

LEGISLATION NEWS

Real estate & Construction

- Comments to the Law “On amendments to certain legislative acts of Ukraine as to improvement of the state regulation in the sphere of housing construction” #2367
- Prohibition to terminate housing construction contracts has been prolonged
- Tax incentives for hotels
- Legal regulation on use of land of electric power
- State registration of land plot lease agreements
- Limitations as to disposal rights for state property
- Regulations on issuance of state acts for the ownership right to land plot is coming into force

Banking & Finance

- Review of the changes to the banking legislation became effective in July 2010

Regulatory

- New order for issuance of licenses for use of subsurface resources
- Legislative regulation of the natural gas market
- Establishment of a National commission on regulation of the public utility services market

Tax

- Regulation of payments to the Pension fund by single tax payers
- Establishment of a single social fee for obligatory state social insurance

Food and Beverages

- Issuance of operational permits

Corporate Law

- Draft of amendments to the legislation on joint stock companies

Dispute Resolution

- New law on judicial system and judges' status

Healthcare

- Government is going to tighten control over drugs circulation
- The list of OTC drugs may be decreased in the short run

Public Procurement

- New law on state procurement coming into force
- State procurement in connection with EURO-2012
- Approval of the state procurement under procedure of purchase by one participant

REAL ESTATE & CONSTRUCTION

Comments to the Law “On amendments to certain legislative acts of Ukraine as to improvement of the state regulation in the sphere of housing construction” #2367

– On July 23, 2010 the Law of Ukraine “On amendments to certain legislative acts of Ukraine as to improvement of the state regulation in the sphere of housing construction” # 2367 (hereinafter – the Law) has come into force which introduces essential changes and amendments to the number of legislative acts in the sphere of construction of residential houses. In general, it shall be noted that despite declarations of the lawmakers as to protection of rights of private investors a lot of provisions of the Law have been designed to the benefit of the developers.

1. Pursuant to the new version of Article 4 of the Law of Ukraine “On investment activity” non-governmental pension funds have been removed from the list of approved mechanisms for investment and financing of housing construction. On the other hand, Article 4 provides a possibility to apply other financing instruments for housing construction, if such instruments are regulated by the law only. Therefore, non-governmental pension funds could renew their participation in direct construction financing only after introduction of respective amendments, for instance, to the Law of Ukraine “On non-governmental pension benefits». Still, the non-governmental pension funds cannot be compared to instruments of construction financing funds/real estate transaction funds as in this case the non-governmental pension funds do not have any means of control over construction process, target use of money and proper fulfillment of developers’ obligations. On the other hand, removal of non-governmental pension funds from the list of instruments for construction financing cannot be deemed as reasonable.
2. Essential amendments have been introduced to Article 29 of the Law of Ukraine “On planning and development of territories”. In particular, in order to obtain a construction permit in course of reconstruction/capital repairs of roads and other linear communications within existing land allocation the developer shall not provide any documents confirming its ownership or use rights for the land plot any more. This provision is of a big

practical importance taking into account the fact that a lot of roads and other linear objects have been constructed in the past without any execution of land plot documents or have been transferred from balance to balance of different state/communal enterprises without re-execution of such title documents.

It shall be noted that previously such provision was present in Ukrainian legislation, though for a short period of time. In particular, because of the Anti-crisis Law #800 dd. 25.12.2008 similar provision has been introduced to Article 29 of the Law of Ukraine “On planning and development of territories”. But, it soon disappeared in connection with the new April version of this article based on the Anti-crisis Law # 509.

Therefore, as for today this provision on simplified procedure for obtaining a construction permit will be a big help first of all for Ukravtodor, its regional services and subordinate state enterprises.

3. Pursuant to the new provision of Article 30-1 of the Law of Ukraine “On planning and development of territories” a specific procedure for putting into operation of residential houses of a villa type, cottages and garden houses constructed prior to 31.12.2008 without obtaining of a construction permit and engagement of construction firms has been introduced. In particular, such buildings shall be put into operation based on technical inspection and provided submission of land plot title documents. In this context it shall be noted that this provision practically introduced new putting into operation procedure compared to the procedure contained in the Transitional Provisions on putting into operation of finished residential houses of a villa type, cottages and garden houses constructed without construction permit (Resolution of the Cabinet of Ministers of Ukraine #1035 dd. 09.09.2009). So, if the Transitional Provision did not previously envisage submission of a land plot title documents as well as documentation of technical inspection for private residential houses having total area less than 200 sq.m. and not more than 2 floors, now taking into account requirements of the law such documents will be required by GASK for submission. Therefore, for putting into operation of houses of a villa type, cottages and garden houses irrespectively their area and floor number title documents to the land plot shall be executed (if they have not been executed already). As to technical inspection – respective procedure shall be approved by the Ministry of regional development and construction.

This provision of the Law shall be in force till 01.01.2012 which is an actual prolongation of the term previously determined by the Resolution of the Cabinet of Ministers of Ukraine # 1035. In particular, if previously according to the Resolution of the Cabinet of Ministers of Ukraine # 1035 the dead line for submission of applications for putting into operation was 31.12.2010, now such application can be submitted up to 01.01.2012 based on the Law of Ukraine “On planning and development of territories”.

Pursuant to afore mentioned novelties the Resolution of the Cabinet of Ministers of Ukraine #1035 shall be brought into compliance with the Law within 6 months term.

