



Ukraine Update

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I. Corporate

Squeeze-Out/Sell-Out in Joint Stock Companies

The Parliament amended legislation governing joint stock companies by introducing squeeze-out and sell-out procedures.¹ The respective legislation will come into force after signing by the president and official publication.

The squeeze-out procedure provides the right of a shareholder that acquired dominant control over a joint stock company (control over at least 95% of the joint stock company shares) to demand all other shareholders to sell their shares to such demanding shareholder, irrespective of whether such shares are encumbered. The demand may be sent within 90 days upon acquisition of dominant control.

The sell-out procedure provides the right of minority shareholders to demand the shareholder having dominant control over the joint stock company to acquire the unencumbered shares that belong to such minority shareholders.

The legislation also introduces two-tier mandatory buy-out of the minority shares:

- When the shareholder gains control of 50% or more of the company's shares
- When the shareholder gains control of 75% or more of the company's shares

Before such, mandatory buy-out requirement existed only if the shareholder acquired 50% or more of the company shares and was not required to be repeated if such shareholder increased its share in the company.

¹ Draft Law of Ukraine on Amending Certain Legislative Acts of Ukraine Regarding Improvement of Corporate Governance in Joint Stock Companies No.2302a-д.

In addition to the above procedures, the newly adopted legislation establishes the sanctions for failure by shareholders to follow squeeze-out, sell-out and mandatory buy-out of minority shares established by the law by restricting the number of shares of such shareholders to vote and be accounted for quorum definition.

Private joint stock companies will have the right not to apply the mandatory buy-out, squeeze-out and sell-out procedures if:

- For mandatory buy-out – more than three quarters of the votes of the shareholders participating in a general meeting vote for such amendment to the charter
- For squeeze-out and sell-out procedures – more than 95% of votes of the entire number of private joint stock company shareholders vote for such change in the charter

The new law also changes the threshold for approval of interested party transactions from 100 minimal salaries to 1% of the assets value as of the last annual accounts date. Private joint stock companies may overrule the restriction for the interested shareholders to vote in relation to approval of an interested party transaction.

The new legislation also introduces escrow bank accounts concept into Ukrainian law, which will allow placing funds in special escrow bank accounts and releasing them to a defined person when certain requirements defined by the parties in the agreement are satisfied.

Corporate Agreements

On 23 March 2017, the Parliament approved the draft law introducing corporate agreements between shareholders/participants in joint stock and limited liability companies and option agreements with respect to shares/interests in Ukrainian companies.²

Once the law becomes effective, such agreements may be signed between the shareholders/participants and may cover any issues related to management of the company, disposal of the shares, voting in general meetings, etc.

The corporate agreements will be treated as confidential and their disclosure will not be required. However, public joint stock companies will be required to disclose existence of the corporate agreement.

Corporate agreements will also be allowed in companies where the state owns shares.

The law will become effective once signed by the president and published.

Obligatory Establishment of Supervisory Board in State-Owned Legal Entities

In order to improve corporate governance, to eliminate corruption and to decrease political influence on companies fully or partially owned by the state, the Cabinet of Ministers of Ukraine defined the criteria for companies which are required to establish supervisory boards. In addition, it defined the procedure of a selection of members and independent members to such supervisory boards on a competitive basis. The majority of the total number of members must be the independent members.³

² Draft Law of Ukraine on Amending Certain Legislative Acts of Ukraine Regarding Corporate Agreements No. 4470.

³ Resolution of the Cabinet of Ministers of Ukraine on Certain Issues of Governing State Entities and Legal Entities More than 50 percent of Shares. (Participatory Interests) of which is Owned by a State, dated 10 March 2017 No. 142.

In particular, the requirement applies to companies fully owned by the state or in which the state owns more than 50% (the "State-Owned Legal Entity") if they meet at least one of the following criteria:

- Value of assets exceeds €2 billion according to the most recent annual financial statements
- Net profit exceeds €1.5 billion according to the most recent annual financial statements
- Charter capital of a newly established State-Owned Legal Entity exceeds €2 billion at the date of its establishment
- There are more than 10 shareholders owning ordinary shares of a State-Owned Legal Entity

If a State-Owned Legal Entity does not meet the criteria indicated above during two consecutive years, it may take a decision to liquidate its supervisory board.

