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Summary of Key Legal Developments in Ukraine: 2012 - 2013

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This Summary outlines the most significant recent and proposed changes to the Ukrainian law affecting business and investment environment.

1. A new system for registering rights to real estate took effect on 1 January 2013

- According to the Law dated 1 July 2004 "On the State Registration of Property Rights to Real Estate and Encumbrances Thereof", the State registration of all property rights to real estate and encumbrances is done by the single authorized body – the **State Registration Service** (previously, the State registration of property rights to real estate and encumbrances in Ukraine was the responsibility of various ministries and departments).
- The new registration system implies transition from the previous act/title system of registration of rights (registration of transactions followed by registration of rights) to a title system. The title system means that the title and other property rights to real estate (the right to rent, easement, superficies, etc.), as well as encumbrances (mortgage, pledge, etc.) will arise **as of the time of the State registration of these rights (encumbrances)**.
- All information concerning the registration of rights to real estate and encumbrances shall be recorded in a single database – the **State Register of Rights to Real Estate** (previously, there were several registers for the registration of real estate rights and encumbrances, in particular, the Register of Titles to Real Estate, the Single Register of Prohibitions of Alienation of Real Estate, the State Register of Mortgages).
- The rights that arise as a result of notary acts with respect to real estate can also be registered by notaries (the State registration of rights can be carried out simultaneously with the notarization of transactions).
- There is a single procedure for registering rights to land plots and the real estate facilities located thereon.

2. A new procedure for registering land plots as objects of title to real estate took effect

- Law dated 7 July 2011 "On the State Land Cadastre", which took effect on 1 January 2013, stipulates that whereas the registration of rights to land plots has become the responsibility of the State Registration Service and notaries, the only responsibility of the bodies of the State Agency of Land Resources in this respect is to form land plots, and the information about same will be stated in the State Land Cadastre (previously, they also performed the State registration of rights to the land plots).

- An excerpt from the State Land Cadastre concerning a land plot (the excerpt will include a cadastral plan of the land plot) will certify the formation of the land plot.
- **Title Certificate** with respect to a land plot, not the State Act of Title to Land as was the case previously, now certifies the title to the land plot (the previously issued State Acts of Title to Land and the other documents certifying rights to land are still valid).
- The State Land Cadastre will contain data not only about land plots (cadastral number, location, area, rated estimation, limits, etc.), but also land use restrictions, cadastral zone, national frontier and the lands of administrative and territorial units (including estimated soil fertility).

3. Tax to be levied on real estate objects other than land plots took effect on 1 January 2013

The tax to be levied on real estate objects other than land plots was initially expected to take effect on 01.01.2012, then it was postponed until 01.07.2012 and, after another postponement, this provision of the Ukrainian Tax Code took effect on 01.01.2013.

- According to the Tax Code, the payers of the real estate tax are **individuals and legal entities** - owners of residential real estate, including non-residents.
- Tax rates are set by local authorities per sq. m **of residential area** in residential premises, but the rates cannot be higher than the following:
 - for apartments of 240 sq.m and residential houses of 500 sq.m - 1% of the minimal salary established as of 1 January of a tax year¹, i.e. **UAH 10,47 (≈ EUR 1,04) per sq.m of residential area.**
 - for apartments of more than 240 sq.m and residential houses of more than 500 sq.m - 2,7% of the minimal salary as of 1 January of a tax year, i.e. **UAH 28,27 (≈ EUR 2,83) per sq.m of residential area.**
- A specific feature of calculating the real estate tax for individuals is a tax privilege - taxation base being reduced² by:
 - 120 sq.m – for an apartment;
 - 250 sq. m - for a residential house.
- One year is the tax period for the payment of the real estate tax.
 - As of today, Verkhovna Rada has approved some amendments to the Tax Code of Ukraine concerning the tax to be levied on real estate objects, which have been sent to President's signing.

¹ As of 1 January 2013, the minimal salary is UAH 1047 (≈ EUR 104).

² If an individual owns several real estate objects, this privilege is applicable to only to the one where the individual is registered, or, upon the individual's request, to another object.

4. Tax privileges for the IT Sector took effect on 1 January 2013 for 10 years

According to the Law dated 05.07.2012 "On Amendments to Ukrainian Tax Code Section XX "Transitional Provisions" Concerning the Specifics of Levying Taxes on the Persons Operating in Software Industry", **as of 01.01.2013 and until 01.01.2023:**

- VAT exemption will cover software supply operations, such software products being:
 - computer programming results in the form of an operating system, system, application, entertainment or education software (components of same), as well as in the form of Internet sites or online services;
 - cryptographic information protection means.
- Profit tax rate for the persons operating in software industry is 5%³.
- The profit tax privilege will be applicable to the holders of a special certificate which can be received through a procedure of registration with a tax authority.
- According to the law, software production industry activities include:
 - software production;
 - computer programming;
 - IT consulting;
 - computer equipment control;
 - creation and introduction of information and technical complexes, systems and networks;
 - data processing, placing information on websites.

