VASIL KISIL & PARTNERS

ATTORNEYS & COUNSELLORS AT LAW

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CORPORATE & FINANCIAL LEGAL ALERT

This NEWSLETTER has been issued to keep Vasil Kisil & Partners clients and other interested persons informed of the latest developments in the Ukrainian legislation and the firm 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.

1. Cap rates have been reintroduced on non-residents' loans

By Resolution No. 614 dated October 15, 2009 the Board of the National Bank of Ukraine amended Resolution No. 363 dated August 3, 2004 "On Fixing Interest Rates on Residents' Foreign Loans"; amendments thereto reintroduced the cap rates on short-term, medium-term and long-term loans raised from non-residents, which had been in force until autumn 2008.

Thus, starting from November 15, 2009 the following interest rates shall be applicable to foreign borrowings:

- For loans for a period of one year – no more than 9.8 % per annum;
- For loans for a period of one year up to three years – no more than 10 % per annum;
- For loans for a period of over three years – no more than 11 % per annum;

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- For loans with floating interest rate – LIBOR rate applicable to three-months USD deposits plus 750 basis points.

Additionally, the said Resolution No. 614 presumes that the National Bank of Ukraine should register amendments to loan agreements (credit contracts) (excluding the changes to the parties' names, locations and/or banking details, or debt assignment to non-resident) based on respective additional agreements only if payments accrued on the loan (credit) do not exceed (under provisions of additional agreement) the cap rate introduced.

2. Time reduced of foreign currency proceeds enrolment from import transactions

According to information received from public sources, the Verkhovna Rada (Parliament) of Ukraine on October 22, 2009 adopted the Law of Ukraine "On Amending Some Laws to Mitigate Adverse Effects of the Financial Crisis."

The Law provides, among other things, the following amendments:

- direct prohibition to fund individuals in foreign currency for non-production purposes, and norms requiring foreign currency loans as written orders on account only;
- reduction of the maximum period set forth for residents to credit their foreign currency proceeds on their foreign currency accounts up to 90 calendar days, as well as the period set forth for residents to complete their import transactions with deferred delivery as provided in the Law of Ukraine "On the Procedure of Settlements in Foreign Currencies."

3. Closed Joint Stock Company is obligated to name its founders (participants) in the charter until bringing the charter in line with the Law of Ukraine "On Joint Stock Companies"

On October 5, 2009 the Ministry of Justice of Ukraine issued a note regarding interpretation of provisions of the Law of Ukraine "On Commercial Companies" and the Law of Ukraine "On Joint Stock Companies" in terms of obligatory listing of the company's participants (founders) in the charter of a closed joint stock company.

According to the explanation, a Closed Joint Stock Company which has not brought its charter in line with the Law of Ukraine "On Joint Stock Companies" by now, ought to be governed by Article 4 of the Law of Ukraine "On Commercial Companies" and list the company's participants (founders) in its charter.

Closed Joint Stock Company which has brought its charter in line with the Law of Ukraine "On Joint Stock Companies" shall be thereafter governed, in terms of information to be obligatorily indicated in the charter, by Article 13 of the Law of Ukraine "On Joint Stock Companies" and therefore be exempted from listing the company's participants (founders) in its charter.

4. Compulsory Payment of Dividends: Draft Law

Draft law No. 5183 "On Amending the Law of Ukraine "On Joint Stock Companies" (as to ensuring ordinary shareholders' rights to dividends)" was introduced in the Verkhovna Rada (Parliament) of Ukraine on October 1, 2009.

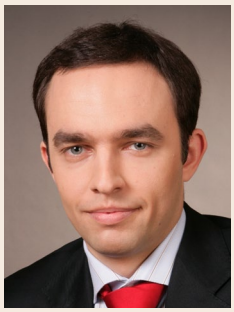
The draft law will require a joint stock company to pay dividends in the amount as determined by the company's general shareholders meeting but not less than thirty percent of net profits earned in the reporting period and/or retained profits not later than six months after the end of the reporting period.

Should there be no or insufficient net profits in the reporting period or retained profits earned in the previous years, dividends ought to be paid by the company out of its reserve capital.

About the firm:

Since 1992, Vasil Kisil & Partners' lawyers have advanced our clients' interests with zeal and integrity. We have established a tradition of legal excellence, and we have earned a reputation as a law firm that always goes the extra mile for its clients. We provide professional service of the highest quality combining technical expertise with commercial awareness and a business savvy practical approach to legal issues.

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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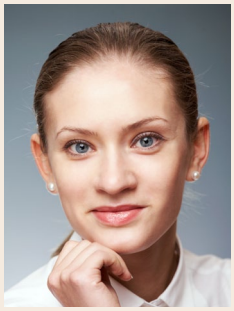

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