

Legal Alert – 7 August 2015

CURRENCY CONTROL OF SERVICES DELIVERED THROUGH THE INTERNET



On 7 July 2015 the National Bank of Ukraine issued a letter No. 22-01012/46746 “Concerning the control over the operations of the residents which envisage the export of services to the non-residents through the Internet”, in which it clarified what documents must be requested by banks from their clients for the currency control clearance (hereinafter – the “**Letter**”).

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The Letter intends to relax the requirements as to the documents that must be presented, in the process of export of services through the Internet, by Ukrainian residents to their banks. For example, based on the Letter, a contract is no longer required, and it can be substituted by just an invoice.

The Letter provides a non-exhaustive list of such services platforms and services providers, including: freelance markets (programmers, designers, copywriters, translators), direct sales (programmers, designers, copywriters, translators), application stores (programmers), stocks (photographers, illustrators, operators), trading platforms (masters, intermediaries in selling goods “Made In Ukraine”), advertising intermediaries (site owners, bloggers), etc.

Based on various Ukrainian laws and regulations, the Letter specifies *inter alia* that:

- For the purpose of the currency control clearance a bank shall request not exclusively a contract, but instead - any other document as used in the international practice (e.g. *invoice*), if this document specifies sufficient information concerning the parties of the transaction, engagement conditions and requirements, the acceptance of the offer by a party and performance of relevant actions thereby.
- For the purpose of the foreign currency return terms calculation a bank shall request not exclusively a statement of acceptance, but instead - any other document as specified under the foreign economic contract (e.g. *an invoice*), provided that this document confirms due performance of the services.
- The banks are entitled to decide themselves whether a translation of the documents is to be requested.
- A copy of the document (as opposite to, for example, an original hardcopy), attested by the Ukrainian resident’s (or its representative’s) signature and seal (if any), shall be sufficient for a bank’s currency control clearance.

It is important to note that the Letter is not a mandatory legislative act, and the banks are free to decide whether to follow it, keeping in mind that the Letter is not a sufficient ground for freeing the banks from liability under the currency control legislation.

A sample of the invoice, based on the provisions of the Letter, should be developed shortly by the relevant authorities.

Disclaimer

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