5. Privileges for Investment Projects in Priority Industries

The Law dated 06.09.2012 "On Promoting Investment Activities in Priority Industries to Create New Jobs" and related changes to the Ukrainian Tax and Customs Codes took effect on 1 January 2013.

- According to this Law, priority industries are those that provide the society with cutting-edge competitive environment-friendly products, high-quality services and implement the State's policy of development of production and export potential, as well as create new jobs. Such priority industries are approved by the Cabinet of Ministers of Ukraine.
- State support is granted to the persons involved in investment activities that implement investment projects approved by the Cabinet of Ministers of Ukraine in the priority industries.

6. Ukraine and Cyprus have signed the new Tax Convention

- The taxes to be covered by the avoidance of double taxation and prevention of tax evasion concerning income taxes Convention dated 08.11.2012 (the "**Convention**") include:
 - in Ukraine: enterprise profit tax and individual income tax;

³ At this time, the standard profit tax rate is 19%; effective 1 January 2014, it will be 16%.

- in Cyprus: income tax; corporate profit tax; special Republic defense fee and property alienation income tax.
- Compared to the current Soviet-Cyprian Convention, which did not stipulate taxation of interests, dividends and royalty, the new Convention states the following respective rates: 2%, 5/10%, 5/15%. The new Convention also includes an amended procedure for charging taxes from permanent representative offices.
- As of today, the Convention has been ratified by Verkhovna Rada and sent for President's signing; it is expected to take effect on 1 January 2014.

7. The new Ministry of Incomes and Charges has been created

Pursuant to Edict No. 141/2013 of the President of Ukraine dated 18 March 2013, the new Ministry is the legal successor to the State Tax Service of Ukraine, the State Customs Service of Ukraine and, partly, the Pension Fund of Ukraine.

8. The National Bank of Ukraine has reduced the timeframe for returning currency proceeds and prescribed obligatory sale of 50% of currency proceeds

According to National Bank of Ukraine Board Resolutions No. 475, No. 476 and No. 479 dated 16.11.2012, as well as No. 163 and No. 164 dated 14.05.2013:

- settlements with residents of Ukraine with respect to exports and imports must be accomplished within 90 calendar days (previously - 180 days).
- 50% of the foreign currency (group 1 of the Foreign Currencies Classification, as well as Russian Rubles) received by residents as export proceeds must be sold (converted into local currency) at the interbank currency market of Ukraine.
- The foreign currency (group 1 of the Foreign Currencies Classification, as well as Russian Rubles) received for the benefit of individuals (residents and non-residents) in an amount equal or more than the equivalent of 150 thous. UAH per month (approx. EUR 15 thous.) must be sold (converted into local currency) at the interbank currency market of Ukraine.

These restrictions will remain effective **until 19.11.2013**, but on practice may be prolonged further.

9. Amendments to the Law of Ukraine "On Production Sharing Agreements"

Law dated 2 October 2012 "On Amendments to Certain Legislative Acts of Ukraine Concerning the Implementation of Production Sharing Agreements" ("**PSA Amendments Law**") in introduced substantive amendments to the Law "On Production Sharing Agreements" ("**PSA Law**").

- The PSA Amendments Law specifies the procedure for converting an existing Subsoil License into a PSA without a tender ("**PSA Conversion**");
- The PSA Amendments Law restores the provision concerning the waiver of sovereign immunity by the State, which was stipulated in the former version of the PSA Law but was

subsequently invalidated by the Constitutional Court. This time, the PSA Amendments Law makes such a waiver a right, but not an obligation of the State;

- The PSA Amendments Law added Unconventional Hydrocarbons to the natural resources eligible for PSAs. Furthermore, the PSA Amendments Law allows to establish in an individual PSA specific provisions applicable to Unconventional Hydrocarbons, which may differ from the legislation applicable to conventionals, and which will prevail in case of a conflict;
- The investors' right in a PSA to change the shape (geographical co-ordinates) of the Subsoil Area covered by the PSA is reinforced, and no changes to the PSA itself are necessary in this case;
- The PSA Amendments Law grants more flexibility to investors in a multilateral PSA to re-arrange their relations (e.g., to change their stakes in shared production).

By introducing the amendments to currency legislation, the PSA Amendments Law exempts PSAs from various currency control restrictions.

