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National Bank of Ukraine Extends Currency Limitations

On 3 March 2016, the National Bank of Ukraine (NBU) issued Resolution No. 140 "On Regulating the Situation in the Monetary and Foreign Currency Markets of Ukraine" (Resolution 140) with effect from 5 March until 8 June 2016 inclusive.

NBU continues to hold to the policy of restrictive measures at the foreign currency market. Thus, according to Resolution 140, the following major NBU requirements remain in force:

- Term for payments under export-import transactions – 90 calendar days
- Obligatory sale of 75% of foreign currency cash receipts from abroad with some exceptions
- Ban to register amendments to loan agreements that shorten the loan terms or accelerate obligations for resident borrowers
- Ban on loans in Hryvnia secured with foreign currency deposits
- Requirement for banks to provide reference documents for transactions involving purchase/transfer aboard of foreign currency equivalent to US\$50,000 or more
- Restriction on registration of amendments to loan agreements changing non-resident lender and/or non-banking resident borrower, and to loan agreements between residents due to assignment of the loan by resident-lender to non-resident-lender

The only liberalization approved by the Resolution 140 lies in the increase of the limits for the purchase of foreign currency by individuals and withdrawal of cash from bank accounts as follows:

- the limit for cash withdrawal from bank accounts is increased from UAH 20,000 to UAH 50,000 in foreign currency, and from UAH 300,000 to UAH 500,000 in national currency per day; and
- the limit for purchase of foreign currency by individuals is increased to UAH 6,000 from UAH 3,000 per day.

Later, effective 26 March 2016, NBU eased some currency restrictions by its new Resolution No. 192 "On Amendments to NBU Resolution No. 140, dated 3 March 2016" (Resolution 192).

Thus, NBU allowed early repayment of interests under amendments to loan and credit agreements if frequency of interest payments is changed (from annual to quarterly/monthly or from quarterly to monthly) and/or the term of interest payments is postponed for not more than 180 days.

NBU also lifted the restriction on early repayment of loans/credits if such loans/credits were provided with participation of a foreign export-and-import agency.

According to Resolution 192, NBU permitted Ukrainian banks to credit foreign currency to investment accounts of non-residents opened with Ukrainian banks if:

- funds credited to such investment accounts are used specifically for increasing a Ukrainian bank's capital;
- Ukrainian bank has an individual license for transferring foreign currency abroad; and
- amounts credited to the investment accounts are within the terms and limits permitted by an individual license.

Resolution 192 will be in effect until 8 June 2016 inclusive.

Amendments to Privatization Law

The law on amendments to the privatization process enabling large-scale privatization came into force. The amendments were pushed by the Ukrainian Government in order to promote its Privatization Program for 2016, including the privatization of PJSC Odesa Port Plant (a major chemical production company with ammonia and urea transshipment facilities).

The most important changes to Ukrainian privatization procedures are as follows:

No privatization by “aggressor state”. The law now bans privatization of Ukrainian enterprises by, *inter alia*, citizens or legal entities of any “aggressor state”. Thus, Russian citizens or legal entities, or their representatives, or controlled by or related to them may not purchase shares in state-owned enterprises to be privatized.

Beneficiaries’ disclosure. The law requires potential buyers of shares in state-owned enterprises to disclose information on their beneficiaries.

Obligatory presale cancelled. The obligatory sale of 5-10% shares of state-owned enterprises on the Ukrainian stock exchange prior to the privatization tender is cancelled.

Arbitration allowed. The law allows privatization authorities to provide arbitration clause in sale and purchase agreements regarding privatization objects.

External advisors. The law allows involving external advisors to prepare strategic state-owned companies for privatization and sale. Such external advisors must be selected through public tenders.

The Cabinet of Ministers of Ukraine by its Decree approved the sale of the following big state-owned companies: PJSC “Zaporizhyaoblenergo”, PJSC “Odeska CHP”, PJSC “Khersonska CHP”, PJSC “Odesa Portside Plant”, PJSC “Sumyhimprom”.¹ The Cabinet of Ministers is going to sell the listed companies by tender with open auction price before 30 November 2016.

Ukraine Acceded WTO’s Government Procurement Agreement

On 16 March 2016, the Verkhovna Rada of Ukraine ratified the law on Ukraine’s accession to the Agreement on Government Procurement within the World Trade Organization (WTO).² This was done after Ukraine’s accession terms were approved by the WTO’s Committee on Government Procurement on 11 November 2015.

