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ATTORNEYS & COUNSELLORS AT LAW

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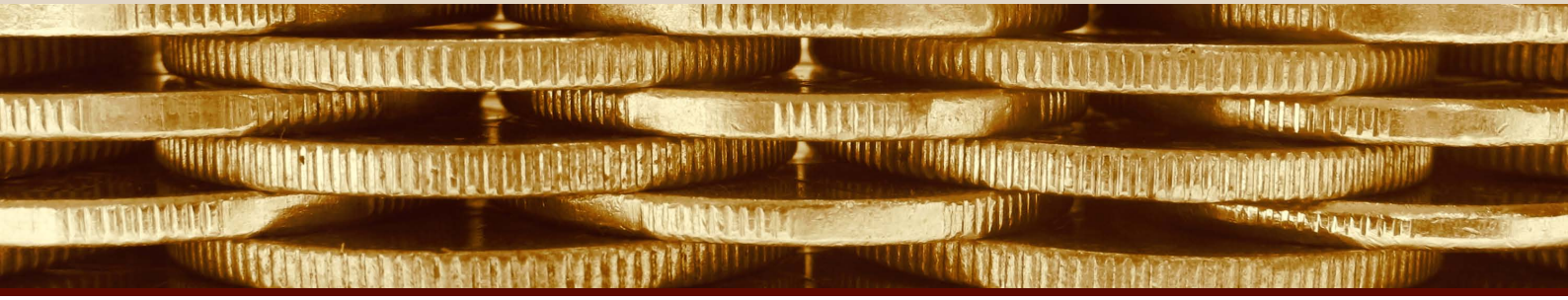

ADOPTION OF THE LAW OF UKRAINE "ON AMENDING CERTAIN LAWS OF UKRAINE TO MITIGATE ADVERSE EFFECTS OF THE FINANCIAL CRISIS"

Dears Sir/Madam,

Vasil Kisil & Partners Law Firm hereby informs you of the recent amendments to the laws of Ukraine governing foreign investment regime, foreign currency control, and to banking and tax legislation. The newsletters issued by VKP from time to time are designed to inform clients and other parties concerned of the current amendments to the laws of Ukraine and of the company's news.

This newsletter does not constitute a legal advice or an opinion rendered upon specific request. The information below has been prepared without enquiry into any individual case and should not be treated as a substitute for detailed advice in any such case.

On November 19, 2009, the President of Ukraine signed the Law of Ukraine "On Amending Certain Laws of Ukraine to Mitigate Adverse Effects of the Financial Crisis" (the "Law"). The law was officially published on November 24, 2009 and entered into force upon the date of its publication.

Please find below an overview of the main novelties of the said Law.

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Cutting Down Settlement and Delivery Periods under Agreements with Non-residents

The Law introduced amendments to the Law of Ukraine No. 185/94-VR "On the Procedure of Foreign Currency Settlements," dated September 23, 1994, whereunder the period of foreign currency receivables' transfer to accounts of Ukrainian residents is reduced from 180 (one hundred and eighty) to 90 (ninety) calendar days starting from the date when a customs export declaration is obtained (in case of export of works/services,

intellectual property rights– from the date when the respective act/protocol is signed by the parties).

Besides, a maximum delivery period related to import transactions of residents on deferred delivery basis is reduced from 180 (one hundred and eighty) to 90 (ninety) calendar days from the advance payment date.

Temporary Tightening of the Regime of Foreign Investments into Ukraine

The Law amends the Law of Ukraine No. 93/96-VR "On the Regime of Foreign Investments," dated March 19, 1996, whereunder foreign investors shall make investments in cash only through investment accounts opened with authorized banks in Ukraine. As a requirement for making foreign investments, foreign currency could be transferred to investment accounts if such currency is recognized by the National Bank of Ukraine (the "NBU") as freely convertible.

Foreign investments in cash in the territory of Ukraine shall be made in the national currency of Ukraine under the procedure prescribed by the NBU.

Thus, foreign investment in a foreign currency, which is transferred to an investment account with the authorized bank in Ukraine, shall be converted into the national currency of Ukraine.

This Law does not provide for any specific rules or exceptions from the foregoing procedure. It is expected that the procedure established by the NBU in the Regulation on the Procedure for Making Foreign Investments into Ukraine, which was approved by Resolution No. 280 of the NBU Board, dated August 10, 2005, will be adjusted to reflect new provisions of the Law.

These amendments are effective till January 01, 2011. Prior to the above-mentioned amendments, direct foreign investments (e.g. contribution to the registered capital of a Ukrainian LLC by a non-resident shareholder) could have been made by direct money transfer to a current account with an authorized bank in Ukraine without mandatory money transfer to an investment account and/or conversion into the Ukrainian currency, which significantly simplified the procedure for making foreign investments into Ukraine.

Mandatory Registration of Foreign Investments into Ukraine

Pursuant to the above Law, foreign investments, both in cash and in kind, shall be subject to mandatory state registration.

Before adoption of the Law, the state registration of foreign investments was not mandatory and remained at the discretion of the investor.

The procedure for registration of foreign investments is currently governed by the Regulation on the State Registration of Foreign Investments, which was approved by Resolution No. 928 of the Cabinet of Ministers of Ukraine, dated August 7, 1996, which determines the

requirements for state registration of foreign investments in any form whatsoever (both in cash and in kind).

Under the new Law, registration of foreign investments in the form of cash (currency valuables) is made according to the procedure stipulated by the NBU. Currently, no such procedure is available. Pursuant to the Transition Provisions of the Law, the relevant procedure is to be approved by the NBU within one (1) month period.