10. Law dated 17 May 2012 “On Sea Ports of Ukraine” took effect on 14 June 2013

- The Law introduces new definition of the “port” –it is no longer a state-owned enterprise, but now qualifies as a territory (land plots) and dock space (aquatic area). This means that Ukrainian legislation regulating State enterprises will not apply to sea ports.
- Among major novelties of the Law is the possibility to privatize an integral property complex of the sea port with the exception of strategic facilities of port infrastructure (according to the legislation effective in the past, a sea port could be solely a state-owned enterprise);
- Private investments in port infrastructure facilities owned by the state in the territory of the sea port are effected based on the public-private partnership agreements, joint operation agreements, lease agreements and other types of investment agreements to be entered into in compliance with specific procedures established by the laws of Ukraine;
- The Law provides for the possibility to lease sea port berths (for a period of up to 49 years).

11. As of 17 December 2012 the registration of legal entities and individuals - entrepreneurs is certified by a single document

- The Verkhovna Rada of Ukraine adopted Laws dated 24 May 2012 "On Amendments to Some of the Laws of Ukraine Concerning the Registration of Legal Entities and Individuals – Entrepreneurs" and "On Amendments to the Ukrainian Tax Code Concerning the Improvement of Some Tax Provisions", the main objective being to implement "single window" system during the State registration of subjects of business activity and their registration with the State statistic authorities, Tax Service and the Pension Fund of Ukraine based on the single document - **excerpt from the Single State Register of Legal Entities and Individuals - Entrepreneurs** (previously, the registration was certified with the certificates issued by the statistic authorities, Tax Service and the Pension Fund of Ukraine respectively).

- The information concerning the registration of legal entities and individuals will be submitted automatically to the Single State Register of Legal Entities and Individuals - Entrepreneurs from departmental registers of the statistic authorities, the State Tax Service, the Pension Fund of Ukraine on the day of the registration.

12. Law dated 05.07.2012 "On Employment" took effect on 1 January 2013

- The Law *inter alia* states that the subjects of business activity - employers that hire workers to perform works in Ukraine for other employers (i.e. recruiting and outsourcing companies) under employment agreements must operate on the basis of a permit to be issued by the Social Policy Ministry. The procedure for hiring workers to perform works in Ukraine for other employers is established by the Cabinet of Ministers of Ukraine.
- The Law states additional conditions for the activities of the subjects of business activity that render intermediary services for employment abroad.
- The Law prohibits *inter alia*: (i) stating age restrictions in vacancy announcements; (ii) to offer works based on gender, except for the specific works that can only be done by the persons of specific gender; (iii) to mention requirements that imply an advantage for specific gender.

13. Law "On the Fundamentals of the State Language Policy" took effect on 10 August 2012

The Law sets the fundamental guidelines of the State's language policy (previously the guidelines were stipulated in the 1989 Law of the Ukrainian Soviet Socialist Republic "On Languages in the Ukrainian Soviet Socialist Republic").

- According to the Law, Ukrainian is the national language in Ukraine.
- The national language, regional languages or languages of minorities, other languages are freely used in economic and social activities of associations of individuals, private enterprises, institutions and organizations, individuals – subjects of business activity and individuals.
- Internal regulations of enterprises, institutions or organizations of all forms of ownership must not include any provisions that preclude or limit the use by employees of the national language, Russian or other regional languages or languages of minorities. Other languages can also be used by enterprises.
- In certain cases, in particular operation of public authorities and local self-government bodies, regional languages and languages of minorities along with the national language must be used.
- Ukrainian remains the exclusively language of the Armed Forces of Ukraine and other military units, sessions of the Verkhovna Rada of Ukraine, its committees and commissions (although the speakers may use other languages); legislative drafts must be submitted to the Verkhovna Rada of Ukraine in the national language.

14. Effective 1 March 2013 import of medicines into Ukraine is subject to licensing

- According to the amended Article 17 of the Law "On Medicines", which took effect on 01.03.2013, medicines can only be imported in Ukraine if there is a license authorizing the import, which license is issued to the importer in compliance with the statutory procedure.
- State Medicines Service of Ukraine is the body responsible for the licensing.
- Requirements to be met by licensees are set forth in the Licensing Conditions for Medicines Import Economic Activities, approved by the Ministry of Healthcare Order No. 143 dated 20.02.2013 include: availability of material and technical facilities, personnel qualification, quality assurance to meet the requirements of import regulations, storage, wholesale trade in medicines, compliance with the legislation provisions concerning the quality of medicines when they are imported in Ukraine, transportation, storage, wholesale, availability of an authorized person(s) responsible for the confirmation of a quality certificate with respect to a series of a medicine and for the authorization of its production, etc.

