the same (i.e. by local state administrations), monetary investments will have to be registered according to a procedure yet to be adopted by the National Bank of Ukraine (NBU). Therefore, before this procedure becomes effective, such mandatory registration of monetary foreign investments technically will not be possible. Even though there are no penalties envisaged for non-compliance with the registration requirement, in practice such non-registration is likely to result in difficulties in connection with repatriation of the investment.

These changes to the foreign investment regime will be effective for the period from 24 November 2009 through 1 January 2011.

## **III. Loans from Non-residents**

The Law prohibits accelerated payments (early repayment) of loans taken by Ukrainian borrowers in foreign currency from non-resident lenders. This provision applies retroactively, i.e. not only to loan agreements entered into after the effective date of the Law, but also to currently effective loan agreements entered into before this Law came into effect. Also, the NBU will not register amendments to loan agreements reducing the term for repayment of the loan obligations. These provisions will be effective until 1 January 2011.

## **IV. Other Changes**

The Law introduces some changes to taxation laws, and in particular establishes a cash method of tax accounting of income received by banks from loan operations.

It introduces a temporary (through 2010) moratorium on evictions of individual mortgagors from mortgaged residential property in cases when such property is the only place of residence of such a mortgagor and provided that interest payments are not more than two months overdue, and a debt restructuring agreement is entered into between the borrower and the mortgagee bank.

The Law prohibits granting loans in foreign currency to individuals with the exception of loans taken for the purposes of payment for medical care and education abroad.