

CANCELLATION OF REGISTRATION OF FOREIGN INVESTMENTS IN UKRAINE

On 31 May 2016, the Parliament of Ukraine adopted amendments to several Ukrainian legislative acts resulting in cancellation of the registration of foreign investment (Draft Law No 2763). The requirement to register foreign investments had existed since 1996 and was a prerequisite for foreign investors to enjoy a number of privileges and protection under the Foreign Investments Act.

For example, under the provisions of the Foreign Investments Act, only registered investments in the form of an in-kind contribution to the charter capital of a Ukrainian company were not subject to customs duties and only registered foreign investments could not be subject to expropriation. However, the provisions of the Foreign Investments Act were sometimes too vague when it came to the types and forms of foreign investments, hence not all types of investments, including those provided for by Ukrainian bilateral investment treaties, could actually be registered. Needless to say, the registration itself was an action of no real value and constituted just another unnecessary bureaucratic hurdle.

In addition, in some cases when foreign investors were seeking protection from Ukrainian state and law enforcement authorities, especially in corporate raider attacks, requests for protection were effectively disregarded: there being no registration of foreign investments, there was no breach either. Certainly, such an approach was in bad faith and ran contrary to investors' rights as stipulated in Ukraine's bilateral investment treaties.

As a result, once the President of Ukraine signs Draft Law No 2763, the requirement to register foreign investments will be removed completely. All the privileges and benefits that foreign investments are provided with under the Foreign Investments Act as well as Ukraine's bilateral and multilateral international treaties, including the release from customs duty for imported in-kind contributions to charter capital of Ukrainian companies, will be applicable to all foreign investments.

We, the lawyers at Wolf Theiss Kyiv, are proud to have initiated and drafted Draft Law No 2763. It was further lobbied through the Parliament of Ukraine with the help and under the auspices of the Ukrainian Venture Capital and Private Equity Association.

Wolf Theiss expresses its appreciation to the Member of Parliament Mr. Roman Semenuha of the Samopomich Party and his team for submitting Draft Law No 2763 and for so carefully handling all the necessary administrative and political steps to gain the support for Draft Law No 2763 and to have it successfully passed by the Parliament of Ukraine.

We expect that Draft Law No 2763 will soon be signed into law by the President of Ukraine, and once published will immediately become effective.

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For more information about our services, please contact:



Taras Dumych
Managing Partner
taras.dumych@wolftheiss.com
T: +380 44 3777 500



Olena Vardamatska
Associate
olena.vardamatska@wolftheiss.com
T: +380 44 3777 500

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Wolf Theiss
Schubertring 6
AT – 1010 Vienna
www.wolftheiss.com