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Political Rally "Who Is Better at Saving Ukraine From Crisis?" Continues

The recent outburst of legislative activity before the upcoming presidential elections in Ukraine has been spectacular. The presidential candidates have been putting forth a lot of effort to persuade Ukrainians which candidate is better at fighting the financial crisis. On November 24, 2009 yet another law aimed at minimizing the impact of the crisis went into effect: Law of Ukraine "On Introducing Changes to Certain Laws of Ukraine With the Purpose of Overcoming Negative Consequences of Financial Crisis" No. 1533-VI dated June 23, 2009 (New Anticrisis Law).

The major provisions of the New Anticrisis Law are summarized below.

90-Day Rule for Return of Foreign Currency to Ukraine

Ukraine-based exporters selling goods and services in non-Ukraine currency must receive payment within 90 days from the date the goods cleared customs or services were accepted. In addition, Ukraine-based importers making prepayments must receive such goods or services within 90 days or obtain the approval of the Ministry of Economy of Ukraine if the period between the prepayment for goods and delivery exceeds 90 days. Before the adoption of the New Anticrisis Law, the requirement allowed up to 180 days.

New Rules for Foreign Investments

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Contacts:

[Peter Z. Teluk](#)
+380.44.220.1414

[Kateryna S. Kokot](#)
+380.44.220.1402

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Pursuant to the New Anticrisis Law, until January 1, 2011 foreign investments in monetary form in the territory of Ukraine must be made in *hryvna* according to the procedure established by the National Bank of Ukraine (NBU). In practice it means that foreign investors will have to exchange foreign currency for *hryvna* to be able to invest in Ukraine. The NBU has yet to set the rules for such investments and, most importantly, the exchange rate for conversion of foreign investments in foreign currency into *hryvna*. Moreover, foreign investors must use Ukrainian investment accounts for making monetary investments until January 1, 2011.

The New Anticrisis Law requires state registration of foreign investments until January 1, 2011. If the foreign investment is in monetary form or in the form of securities, then it must be registered according to the procedure established by the NBU. Such procedure has yet to be developed, and it remains to be seen what documentation and timeframes will be required for registration.

If a foreign investment involves property, it must be registered by the respective local state administrations within three days after the investment is made. The procedure for state registration is explained in the Regulation of Cabinet of Ministers of Ukraine "On Approval of Regulation on the Procedure of State Registration of Foreign Investments" No. 928 dated August 7, 1996.

Before enactment of the New Anticrisis Law state registration of foreign investments was not mandatory. However, many foreign investors opted to register their investments to obtain certain rights and guarantees under Ukrainian legislation.

No Early Fulfillment of Foreign Loan Obligations

Until January 1, 2011 borrowers in Ukraine may not change foreign-currency-denominated loan agreements entered into with non-residents to shorten the term of repayment. The NBU will not register such changes to loan agreements until that date.

Also, until January 1, 2011 Ukraine-based borrowers are prohibited from early fulfillment of their obligations under foreign-currency loan agreements with non-resident lenders. Such prohibition applies to loan agreements executed before the New Anticrisis Law went into effect.

Minimum Amount of Share Capital for Banks Is

Reduced

The minimum amount of required share capital for Ukraine-based banks has decreased from €10 million to approximately €6.3 million (75 million UAH).

VAT Exemption for Sale of Pledged Property

Transactions of banks and other financial institutions related to the sale of property pledged by individuals and private entrepreneurs are now exempt from VAT.

Restriction on Extension of Foreign-Currency Loans to Individuals

Until January 1, 2011 banks and other financial institutions are prohibited to extend foreign-currency consumer loans unless the loan is used for payment for medical treatment or education abroad.

If you have any questions regarding the New Anticrisis Law, please contact your principal Squire Sanders lawyer or one of the lawyers listed in this Alert.

The contents of this update are not intended to serve as legal advice related to individual situations or as legal opinions concerning such situations. Counsel should be consulted for legal planning and advice.

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Leonardo Business Center, 19-21 Bohdan Khmelnytsky St., 16th Floor, Kyiv 01030, Ukraine

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