4. The lawmakers tried to prohibit existence of control relations between trustees, developers and insurance company in the framework of construction financing funds and real estate transaction funds. In particular, in one of the first versions of the Law of Ukraine “On financial and credit instruments and asset management at housing construction and real estate transactions” such prohibition was provided as amendment to Article 4 through definition of control relations and affiliated persons in Article 2 of the Law. After this, taking into account difficulty in practical application of this provision, it has been cancelled. This was an attempt to fight abuse in the sphere of construction financing as well as to provide real control of the trustee over the developer’s activity by construction of a residential object. Therefore, this provision was primarily directed at protection of private investors’ interests. On the other hand, it could not be let out that under conditions of the Ukrainian market such provision would not work at all or provided strict control of state authorities would seriously compromise the construction of residential houses. Due to afore mentioned dilemma between the progress of the construction branch and protection of investors’ interests, the lawmaker choose in favor of the first.
5. The Law cancelled the requirements as to obligatory insurance of construction and installation works by the developer within construction financing funds and real estate transaction funds. The obligation of the principle as to insurance of its proprietary risks under agreement on participation in a construction financing fund has been cancelled as well. Respective provisions on obligatory insurance have been removed from Article 7 of the Law of Ukraine “On insurance”.

On the one hand, this provision shall considerably

lighten the financial burden for both – the developer and the principal. On the other hand, such provision can negatively influence private investors, especially taking into account the fact than in most cases objects are put into operation with delay and not always with duly executed construction/furnishing works. For fairness sake it shall be noted that the investor can any time on its own initiative to choose voluntary insurance.

As to the insurance of construction and installation works regarding risks of their damage or destruction, its cancellation could negatively influence the private investors. In particular, in case of such damage or destruction the developer will apply for force majeure at the Chamber of Commerce and Industry (by the way, based on new part 3 article 14 of the Law of Ukraine “On chambers of commerce and industry in Ukraine”) and will be free of any liability as to non-performance or improper performance of its obligations. Besides, previously obligatory insurance of construction and installation works was executed for the whole warranty term after transfer of the object into ownership of the investor, but now after cancellation of the obligatory insurance investors will not be able to receive any compensation in case of damage or destruction of the investment object. Therefore, this legislative novelty has been introduced, most likely, to the benefit of the developers and not the private investors.

6. Pursuant to Article 7 of the Law of Ukraine “On financial and credit instruments and asset management at housing construction and real estate transactions” the fund trustees are prohibited to conclude asset management agreements and raise capital from members for financing of construction objects before obtaining of a construction permit by the developer. Previously, issuance of a construction permit was obligatory only for opening of financing within construction financing funds. As to real estate transaction funds, there was no such requirement as to opening of a financing. Furthermore, according to Article 25 of the law, the real estate transaction fund could have been established even before approval of design estimate documentation for construction – in such case owners of certificates of a real estate transaction fund agree to additional risks. Now, after passing of the new provision of Article 7 of the Law, prior to obtaining of a construction permit by the developer the trustee can only draft Fund Provisions and regulate relations with the developer. This provision shall minimize risks of investors as well as to prevent non-target use of capital by the trustees. So, previously the capital raised prior to obtaining

of a construction permit could be freely used by the trustees in bank transactions according to Article 7 of the Law “On financial and credit instruments and asset management at housing construction and real estate transactions”. From now on, all raised capital shall be used directly for construction purposes. Besides, obtaining of a construction permit as condition for attraction of financing shall motivate developers to obtain the permit more quickly and within the set terms.

7. Another innovation in the Law “On financial and credit instruments and asset management at housing construction and real estate transactions” concerns claimants with claims to replace the trustee of construction financing funds and real estate transaction funds. If previously court judgment on replacement of a trustee could be made upon claim of any third party, now only principals of the construction financing fund/owners of certificates of real estate transaction funds and authorities supervising activity of the trustee shall have such right. Most likely, through limitation of the number of persons authorized to claim replacement of the trustee, the lawmaker intends to prevent possible abuse on the side of third parties.

In addition, the procedure for transfer of control shall be regulated on the sub-legislative level by the Cabinet of Ministers of Ukraine.

8. The Law also introduces additional requirements for advertisement of real estate objects being constructed. In particular, additionally to requirements of the Article 25-1 of the Law “On advertisement”, the advertisement of residential houses being constructed is allowed now irrespectively availability of a construction permit and a construction activity license provided obtaining of a permit/license for provision of financial services or a certificate on registration of special purpose bonds. Besides, the list of requirements has been supplemented with a condition as to confirmation of ownership or use rights for the land plot (though, on the other hand, a construction permit cannot be issued without confirmation of such rights). Taking into consideration such novelty a special authorized body on town planning and architecture has been introduced in addition to existing controlling bodies in the sphere of advertisement which shall control the advertisement of real estate objects being constructed. In case of violation of the requirements of the Law “On advertisement”, advertisers, advertisement producers and advertisement distributors will bear administrative

liability in form of a fine in amount of five-time value of distribution/production of the advertisement.

In general, this legislative novelty allows preventing of misleading of private investors and ensures transparency of the procedure of attraction of private investors to housing construction. It is, nevertheless, not to forget that imposing of a prohibition is only the first step, the further implementation depends on the level of control from controlling authorities and, in the main part, on advertisement distributors.

9. The validity term of the clause of the Transitional provisions of the Land Code as to non-competitive procedure for lease of land plots being in state or communal ownership if the decision on approval of the object location or approval of the land allocation project was made before January 1, 2008 has been prolonged. This clause shall be in force till October 15, 2010. Besides, lease of land plots based on decision on approval of the object location or approval of the land allocation project issued before 14.10.2008 shall be conducted on non-competitive basis as well.

