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Draft Law of Ukraine “On Land Market”

During the autumn session of the Ukrainian Parliament the bill “On Land Market” will be discussed. If passed, it will abolish the moratorium for free turnover of the agricultural land as of January 1, 2013.

As known, paragraph 15 of the current version of the Transitional provisions of the Land Code envisage abolishment of the moratorium for sale of purchase and sale of agricultural land plots as of January 1, 2013 provided passing of laws on the state land cadaster and the land market. Ukrainian law “On State Land Cadaster” No. 3613-VI was adopted on July 7, 2011 and shall come into force as of January 1, 2013. The bill “On Land Market” was passed on December, 2011 in first reading and provides that it will come into force on January 1, 2013 as well.

What does this bill envisage? Sale of agricultural land in private and state ownership is allowed. Still, there is a number of limitations on sale and possession of such land category which practically nullify its commercial turnover.

Firstly, article 10 of the bill envisages that agricultural land plots for commercial farming may be purchased only by Ukrainian citizens, the state (represented by the land bank, government authorities and the government of the AR Crimea) and territorial communities. Therefore, any legal person is intentionally excluded as owner of agricultural land.

Secondly, article 14 of the bill states that:

- one person may own (including, jointly) not more than 100 ha of agricultural land for purposes of commercial farming,
- one person (taking into account control relations) may use not more than 6000 ha of agricultural land within the territory of one district and not more than 5% - within the territory of one region.

The first limitation is already in effect (paragraph 13 of the Transitional provisions of the Land Code). At the same time, it is possible to exceed the limit of 100 ha if the land is inherited. However, the bill envisages that if this limit is exceeded due to inheritance, the excess of land shall be sold within one year.

The second limitation is new as currently the amount of land to be leased by a legal entity is not limited. If this bill is passed, all companies leasing over 600 ha within the territory of one district will be forced to either abandon the land plots they have leased for a long period of time or to reorganize themselves in order to create several legal entities in one district not affiliated to each other. (The term “control” as stated in article 1 of the bill is used according to its definition provided in article 1 of the Ukrainian law “On Protection of Economic Competition” pursuant to which control is a decisive influence on activity of an economic entity through different factors including, but not exclusively, through holding of stock or share in the charter capital).

It is obvious, that big agricultural companies which lease these land plots might have become the main purchaser of the land plots. However, they have been denied the access to the land market – as previously said, legal entities are not allowed to own agricultural land.

As another consequence of the proposed limitations it will become impossible to obtain a land credit: legal entities will not be able to use land plots as collateral, and 100 ha potentially allowed to be held by individuals is not sufficient to secure major credits. Moreover, even with all this, the commercial banks will be practically cut off from agriculture financing. Pursuant to article 61 of the bill, the State Land Bank of Ukraine has the exceptional right to become pledger of agricultural land for commercial farming or establishment of a private farm enterprise.

For now the bill has been passed in first reading only and there is still a possibility to influence its final version. This bill was even published in the newspaper “Golos Ukrainy” in order to ensure its public discussion.

Simplification of Declarative Procedures in Construction: Implementation of an Electronic Filing System and Approval of Shorter Forms of Documents

Recently Ukraine has taken another step to simplify procedures in construction. On July 25, 2012, the CMU Decree No. 653 dd. 11.07.2012 came into force. The Decree amends the preparatory work performance procedure
and the construction work execution procedure (CMU Decree No. 466 dd. 13 April 2011). The Decree No. 653 provides for notifications and declarations of the beginning of preparatory and construction work by means of the so-called electronic system of declaratory procedures execution in construction. Previously, notifications were delivered in person or sent by registered mail with a description of enclosure. Now, an electronic system is being developed, but GASK (State Architecture and Construction Inspection), which is the central body of executive power in the field of construction, has already promised to launch it soon.

So far, the workflow automation extends only to declaratory procedures in construction. Even after the electronic system starts running, it will not be possible to use it to apply for a construction work permit.

As it is, a construction permit should be obtained only for objects of the IV-V category of difficulty (licensing procedure). In other cases, the so-called declarative procedures apply, within which notices or declarations of the beginning of preparatory or construction works should be filed with GASK.