II. Finance

NBU Simplifies Registration of Loan Agreements with Non-Residents

Effective on 10 April 2017, the National Bank of Ukraine (NBU) simplifies the procedure of registration of loans received from non-residents⁴, in particular:

- In case of loan assignments, new non-resident lenders are now entitled to initiate registration of loan assignment by submitting a joint application together with the initial lender, provided that Ukrainian borrower was notified of change of lenders. Only borrowers were entitled to initiate such registration before.
- A new electronic system for registration of loan agreements is established, which allows the banks servicing loans to monitor the procedure of loan agreement registration and to control compliance with the requirements on maximum interest rate for transactions under loan agreements.

III. Regulatory

Cancellation of Legal Entity/Individual Entrepreneur Stamps

On 23 March 2017, the Parliament adopted a draft law, which cancels obligatory use of stamps. Earlier, in 2014, the Parliament already eased requirements for use of stamps.⁵ However, they were still required in certain cases. With the new law taking effect, legal entities and individual entrepreneurs will not be required to use stamps in their activity anymore, including in their communication with state authorities. To ensure that the law is observed by state authorities, it introduces administrative liability of state officials for requiring stamped documents.

The law will come into effect in three months after its publication. At the moment, it is awaiting the president's signature.

⁴ NBU Resolution on Amendments to Certain NBU Normative Acts, dated 23 March 2017, No. 26.

⁵ Draft Law of Ukraine on Amending Certain Laws of Ukraine Regarding Use of Stamps by Legal Entities and Individual Entrepreneurs No. 4194.

Banks Capitalisation and Reorganisation Simplification

The Parliament has extended the term for banks to use the simplified procedure for capitalisation and reorganisation until 2020.⁶

The new law replaces the previous one, which was valid before 2017, and establishes expedited procedures for banks capitalisation and reorganisation by means of merger in order to bring their activity into compliance with the requirements regarding the amount of the charter capital which was raised in 2014.

The law also stipulates the possibility of revoking a banking license without liquidating the bank as a legal entity, which is completely new to Ukrainian law, and will allow the bank to perform non-banking operations after revocation of its banking license.

The law will come into effect the day following its publication and will be valid until 1 August 2020. At the moment, it is awaiting the president's signature.

New Air Transportation Licensing Conditions

On 23 March 2017, the license requirements for air carriage of passengers, dangerous freights and hazardous waste came into force.⁷

The respective resolution set forth the exhaustive list of documents to be submitted and established the following requirements to companies seeking the license:

- An applicant must have a valid air operator certificate and own or lease at least one aircraft (except for a wet lease)
- Main activity of an applicant is air transportation, which may be accompanied with any other type of commercial aircraft operation and aircraft technical maintenance
- Operational specifications indicated in an air operator certificate such as types of flights, place of business and material and technical facilities must be consistent with the sought type of licensed business
- More than 50% of the applicant's share capital must be owned by Ukraine, Ukrainian legal entities and/or Ukrainian individual residents, unless otherwise is established in the international treaties of Ukraine
- Aircraft personnel must comply with Ukrainian qualification requirements and have valid certificates
- An applicant must employ its employees under labour agreements governed by Ukrainian law

New Licensing Conditions in the Spheres of Heat Supply and Electricity Generation

The National Commission for State Regulation of Power and Utility Industries has adopted new licensing conditions for heat production, transportation and supply.⁸

The respective resolution will come into force the following day after the day of its publication.

⁶ Draft Law of Ukraine on Simplification of the Procedures for Capitalization and Reorganization of Banks, No. 6010.

⁷ Resolution of the Cabinet of Ministers of Ukraine on Approval of Licensing Conditions of Business Activity on the Carriage of Passengers, Dangerous Freights and Hazardous Waste by Air Transport, dated 10 March 2017, No. 134.

⁸ Resolution of the National Commission for State Regulation of Power and Utility Industries on Approval of Licensing Conditions for the Economic Activity in the Sphere of Heat Supply, dated 22 March 2017, No. 308.

Companies working in the field of heat supply must bring their activity into compliance with the new requirements within two months after the resolution becomes effective.

In addition, new licensing conditions were approved for electricity generation.⁹

The resolution will come into force in two months after the day of its publication.

