Track Changes

June 2020

WOLF THEISS

UKRAINE: NEW INVESTMENT AND FINANCIAL MARKETS LAW

The Ukrainian capital market has been in poor condition for quite some time and could arguably be described as not existing at all. However, there may be a breakthrough, at least on the legal side, which could help the Ukrainian capital market, involving stocks, bonds, derivatives and other instruments, to make a significant leap forward and create opportunities for investors, traders and companies, including small and medium size, seeking to raise equity or debt in public markets.

On 19 June 2020, the Parliament of Ukraine adopted the draft Law of Ukraine "On Amendments to Certain Statutory Acts of Ukraine to Facilitate Investment Attraction and Introduce New Financial Instruments", registration no. 2284 ("New Investment Law"). The draft of the New Investment Law is expected to be signed into law by the President of Ukraine.

Generally, the New Investment Law restates the Law of Ukraine "On Securities and Stock Market" (now to be named as the Law of Ukraine "On Capital Markets and Organized Commodity Markets") and the Law of Ukraine "On Commodity Exchange" (now to be named as the Law of Ukraine "On Commodity Exchanges") as well as introduces numerous amendments to other statutory acts. The New Investment Law further develops a legal framework for the functioning of capital markets and organized commodity markets, regulation of professional activities on said markets as well as procedures and rules for the issuance of securities and transactions in securities, execution and performance of derivative contracts and derivative transactions.

Among the principal and significant novelties, the New Investment Law implements certain provisions of the EU directives, in particular MiFID II, MIFIR, EMIR, Settlement Finality Directive, and Financial Collateral Directive, hence, introducing to national law such elements of the financial infrastructure as central counterparty, trade repository and regulated market operator. Once signed, the New Investment will fundamentally change the existing regulatory landscape of securities and commodities markets.

Derivative market

A long-awaited development, the New Investment Law introduces the regulatory landscape for derivative market operation and financial market instruments, exchange-traded and over-the-counter derivative contracts. It also provides a legal framework for the establishment of market infrastructure necessary for derivative market functioning. This legal framework shall be based on the EMIR rules, particularly providing for the creation of the central counterparty and trade repository.

New market infrastructure

Another unique facet of the New Investment Law is its approach to the infrastructure of regulated markets. The law provides for the creation of a 2-level market: (i) regulated market – for large scale issuers, and (ii) alternative market: multilateral trading facility – for the medium and small size companies, and organized trading facility – a marketplace to facilitate trading in financial instruments and execution of derivative contracts. Furthermore, the New Investment Law will introduce a new market player – the regulated market operator and establish principles of settlements finality and liquidation netting.

Green bonds and new financial instruments

The New Investment Law introduces a regulatory framework for the offering and circulation of green bonds. Green bonds are defined as bonds from which the proceeds of said bonds are to be used exclusively for the financing of environmental projects. The law will outline criteria for projects that can be financed through green bond issuances as well as reporting requirements related to them.

The New Investment Law extends the list of securities that non-state pension funds can invest in, introduces new types of bonds, and new types of other securities, such as bank deposit certificates and derivative securities, including option certificates, stock warrants, depository receipts, and credit notes.

Investors protection

The New Investment Law implements the international practice standards for the bondholders' rights and interest protection. Specifically, it introduces the position of an administrator, appointed by the issuer (or elected by the bondholders), and regulates the bondholders' general meetings, including their authorities and the procedure for their convention and holding. It also regulates default under bond offerings and delineates a specific process for bond issuers' insolvency and liquidation.

Finally, the New Investment Law introduces the concepts of qualified investors and differentiation between qualified and non-qualified investors in the Ukrainian legal system, concepts which are well known in developed capital markets.

About WOLF THEISS

Wolf Theiss is one of the leading law firms in Central, Eastern and Southeastern Europe (CEE/SEE). We have built our reputation on a combination of unrivalled local knowledge and strong international capability. We opened our first office in Vienna over 60 years ago. Our team now brings together over 340 lawyers from a diverse range of backgrounds, working in offices in 13 countries throughout the CEE/SEE region.

For more information about our services, please contact:

Oksana Volynets
Head of Finance and Capital Markets Practice
oksana.volynets@wolftheiss.com
T: +38 044 3 777 500