New legal regulations of currency transactions in Ukraine starting from 2019

Review of legislative changes
The Law “On currency and currency transactions”

On 7 July 2018, the Law of Ukraine “On Currency and Currency Transactions” came into force (hereinafter – the “Law”). According to the transitional provisions, the Law will be put into effect on 7 February, 2019.

The Law abolishes a number of irrelevant restrictions, defines legal principles of currency operations, currency regulation and supervision and declares significant liberalisation of currency transactions and capital movement. Below are some practical examples of how the Law will affect Ukrainian business.

Cancellation of individual licenses of the National Bank of Ukraine (hereinafter – the “NBU”)

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<th>TODAY</th>
<th>WHAT WILL CHANGE?</th>
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<td>Individual licenses of the National Bank of Ukraine are issued for the implementation of a one-time currency operation for the period required for such an operation. Individual licenses are required, in particular, for operations on deposit of currency valuables on bank accounts outside of Ukraine, as well as for operations on investments abroad (with certain exceptions). The procedure for obtaining licenses is rather time-consuming and bureaucratic. In practice, the NBU often refuses to issue such licenses.</td>
<td>In addition to the above-mentioned changes in currency regulation which relates to individuals, Ukrainian residents (including business entities) will be allowed to open accounts abroad and to transfer funds to such accounts, as well as to invest in foreign securities, corporate rights and real estate by the transfer of funds from Ukraine (subject to financial monitoring requirements and within the limits to be established by the NBU).</td>
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<td>In recent years, the NBU has liberalised the requirements for the obtainment of individual licenses by individuals that do not have the status of private entrepreneurs, namely: i) the opening of an account abroad, the deposit of funds which originate outside of Ukraine on such an account, as well as making investments using such funds do not require obtaining license; and ii) the procedure for obtaining licenses for amounts of up to USD 50,000 was simplified with the issuance of electronic licenses.</td>
<td>As an example, the cancellation of the requirement of individual licences will lead to the simplification of implementing “long-term incentive plans for employees” (Stock Purchase and Option Plans, etc.) which usually provide for the acquisition of shares in foreign companies.</td>
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Cancellation of the requirement for registration of credits/loans in foreign currency concluded with non-residents

**TODAY**

There are currently significant delays and inconveniences faced by resident borrowers in servicing loan agreements provided by non-residents due to the necessity of registering amendments to such agreements with the NBU (e.g. in case of change of the party under the agreement or conversion of indebtedness under the loan agreement to charter capital).

Actual receipt of funds under a loan agreement (with some exceptions) is possible only after registration of the agreement with the NBU, which creates certain difficulties for business (e.g. it is not possible to convert trade or other indebtedness before non-residents to a loan).

**WHAT WILL CHANGE?**

Registration with the NBU of agreements and amendments to such agreements will be abolished. Control over the implementation of transactions under loan agreements (in particular, from the standpoint of financial monitoring) will remain with the servicing banks.

Ukrainian borrowers will be able to convert trade or other indebtedness into long-term loans.

Cancellation of maximum terms for settlements under import/export operations

**TODAY**

As a general rule, the transfer of foreign currency proceeds from the export of goods/delivery of goods under import operations on the terms of post delivery shall be made within 180 calendar days from the date of: i) customs clearance of the goods (in the case of export of goods); ii) signing of the transfer and acceptance statement (in the case of export of works or transport services); or iii) advance payment (in the case of import of goods, works or services).

A breach of the mentioned terms leads to an imposition of penalties in the amount of 0.3% of the amount of non-received proceeds (the value of the undelivered goods) for each day of delay but not more than the amount of the non-received proceeds.

Grounds for exemption from penalties are as follows: i) a decision on the satisfaction of a claim by a court, the International Commercial Arbitration Court or the Marine Arbitration Commission at the Ukrainian Chamber of Commerce and Industry (other international commercial arbitrations are not included in this list), and ii) settling an obligation by the Export Credit Agency of Ukraine.