Companies working in this field must bring their activity into compliance with the new requirements within three months after the resolution becomes effective.

Free Trade Agreement With Canada

On 14 March 2017, the Ukrainian Parliament ratified the Free Trade Agreement (FTA) between Canada and Ukraine dated 11 July 2016.¹⁰ The agreement will come into force on the first day of the second month following receipt of notification on ratification from the party that is the last to ratify the agreement.

Once the FTA enters into force, Canada will eliminate custom duties to agricultural goods (except for goods that are in the tariff rate quotas, e.g., wheat, milk, chicken, eggs, etc.) and industrial products (except for cars for the transition period of seven years) originated and exported from Ukraine.

Ukraine will eliminate custom duties for food products and certain manufactured goods originated and exported from Canada incrementally within seven years.

Parties have agreed that the above preferential conditions apply exclusively to goods originated from Ukraine/Canada (where the product was produced exclusively from originating materials or has undergone sufficient production).

In addition, under the FTA, Canadian and Ukrainian entrepreneurs will have preferential treatment when they participate in government procurement procedures.

FTA parties have also agreed to mutual protection of intellectual property rights and release of e-commerce deliverables from customs duties and any other charges.

IV. Anticorruption

Model Anticorruption Program for Ukrainian Legal Entities

Ukrainian National Agency for Prevention of Corruption approved a Model Anticorruption Program to be used by Ukrainian legal entities as a base for internal policies.¹¹ Under the Law on Preventing Corruption in Ukraine, such policy is mandatory for state-owned companies and companies participating in public procurement when the tender amount is equal or exceeds €20 million.

The model program contains all provisions required under the Law on Preventing Corruption in Ukraine, but may be strengthened with additional anticorruption standards and procedures at company's discretion.

⁹ Resolution of the National Commission for State Regulation of Power and Utility Industries on Approval of Licensing Conditions for the Economic Activity of Electricity Generation, dated 22 March 2017, No. 309.

¹⁰ Law of Ukraine on Ratification of Free Trade Agreement between Ukraine and Canada, dated 14 March 2017, No. 1917-VIII.

¹¹ Decision of the National Agency for Prevention of Corruption on Approval of the Model Anti-Corruption Program for Legal Entities, dated 2 March 2017, No.75.

V. Double Taxation

Double Taxation Treaty Between Ukraine and Luxembourg

On 14 March 2017, the Ukrainian Parliament ratified the Double Taxation Treaty between Ukraine and the Grand Duchy of Luxembourg dated 6 September 1997 and respective Protocol dated 30 September 2016.¹² The treaty as amended by the protocol will apply to income received from 1 January of the year following the year in which both parties accomplish ratification procedures.

The protocol amends the tax rates for passive income as follows:

- 5% withholding tax on dividends, provided that the dividend recipient holds at least 20% of the capital of the company paying the dividend. In all other cases, the rate is 15%.
- 5% withholding tax on interest on loans provided by banks or other financial institutions. In all other cases, the tax rate on interest is 10%.
- 5% withholding tax on royalties for patents, trademarks, designs, secret formulas or processes, or for information (know-how) concerning industrial, commercial or scientific experience. 10% is applied to royalties for copyright works.

VI. Sanctions

Sanctions Against Russian Banks

From March 2017, Ukraine imposed economic sanctions against five Ukrainian banks that have Russian capital: "SBERBANK" PJSC, PJSC "VS Bank", PSC Prominvestbank, PJSC "VTB BANK", "BM BANK", PJSC.

For one year, the sanctions restrict these banks from transferring capitals (funds) outside of Ukraine in favour of any of their affiliated entities, including by means of providing loans, making investments, placement of funds on correspondence accounts, paying dividends, repaying loans, etc.

The sanctions do not restrict transactions of the banks' clients.

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¹² Law of Ukraine on Ratification of the Convention between the Government of Ukraine and the Government of the Grand Duchy of Luxembourg "On Avoidance of Double Taxation and Prevention of Income and Capital Tax Evasion" and a Protocol to the Convention between the Government of Ukraine and the Government of the Grand Duchy of Luxembourg "On Avoidance of Double Taxation and Prevention of Income and Capital Tax Evasion" dated 14 March 2017 No. 1918-VIII.