Temporary Tightening of Lending and Loan Repayment Policy

The Law imposes the following restrictions in respect of lending transactions that will be effective till January 01, 2011:

- The right of financial institutions to grant foreign currency loans (credits) to individuals being residents or non-residents of Ukraine (other than registered private entrepreneurs) is limited to payment for services rendered by non-residents in relation to medical treatment and education abroad. Loans will be granted by Ukrainian banks through direct transfer of funds to the account of the medical or education institution, provided that the respective supporting documents are submitted by the borrower;
- Prohibition for resident individuals and legal entities to introduce amendments to the loan agreements with non-residents which reduce the term of performance by resident borrowers of their obligations towards non-resident lenders or which provide for an early performance of such obligations;
- Registration by the NBU of amendments to loan agreements with non-residents is temporarily suspended where such amendments relate to reduction of the term for performance by resident borrowers of their obligations towards non-residents under such agreements;
- Prohibition of early performance by resident individuals and legal entities of their obligations towards non-resident lenders under loan agreements. Moreover, the Law provides that such prohibition also applies to the agreements entered into before the Law became effective.

Alterations to Banking and Financial Legislation

- Formation of Bank's Registered Capital

  The Law provides for a minimum amount of the bank's registered capital no less than UAH 75 million as of the bank's registration date (previously such minimum amount of the bank's registered capital was EUR 10 million). Moreover, the Law expressly stipulates that the NBU is not entitled to require any change of the registered capital of the banks

established before the Law came into effect. The requirement to adjust the amount of the registered capital by hryvnya devaluation index and revaluation index following the annual results based on the financial statements is no longer applicable.

Pursuant to the Law, the funds borrowed as subordinated debt may be included into the bank's regulatory capital in the amount up to one hundred percent (100%) of the bank's Tier 1 capital till January 01, 2012. Funds borrowed within this period as subordinated debt are to be included into the bank's capital in full regardless of restrictions set for the bank's additional capital (previously the Law of Ukraine "On Banks and Banking" stipulated that the whole amount of the additional capital, including the amount of the subordinated debt, could not exceed 100 percent of the regulatory capital).

The Law also envisages that the subordinated debt is to be included into the bank's capital without mandatory annual decrease by 20 percent of its initial amount till January 01, 2012 (previously, the amount of subordinated debt included into the capital was subject to annual mandatory decrease by 20 percent of its initial amount during the last five (5) years of validity of the loan agreement under which the funds were borrowed by the bank).

- Credit Restructuring

Until December 31, 2010, commercial banks are entitled to restructure loans of individual borrowers under the mutual consent with the borrowers. Such restructuring may be applied to:
1) loans granted before October 01, 2008;
2) loans with the nominal value not exceeding UAH 1,000,000.00 (one million hryvnyas), including the loans denominated in foreign currency (in such case the official NBU rate as of October 1, 2008 applies).

The Law provides for the following restructuring methods:
prolongation of the term for the loan repayment of up to two (2) years;

extension of the loan agreement's validity period, taking into account restrictions set forth by commercial banks and the borrower's financial standing;

change of the interest calculation mechanism so that monthly loan payments would not exceed thirty-five percent (35%) of the aggregate monthly income of the borrower's family.

Banks are also obliged to release borrowers from paying any penalties applicable due to borrower's untimely performance of loan agreements that occurred before the restructuring date, provided that the restructuring was implemented in accordance with the terms and conditions prescribed by the Law.
Moreover, the Law provides for some particularities in relation to restructuring of mortgage loans by commercial banks, such as:

1. only mortgage loans secured by residential real estate being the only residence of the borrower and his/her family are subject to restructuring;

2. a moratorium for compulsory re-possession will be in place during 2009 - 2010 in relation to those residential premises where an individual mortgagor is registered and which is his/her only residence, provided that interest accrued in accordance with the residential mortgage loan agreement is paid timely or a delay of payment of such interest does not exceed two (2) months, and debt restructuring arrangements have been agreed by the parties in writing.

Alterations to Tax Legislation

The Law of Ukraine "On Corporate Profit Tax" dated December 28, 1994, No. 334/94-BP is amended as follows:

- Starting from January 01, 2009 (retrospectively), banks are eligible to treat 100% (and 80%, after January 1, 2011) of aggregate provisions from to cover possible losses from loan transactions as deductible expenses. Certain non-banking financial institutions are eligible to treat 80% of all losses provisions as tax deductible. We note that the previous maximum amount of provisions was limited to 10% of the aggregate amount of debts for banks, and 15% for non-banking financial institutions;
- Once the Law is effective, banks and financial institutions shall be entitled to compensate their loss at the account of provisions release upon enforcement of pledged property. Subject to certain conditions, if an amount received by the bank after enforcement of the pledged property, or estimated value of such property is less than the amount of outstanding loan, amount of provisions equal to the amount of outstanding indebtedness is not considered as the bank's taxable income;
- Bank's income derived from credit transactions accrued in 2009 (retrospectively) and 2010, but not actually received as of January 1, 2011 shall be recorded in tax accounts as taxable income upon their actual receipt only, i.e. cash method of tax accounting shall apply.

Certain amendments are also introduced to the Law of Ukraine "On Personal Income Tax" dated May 22, 2003, No. 889-IV, the most significant of which is release of legal entities (including banks) from acting as tax agents for individuals in relation to the deemed income earned by such individuals from uncollectable debt write-off where limitation period has expired.

Please, do not hesitate to contact us for any further information on the topic of this Newsletter or to address you other legal service needs.

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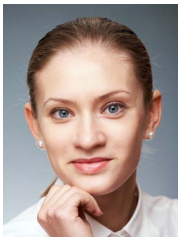

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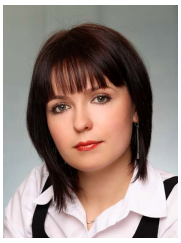

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