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Legal Services in Ukraine and the CIS

Major Legal Developments in Ukraine

June 2010

The presentation outlines most significant recent changes as well as proposed changes to Ukrainian law affecting business and investment environment.

I. Law "On Joint-Stock Companies"

- By 30 April 2011, Ukrainian joint-stock companies have to fully comply with the Law "On JSCs" which was adopted on 17 September 2008, and entered into force in April 2009.
- Among the changes introduced by the JSC Law are cumulative voting, more detailed procedure for share transfer, expanded role of the supervisory council, rules for conflict of interest transactions and material transactions.
- Shares will exist in non-certificated form only (as electronic entries in the depository system). Existing Ukrainian JSCs have to transfer their certificated shares into non-certificated form before October 29, 2010.
- Recent changes into the JSC Law (introduced by the Law of Ukraine "On State Budget for 2010") make payment of dividends in the amount of 30% of net income of the reporting year and/or undistributed income mandatory. This requirement applies to joint-stock companies that brought their constituent documents and activity in compliance with the JSC Law.

II. "Anti-crisis Law" Repealed

- Law of Ukraine "On Amending Certain Laws of Ukraine to Promote Foreign Investments and Loans" No. 2155 of 27 April 2010, which took effect on 15 May 2010, invalidated a number of foreign investment restrictions introduced by the so-called "Anti-Crisis Law" in the fall of last year.
- In particular, the following restrictions are now removed: prohibition of accelerated repayment of loans by resident borrowers to non-resident lenders; the requirement that foreign investments must be made in the national currency of Ukraine through investment accounts opened in Ukrainian banks; and mandatory state registration of foreign investments.

III. Anti- Money Laundering Law Restated

- On **21 August 2010**, the restated version of the Law of Ukraine "On Preventing and Countering Money Laundering" takes effect. The Law substantially changes the scope of financial operations subject to financial monitoring and subjects of primary financial monitoring, imposes additional obligations upon them, as well as introduces a number of other changes.

- Whereas prior to the changes subjects of primary financial monitoring were mainly financial institutions, now this list is supplemented to include in particular legal services providers, notaries, attorneys, auditors, auditing companies, and individual entrepreneurs providing accounting services.
- Definition of "financial transaction" is extended. Whereas before the changes "financial transaction" referred to payments, now it is defined as any transactions in respect of assets (money, property, property and non-property rights) effected through a subject of primary financial monitoring.
- According to the changes, the client, party to a contract, as well as persons acting on their behalf are considered parties to a financial transaction. At the same time "client" is defined as any person using services of a subject of financial monitoring.
- Legal services providers (as well as notaries, attorneys, auditors, auditing companies, individual entrepreneurs providing accounting services) shall be bound by obligations of a subject of financial monitoring in case they participate in preparing and effecting the following transactions:
 - (i) sale and purchase of real estate;
 - (ii) management of client's assets;
 - (iii) management of a bank account or securities account;
 - (iv) raising funds for incorporation of legal entities, supporting their operation and managing them;
 - (v) incorporation of legal entities, supporting their operation and managing legal entities, as well as sale and purchase of legal entities.
- Obligations imposed upon subjects of primary financial monitoring include in particular the following:
 - (i) register with the authorized state authority as a subject of primary financial monitoring and regularly report to such authority in cases stipulated by law, notify such state authority of winding up of the subject of primary financial monitoring;
 - (ii) set rules, develop programs of conducting financial monitoring and appoint an employee responsible for such financial monitoring;
 - (iii) carry out identification of the client in cases stipulated by law. In case identification of a client according to the requirements of the law is impossible, subject of primary financial monitoring must refuse to establish business relations with the client or to effect financial transaction, and to report such person as well as the intended financial transaction(s) to the authorized state authority;
 - (iv) arrange for identification of financial transactions which are subject to financial monitoring and report such transactions to the authorized state authority as prescribed by law;
 - (v) ensure upon documentary request free access of subjects of state financial monitoring and law enforcement authorities to the documents or information available to them according to the requirements of the law;
 - (vi) in respect of public persons and persons related to them – take measures to verify sources of their income in the process of establishing business (contractual) relations with them and providing services to such persons.
- The Law also envisages changes to the Law of Ukraine "On State Registration of Legal Entities and Individual Entrepreneurs" expanding the list of documents required to be filed for state registration of a legal entity. After the Law becomes effective it will be necessary to additionally file "information with documents confirming the ownership structure of founders-legal entities which allows to identify individuals holding substantial participation in such legal entities". Substantial participation is understood as direct or indirect ownership of 10 and more per cent of participatory interest in the charter capital, 10 and more per cent of shares and voting rights in a legal entity, direct or indirect influence upon such legal entity.

IV. Changes in the Procedure of Registration of Ownership Rights to Real Estate

- On 11 February 2010, the Law of Ukraine "On State Registration of Property Rights to Real Estate and Encumbrances Thereof" was restated changing the procedure of state registration of rights to real property. Changes were also made to a number of related laws and regulations. The restated Law came into effect as of 16 March 2010, except for some of its provisions. The procedure of registration of property rights to real estate envisaged by the Law will be applied as of **1 January 2012**.
- Authority regarding state registration of rights to real property shall be vested with the Ministry of Justice of Ukraine.
- Issues of registration of construction in progress and mortgage of property rights to construction in progress are regulated.

V. Effective Date of Anti-corruption Legislation is Postponed

- A number of new anticorruption laws and regulations were adopted in June 2009, which provide for a more detailed regulation of corruption activity and anticorruption responsibilities of persons that can be subject to liability for corruption.
- New anticorruption laws and regulations were initially scheduled to take effect on 1 January 2010, but this was later delayed until 1 April 2010. Later the date of taking effect date was again postponed until 1 January 2011.

VI. Law "On Protection of Personal Data" is Adopted by the Parliament

- On 1 June 2010, Verkhovna Rada of Ukraine adopted the Law "On Protection of Personal Data" (this Law is awaiting the Presidential signature and publication to take effect; and if signed by the President will become effective as of 1 January 2011).
- The Law regulates use of personal data, provides certain rights and guarantees to subjects of personal data and establishes obligations of holders of such personal data related to protection of such data.
- According to the Law the State Register of Personal Databases will be established and each personal data base will be subject to registration with this State Register.

VII. Draft Tax Code

- On 17 June 2010, Verkhovna Rada of Ukraine adopted Draft Tax Code in the first reading. Some of the changes proposed by the draft Tax Code include:
 - (i) real estate tax;
 - (ii) mandatory electronic reporting;
 - (iii) automatic establishment of tax charge from the first day of payment delay;
 - (iv) institute of tax managers is introduced. Such tax managers will be appointed to manage the assets of the tax payers-debtors;
 - (v) taxation rates will be changed, etc.

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