The new Law was adopted to effect Ukraine’s accession to the WTO agreement and implementation of agreement’s provisions in Ukraine.

The implementation of the WTO agreement’s provisions will promote Ukraine’s active integration with the EU and will create framework for opening markets of public procurement of member states who have signed the agreement for Ukrainian business.

New in Customs Clearance

Beginning 24 March 2016, the customs regulation of certain goods has been changed.³ The list of products which are restricted in movement through customs border of Ukraine has been expanded by adding seeds, planting material, radioactive materials, and special radioelectronic equipment and radiating devices. It should be also noted that since now, no license is required for export/import of optical discs for laser readout systems and matrixes. Fishing products and food made therefrom do not any more require mandatory certification while moving through customs border of Ukraine. Also, securities have been added to the list of currency values restricted in movement through customs border of Ukraine, and the list of goods which must undergo conformity assessment has been reduced to radio equipment, goods containing radio equipment, telecommunications end user (data terminal) equipment.

New Rules of Concession Payment

The Cabinet of Ministers adopted new methods of calculation of concession fees.⁴

Now, the concession fees for: (i) operation and reconstruction of existing objects is calculated depending on the value of the object provided to concession, on net profit or as mixed payment (based on the object’s value and the profit), (ii) construction of new objects is calculated only based on the net profit.

According to the new methods, the concessor may choose the method of concession fees calculation on its own discretion based on the profitability of the economic activity in which the object of the state or communal ownership is provided to concession (i.e. the higher profitability – the bigger concession payment).

The amount of concession fee is to be the main criteria for defining the winner of concession tender.

1 Decree of the Cabinet of Ministers of Ukraine “On Amendments to Some Orders of the Cabinet of Ministers of Ukraine on Privatization Issues” No. 202-p, dated 10 March 2016

2 Law of Ukraine “On Ukraine’s Acceding to the Procurement Agreement” No. 0085 dated 3 February 2016

3 Regulation on Amending Regulation No. 436 of Cabinet of Ministers of Ukraine dated 21 May 2012, issued by the Cabinet of Ministers of Ukraine on 2 March 2016, No. 142

4 Regulations of the Cabinet of Ministers of Ukraine “On Amendments to Regulations of the Cabinet of Ministers of Ukraine No. 639 dated 12 April 2000” No. 130 dated 4 February 2016

Submission of Declarations by Civil Servants in 2016

The President signed the law on amendments regarding submission of declarations on property, income and expenditures by civil servants in 2016.⁵ The purpose of the law is introducing the procedure of submission and publication of declarations by civil servants according to the anticorruption laws in 2016.

According to the law, the civil servants have to declare their property during 60 days after the law comes into force. At that, civil servants may submit corrections to the declarations during seven days after the submission of respective declarations.

The law provides obligation for the civil servants to declare their movable property of the value more than 50 minimal wages.

The law foresees responsibility of civil servants for providing deliberate misrepresentations in the declaration (if the difference in amounts exceeds 100 minimal wages).

The law was in the package of the laws to be adopted for the establishment of the "visa-free regime" with the EU.

New Forms of Accounting Documents and Reporting on Payment Transactions

The Ministry of Finance approved the following amendments on the settlement documents and settlement transactions.⁶

- the new form of and details to be indicated in settlement documents certifying the sale of products, rendering services, receipt of money in trading, etc. (such as cash receipts, sales checks);
- the new form of the report on use of record books of settlement transactions (pay books);
- the procedure of submission of reports on use of record books of settlement transactions (pay books). The reports are to be submitted to the tax authorities at the address of registration of record books of settlement transactions and it is not required to submit the record books of settlement transactions along with the reports.

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5 Law of Ukraine "On Amendments to Some Legislative Acts of Ukraine on Peculiarities of Submission of Declarations on Property, Income and Expenditures by Civil Servants in 2016" dated 26 January 2016

6 Order on Approval of Regulation on Form and Content of Settlement Documents, Procedure for Submission of Reports on Use of Record Books of Settlement Transactions (Pay Books), Form No. 3BP-1 of Report on Use of Record Books of Settlement Transactions (Pay Books), issued by the Ministry of Finance of Ukraine on 21 January 2016, No. 13