



# Ukraine Update

September 2016

I. Antimonopoly Regulation .....	1
Merger Amnesty Extended until 15 March 2017 .....	1
II. Judicial and Enforcement Systems .....	1
Justice Reform in Force .....	1
III. Regulatory.....	2
Mandatory Certification Register .....	2
Verification of Judgments for Title Registration .....	2
Food Products Pricing Deregulation .....	2
Minimum Lease Term for Agricultural Land.....	2
IV. Finance.....	2
NBU Interest Discount Rate Decreased .....	2
New Currency Limitations of NBU .....	2
V. Privatization .....	3
Cabinet Expands the List of Objects for Privatization .....	3

## I. Antimonopoly Regulation

### Merger Amnesty Extended until 15 March 2017

On 20 September 2016, the Antimonopoly Committee of Ukraine (AMC) extended the amnesty for mergers/concentrations performed without AMC approvals for the next six months.<sup>1</sup> The amnesty now applies if a party performed a concentration without AMC approval before 15 September 2015, as long as it reaches AMC with a respective amnesty application before 15 March 2017. In such case, the fine will be a fixed amount of UAH102,000 (equivalent to approximately US\$3,950).

## II. Judicial and Enforcement Systems

### Justice Reform in Force

From 30 September 2016, amendments to the Ukrainian Constitution and the Law on Judiciary and Status of Judges, designed to reform the judicial system, came into effect.<sup>2</sup> Some of the major changes in the judicial system that will positively affect companies doing business in Ukraine include:

- Levels of the judicial system will decrease from a four-tier to a three-tier system. This will shorten the time span for resolving disputes. A court case can be heard and appealed through three courts – local courts, courts of appeal and the Supreme Court of Ukraine – in contrast to the prior four instances.
- Specialized high courts, namely High Intellectual Property Court and High Anticorruption Court, will be created as courts of first instance. Such specialization will help achieve increased competence and shorter terms for dispute resolution.

<sup>1</sup> Recommendarory Clarifications of Antimonopoly Committee of Ukraine on Amendments to Article 15 of Recommendarory Clarifications of Antimonopoly Committee of Ukraine, dated 9 August 2015 No. 39-pp, dated 20 September 2016 No. 44-pp.

<sup>2</sup> Law of Ukraine on Amendments to the Ukrainian Constitution in the Sphere of Justice, dated 2 June 2016 No. 1401-VIII; and Law of Ukraine on Judiciary and Status of Judges, dated 2 June 2016 No. 1402-VIII.

- Only lawyers admitted to the Ukrainian Bar will be allowed to represent parties before courts. This requirement will become effective for representation in the Supreme Court from 1 January 2017, in courts of appeal from 1 January 2018, and in courts of first instance from 1 January 2019. Presently, any individual, regardless of whether or not s/he has a law degree and/or is admitted to the bar, is allowed to represent clients before courts (except for criminal proceedings during pre-trial investigations and court hearings).

### III. Regulatory

#### Mandatory Certification Register

The Ministry of Economic Development and Trade of Ukraine adopted rules for maintaining the State Certification System Register, which will contain information about certification of goods requiring mandatory certification.<sup>3</sup>

According to the Decree on Standardization and Certification, customs clearance of such goods (e.g. oil products, construction materials, etc.), in terms of conformity certification requirements, is to be performed based on the information available in the Register, without providing hard copies of conformity certificates.

#### Verification of Judgments for Title Registration

From 14 September 2016, when registering proprietary rights to immovable property, incomplete construction and/or their encumbrances in Ukraine based on a court judgment, notaries and state registrars must verify that an electronic copy of the provided court judgement is contained in the Unified State Register of Court Decisions of Ukraine.<sup>4</sup> Although it is not explicitly provided, it is expected that any discrepancy in wording or details of the court judgment as well as its absence in the Register may be a reason for refusal in property rights registration.

