

THE NBU CANCELLED PROHIBITION ON ASSIGNMENT OF FOREIGN CURRENCY LOANS BUT INTRODUCED ADDITIONAL REQUIREMENTS

Beginning from 11 January 2016, registration of the assignments of foreign currency loans received by Ukrainian borrowers is again allowed based on resolution no.996 of 30 December 2015 of the National Bank of Ukraine (the "NBU"). Wolf Theiss, as a member of the Ukrainian Venture Capital and Private Equity Association (UVCA) and under the auspices of UVCA, was advocating and lobbying the NBU to make this move.

Now, the NBU will register assignments of foreign currency loans received by Ukrainian borrowers, subject, however, to additional requirements and verifications by the NBU as well as by Ukrainian servicing banks.

Specifically, servicing banks are now required to check whether the underlying financing transactions may result in the risky bank activities that would threaten the interest of the bank depositors or other creditors.

For this purpose, banks are authorized to examine transactional documents, information about the client, other participants to the transaction and their activities, as well as to request the clients (borrowers) to provide the corresponding documents and information. Clients (borrowers) must provide such additional documents within a scope and deadlines required by the bank.

Furthermore, banks are obligated to verify whether the documents submitted by the client are valid as well as check their compliance with applicable legal requirements. Based on these checks, a servicing bank prepares a substantiated conclusion on whether a particular financing transaction constitutes any risky activities that may threaten the interest of the bank's depositors or other creditors. Presently, it is not clear how banks will draw such a conclusion and what documents they may want to see for this purpose. The list of risky activities enacted by the NBU in 2015 includes, among others, indirect lending to the persons related to the bank. So, it cannot be excluded that a bank may request documents on the lender's beneficial ownership to confirm that the parties' beneficial owners are unrelated to the one of the bank.

TRANSACTION SUBJECT TO SPECIAL INTEREST

The NBU has introduced a list of financing transactions the registration of which will require submission of additional documents, such as: (i) amendments to the loan agreement related to the change of a finance party (i.e. assignment), (ii) registration of the loan agreement if the initial registration was cancelled and registration of the loan agreement whereunder a disbursement was made to a Ukrainian borrower without its registration by the NBU; (iii) export – financing transactions pursuant to the terms of

which, the disbursement by a foreign lender is made outside of Ukraine, i.e. without the transfer of funds to a borrower's account in a servicing bank, and (iv) financial transaction involving a public individual or his/her relative or a loan agreement for the issuance of a loan in the amount exceeding USD 500,000/its equivalent to an individual who is a Ukrainian citizen.

Such additional documents are also outlined in the regulation. However, for some of these transactions the borrower may also be required to provide documents which are defined rather broadly such as, for instance, the documents confirming business purpose of the transaction. Obviously, the bank will exercise discretion in determining whether the documents are sufficient for this purpose.

The registration of the financing agreements (or amendment thereto) in the above cases is subject to the consideration of the documents by the NBU (upon transfer of their copies by the servicing bank) and taking a decision with respect to the risky activities. Such decision shall be issued by the NBU within 30 calendar days after receipt of the documents.

EXTENDED DEADLINES

The terms for the consideration of the documents by the servicing bank have been extended from 4 to 7 business days. The NBU is now required to review the documents also within 7 business days which term does not include the above mentioned 30-day term for the issuance of the decision by the NBU concerning the risky activities.

Historically, the assignment of cross border loans was restricted (effectively prohibited) by the NBU in August 2015 as a declared measure to ensure stability of the currency exchange market of Ukraine. Many business organizations and associations, including the Ukrainian Venture Capital and Private Equity Association (UVCA) and European Business Association were lobbying NBU to cancel the restriction as fully ineffective and interfering with private relationship of the contractual parties. We are pleased to inform that the lobbying actions of UVCA were organized by Wolf Theiss.

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