**WHAT WILL CHANGE?**

The maximum terms, established by law, for settlements will be cancelled. At the same time, the NBU reserves the right to impose maximum terms for settlements under import/export operations (the NBU plans to establish 365 days maximum term for settlements). In such a case, a penalty in the amount of 0.3% for each day of delay will remain.

The list of grounds for exemption from penalties will be extended and will include, in particular: (i) circumstances of force majeure, (ii) the approval of consideration of a claim by international commercial arbitration, or (iii) adoption by the competent authority of the respective state of the document for the collection of indebtedness in favour of a resident in a pre-trial proceeding (e.g. via a notary).
Abolition of sanctions for violation of the legislation regarding foreign economic activity

**TODAY**

The Law of Ukraine “On Foreign Economic Activity” prescribes special sanctions which may be applied to subjects of foreign economic activity, in particular the application of the individual licence regime and the temporary suspension of foreign economic activity.

**WHAT WILL CHANGE?**

The mentioned sanctions, which have often resulted in the actual cessation of activities by Ukrainian enterprises, will be cancelled.

Mandatory sale of foreign currency proceeds

**TODAY**

Receipts in foreign currencies from abroad for the benefit of business entities are subject to mandatory sale in the amount of 50% (with some exceptions).

**WHAT WILL CHANGE?**

The NBU reserves the right to impose a requirement for the mandatory sale of a portion of such foreign currency proceeds. In view of this, we expect that the requirement for the sale of foreign exchange proceeds will remain in force after the Law comes into force.

Restrictions on operations with capital movements

**TODAY**

According to the current rules, the return of funds received as a result of (i) the sale of securities or corporate rights, (ii) the reduction of charter capital, or (iii) the withdrawal from business entities, is allowed in the amount of up to USD 5 million within one calendar month.

**WHAT WILL CHANGE?**

The NBU reserves the right to impose permits and/or limits on certain currency transactions. In view of this, we do not expect that the mentioned restrictions will be cancelled in full. However, the limits may be revised.

Cancellation of control (supervision) over minor transactions

**TODAY**

Currency control applies to transactions of any amount.

Transactions in amounts of up to UAH 150,000 related to the transfer of funds are not subject to in-depth analysis from the standpoint of financial monitoring.

**WHAT WILL CHANGE?**

Foreign currency transactions of up to UAH 150,000 (the amount established for financial transactions that are subject to mandatory financial monitoring in accordance with the legislation on the prevention and counteraction to legalization [laundering] of proceeds) will be exempted from currency control.

In view of this, the above-mentioned restrictions (sale of currency proceeds, terms for settlements, etc.) shall not apply to transactions in amounts of up to UAH 150,000.
Defining electronic money as currency valuables

**TODAY**

Electronic money is not currency values.

**WHAT WILL CHANGE?**

Electronic money will get the status of currency valuables. It will lead to the legal use of electronic money under foreign economic agreements (for example, payment by means of mobile money deposited to the mobile subscriber).

Will “Anti-BEPS” Law accelerate the reform?

An important aspect of the Law is its correlation with the tax legislation. The Law obliges the Cabinet of Ministers of Ukraine, together with the NBU, to develop and submit to the Parliament draft laws on the implementation of a one-time declaration of assets for individuals and on the international tax cooperation of Ukraine (anti-BEPS) by 7 January, 2019, which will determine:

- controlled foreign companies (CFC) rules
- country-by-country reporting (CbCR) rules for multinational groups
- interest deductibility rules for financial transactions with related parties
- rules for the taxation of permanent establishments
- rules for preventing the granting of double tax treaty benefits in inappropriate circumstances
- dispute resolution mechanism for double tax treaties
- implementation of international standards on the automatic exchange of financial information

In our opinion, the further liberalization of currency controls and the application or non-application of NBU anti-crisis measures (maximum term for settlements, mandatory sale of foreign currency proceeds, restrictions on capital operations, etc.) will directly depend on the adoption or rejection of these laws.
New legal regulations of currency transactions in Ukraine from 2019

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