In addition to the electronic system, the CMU Decree No. 653 stipulates the new forms of declarative documents and permits for construction, which are significantly shorter as compared to the previous ones, and require a much smaller amount of information. In contrast to the electronic system, which exists only on paper so far, the new forms of documents have entered into force and are mandatory for use.

The introduced electronic filing system and the new shortened forms of documents aim at further simplification of licensing procedures in construction and will certainly help to improve the business environment in Ukraine.

Amendments to the Land Code Regarding the Land Bidding Procedure Enter into Force

— Under article 134 of the Land Code of Ukraine (LCU) land plots of state and municipal property and the rights pertaining to them (rent, superficies, perpetual lease) shall be sold on a land auction (with some exceptions). Previously, article 137 of the Land Code of Ukraine envisaged that land auctions shall be held in the manner prescribed by law. However, the Law had never been passed. As a result, the market of state and municipal property has long been virtually frozen, and the sale of such land was illegal. To address the legislative gap, the Law of Ukraine “On Amendments to the Land Code of Ukraine concerning land auctions” No. 5077-VI (the Law), under which articles 135 - 139 of LCU are set out in a new wording. The Law came into force on August 19, 2012.

The law stipulates that the bidding shall be organized by the competent state authority or local self-government. The performer shall be a licensed business entity under a contract with the organizer. Bidders may be individuals or legal entities that have filed the required documents with the bidding performer, paid registration and guarantee fees and have the right to purchase the land plot put up for auction or the right to it (the lot).

The registration fee shall be determined by the performer, but may not exceed 50 percent of the minimum wage on the date of publication of a land auction notice. As of August 2012, the minimum wage is UAH 1,102. As a general rule, the registration fee shall not be returned to the unsuccessful bidders but shall be used to cover the expenses for the auction.

The guarantee fee shall amount to 5 percent of the starting price of the land plot or of the initial annual fee amount for the use of the land plot (in the case of selling the right to use). Guarantee fees shall be returned to all bidders that failed to succeed in the auction within three banking days after the auction.

A lot may be put up for auction, if there are at least two bidders. The winning bidder shall be the bidder that has offered the highest price for the land plot or its use. If none of the bidders offers a price higher than the starting price, the auction shall be considered failed. If an auction is declared failed due to only one bidder present, and only with the same bidder has registered to participate in the re-bidding, it has the right to purchase the land or the right to it for the initial price.

The winning bidder shall pay the cost of land / fee for the use no later than three business days from the date of the respective contract. Payment by installments is not envisaged by the Law.

The adopted Law is of great importance, as it will legalize and increase the civil and legal turnover of state and municipal property.

The Bill on Technical Inventory Vetoed by the President

— On July 5, 2012 the Parliament adopted the Bill on Technical Inventory of Real Estate in whole. Under the Bill, the right to technical inventory was provided not only to utility companies – bureaus of technical inventory (BTI), but also to other legal entities having the appropriate license. The Bill provided that such legal entities could be set up in any legal form, but the size of their charter capital shall not be less than UAH 10 million, and they could not engage in other activities. For existing BTIs, no license was required. Also, there were no requirements as to the amount of their charter capital.

The President of Ukraine vetoed the Bill on Technical Inventory.
Inventory passed by the Parliament, pointing to its many flaws. Among other things, the President noted that the Bill actually helped to preserve the monopoly of BTIs, taking into account the high requirements to the charter capital established for other subjects and the low profitability of technical inventory operations. The President also criticized the Bill regarding the requirement of licensing for technical inventory, indicating that it was contrary to the deregulation of business policy declared by Ukraine.

Given the many flaws of the Bill on Technical Inventory, the President proposed to set it forth in a new wording, according to which, among other things, the right to carry out technical inventory should be provided not only to legal entities, but also to individual entrepreneurs, while licensing for technical inventory should be replaced by professional certification of inventory performers.

It should be noted that the wording of the Bill on Technical Inventory of Real Estate proposed by the President, as well as the earlier wording passed by the Parliament, does not provide for mandatory technical inventory during the transfer of property title.