10. It shall be noted that the parliamentarians tried to introduce a special strict requirement for foreign developers, in particular, a requirement as to obligatory involvement of citizens and legal entities of Ukraine in carrying out of construction and installation works in the volume of not less than 90% as well as use of not less than 50% of domestic products and materials for an object construction. The parliamentarians even voted in favor of this version of the Law in second reading. But, due to the veto of the President this provision has been removed from the final text of the Law. Obviously, such high requirements to foreign developers would not contribute to the attractiveness of the Ukrainian market. Besides, this provision did not correspond with the requirements of the WTO agreement, General agreement on tariffs and trade, General agreement on trade in services as to establishment of a national regime.

Previously, there were similar requirements to foreign developers in the Ukrainian legislation. In particular, because of the Anti-crisis Law # 800 dd. 25.12.2008 similar provision was introduced to Article 29 of the Law of Ukraine “On planning and development of territories”. But it was removed in connection with the new April version of the mentioned Article based on the Anti-crises Law # 509.

11. The Law also did not leave out the provision on force majeure. So, previously the powers of the

Chamber of Commerce and Industry as to dealing with applications and issuance of certificates on liquidation (suspension) of activity due to force majeure have been provided only in the Anti-crisis Law # 800. From now on, the respective powers as to certification of force majeure in course of construction of residential real estate objects have been determined directly by the Law of Ukraine "On chambers of commerce and industry in Ukraine". Clearly, this provision can be abused by the developers and is not directed at the protection of rights of private investors. In this case it is necessary to regulate consequences of force majeure and procedure for return of money to the investors. Unfortunately, this issue has not been considered by the parliamentarians. In this connection, the only protection tool for investors is litigation.

Prohibition to terminate housing construction contracts has been prolonged

- According to par. 4 part one Article 3 of the Law "On preventing influence of the world financial crisis on development of the construction branch and housing construction" till 1.01.2010 it is prohibited for individuals and legal entities to terminate housing construction contracts. This prohibition was applied to contracts on transfer by developers of finished housing construction objects (their parts) provided 100% down payment under such contracts except for cases such termination is carried out upon agreement of the parties. It is also stipulated that this prohibition shall not be applied if putting into operation term for the construction object is delayed for more than 18 months.

On 10.07.2010 the Parliament of Ukraine took as basis the draft law "On amendments to the Law of Ukraine "On preventing influence of the world financial crisis on development of the construction branch and housing construction" as to prolongation of the term in order to stimulate the housing construction branch. The draft law #6687 envisages prolongation of the prohibition term till 1.01.2013 and stipulates that this prohibition shall not be applied if the term for putting into operation of the construction object is delayed for more than 30 months.

Tax incentives for hotels

- On July 8, 2010 the Parliament of Ukraine has passed in general the Law of Ukraine "On amendments to certain laws of Ukraine as to development and preparation of single infrastructure to conduction

in Ukraine the final part of the 2012 European Football Championship".

This Law envisages temporary tax redemption for 10 years beginning with January 1, 2011 as to profits of 5*, 4* and 3* hotels if such hotels (including, newly constructed or reconstructed, or after capital repairs or restoration) will be put into operation before September 1, 2012.

This Law shall come into force as of its publishing. We expect that passing of this Law will positively influence the investment attractiveness of the Ukrainian hotel business in general, as envisaged tax incentives allow to essentially increase the profitability of hotel business projects and stimulate effective preparation of Ukraine for the EURO 2012.

On the other hand, taking into account that it takes in general at least two years for a hotel construction project to be implemented, it shall be said that tax incentives will be applied only to such companies which have already started to work on such projects.

Legal regulation on use of land of electric power

- On 09.07.2010 the Parliament of Ukraine has passed in second reading the Law "On land of electric powers and the legal status for special zones of power engineering facilities" (draft law #4680).

The Law provides definition and classification for the land of electrical powers. Pursuant to the Law the land of electrical powers is land transferred according to the procedure established by the legislation into the ownership and use for allocation, construction and operation of electricity and heat energy production and transmission facilities, alternative energy facilities, technological infrastructure facilities of power engineering facilities, including administrative and production buildings of enterprises carrying out such activity.

The law stipulates that electricity transmission objects can be located on land plots of all land categories without change of their designation. At this, electricity transmission objects are determined by the Law as air and cable electricity transmission lines, transforming substations, distributing centers and plants.

For construction, allocation and operation of electricity or heat energy transmission objects land plots of any ownership form, under agreement with

owner or user of the land plot, can be used also through establishment of permanent or fixed-term servitudes without change of land plot designation.

The Law also stipulates the legal regime for special zones of power engineering facilities, in particular sanitary protection areas of nuclear power plants, radiation-control area of nuclear power plants, protected and sanitary protection zones of power engineering facilities, protected zones of main heating systems.

The Law introduces changes to the Law of Ukraine “On land lease” which provides for possibility to conclude a lease agreement for several land plots owned by one lessor (and as to land plots being in state or communal ownership - land plots being in disposal of one executive or local self-government authority).

State registration of land plot lease agreements

- On 08.07.2010 the Parliament of Ukraine has passed the law of Ukraine “On amendments to Article 20 of the Law of Ukraine “On land lease” (draft law #4681). The Law envisages that the lease rights to the land plot arise as of the date of the state registration of such right according to the law regulating the issues of the state registration of corporeal rights to real estate and their limitations. At this, it shall be taken into account that according to final and transitional provisions of the Law of Ukraine “On amendments to the Law of Ukraine “On state registration of corporeal rights to real estate and their limitations” and other legislative acts” # 1878-VI dd. 11.02.2010 the state registration of land plot lease agreement till 01.01.2012 shall be carried out by land resources authorities.

The Law also provides that till 01.01.2012 the term for the state registration of the land plot lease agreements cannot exceed 14 days as of application submission. Besides, the fee for the state registration of a lease agreement on land plot with agricultural designation shall not exceed three tax-free personal incomes.

