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## PUBLIC PRIVATE PARTNERSHIP

### New Exceptions to the Public Procurement Regulations

- The Cabinet of Ministers of Ukraine by its Resolution № 300 dated 12.04.2010 approved amendments to the Regulations on Procurement of Goods, Works and Services for Public Funds. According to these amendments the norms of the abovementioned Regulations do not apply to the procurement of goods, works and services, connected with the preparation of infrastructure objects for the final part of the 2012 European Football Championship in Ukraine, notably to the following procurements:
  - construction of new stadiums and reconstruction of operating stadiums for the conduct of the final part matches of the 2012 European Football Championship in Ukraine;
  - construction of new, reconstruction and additional fitting-out of operating training-centers in order to facilitate the trainings of teams participating in the Championship;
  - designing, construction, reconstruction and repairs of airports;
  - construction, reconstruction, and complete overhaul of public motor roads (interurban communication) according to the European standards;
  - establishing of modern systems aimed at rendering public transport services around Kiev, Donetsk, Lvov, Kharkov as well as at the road safety monitoring all the way to the stadiums.

## CORPORATE LAW

### Innovations in the State Budget Law Regarding Dividend Payment

- In concordance with the Law «On the State Budget of Ukraine for the Year 2010» which was adopted on 04.27.2010 by the Parliament of Ukraine, in

2010 all joint stock companies (irrespective of the proprietary form) are obliged to pay out dividends from the net profit of the accounting year and/or from their unappropriated balances at the minimum rate of 30 per cent.

Consequently, in case a decision on dividend payment is taken it is only possible to augment the dividend rate as compared with the specified minimum rate, but not to curtail it.

The current norm will come into force once the Law has been published.

According to the current legislation a regular general meeting is to be held by a joint stock company on or prior to April 30th of the year following the reporting year. Hereby, for the majority of joint stock companies which have already held their meetings and taken their decisions on dividend payment at a smaller rate this innovation will be irrelevant (as well as for the shareholders concerned).

Thus, on the one hand, the establishment of the obligatory rate of dividend payment could produce a negative impact on the company's activities and its further intensive development (considering that the planning of economic activities takes more than a month or two, and indeed amendments to plans are oftentimes not relevant). On the other hand, the rights of shareholders are protected in such a way, chiefly of minority shareholders having no particular «levers» for exerting pressure on the company's activity. Therefore, the companies' obligation to pay dividends can make the minority interests more attractive, which will certainly contribute to the development of the stock market (however, not in our case, when a company's obligation to pay dividends is established practically in May of the current year, and this only for the current year).

### Arrangement of the Registration Procedure for Stock Issue When Setting up Joint Stock Companies

- With Regulation N 1639 dated 12.03.2009 the State Commission for Securities and Stock Market (SCSSM) has passed the Regulations of the registration procedure for stock issue (issues) when setting up joint stock companies, specifying the terms and the order of registration of stock issues with the State Committee on Securities and Stock

Market when setting up public and private joint stock companies, a list of documents required for the registration of stock issue and for the report on the results of closed (private) placement of shares, the order of refusal of registration as well as the content requirements to the minutes on placement of shares, requirements to the completion of documents which are to be submitted for registration.

The effect of these Regulations covers public joint stock companies set up via establishment, except for the institutions of common investments, and does not apply to the cases of stock issue registration of companies which are founded via merger, accession, division, separation or transformation of a legal entity (entities), as well as of companies incorporated in the process of privatization and corporatization.

Furthermore, the Committee resolved that the emitters who had made a resolution on closed (private) placement of shares among founders and had arranged for the registration of stock issue with SCSSM before the Law “On Joint-stock Companies” came into force, can apply for registration of the report on the results of closed (private) placement of shares pursuant to the Regulations of the Registration Procedure for Stock Issue When Setting up Joint-Stock Companies, which were approved by the resolution of SCSSM N 487 dated 03.15.2007.

In connection with the above stated decision of SCSSM declared its decision N 487 dated 03.15.2007 “On Approval of Regulations of the Registration Procedure for Stock Issue When Setting up Joint Stock Companies” null and void (except for certain provisions). The resolution dated 12.03.2009 came into force on April 13th 2010.

## Amendments Concerning the Regulation of Foreign Investments

- On April 27th the Parliament of Ukraine has adopted a law cancelling mandatory registration of foreign investments and lifting the ban on early repayment of cross-boarder credits and loans.

As it is known, in autumn 2009 the amendments became operating, according to which all investments in Ukraine prior to and in January 2011 must be carried out with the obligatory conversion to Grivna (Ukrainian national currency) and the

use of investment accounts. The registration of foreign investments has thereby become obligatory, also for the purpose of dividend payment or return of investment; early repayments of cross-boarder credits and loans were also put under a ban (such loans quite often serve as the main means for financing activities of foreign investors in Ukraine). The given amendments were part of countermeasures against the financial crisis in Ukraine. However, they have exerted considerable negative influence on the foreign investors’ activity, modest as it is, having obstructed their business in Ukraine. The mentioned amendments proved again the fact that “rules” can also be changed in the course of the “game”...

That is why the adoption of the law cancelling the above stated restrictive norms for foreign investors could positively influence the increase of investment appeal of Ukraine.