The Heading on a Superintendent’s Qualification Certificate Removed from the Declaration of Readiness of an Object for Operation

According to the Resolution of the Cabinet of Ministers No. 461 dd. 13.04.2011, starting from June 1, 2012 the declaration of readiness of an object for operation must specify the number and series of the superintendent’s qualification certificate (the person responsible for the performance of work). However, according to the CMU Decree No. 554 dd. 23.05.2011 the activity of superintendents shall not be referred to work (services), which require professional certification. Therefore, even after June 1, 2012 the declarations were actually accepted without the superintendent’s qualification certificate details.

To eliminate the legislative gap the CMU adopted Decree No. 757 dd. 15.08.2012 to remove the said heading from the approved forms of declarations of readiness of an object for operation.

Related Publications by Arzinger:

- **Getting the Deal Through - Construction 2013**
  Timur Bondaryev, Managing Partner; Svitlana Teush, Senior Associate; Volodymyr Grachok, Associate
  /published by Law Business Research Ltd/

- **Construction Law & Practice 2012 - Ukraine**
  Timur Bondaryev, Managing Partner
  /The European Lawyer Reference Series/

BANKING & FINANCE

Amendments to the Regulation on Order and Terms of Foreign Currency Trade


Resolution No. 308 introduces, in particular, amendments to the Regulation on Order and Terms of Foreign Currency Trade (hereinafter – the “Regulation”), approved with the NBU Board Resolution No. 281 dated August 10, 2005.

It is stipulated that clients-residents (legal entities and private entrepreneurs) are entitled to purchase and exchange foreign currency through one market entity under each foreign economic contract with a non-resident in order to make settlements under trade transactions. A resident is entitled to transfer the respective foreign economic contract to another market entity for servicing. A market entity that serviced payments under a foreign economic contract shall provide all information it has, in free format, on resident’s outstanding settlements, amounts of purchased, exchanged and transferred foreign currency under such contract. This information is provided upon a written request of the client-resident or any other market entity (provided written consent of the client-resident), to which the resident has transferred the foreign economic contract for servicing.
Besides, another amendment to the Regulation sets forth that in case of non-compliance with all requirements regarding procedure for formation and keeping of compulsory reserves during a respective reservation reporting period an authorized bank is not entitled to carry out its own foreign currency purchase transactions within the next calendar month. According to the amendment, non-compliance with this requirement results in liability pursuant to article 73 of the Law of Ukraine “On Banks and Banking Activity”.

Resolution No. 308 also provides that purchase or exchange of foreign currency for purposes of making payments to non-residents for commodities imported to Ukraine (that pursuant to law are subject to customs clearance) is carried out by a market entity if customs declaration registers contain information that goods under respective foreign economic contracts of the client-resident were imported and released into free turnover on the customs territory of Ukraine.

Resolution Nr. 308 includes payments for enrolment or membership fees payable to international organizations or other legal entities – non-residents to foreign currency non-trade operations.

It stipulates two new cases for purchase or exchange of foreign currency, and the list of necessary documents for:

- Settlements with non-residents under a contract (commission, agency, agent agreement), authorizing such resident to sell commodities, works or services under commission of such non-resident in Ukraine; and
- Transfer of a guarantee payment in amount not exceeding EUR 10,000 in one calendar year in favor of the same non-resident for purposes of participation in a tender procuring delivery of goods.

Moreover, Resolution No. 308 amends the Regulation on Execution of Operations with Bank Metals, approved by the NBU Board Resolution No. 325 dated August 6, 2003. In particular, it stipulates that:

- Operating cash desks of authorized banks shall post a copy of the bank’s order (instruction) fixing the purchase and sale price for bank metals in conspicuous place; and
- Transfer of bank metals between banks is executed in form of credit and debit slips.

Resolution No. 308 was registered with the Ministry of Justice of Ukraine on August 9, 2012 and will become effective upon its official publication.

In its letter No. 29-113/8242 dated August 16, 2012 the NBU informed that Resolution No. 308 will come into effect on August 23, 2012 due to its official publication in the “Official Gazette of Ukraine” and has recommended authorized banks to inform clients on changes in the procedure of foreign currency purchase or exchange under the current trade transactions and to ensure that foreign economic contracts are transferred for servicing to one market entity of their choice.