Limitations as to disposal rights for state property

- On 25.07.2010 the President of Ukraine has signed the Law “On amendments to certain laws of Ukraine” (draft law #4552). In order to prevent alienation of

integral property complexes included to the list of state ownership objects not subject to privatization and their structural subdivisions the Law prohibits transferring such complexes into lease, to reorganize or liquidate such enterprises until their removal from this list.

Regulations on issuance of state acts for the ownership right to land plot is coming into force

On 05.07.2010 the Decree of the State Commission on Land Resources dd. 03.06.2010 #433 has come into force introducing amendments to the Regulations on procedure for execution, issuance, registration and storage of state acts for the ownership rights to land plot and rights of permanent use to land plot and land lease agreements. Among other things, the Decree cancelled the provisions on issuance of state acts for the ownership right (permanent use) to land plot as well as on their (and land lease agreements) state registration by the structural subdivisions of the Centre of the state land cadastre at the State Commission on Land Resources.

BANKING & FINANCE

Review of the changes to the banking legislation became effective in July 2010

- 1. On July 17, 2010 the Resolution of the NBU’s Board of Directors No. 280 as of 15 June, 2010 “On adoption of Changes to Regulation on organization of operational activity in Ukrainian banks” became effective (except for some provisions to become effective on 1 January, 2011).

Among changes implemented by this Resolution the most significant is the amendment to clause 1.4 of the Regulation on organization of operational activity in Ukrainian banks, according to which “processing of data regarding operations [of bank] and its storage shall be performed on servers and/or other computer hardware which shall be physically located in Ukraine”. This provision shall become effective on 1 January, 2011.

Consequently, from 1 January, 2011 processing and storage of data on banking operations on servers located abroad shall be prohibited. Most of all it affects banks with foreign capital, servers of which are located abroad. They will be enforced to make fundamental changes to their policy regarding the data processing and storage.

2. On July 17, 2010 the Resolution of the NBU's Board of Directors No. 273 as of 9 June, 2010 "On changes to certain regulations of the National bank of Ukraine" became effective.

Among the most important changes implemented by this Resolution the following changes to the Instruction on order of regulation of banking activity in Ukraine, adopted by the Resolution of the NBU's Board of Directors No. 368 as of 28 August 2001, may be emphasized:

- (a) Minimum amount of the regulatory capital has been changed from EUR 10 million to UAH 120 million. Moreover, amount of the bank's regulatory capital shall not be less than its authorized capital. Banks, having on the effective date of this Regulation the regulatory capital less than UAH 120 million, shall increase it to the stipulated amount till January 1, 2012. Banks, having on the effective date of this Regulation the regulatory capital less than UAH 120 million, shall be authorized to attract deposits from private individuals (to open new deposit accounts to private individuals and credit existing accounts) within the amount of attracted deposits on the effective date of this Regulation, until adjustment of the regulatory capital in accordance with the Regulation.
- (b) New grounds for suspension of payment of interests under subordinated loans have been added. Namely: (i) existence of payment documents not performed in time due to the bank's fault, and (ii) appointment of the temporary administration caused by the deterioration of the financial position of the bank-borrower.
- (c) The order of accounting of funds, attracted as a subordinated loan in the foreign currency, in the bank's regulatory capital has been changed. According to the previous order, to determine the amount of the subordinated loan to be counted in the bank's capital, attracted funds in the foreign currency had to be recalculated in UAH according to the official exchange rate established by the NBU on the date of crediting such funds to the correspondent account of the bank-borrower. And according to the new order funds attracted as a subordinated loan in the foreign currency shall be counted in the bank's regulatory capital according to the official exchange rate of the NBU on the reporting date, taking into account the term remaining till the maturity date.
- (d) Funds of the compulsory bank's reserves with the NBU are excluded from the list of assets taken into account for calculation of the bank liquidity ratios.

- (e) New forms of monthly reports have been added, namely: "Report on the largest (direct and indirect) participants of bank's contractors" and "Report on concentration of risks under passive bank's operations".

- (f) The following reports have been excluded from the quarterly report forms: "Data on deposits of private individuals with banks" and "Data on subjects of commercial activity in which owner of the significant stake in the bank has participation interest exceeding 10%".

Moreover, this Resolution implements changes to the Regulation on order of issue to banks of banking licenses, written permits and licenses for performance of separate operations, adopted by the Resolution of the NBU's Board of Directors as of 17 July, 2001 No. 275, to the Resolution of the NBU's Board of Directors as of August 6, 2008 No. 228 "On amendments to certain regulations of the National bank of Ukraine", to the Regulation on order of issue to non-banking financial entities of licenses for performance of certain banking operations, adopted by the Resolution of the NBU's Board of Directors as of August 16, 2001 No. 344, to the Regulation on order of establishment and state registration of banking associations, adopted by the Resolution of the NBU's Board of Directors as of August 31, 2001 No. 377, and to the Regulation on application by the National bank of Ukraine of measures of influence for violation of the banking legislation, adopted by the Resolution of the NBU's Board of Directors as of 28 August, 2001 No. 369.

3. On 19 July, 2010 the Resolution of the NBU's Board of Directors No. 223 as of 30 April, 2010 "On performance of operations with usage of special payment instruments" became effective (except for some provisions to become effective on January 1, 2011).

Mentioned Resolution establishes new Regulation on order of issue of special payment instruments and performance of operations with them and implements changes to the Instruction on order of opening, utilization and closing of accounts in national and foreign currencies, adopted by the NBU resolution as of November 12, 2003 No. 492, with regard to opening and utilization of current accounts, operations on which may be performed with usage of special payment instruments.