## REAL ESTATE

### Changes in the Order of Rental Quoting of Retail Premises

- The Ministry of Economy and the State Committee for Entrepreneurship by joint decree N 256/44 dated 03.09.2010 have introduced amendments to their decree N 638/109 dated 06.30.2009 “On the Adoption of the Order of Quoting of Prices for Services and Rent of Retail Premises (Spaces) and their Maintenance at the Markets of Foodstuffs and Nonfoods» stipulating that:

1. The rental rate for retail premises (spaces) at the markets is quoted on the assumption of the planned or actual amount of expenditures for the preceding year adjusted for the officially estimated inflation rate for the preceding official year (in the current version of the Order referred to as long-term average inflation rate).
2. The rental cost price for retail premises (spaces) comprises direct and indirect expenditures connected with the lease of retail premises (spaces), and/or expenditures connected with the maintenance of retail premises (spaces) at the markets:
  - Direct expenditures, i.e. expenditures which may be directly referred to a certain object of

expenditures by economically expedient means pursuant to accounting provisions (standards);

- indirect expenditures, i.e. expenditures on remuneration of labour of administrative and technical staff; on heating and water supply, electric power, and garbage disposal; cleaning services, security and fire prevention services; costs of first-aid provision, disease and sanitation laboratories, utility cores, hygiene rooms, police rooms; amortization of main means and intangible assets.

3. Depending on the location and the layout of a trade post or on the type of products sold, the lessor has a right to stagger the rent price of 1 square meter of a trade post within the limits of the total expenditure costs connected with the lease of all market posts.

## Timely Provision of Construction Permits

- Under decree N 114 dated 03.31. 2010 the Ministry of Regional Development and Construction has obliged the State Architectural Construction Inspection to provide the unconditional observance of review duration of submitted documents and making decisions on:
  - Issue or refusal of permits for preparation and construction work approved by Resolution N 1104 of the Cabinet of Ministers of Ukraine dated 30.09.2009 “Certain Points of Issuance of Permits for Preparation and Construction Work “;
  - Commission of ready construction projects and issue of conformance certificates as stipulated by the Resolution of the Cabinet of Ministers N 923 dated 10.08.2008 “On the Procedure of Commission of Ready Construction Projects”.

By the normative deadline the applicant is to be informed without fail of refused permissions:

- On preparation and construction work – within 5 working days;
- On issue of conformance certificates – within 2 working days.

Moreover, the Ministry of Regional Development and Construction has forbidden out-of-time complex state expert examinations executed by the

State Enterprise “Ukrainian State Construction Expertise” and its local departments. state expert body - the Central Service of the Ukrainian S

## BANKRUPTCY

### A Draft of the Bankruptcy Legislation Amendment

- On 15.04.2010 the Parliament of Ukraine adopted the Law “On Amendments to the Law of Ukraine “On Restoration of Debtor’s Solvency or its Declaration of Bankruptcy” (draft law № 2088). The legislation act introduces amendments to articles 17 and 32 of the law currently in force, stipulating the order of rehabilitation of normal activities of an insolvent enterprise upon the termination of bankruptcy proceedings due to an amicable agreement or to the discharge of the creditor’s claim (article 17) and provided the liquidation procedure raised enough funds to satisfy the creditor’s claim (article 32).

Particularly, “in case of the early termination of bankruptcy proceedings due to an amicable agreement or to the discharge of the creditor’s claim the liquidator shall inform of it the body or the office-holder of the body authorized to appoint the director (the management body) of the debtor within five days as of the date of the corresponding decision made by the economic court, shall conduct a meeting or a sitting of the corresponding body if necessary and exercise his duties until the director (the management body) of the debtor is appointed in the due order”.

According to the document, if the bankrupt company’s assets were sufficient to satisfy all creditor claims, it is considered to be solvent and can continue its entrepreneurial business. In such a case the liquidator shall inform of it the body or the office-holder of the body authorized to appoint the director (the management body) of the debtor within five days as of the date of the corresponding decision made by the economic court, shall conduct a meeting or a sitting of the corresponding body if necessary and exercise his duties until the director (the management body) of the debtor is appointed in the due order. The economic court can pass a resolution on the liquidation of the legal entity of the former debtor, only if the property assets remaining in its possession make up less than it is needed for its operation according to the legislation.

## FOOD AND BEVERAGES

### Draft Law on the Quality of Dairy Products

- On 04.15.2010 the Parliament of Ukraine adopted the Law “On Amendments to the Law of Ukraine “On Milk and Dairy Products” (draft law №0923) concerning conformity of safety and quality of dairy products with the indexes established by the legislation and standards of Ukraine.

The legislative act has improved the current legislative provisions regarding safety and quality of dairy products. Particularly, it clarifies the terms «milk feedstock», «dairy products», «traditional dairy products», «packaging», «processing plant» etc. It also specifies the requirements to the safety and quality indexes of milk, milk feedstock and dairy products.

According to the Law «the traditional dairy products are butter, different sorts of cheese, ryazhenka (fermented baked milk), thick sour milk, sour acidophilus milk, sour cream, curds produced from milk feedstock under established technologies with use of lactobacillus ferments, and kefir produced with use of kefir fungi ferments». The Law forbids using fat and non-milk proteins as well as all stabilizers or preservatives in the production of traditional dairy products.

It is also stipulated that milk, milk feedstock and dairy products which are produced in Ukraine or are imported to the customs territory of Ukraine must comply with the safety and quality indexes determined by the normative legal acts of Ukraine.