#### Food Products Pricing Deregulation

At proposal of the Ministry of Economic Development and Trade, the Cabinet of Ministers has implemented a pilot project on food product pricing deregulation.<sup>5</sup>

Starting from 1 October 2016, state regulation of prices (tariffs) will not be applied to:

- Profitability and mark-up thresholds for infant food
- Maximum payments for services provided in food and non-food product markets
- Maximum prices and profitability rates (not more than 20%) for lease of retail space and equipment

- Trade mark-ups to wholesale prices for flour, bread, pasta, cereals, sugar, beef, pork and poultry meat, cooked sausages, milk, cheese, sour cream, butter, sunflower oil, chicken eggs, not more than 15%, excluding costs on transportation via intercity traffic
- Production profitability thresholds for wheat and rye flour and their products, bread and flour products for diabetics
- Maximum wholesale prices for wheat and rye flour, buckwheat, beef, pork, poultry meat, cooked sausages, milk, cheese, sour cream, butter, chicken eggs, sugar, and sunflower oil by means of declaring price changes
- Profitability thresholds for food product packaging not more than 10%

#### Minimum Lease Term for Agricultural Land

Parliament adopted the law setting a minimum term of 10 years for lease of ameliorated agricultural land.<sup>6</sup> Lease agreements must include lessee's obligation to invest in development and modernization of melioration systems and engineering infrastructure objects.

The law comes into effect the next day after its official publication and will not be applied to the land lease agreements entered into before such day.

### IV. Finance

#### NBU Interest Discount Rate Decreased

On 16 September 2016, the NBU interest discount rate was decreased from 15.5% to 15% per annum.<sup>7</sup>

#### New Currency Limitations of NBU

Effective 15 September 2016, the National Bank of Ukraine (NBU) enacted new Regulation No. 386 regarding Ukraine's monetary and hard currency market.<sup>8</sup> Regulation No. 386 will be in effect until 15 December 2016.

The new regulation provides the following restrictions pertinent to legal entities:

- Mandatory sale of foreign currency cash receipts from abroad is established at the level of 65%.
- Term for payments under export-import transactions – 120 calendar days.
- A limit for cash withdrawals in foreign currency or bank metals from client's current or deposit bank accounts is significantly increased from the equivalent of UAH100,000 to UAH250,000 (approximately US\$9,600) per day.
- Residents are allowed to purchase foreign currency to repay foreign currency loans even if they have any amounts of their own foreign currency on their accounts yet provided that such own and purchased foreign currency is used to repay such loans.

<sup>3</sup> Order by the Ministry of Economic Development and Trade of Ukraine on Certain Questions about Realization of Article 14-1 of the Decree of the Cabinet of Ministers of Ukraine on Standardization and Certification, dated 20 July 2016 No.1195, in effect from 9 September 2016.

<sup>4</sup> Regulation of the Cabinet of Ministers of Ukraine on Amendments to Article 12 of the Procedure for State Registration of Proprietary Rights to Immovable Property and their Encumbrances, dated 8 September 2016 No. 594.

<sup>5</sup> Resolution of the Cabinet of Ministers of Ukraine on Implementation of the Pilot Project to Temporarily Restrict Application of Resolution of the Cabinet of Ministers of Ukraine, dated 25 December 1996 No. 1548 and Resolution of the Cabinet of Ministers of Ukraine, dated 17 October 2007 No. 1222, dated 22 September 2016 No. 656.

<sup>6</sup> Draft Law of Ukraine on Amending Certain Legislation of Ukraine Regarding Setting the Minimum Term of Lease of Ameliorated Agricultural Land, dated 20 September 2016 No. 2920.

<sup>7</sup> NBU Decision on Interest Discount Rate, dated 15 September 2016 No. 277-RSh.

<sup>8</sup> NBU Resolution on Regulating the Situation in the Monetary and Foreign Currency Markets of Ukraine, dated 14 September 2016 No. 386.

## V. Privatization

### Cabinet Expands the List of Objects for Privatization

Cabinet of Ministers of Ukraine has approved the extended list of companies to be privatized in 2016-17.<sup>9</sup> The extended list includes more than 400 companies after adding such companies as Turboatom, Electrotyazhmash, United Mining Chemical Company, Zaporizhia Titanium and Magnesium Combine and State Food and Grain Corporation.

Some of the objects will be subject to privatization only upon their exclusion by the Parliament from the list of objects that may not be privatized. These include Ukrbud, Ukrspirt, Odessa Airlines, more than 10 sea and river trade ports (Yuznyi, Mariupil, Illichivsk, Odesa, Izmail, Berdyansk, Mykolayiv, Bilhorod Dnistrovskiy, Kherson, Reni, Ust-Danube, Skadovsk seaports, and specialized port Oktyabrsk), 100% shares of Danube Shipping Company, Azov Shipyard and other companies.

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<sup>9</sup> Resolution of the Cabinet of Ministers of Ukraine on Amending Resolution of the Cabinet of Ministers of Ukraine, dated 12 May 2015 No. 271, dated 31 August 2016 No. 588.