The General Department for Monetary and Credit Policy of the NBU Explains Certain Issues Related to Prohibition of Granting Consumer Loans in Foreign Currency

– On August 15, 2012 the General Department for Monetary and Credit Policy of the NBU provided banks of Ukraine with Letter No.29-213/8207 (hereinafter – the “Letter”) explaining certain issues related to prohibition of granting consumer loans in foreign currency.

Thus, the NBU stated that granting (obtaining) consumer loans in foreign currency after October 16, 2011, including in form of tranches under credit facilities, overdraft credits etc., violates the Ukrainian legislation.

The regulator noted that legislative prohibition to provide consumer loans in foreign currency applies also to credit transactions under revolving lines of credit agreements, which were concluded prior to October 16, 2011. In the Letter the regulator stresses out that after October 16, 2011 banks are allowed to restructure foreign currency consumer loans, only if it entails no additional foreign currency lending.

Verkhovna Rada Adopted the Law “On Realization of Social Initiatives of the President of Ukraine Regarding Cheapening of the Cost of Mortgage Loans”

– On July 05, 2012, the Verkhovna Rada of Ukraine on the basis of Draft Law No. 10557 adopted the Law “On Realization of Social Initiatives of the President of Ukraine Regarding Cheapening of the Cost of Mortgage Loans” (hereinafter – the “Law”).

The Law, in particular, established that in the State budget of Ukraine for 2013 and subsequent years shall be foreseen expenses for compensation of interest, paid out to banks and/or other financial institutions under loans, granted to citizens for construction (reconstruction) or purchase of residential housing. The compensation of in-
terest shall be effected in order set forth by the regulation on cheapening of the cost of mortgage loans, established by the Cabinet of Ministers of Ukraine.

The Law also determines that the financing of objects of uncompleted construction, at the expense of the state budget programs, can be executed by way of concluding of agreements on sale purchase of property rights between the project owners of construction (owners, managers) and citizens.

The Law “On Mortgage” was supplemented with a provision, in accordance with which the person, who based on the agreement on satisfaction of claims of the mortgagee or a corresponding stipulation in the mortgage agreement on satisfaction of claims of the mortgagee, acquired ownership right to the mortgage property, based on the land plot, which is leased by the mortgagor, acquires the right to lease such land plot.

The indicated agreement on satisfaction of claims of the mortgagee or a corresponding stipulation in the mortgage agreement on satisfaction of claims of the mortgagee shall be deemed to be a document, confirming the transfer of the lease right of the land plot to the new owner of the mortgage property and the change of the lessee in the land lease agreement and shall be subject to state registration in order established by law.

If signed by the President of Ukraine, this Law will become effective on the day following its official publication.

Amendments to the Order on Cheapening of the Cost of Mortgage Loans for Providing with Affordable Housing Citizens, in Need of Housing Conditions Improvement

— On June 27, 2012 the Cabinet of Ministers of Ukraine introduced amendments to the Order on Cheapening of the Cost of Mortgage Loans for Providing with Affordable Housing Citizens, in Need of Housing Conditions Improvement, approved with the Cabinet of Ministers of Ukraine Resolution No. 343 dated April 25, 2012.

In particular, the amendments foresee the possibility to decrease the amount of the first payment in case of granting of additional collateral under the loan agreement in accordance with the internal rules of banks. In addition, now the borrower can conclude suretyship agreements not only with every legally capable family member, residing together with the borrower, but also with other guarantors, as well as provide additional pledges under the loan agreement.

The partial compensation of interest is granted to borrowers provided that the monthly payment under the loan agreement (excluding partial compensation of interest) does not exceed 50% of the aggregate average family income. At that, the sum, which is left after all monthly payments under the loan agreement, must not be less than one living wage for the borrower and each member of his/her family, for whom the calculation of partial compensation of interest was carried out.

Also, the CMU eliminated requirements as to the upper income level of the borrower and his/her family members for receiving partial compensation of interest, as well as the necessity to annually submit the family income declaration to the tax service bodies.

The amendments took effect on July 07, 2012.

