

UKRAINE PROVIDES FOR NEW AMENDMENTS TO RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGMENTS AND ARBITRAL AWARDS

This ALERT from International Arbitration Practice of Vasil Kisil & Partners is aimed to update our clients regarding current developments in the Ukrainian legislation on recognition and enforcement of foreign judgments and arbitral awards as well as on some related issues

The Law of Ukraine No. 1837-VI "On Amending Certain Legislative Acts of Ukraine in respect of Regulating Private International Law Issues" (the "Act No. 1837") becomes effective on February 16, 2010. The Act No. 1837, among other, introduced long expected amendments to the rules governing the recognition and enforcement of foreign judgments and expressly extended their application to recognition and enforcement of arbitral awards in Ukraine.

The Act No. 1837 introduced important relevant amendments to the following legislative acts: the Labor Code of Ukraine; the Commercial Procedure Code of Ukraine; the Commercial Code of Ukraine; the Civil Procedure Code of Ukraine; the Administrative Proceedings Code of Ukraine; the Ukrainian Laws On Execution Procedure and On Private International Law.

Key changes

- The Act No. 1837 expressly provides that "foreign court decisions (or judgments)" include the awards rendered by foreign or international (in Ukraine) arbitral tribunals. The latter means that the rules concerning recognition and enforcement of foreign judgments as contained in the *Civil Procedure Code of Ukraine* shall directly apply to recognition and enforcement of arbitral awards;
- The preconditions to recognition and enforcement of foreign judgments have been modified. Initially the recognition and enforcement of foreign court decision could be granted either if international treaty so provided or under the reciprocity principle on the basis of *ad hoc* agreement with the foreign state concerned. The Act No. 1837 expressly revokes the requirement of *ad hoc* agreement and, instead, sets forth that in case if no international treaty provides for recognition and enforcement of foreign judgment, such recognition and enforcement still may be granted on the basis of reciprocity principle;

VASIL KISIL & PARTNERS

ATTORNEYS & COUNSELLORS AT LAW



- The *Act No. 1837* lays down the instructions as to how such reciprocity should be determined. In particular, it provides that in case the recognition and enforcement of foreign judgment depends on reciprocity principle, it shall be presumed that reciprocity exists unless it is proved otherwise;
- The list of persons entitled to apply to Ukrainian court requesting recognition and enforcement of foreign judgment have been broadened and now such applications may also be submitted not only by judgment creditor but by other interested person according to the applicable international treaty in force;
- The *Act No. 1837* introduced amendments to relevant procedural legislation which governs the proceedings involving foreign parties, and at that the most essential amendments relate to the procedure of applying to foreign court with rogatory letters and execution of the foreign courts' rogatory letters in Ukraine;
- According to the *Act No. 1837* execution proceedings shall *inter alia* be initiated by the state execution officer when the writ of execution, issued on the basis of the ruling granting enforcement of foreign judgment, is forwarded from the respective court to the state execution service, in accordance with the procedure set forth by law.

The above long-overdue amendments to Ukrainian legislation will definitely facilitate the procedure of recognition, enforcement and further execution in Ukraine of foreign judgments and arbitral awards.

At that the adopted amendments did not resolve all the problems existing in Ukraine in respect of recognition and enforcement procedure and further improvements of Ukrainian legislation and practice in this sphere are still expected.

This alert is meant to be a general guide to recent developments in the law. Readers should not rely on the alert when considering specific action as it is not designed to provide legal or any other advice.

No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, including photocopying or recorded, without the written permission of the copyright holder.

If you do not wish to receive further information from Vasil Kisil & Partners legal developments, which we believe may be of interest to you, please, send an e-mail to nomorecontact@vkp.kiev.ua.

Leonardo Business Centre
17/52-A B. Khmel'nitskogo St.
Kyiv 01030 Ukraine
Telephone: +380 44 581 7777
Fax: +380 44 581 7770

www.kisilandpartners.com

**Dr. Tatyana
Slipachuk**
FCI Arb, partner
slipachuk@vkp.kiev.ua

**Olena
Perepelynska**
senior associate
perepelynska@vkp.kiev.ua