According to the mentioned Regulation No. 223 banks – members of payment systems which perform issuance and acquiring of special payment

instruments, apart from payment cards, shall provide the NBU with notification of bank's work with special payment instruments in the form set forth in the annex to the Regulation on order of issue of special payment instruments and performance of operations with them. Banks – members of payment systems which perform acquiring of special payment instruments shall, not later than August 1, 2010 ensure codification of self-service banking machines assigning them interbank registration codes in accordance with interbank system of registration codification.

4. On July 23, 2010 the Resolution of the NBU's Board of Directors as of July 13, 2010 No. 327 "On adoption of Regulation on provision by the NBU of stabilization loans to Ukrainian banks" (hereinafter – the "Regulation") became effective.

Mentioned Resolution cancels Resolution of the NBU's Board of Directors as of 4 February 2010 No. 47 "On adoption of Regulation on refinancing and provision by the NBU of loans to Ukrainian banks for the purpose of stimulation of crediting of Ukrainian economy for the period of its return to pre-crisis characteristics" and establishes new rules and requirements of providing banks with stabilization loans which are significantly different from the previous ones.

Pursuant to the new Regulation the stabilization loan may be granted exclusively to solvent bank for support of its liquidity for the 90-day term with possible extension up to 90 days. Interest rate under the stabilization loan is floating and shall amount to the NBU's discount rate plus two interest points.

To limit the bank's liquidity risk the NBU may, upon granting the loan or changing its conditions, establish restrictions and requirements in respect of bank's activity.

To obtain the stabilization loan the bank shall, along with the other documents, provide the NBU with its program of financial rehabilitation aimed at solving the liquidity problem, improvement of assets structure, profitability etc. Moreover, within the validity term of the loan agreement the bank shall, on the monthly basis, provide the NBU with reports on fulfillment of the program of financial rehabilitation and provisions of the loan agreement.

Regulation contains the list of reasons for refusal to grant the stabilization loan, inter alia:

- Insolvency of the bank

- Shareholders and investors of the bank have the objective possibility to ensure the proper financial conditions of the bank by themselves;
- Acquisition by bank of the fixed assets not involved in banking operations;
- Early fulfillment of obligations to owners/ members of the bank (including affiliated persons), as well as under cross-border loans;
- Granting by bank unsecured loans, loans secured by non-liquid assets or securities of its own emission;
- Payment of bonuses to bank's management;
- Purchase of the foreign currency on the interbank currency market for the credit funds received from the NBU;
- Untimely fulfillment of obligations under the NBU loans;
- Violation of requirements and restrictions stipulated by the NBU's resolution on loan granting or the loan agreement.

NBU shall have the right to inspect the bank, if it's necessary for making the decision on stabilization loan granting. In the event that the issue on changing the provisions of the loan agreement arises, the NBU shall inspect the bank-borrower and make the decision taking account of such inspection results.

If the NBU extends the term of the loan agreement the interest rate there under shall be equal to the NBU's discount rate plus three interest points, but not less than the average inter-bank credit interest rate (KIACR) in national currency for the term longer than 92 days, which shall be calculated 30 days prior to the date of the changes to the loan agreement.

In accordance with Regulation stabilization loan must be secured by primary and secondary collateral.

Collateral provided by the bank or property surety shall not be encumbered by other obligations.

The following assets shall be accepted as the primary collateral:

- Ukrainian state bonds;
- Debt securities issued by the NBU;

- Bonds of the State mortgage institution secured by the guarantee of the Cabinet of Ministers of Ukraine;
- Guarantees of the Cabinet of Ministers of Ukraine;
- Foreign currency (USD, EUR, English pound sterling, Swiss francs, Japanese yen) placed with the NBU as the guarantee deposit (without payment of interests on it) for the term not less than the term of the loan agreement.

The proprietary rights to the future receipt of funds on the correspondent account with the NBU shall be accepted as the secondary collateral.

In the event that the value of the collateral is decreased the bank shall repay part of the stabilization loan proportionally to the amount of the collateral value decrease or provide the sufficient additional collateral.

If the bank breaches provisions of the loan agreement the NBU shall have the right to write off the indebtedness from the bank's correspondent account with the NBU on the preemptive and unconditional basis, and terminate the agreement.

In general mentioned Regulation evidences that NBU has given up the idea of crediting the economy of Ukraine and support of the insolvent banks, what, in our opinion, is the result of active work in Ukraine of the International Monetary Fund and the EBRD which have always been insisting on inadmissibility of use of NBU's funds for such purposes.

REGULATORY

New order for issuance of licenses for use of subsurface resources

- On 26.07.2010 the Procedure for issuance in 2010 of special licenses for use of subsurface resources approved by the Resolution of the Cabinet of Ministers of Ukraine dd. 23.06.2010 #596 has come into force. This Procedure stipulates the order of issuance in 2010 of special licenses for use of subsurface resources (hereinafter – licenses) within the territory of Ukraine, its continental shelf and exclusive (sea) economic zone.

The licenses for use of subsurface resources are issued by the Ministry of Natural Resources to winners of auctions on their sale and in other cases provided in par. 8 of the said Procedure.

According to par. 5 of this Procedure the licenses shall be issued for following types of use of the subsurface resources:

- geological exploration, including research and industrial exploitation of mineral deposits of state importance;
- mining operations;
- geological exploration, including research and industrial exploitation of hydrocarbon deposits with further oil and gas recovery (industrial exploitation of deposits);
- construction and operation of subsurface buildings not connected with mining operations, in particular, for subsurface storage of oil, gas and other substances and materials, underground deposit of hazardous materials and industrial waste, waste water disposal and pumping of drain (mining) water;
- creation of geological territories and objects of scientific, cultural and recreational and health-improving importance.