The Law “On Introduction of Amendments to Certain Legislative Acts of Ukraine (Regarding Functioning of Payment Systems and Development of Cashless Settlements)” Adopted in the First Reading


The explanatory note to the Draft Law reads that the aim of the document is to ensure constant, reliable and efficient functioning of payment systems, mass implementation of cashless settlements and development of the national payment infrastructure.

One of the main novelties of the Draft Law is the empowering of the NBU to establish maximum limits of cash payments at settlement for goods and services. At that, the state tax service, according to the suggested amendments, will execute control over adherence to the order of cash settlements for goods (services), the order of acceptance of cash for its further transfer by bank and over compliance with the legislative requirements regarding mandatory ensuring by economic entities of the possibility for payment for goods (services) with electronic payment means.
Thus, in accordance with the proposed changes to the Code on Administrative Violations, the refusal to accept a payment card will be subject to a fine in amount of 500 non-taxable minimum incomes (UAH 8,500 as of today).

Also, pursuant to the suggested changes to the Criminal Code of Ukraine, criminal liability will be introduced for forgery of electronic money, their illegal issue and use.

The Draft Law also envisages introduction of amendments to the Law “On the National Bank of Ukraine”, namely by broadening the authorities of the regulator, in particular, by foreseeing that the NBU:

- Coordinates and controls the creation of payment instruments;
- Keeps the register of payment systems, settlement systems, participants of such systems and operators of services of payment infrastructure;
- Executes supervision (oversight) over payment systems and settlement systems;
- Determines the order of execution in Ukraine of routing, clearing and settlements between the participants of the payment systems under operations, executed within the territory of Ukraine with the use of payment cards, issued by banks-residents;
- Keeps the register of commercial agents of banks;
- Determines the order of application of digital signature, including the electronic digital signature, for verification of electronic documents for transfer of funds; and
- Issues licenses to non-banking financial institutions, which aim at becoming members of payment systems, for money transfer without opening of accounts, and withdraws such licenses in accordance with legislation.

The proposed changes to the Law “On Payment Systems and Transfer of Monies in Ukraine” relate to definitions, in particular, new definitions are introduced (e.g., system of settlements, processing, routing, payment means, mobile payment instrument etc.) while certain existing definitions (e.g. acquiring, electronic payment means, payment organization etc.) are amended.

Amendments to the Law “On Payment Systems and Transfer of Monies in Ukraine” also foresee that the NBU maintains the Register of payment systems, settlement systems, participants of such systems and operators of services of payment infrastructure (hereinafter – the “Register”). Inclusion of information to the Register is a necessary pre-condition for activity of payment organizations of payment systems, participants of payment systems and operators of services of payment infrastructure. The Draft Law also sets forth the volume of such information.

The proposed amendments also envisage that banks, which have concluded agency agreements with legal entities (commercial agents), bear responsibility to the payer and the receiver, connected with the transfer execution, in accordance with the law and agreements, concluded between them.

In accordance with the Draft Law banks will be obliged to introduce SMS-banking service (notification on every operation on the client’s cell phone) for all cardholders without exception. If the bank fails to do so, it shall reimburse to the client all losses, in case of funds disappearance.

Pursuant to the Draft Law, the NBU will acquire full control over all payment systems, which are active or represented in Ukraine, including those which operate through payment terminals and accept money for mobile connection, housing utilities, etc. In order to continue their activity, the owners of the networks of terminals will be required to obtain a corresponding license from the NBU. Currently such payment systems carry out their activity based on licenses issued by the National Commission for Regulation of Markets of Financial Services.

The Draft Law provides additional requirements for international payment systems (such as VISA and MasterCard), which operate in Ukraine. In particular, they will be required to register with the NBU their rules of work in Ukraine. Following this, they will be required to transfer their guarantee deposits of Ukrainian banks-issuers of payment cards to UAH and to Ukrainian banks, and the processing of payments inside Ukraine – to the processing centers in Ukraine.

The Draft Law also grants to the NBU the right to establish the order of execution in Ukraine of routing, clearing and settlements among the participants of payment systems under operations, executed in Ukraine with the use of payment cards issued by banks-residents, and to ensure the formation and placement of guarantee deposits of members of payment systems under operations, executed within the borders of Ukraine with the use of payment cards in national currency of Ukraine, on the accounts of the NBU and other banks of Ukraine.