15. Personal Data Protection Regime to be Changed

- The Law "On Personal Data Protection" took effect on 1 January 2011 and it regulates the use of personal data, stipulates certain rights and guarantees to subjects of personal data and establishes data protection obligations for personal data holders.
- According to the amendments that took effect on 20 December 2012, cross-border transfer is only allowed if the foreign country to which personal data is transferred secures the proper personal data protection. The States - Parties to the European Economic Area, as well as the countries that signed the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data are treated as having the required level of personal data protection.
- The most recent amendments, which were adopted by the Verkhovna Rada substantially liberalize personal data protection system. These pending amendments cancel the registration requirement for Personal Databases, stipulate liquidation of the State Service of Ukraine for Personal Data Protection and the State Register of Personal Databases, designating the Human Rights Commissioner of the Verkhovna Rada of Ukraine (the "**Ombudsman**") as the authorized body for personal data protection; instead of personal databases registration, the owners of personal data must only notify the Ombudsman regarding the processing of personal data, which is of particular risk to the rights and liberties, and this information must be posted on the Ombudsman's official webpage. As of today, amendments have been sent for President's signing.

16. Law dated 20.11.2012 "On Single State Demographic Register" took effect

- The Law "On Single State Demographic Register and Documents that Confirm Citizenship of Ukraine, Identify Personality or Special Status of a Person" took effect on 6 December 2012.
- In accordance with the Law the Single State Demographic Register ("**SSDR**") will be created and functioning in Ukraine. The SDDR will contain information about an individual and documents that are executed with the use of the Register. The information in the

Register is confidential. Every person whose personal data (information about the person) is included into the Register has the right to receive information from the SSDR.

- The Law on SSDR provides for the transfer to the biometric system of 15 document types, including, in particular, Ukrainian and international passports, diplomatic and service passports, permanent and temporary residence permit, migrant card.
- All types of biometric documents must contain a unique SSDR record number.

17. A new Criminal Procedural Code of Ukraine took effect on 20 November 2012

- Criminal proceedings are deemed initiated as of the time a criminal offence statement is filed, and the applicant automatically becomes the victim immediately when a statement is filed with militia authorities. Information about a crime is stated in the single register of pre-court investigations.
- Only those persons who have committed violent acts or crimes resulting in death will be held in custody. Other persons will sign written undertakings not to leave certain places, will be kept under house arrest with electronic monitoring (the suspect will carry an electronic bracelet) or will be released on bail. Preventive punishment will be determined exclusively by court.
- Only a lawyer listed in the Single Register of Lawyers can act as a defense counsel for the accused. Close relatives or independent lawyers not listed in the Single Register of Lawyers cannot no longer act as defense counsels for the accused.
- Two professional judges and three jurymen may participate in court proceedings. This provision is only applicable to the proceedings in the crimes punishable by life imprisonment. An acquittal verdict of a jury is final and cannot be challenged.
- During court sessions, the accused will now be kept behind glass, not in cages. Investigations cannot be conducted at night (22:00 – 06:00) with certain exceptions.
- Timeframes for pretrial investigations and court proceedings have been set: for average and minor crimes - six months, for grave and especially serious crimes - 12 months.
- Additional investigations have been abolished: if a defendant is not proven guilty, the court must state the “not guilty” verdict. The list of the grounds for the court of appeal to return a case for a new trial in the first instance court has also been reduced.
- Interrogations can be carried out remotely - by means of a videoconference.

18. A Law concerning criminal liability of legal entities has been passed

- The Law "On Amendments to Certain Legislative Acts of Ukraine Concerning the Introduction of Criminal Law Measures With Respect to Legal Entities" stipulates a list of the crimes which, if committed by the director, founder, participant or another authorized person of a legal entity on its behalf, will trigger criminal law measures with respect to the legal entity, in particular:
 - legalization of the incomes derived by criminal methods (money laundering);

- receiving a bribe, illegal enrichment, commercial bribe to an official of a private-law legal entity, regardless of corporate form, bribe to a person who renders public services, offering or giving a bribe, abuse of influence.
- The criminal-law measures are not applicable to legal entities, which are public authorities, the authorities of the Autonomous Republic of Crimea, local self-government authorities, the organizations created by same in compliance with the established procedure which are maintained exclusively at the cost and expense of the State budget or a local budget, obligatory State social insurance funds, the Individuals' Deposits Guarantee Fund and international organizations.
- The criminal-law measures applicable to legal entities include:
 - fine from 5 to 75 thous. minimal individuals' tax-free incomes;
 - confiscation of property;
 - liquidation.

The Law enters into force 1 September 2014.

19. Offering/getting an undue advantage (bribes) is subject to exclusively criminally liability

- Law dated 18.04.2013 "On amendments to certain legislative acts of Ukraine on bringing national legislation in conformity with the standards of Criminal Convention on Combating Corruption" took effect on 18.05.2013.
- Articles providing for responsibility for offering and getting an undue advantage are excluded from Code of Ukraine on Administrative Offences.
- Criminal Code of Ukraine is amended by replacing the term "bribe" with the term "undue advantage".