The validity term of a license begins with its registration date, if otherwise not provided therein.

It is also provided that special licenses for geological exploration and exploitation of minerals included to the List of minerals and their minimal stock or perspective resources being of strategic importance for the economy of Ukraine as approved by the governmental resolution dd. 15.07.97 p. #742 are issued by the Ministry of Environment upon decision of the Interagency commission for use of subsurface resources. Previously, such special licenses were issued upon decision of the Cabinet of Ministers of Ukraine.

Legislative regulation of the natural gas market

- On 24.07.2010 the Law of Ukraine “On principals for functioning of the natural gas market” drafted by the Ministry of Fuel and Energy of Ukraine and approved by the government has come into force.

The Law provides for division of functions of transportation, distribution and supply of natural gas and establishment of separate tariffs for gas transportation, supply and storage.

The Law envisages equal access rights to the unified gas transport system of Ukraine and underground gas storages for all market players.

According to this document, enterprises with state controlling stock interest as well as their daughter enterprises, branch offices, parties to joint venture agreements signed with participation of such enterprises shall monthly sell all of the gas recovered in Ukraine to an entity authorized by the government. Afterwards, this gas shall be used for formation of a resource with further use for needs of the population.

Besides, it is envisaged that purchase price for gas shall be determined once a year by the National commission on power industry regulation of Ukraine individually for each seller.

Establishment of a National commission on regulation of the public utility services market

- On 22.07.2010 the Law of Ukraine “On National commission on regulation of the public utility services market” #2479-VI dd. 09.07.2010 has come into force. This Law stipulates legal principles for organization of the activity of the National commission on regulation of the public utility services market of Ukraine – the state collegial body of the executive power which shall be responsible for state regulation in the field of heat supply (except for activity of economic subjects carrying out combined heat production and/or use alternative or renewable energy sources), centralized water supply and disposal.

TAX

Regulation of payments to the Pension fund by single tax payers

- On 17 July, 2010 the Law of Ukraine “On amendments to the Law of Ukraine “On State budget of Ukraine for 2010” and “On obligatory state pension insurance” dd. 08 July, 2010 No. 2461-VI, became effective.

This Law introduces changes to the Law “On obligatory state pension insurance” according to which the obligatory state pension insurance payments shall be made by:

- individuals – private entrepreneurs with special taxation regime (fixed tax, single tax);
- family members of such individuals participating in their business activity.

The amount of insurance payments shall be determined by such individuals for themselves and their family members. The procedure for determining the payable amount is stipulated by the Law “On obligatory state pension insurance”.

Establishment of a single social fee for obligatory state social insurance

- On 08 July, 2010 the Parliament of Ukraine has passed the Law “On collection and accounting of single fee for obligatory state social insurance” (draft law # 6525).

The Law provides for legal and organizational principles for collection and accounting of a single payment for obligatory state social insurance, terms and conditions of its accrual and payment as well as powers of the body responsible for collecting and accounting of such payments.

Only this Law stipulates principles for collection and accounting of the single payment, payers of the single payment, procedure for accrual, calculation and payment of the single payment, its amount and proportions of its distribution according to types of the obligatory state social insurance, body responsible for collection and accounting of such payment, its powers and scope of responsibility, composition, procedure for record keeping and use of data from the State register of obligatory state social insurance, procedure for state control over collection and accounting of the single payment.

Pursuant to the Law the Pension fund of Ukraine shall be responsible for collection, accounting of and control over payments.

In case of its signing by the President of Ukraine the Law shall come into force on 01 January, 2011 except for some provisions which shall come into force on 01 January, 2014.

FOOD AND BEVERAGES

Issuance of operational permits

- On 26.07.2010 the President of Ukraine has signed the Law “On amendments to certain laws of Ukraine as to issuance of operational permits”.

This legislative act introduces changes to the Laws “On fish, other water living resources and foodstuff made of them», “On safety and quality of foodstuff” in order to bring existing safety requirements for foodstuff in compliance with requirements of the state foodstuff control and supervision and simplify the economic activity on the food market of Ukraine.

The Law clearly stipulates the list of actual reasons for refusal in issuance of operational permits to subjects of economic activity which produce and sell foodstuff. The provision on 30-day term for decision-making on issuance of operational permits stipulated by the law shall lighten the influence of public officers in this process.

CORPORATE LAW

Draft of amendments to the legislation on joint stock companies

- On 06.07.2010 the Parliament of Ukraine has took as basis the draft law on amendments to the Law “On joint stock companies” as to improvement of mechanisms for joint stock companies’ activity.

The draft law #6216 introduces changes to the current law directed at improvement of its provisions concerning establishment of a company, procedure for conduction of general members’ meetings, creation of a supervisory board etc.

The draft law changes, in particular, the procedure for alienation of shares of a joint stock company excluding priority rights of the company to buy shares. This will prevent abuse on the part of majority shareholders of the company as to their powers for share purchase.

The draft law also introduces changes to the procedure of creation of the reserve capital of joint stock companies of different types, clarifies the procedure for dividend payment (as to payment of dividends depending on share type) and provisions

as to preparation and conduction of general meetings (procedure for notification, introduction of propositions, shareholders’ registration) as well as to split-off and liquidation of joint stock companies etc.

It is envisaged to supplement the current law with a new article on procedure for buy out of shares of the company by an owner of 95% company’s shares.