The Draft Law provides additional requirements for international payment systems (such as VISA and MasterCard), which operate in Ukraine. In particular, they will be required to register with the NBU their rules of work in Ukraine. Following this, they will be required to transfer their guarantee deposits of Ukrainian banks-issuers of payment cards to UAH and to Ukrainian banks, and the processing of payments inside Ukraine – to the processing centers in Ukraine.

In addition, the Draft Law grants the right to banks to place on the payment card two or more payment system’s trademarks.

If adopted in its current wording, the Draft Law will become effective immediately after its official publication.
ANTITRUST LAW

The Cabinet of Ministers Approved the Bill on State Aid to Business Entities Drafted by the Antimonopoly Committee of Ukraine

— The Bill was drafted as part of the National Action Plan for 2012 to the Economic Reform Program of the President of Ukraine, the press service of the AMCU reports (www.amc.gov.ua). The Bill is aimed at preventing the negative impact of state aid on competition, as well as at increasing the transparency of the mechanism to provide and use such aid. In particular, the Bill provides for the registry of information on state aid provided and for control of its impact on competition. The Committee believes, this will prevent the adoption of regulations that may have an adverse effect on competition and eliminate the consequences, if any public aid would considerably distort competition. The Bill will promote competition in the commodity markets of Ukraine. As we know, the international obligations of Ukraine in the field of state aid are determined by the WTO agreement and the Partnership and Cooperation Agreement between Ukraine and the EU.

The European Commission Publishes Guidance on Application of Competition Rules in Car Sector

— Commission has published a set of frequently asked questions (FAQs) on the application of EU antitrust rules in the motor vehicle sector. The FAQs provide stakeholders with guidance on how the Commission applies these rules, in particular in the markets for repair and maintenance services and spare parts. In May 2010, the Commission adopted a new Motor Vehicle Block Exemption Regulation and accompanying Guidelines, concerning the application of EU antitrust rules to categories of agreements between vehicle manufacturers and their authorized dealers, repairers and spare parts distributors (see IP/10/619 and MEMO/10/217). Following requests from stakeholders and national competition authorities for further practical guidance on the application of the new rules, the Commission has now published a set of frequently asked questions. The FAQs are available on the Commission’s Competition Website at http://ec.europa.eu/competition/sectors/motor_vehicles/legislation/legislation.html

TAX LAW


— The Guidelines have been developed for the purpose of control and inspection work to improve the quality of inspections of business entities engaged in foreign trade operations.

The Guidelines indicate that fiscal control over the determination of regular prices for products (goods) in foreign trade operations involves a system of measures to be applied by state tax authorities in order to match the prices in export operations with non-residents with the market prices.

Concerning the application of conventional prices one should be aware of the following:

• In inspections covering the tax reporting period till April 1, 2011 paragraph 7.4, article 7 of the Law of Ukraine on Profit Tax shall be applied. According to it, the income derived by a taxpayer from foreign trade operations shall be determined in accordance with contract prices, but not below the regular prices for the corresponding goods at the date of such sale;

• In inspections covering tax reporting periods after April 1, 2011 paragraph 153.2, article 153, section III of the
Tax Code shall apply. According to it, the income derived by a taxpayer from foreign trade operations shall be determined in accordance with contract prices, but not below the regular prices for the corresponding goods at the date of such sale, if the contract price for such goods differs by more than 20 percent from the regular price for such goods.

Also, the Guidelines determine the non-exclusive list of information sources used for the purpose of determining regular prices both in the pre-inspection analysis and during the inspection, such as:

1) Statistical data of state statistics bodies;
2) Prices of specialized exchanges for trade in particular products;
3) State External Information Service (Derzhzovnishinform), the journal “Review of prices of Ukrainian and world commodity markets”, the Commodity Monitor “Exchange Commodities”, the Metallurgical Monitors “Steel products”, “Raw Materials”, the catalog “Importers and Exporters of Ukraine”;
4) Websites:
   • visnik.kiev.ua – crop prices under contracts concluded on commodity exchanges;
   • agriagency.com.ua – prices for wheat, corn, sunflower, soybean, rapeseed;
   • cropcongress.org – prices for agricultural products (corn, barley, wheat, etc.);
   • zernoua.org – prices and analysis of purchase prices for grain, etc.;
   • metaltorg.ru – prices for metals;
   • metalcourier-online.com – world prices for metals, coal and ferroalloys;
   • icis.com – analysis of prices for chemicals and petroleum products in the world markets of Asia, Africa and Europe;
   • commodcityoniine.com – prices for metals on world commodity exchanges;
   • ugmk.ua – prices for metals and metal products in the Ukrainian market;
   • me.kmu.dov.ua – the Website of the Ministry of Economic Development and Trade of Ukraine (monitoring of prices for metals on world exchanges);
   • visnik.kiev.ua – prices for crops under contracts concluded on commodity exchanges;
   • agriagency.com.ua – prices for wheat, corn, sunflower, soybean, and rapeseed;
5) Information from fiscal authorities of other countries;
6) Results of an independent assessment of property and property rights held in accordance with the Law of Ukraine “On assessment of property, property rights and professional appraisal activity in Ukraine”; 
7) Explanations provided by a taxpayer at the request the State Tax Service of Ukraine on the reasoning of the level of regular prices.

At the same time, to determine the regular selling price for products (goods) on the world markets, fiscal authorities use all available information sources. Also, the Guidelines determine the practical steps to be taken by inspection bodies in the pre-inspection analysis and during the inspection.

In particular, the pre-inspection analysis suggests that subjects of analysis shall be determined by a specially established Working Group on the basis of VAT returns. Such subjects include, among others, taxpayers:

• Supplying goods at reduced prices to non-residents through intermediaries registered in countries with an offshore status and/or preferential tax treatment (e.g. the Republic of Cyprus), with the subsequent sale of such goods by intermediaries to non-residents, but at market prices (the actual movement of goods is different from the movement “according to the documents”);
• Regarding which third party sources have provided information on export operations at low prices;
• With the level of tax return lower than the average for the relevant industry.

Based on the results of comparing the prices established by subjects of analysis and the information from external sources on the prices for products, the Working Group shall make an analytical report in the prescribed form, which should provide a reasonable basis for a scheduled or unscheduled inspection of the taxpayer.

In determining the level of average prices during a taxpayer inspection, the inspectors, according to the Guidelines, should take into account the specifics of transactions or businesses; property specifics, the parties' functions, contractual terms, economic circumstances and business strategies observed by the parties.
HEALTHCARE AND PHARMACEUTICALS

Changes to the Licensing Terms for Medicines Retail and Wholesale

- On August 1, 2012 Resolution of the Cabinet of Ministers of Ukraine No. 699 “On Amendments to paragraph 5 of the list of documents to be attached to the application for obtaining a license for certain business activity types and declaration of certain resolutions of the CMU as to be ceased in force” which imposed an obligation to file the information about availability of material and technical basis and qualified personnel signed by an applicant for obtaining a license for medicines retail and wholesale instead of filing a copy of a pharmacy pass.

Thus, resolution of the CMU No. 906 dd. 04.10.2010 “On Approval of the Form of a Pharmacy (Structural Subdivision) Pass” ceased to be effect.

Changes to the Quality Control Procedure for Import of Medicines to Ukraine

- Resolution of the CMU dd. 08.08.2012 No. 793 introduces changes to the State Quality Control Procedure for medicines imported to Ukraine as approved by Resolution of the CMU No. 902 dd.14.09.2005. Thus, according to the amendments a business entity is entitled to address the State Service on Medicinal Products in order to obtain a report on quality of medicines imported to Ukraine within 5 days after the completion of the customs clearance (previously – 3 days). In order to obtain a report on quality of imported medicines it is necessary to provide the series quality certificate with its translation, besides, the copy of customs declaration shall bear the customs stamp (which was not required before and which makes obtaining of such copy even more complicated).

It shall be noted that laboratory analysis of medicines is required unless manufacturing sites are located in countries, which medicine quality control authority is member of the Pharmaceutical Inspection Cooperation Scheme, PIC/S.

