



U.S.-Ukraine Business Council (USUBC)

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FOR IMMEDIATE RELEASE:

15. NEW PROCEDURE FOR THE STATE REGISTRATION OF FOREIGN INVESTMENTS

RULG, Kyiv, Ukraine, Wednesday, April 3, 2013

KYIV-- The Ukrainian legislation on regulation of foreign investments was amended with several provisions especially important for the Companies the owners of which have changed.

On 19 March 2013 a new Procedure for Registering (Re- registering) Foreign Investments and Cancelling the Registration was enacted by the Cabinet of Ministers Resolution No. 139 dated 6 March 2013 (the "Procedure").

In general, the Procedure repeats the previous Procedure for Registering Foreign Investments approved by CMU Resolution No. 928 dated 7 August 1996 (cancelled now) but includes the following key new provisions:

- 1) The State registration of foreign investments (as well as the re-registration and cancellation of investments registration, issuance of duplicates of registration certificates) does not imply a fee for such procedures. Previously, the fee of 340 UAH was collected for the State registration of a foreign investment, and 136 UAH was collected for the issuance of duplicates of State registration certificate;
- 2) Notice of recall of a foreign investment was replaced by a procedure of cancelling a foreign investment. Compared to the procedure of notifying of a recall of a foreign investment, in addition to the statement of investment recall and the investment registration certificate, it will be necessary to file a certificate of the Ministry of Revenues and Fees of Ukraine stating that the investment owner has paid taxes in Ukraine.

3) Re-registration of foreign investments is introduced, which consists in the cancellation of an investment by the previous investment owner and the registration of the investment by the new investment owner.

The Procedure was adopted in implementation of the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine Concerning the State Registration of Foreign Investments" dated 24 May 2012 (the "Law"), which took effect on 17 December 2012. The Law amended Article 395 of the Commercial Code of Ukraine and Articles 1 and 13 of the Law of Ukraine "On Regime of Foreign Investments" introducing the following new provisions:

1) Re-registration of foreign investments due to changes of ownership must be realized by means of abolition of the previous State registration and carrying out a new State registration of the foreign investment.

At the same time, the requirement to re-register foreign investments due to changes of foreign ownership, which was included in the draft Law, was omitted in its final version.

Although it is not clear whether a change of foreign ownership triggers mandatory re-registration of a foreign investment or whether the re-registration is voluntary, in our opinion this clause imposes the obligation to re-register an investment in the case of change of a foreign owner of the investment (e.g. in the case of change of a foreign participant in a Ukrainian company, provided that this participant registered its foreign investment) so that the new owner may enjoy the legal guarantees of foreign investments protection.

2)The Law provides for the cancellation of registration of a foreign investment in the case of its repatriation. Previously, under the Law of Ukraine "On Regime of Foreign Investments" the cancellation of registration of foreign investment was not envisaged.

The State registration, re-registration and cancellation of registration of foreign investments must be conducted by the authorized state body (respective local State Administration of an oblast, Kyiv or Sebastopol city, Crimean Ministry of Economic Development and Trade) within 7 days starting from the date on which the respective application is filed by a foreign investor.

USUBC NOTE: RULG is a member of the U.S.-Ukraine Business Council (USUBC), Wash, D.C., www.usubc.org

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