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ANTI-CORRUPTION LEGISLATIVE DEVELOPMENTS

In October 2014 the Verkhovna Rada of Ukraine adopted and the President signed a new anticorruption package consisting of 4 laws:

(1) Law “On Fundamentals of the State Anti-Corruption Policy (Anticorruption Strategy) in 2014 - 2017” (took effect on 26 October 2014) (the “**Anticorruption Strategy**”);

(2) Law “On Preventing Corruption” (took effect on 26 October 2014 to become effective on 26 April 2015);

(3) Law “On the State Anti-Corruption Bureau” (to take effect on 25 January 2015);

(4) Law “On Amending Certain Legislative Acts of Ukraine Regarding the Identification of Ultimate Beneficiaries of Legal Entities and Public Persons” (to take effect on 25 November 2014).

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(1) Anticorruption Strategy

The Anticorruption Strategy is an overall strategic document outlining key measures to prevent and combat corruption, which should provide a basis for further reforms in this area (such as defining and implementing anti-corruption policy; preventing of corruption in State and local bodies, during public procurement, in courts, in criminal justice bodies, in private sector; ensuring access to the information owned by public State bodies; ensuring punishment for corruption; shaping a negative attitude to corruption in the society, etc.).

(2) Law “On Preventing Corruption”

The important practical measures introduced by this Law include:

(a) setting the legal grounds for the operation of the **National Anticorruption Agency** (a collegiate body consisting of 5 members), the special-status central executive authority that will ensure the development and implementation of the State anticorruption policy;

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(b) amending the list of persons liable for corruption (e.g. officials of foreign States and international organizations were excluded from the list);

(c) providing more detailed guidelines with regards to gifts:

- the list of the persons subject to gift restrictions includes (i) the persons authorized to perform the responsibilities of the State or local self-governed bodies (the President, Ministers, Deputies, judges, etc.) and (ii) the persons regarded as being authorized to perform the responsibilities of the State or local self-governed bodies (officers of public-law legal entities and persons who are not public servants or officials of local government but render public services (auditors, notaries and appraisers, as well as experts, arbitration managers, independent brokers, members of labor arbitration tribunals, arbitrators in the time of performance of these functions, other persons in cases established by law));

- gift prohibition covers all cases when the gifts are related to the person's official position (as the person's decisions may be expected in the future)¹ and if the person who gives a gift is a subordinate;

- the persons subject to gift restrictions may accept the gifts that fall within the generally accepted notions of hospitality, apart from the cases listed above, provided that the values of such gifts do not exceed one minimal wage as of the day when the gift was accepted (effective 1 January 2014, the minimal wage in Ukraine is UAH 1218 (or approximately USD 77)), one time, and the aggregate value of such gifts received from one source within one year does not exceed two minimal subsistence levels set for working persons as of 1 January of the current year (effective 1 January 2014, one minimal subsistence level in Ukraine is UAH 1218 (or approximately USD 77));

- if an unlawful benefit or gift is proposed, the persons who are subject to gift restrictions must take the following steps immediately: (i) reject the proposal; (ii) identify, if possible, the person that has made the proposal; (iii) involve witnesses, if possible, including employees; (iii) notify the management in writing. If the person who has found in his/her official premises or has received an item that can be treated as an unlawful benefit or a gift, he/she must notify the management in writing immediately, but no later than within one business day.