The article envisages, in particular, that a person (persons acting jointly) having 95% of company’s shares shall have the right to request all of the shareholders to sell their ordinary shares. In such case, the shareholders shall be obliged to sell their ordinary shares to such shareholder. A person (persons acting jointly) having 95% of shares of the company shall present the company with an open irrevocable claim to all the shareholders owing ordinary shares as to purchase of shares and shall notify the State commission on securities and stock market about this as well as all stock exchanges where the company is listed.

The company shall direct such written claim to each shareholder according to the list of shareholders within 10 calendar days as of receipt of respective documents from the person (persons acting jointly) having 95% of company’s shares. This claim shall also be presented to the depository (ies) where a securities account of a person (persons acting jointly) having 95% of company’s shares has been opened.

Pursuant to the draft law, the purchase price cannot be lower than average arm’s length price of the stock exchange dealing with the company’s shares. If there are no company’s shares on the market, the purchase price cannot be less than a price determined by an independent appraiser. The fee for services of the independent appraiser shall be borne by the person (persons acting jointly) having 95% of the company’s shares.

After the sending the claim to the company as to purchase of ordinary shares of the company the person (persons acting jointly) having 95% of the company’s shares is obliged to purchase such ordinary shares from all other shareholders of the company. Other shareholders of the company shall take all actions necessary for sale of their ordinary shares to the person (person acting jointly) having 95% of the company’s shares.

DISPUTE RESOLUTION

New law on judicial system and judges' status

- On July 07, 2010 the Parliament has passed in second reading the Law of Ukraine “On judicial system and status of judges” which shall be the core of the declared judicial reform. Respective changes have been introduced to the judicial system of Ukraine as well as to codes of procedure. Below you find examples of some of them.

The Law envisages liquidation of military courts and establishment of a High specialized court of cassation (shall commence operation on 01.11.2010) for civil and criminal cases which have been tried by the Supreme Court of Ukraine. At this, the Supreme Court has been actually deprived of its powers as a court of cassation and is responsible only for review of decisions of high courts based on two reasons – unequal application of the substantive law provisions in similar cases (cases are admitted for such re-examination by superior specialized courts as courts of cassation) and determination by an international judicial institution jurisdiction of which has been recognized by Ukraine of Ukraine's violations as to international obligations. In opinion of many experts this limitation of the Supreme Court's powers actually deprives it of the possibility to ensure the unity of the judicial practice, i.e. same interpretation and application of the substantial and procedural law provisions by all courts. Instead of that, Plenums are established at superior specialized courts. This, however, does not exclude divergent interpreting of the same statutory provisions by different courts.

It is interesting, that despite the European Charter on the Statue of Judges the new law on judicial system does not provide for a competitive mechanism for promotion of judges to positions in courts of higher instance. Obligatory postgraduate training for judge candidates in specialized legal universities subordinate to the Ministry of Education has been introduced as well, which contradicts with common European principals of judicial self-government.

The higher qualification judge commission shall be authorized to hear cases on disciplinary liability of judges. The new law also introduces administrative liability for non-submission (late submission) of answers to the questions of the commission or its members. The Supreme Council of Justice despite provisions of the Constitution of Ukraine has got the

right to appoint and dismiss the court presidents and their deputies. A short procedure for appointment and dismissal of judges elected for indefinite time in form of a non-scheduled adding of the issue to the agenda of the Supreme Council has been introduced as well.

Considerable curtailment of the term for consideration of cases in courts of all instances as well as implementation of the electronic system of automatic case distribution among judges are to be regarded as a positive innovation. Nevertheless, taking into account the existing workload in courts one could assume that these terms will be extremely rarely observed.

In general, the range of evaluations and forecasts of experts – leading lawyers and judges of higher courts as to the judicial reform introduced by the new government varies from mild skepticism to absolute rejection. These changes have been most negatively judged, in particular, by the Venice commission, many novelties of the Law run counter with the Constitution of Ukraine and with the decision of the Constitutional Court of Ukraine. At this, it shall be noted that the practice will be a more objective indicator for efficiency of the judicial reform. The Law has come into force on July 30, 2010 except for single provisions.

In the part of novelties to judicial practice primary attention should be devoted to the ample Circular of the Supreme Administrative Court of Ukraine (hereinafter SACU) d.d 20.07.2010 № 1112/11/13-10 «On Problem Issues of Application of Laws in Cases Involving State Tax Inspectorate Bodies» (prepared on the basis of the summarized practice of revision of SACU decisions by the Supreme Court of Ukraine in 2009 in the above mentioned disputes).

Of interest is also the survey of the Supreme Economic Court of Ukraine d.d 15.07.2010 #01-08/415 «On Practice of Application of Laws on Protection of Rights to Industrial Property Objects by Economic Courts of Ukraine» and the Guidelines of the General Committee of the Supreme Economic Court of Ukraine as of 19.07.2010 #04-06/113, dedicated to the guidelines regarding the prevention of process abuse by procedure participants and of the so called «process subversive acts».

HEALTHCARE

Government is going to tighten control over drugs circulation

- On 21.07.2010 the draft law “On Amending Certain Legislative Acts in Healthcare Sector” providing for control strengthening over circulation of drugs and dietary supplements was registered at the Parliament of Ukraine.

Among the most significant amendments which can be implemented in the nearest future is direct prohibition of drugs advertisement (Rx as well as OTC) and introduction of inspections as for the material and technical recourses as well as staff qualification of a licensee by a licensing body before issuance of license for wholesale or retail sale of medicines.

Besides the Ministry of Healthcare of Ukraine has published a draft order (“Draft order”) “On amendments to the Order # 360 as of 19.07.2005” for its public discussion.

The Draft order provides for a new form of prescription issuance for mono-medicines, namely by the way of indication in prescriptions their international nonproprietary names. Exceptions from this rule are drugs which are provided for free or under favorable terms as well as those drugs which are subject to quantitative accounting.