(d) introducing substantial amendments regarding prevention of corruption in the activities of legal entities, including:

- legal entities must ensure the development and implementation of the steps that are necessary and reasonable for the purposes of preventing and counteracting corruption in legal entities' operations;

- legal entities' officials and officers, other persons who do works and have labor relations with legal entities must: (i) not commit nor take part in corruption offences related to legal entities' operations; (ii) not act in a manner that can be treated as readiness for the corruption offences related to legal entities' operations; (iii) immediately notify the official responsible for the prevention of corruption in legal entities' operations, the legal entity's director or the founder (participants) of any instances of instigation of the corruption offences related to legal entities' operations; (iv) immediately notify the official responsible for the prevention of corruption in legal entities' operations, the legal entity's director or the founder (participants) of corruption or

¹ Under previous edition of the Law "On the Fundamentals of Corruption Prevention and Counteraction" the officials were forbidden to receive gifts as a reward for decisions, actions or lack of action in the interests of the gift-giver, adopted or performed both directly by such persons and with their concurrence by other officials and bodies.

corruption-related offences by other employees of the legal entity or other persons; (v) immediately notify the official responsible for the prevention of corruption in legal entities' operations, the legal entity's director or the founder (participants) of an actual or potential conflict of interests;

- the following legal entities are under obligation to adopt Anticorruption Policy (i.e. a set of rules, standards and procedures to be used in discovering, counteracting and preventing corruption): (i) State and municipal enterprises, business companies (where the State's or municipal ownership interest is above 50%), where average employee number in a reported (financial) year is above 50 persons, and gross proceeds from sales of products (works, services) in that period is above UAH 70'000'000; (ii) the legal entities that are involved in previous qualifications, purchase procedures pursuant to the Law of Ukraine "On Public Procurement". For the purposes of implementing the Anticorruption Policy, such legal entities must create a special position of the Anticorruption Policy Authorized Person. The Anticorruption Policy must be discussed with the company's employees and should be publicly available; its provisions must be included in employment agreements, internal labor regulations, as well as, at the company's discretion, in agreements with contractors.

(3) Law "On the State Anti-Corruption Bureau"

This Law provides for setting up of the **National Anti-Corruption Bureau of Ukraine** (the "**Bureau**"): the State law-enforcement body to be responsible for the prevention, discovery, termination, investigation and disclosure of corruption offences, as well as prevention of new offences. The purpose of the Bureau is to counteract the criminal corruption offences committed by the senior officials who are authorized to carry out the responsibilities of the State or local self-government authorities, which offences undermine national security. The Bureau will have its central office and local offices which will include information, analytical, research, technical and investigation units, the units that will identify the property that can be collected, quick-reaction units, departments that will ensure security of the persons involved in criminal proceedings, represent interests in foreign jurisdiction bodies, expert and other units.

The Bureau will be directed by a Director to be appointed with the approval of the Verkhovna Rada of Ukraine and dismissed by the President of Ukraine.

The Verkhovna Rada of Ukraine, provided that it has reasonable grounds and a request supported by at least 150 People's Deputies of Ukraine, may issue a "no confidence" statement to the Bureau Director, thus triggering his/her resignation.

(3) Law "On Amending Certain Legislative Acts of Ukraine Regarding the Identification of the Ultimate Beneficiaries of Legal Entities and Public Persons"

This Law requires the companies to identify their ultimate beneficiaries and provide information about them to the State Registrar.

The ultimate beneficiary is defined as an individual who, regardless of formal ownership, is able to have a decisive impact on the management or business activities of a legal entity either directly or via other persons, particularly by exercising the right to possess or use all or a significant part of the assets, the right to have a decisive impact on the formation of membership, voting results, as well as implementation of the transactions that provide for the opportunity to control business operation conditions, to issue binding instructions or act as a management body, or is able to influence based

on a direct or indirect (via another individual or legal entity) possession, by one person independently or jointly with associated individuals and/or legal entities, of an ownership interest in a legal entity comprising 25 or more per cent of the legal entity's charter capital or voting rights. A physical person who is the ultimate beneficiary of the legal entity cannot be at the same time an agent, nominal owner or merely an intermediary with regards to such right.

The legal entities incorporated prior to this Law taking effect must deliver to the State Registrar information about their ultimate beneficiaries, including the ultimate beneficiaries of their founders (if the founders are legal entities) within 6 months after the day on which this Law takes effect (i.e. on or before 25 May 2015).