In case of implementation of the proposed amendments pharmaceutical companies will be forced to change completely their marketing strategies, review their budgets and look for new promotion activities.

The list of OTC drugs may be decreased in the short run

- As of 03.08.2010 there are 14231 medicines (domestic-3818, foreign – 10413) in the State Register of Medicinal Products of Ukraine. The list of OTC drugs authorized for use in Ukraine (approved by Order of Ministry of Healthcare of Ukraine # 793 as of 02.11.2009) includes 3626 names, thus current OTC’s volume of Ukrainian pharmaceutical market is approximately 25 %, which is lower than in other CIS countries.

Despite that fact, according to the recent statement of the Minister of Healthcare of Ukraine the intention of the government is to shrink significantly

the list of OTC drugs and to strengthen control over the advertisement of medicines.

The increasing of the list of Rx group will affect not only manufacturers and distributors of medicines, but also media owners, for the reason that the advertisement of Rx medicines in Ukraine is prohibited. The final consumer may also face some inconveniences from such innovations because, before buying the medicine the patient will have to stand in queues (the amount of which will definitely increase if such changes are implemented) to see a doctor and then find appropriate branch pharmacy, as in compliance with the Ukrainian legislation in force the retail trade of Rx drugs is allowed only from drugstores and pharmacy points and it is forbidden to dispense them from pharmacy kiosks and without the prescription.

PUBLIC PROCUREMENT

New law on state procurement coming into force

- As of 30.07.2010 the Law of Ukraine “On state procurement” shall come into force (hereinafter – the Law). (At this, the Provision of the Cabinet of Ministers as of 17.10.2008 # 921 on purchase of goods, works and services for state funds which regulated the sphere of state procurement before passing of the Law still remains in force).

Main provisions of the Law compared to previous legislation:

- 1) National and foreign companies participate in state procurement on equal terms;
- 2) The notion of “tender” shall be replaced with the notion of “competitive bidding”;
- 3) The list of companies which shall adhere to the procedure of the state procurement has been extended – from now on it comprises communal companies, their daughter enterprises and unions of state and other companies;
- 4) The list of funds deemed to be state funds and which shall be spent in course of state procurement (funds granted to ordering customers upon guaranty of the Cabinet of Ministers under credits and loans provided by foreign countries, banks and financial institutions) has been extended;

- 5) The Law just as the previous legislation shall be applied to purchase of goods and services for amount of 100.000,00 UAH, works – 300.000,00 UAH;
- 6) The Law shall not be applied to purchases in connection with preparation to EURO-2012, financial services purchased by the NJSC “Naftogas of Ukraine” etc.;
- 7) The list of state procurement comprises only (1) open bidding, (2) two-step bidding, (3) request for quotation, (4) preliminary qualification of participants, (5) purchase by one participant;
- 8) As to open bidding – the main criterion for winner choosing is, still, the price. If other criteria are applied– depreciation of the price criterion has been decreased to 50 % (previously – 70%);
- 9) The provision on impossibility to change terms and conditions (including, as to the price) of contracts concluded based on bidding results remained in force, which in practice caused termination of contracts and re-bidding exercise (when prices for goods changed dramatically within a year);
- 10) Authorized bodies in the sphere of state procurement are the Ministry of Economy, the appeal body – the Antimonopoly Committee of Ukraine;
- 11) Appeals against actions of the tender committee shall be submitted to the Antimonopoly Committee of Ukraine (within 14 days after violations have become known to the participant) or filed to the court (within 30 days after contested decision has been made by the ordering customer). The right of appeal has only a person whose rights and interests have been violated. The term for appeal consideration by the Antimonopoly Committee is 30 days. Appeal against the decision of the Antimonopoly Committee can be submitted to the Kyiv district administrative court within 30 days after respective decision making of the Antimonopoly Committee (renewal of the appeal term is not admissible).

State procurement in connection with EURO-2012

- As of 01.08.2010 the Law “On amendments to laws of Ukraine “On state procurement” and “On

organization and conduction in Ukraine of the final part of the 2012 European Football Championship” shall come into force in order to ensure taking actions for organization of the final part of the 2012 European Football Championship which determines a special procedure for state procurement for goods, works and services for this event.

From now on, purchase for funds (administrator of which is a special authorized state body on support of preparation and conduction in Ukraine of EURO-2012) shall be regulated by the Law of Ukraine “On organization and conduction in Ukraine of the final part of the 2012 European Football Championship” which provides for possibility of state procurement under procedure of purchase by one participant without approval with the state procurement body. Nevertheless, such purchase shall be exercised only after approval of the body authorized for preparation and conduction of EURO -2012.

Approval of the state procurement under procedure of purchase by one participant

With its Resolution dd. 28.07.2010 #668 the Cabinet of Ministers of Ukraine has approved the Order for approval of the purchase by one participant procedure. The Resolution has been published on the official site of the Cabinet of Ministers.

This Order determines the mechanism for approval with the Ministry of Economy of the procedure of purchase by one participant of goods and services for the amount of 100.000,00 UAH or more, and works for the amount of 300.000,00 UAH.

In order to obtain such approval the ordering customer shall submit to the Ministry of Economy all necessary documents and the Ministry of Economy shall make a decision on granting of or refusal in approval of the state procurement within 15 business days. At this, the refusal is possible, if:

- not all documents have been submitted;
- there is no reason to apply the procedure of purchase by one participant;
- the documents contain inaccurate information;
- ordering customer or participant-non-resident are subject to special sanctions in form of individual licensing or temporary suspension of the foreign economic activity.