It should be noted that previously laboratory analysis of imported medicines was not required if the manufacturing site was certified for compliance with the Good Manufacturing Practice, GMP, i.e. there was no direct requirement for the manufacture to be located in a PIC/S country (http://www.picscheme.org/members.php).

As many pharmaceutical manufacturers have their manufacturing facilities outside PIC/S countries, e.g. in India, this restriction constitutes a serious technical barrier for a number of international manufacturers entering the Ukrainian market.

CMU Sets Quotas for Ketamine

- Resolution of the CMU No. 662 dd.25.07.2012 “On Amendments to Supplement 2 to Resolution of the CMU No. 128 dd. 22.02.2012” sets quotas for production, export, import and storage of ketamine in 2012. The quota for ketamine storage is 506,021 kg, production - 575,560 kg (in finished dosage form), the quota for ketamine import in substance form amounts to 571,108 kg, and quota for import in finished dosage form - 3 kg, for export - 270 kg in finished dosage form.

It is important to note that in 2011 ketamine was included to the list of psychotropic medicines (list No. 2), which means that private entrepreneurs and legal entities in veterinary praxis are bound to obtain a license for its use (ketamine is used for anaesthesia during operations).

Procedure Approval of Prior Inspection before Issuing a Medicines Manufacture, Wholesale and Retail License

- On August 13, 2012 decree of the Ministry of Healthcare of Ukraine No. 513 dd. 11.07.2012 “On Approval of the Procedure for inspection prior to issuance of a license for medicines manufacture, wholesale and retail” has come into effect. This procedure was developed pursuant to articles 10, 11 of the Law of Ukraine “On Medicinal Products” in order to inspect compliance of the material and technical basis, personnel qualification, conditions for quality control of manufactured medicines. This procedure will enable to confirm a business entities compliance with established requirements while obtaining a license for medicines manufacture, wholesale and retail. It shall be noted that while setting requirements to be complied with by business entities, e.g. requirements as to availability and compliance of necessary production equipment, technical means, inventory, measuring devices in order to ensure a duly process and cleaning or disinfection procedures, this procedure does not provide for a list of standards to be adhered by such equipment. Therefore, this regulatory legal act holds some corruption risks and a number of its provision need to be specified.

List of Medicines Banned for Advertising
Decree of the MHC of Ukraine No. 639 dd. 17.08.2012 “On Approval of the List of OTC medicines banned for advertising” has approved the list of OTC medicines which are prohibited for advertising. It shall be noted that this decree is considered by the MHC of Ukraine as an individual action and therefore shall not be registered with the Ministry of Justice of Ukraine.

It shall be noted that pursuant to the decree of the MHC of Ukraine No. 566 dd. 26.07.2012 “On ensuring adherence to regulatory legal acts governing medicines advertisement” it is envisaged to approve the list of OTC medicines banned for advertisement on a quarterly basis starting from 10.08.2012.

At the same time, decree of the MHC of Ukraine No. 566 sets out that SE “State Expert Centre” shall adhere to provisions of the Law of Ukraine “On Amendments to certain legislative acts of Ukraine in the healthcare sphere concerning increase of the control of the turnover of special dietary nutrition, functional food supplements and dietary supplements”, resolution of the CMU No. 629 dd. 16.07.2012 and decree of the MHC of Ukraine No. 422 dd. 06.06.2012 during expert examination of registration materials for a medicines submitted for state registration (re-registration). Moreover, SE “State Expert Centre” is obliged to include information about ban for advertising a medicine, application for state registration on which was submitted after coming into force of decree of the MHC of Ukraine No. 422, to the list of medicines recommended for registration, re-registration or amendment in the registration file that are submitted to the Department on Medicinal Products and Medical Devices within the framework of decree of the MHC of Ukraine No. 98 dd. 09.02.2012 “On Cooperation between the Department for Development of the Pharmaceutical Branch of the Healthcare Sphere of the MHC of Ukraine and SE “State Expert Centre”.

It shall be noted that decree of the MHC of Ukraine No. 98 dd. 09.02.2012 does not stipulate a procedure of determining a compliance of a medicine with advertisement ban criteria as approved by decree of the MHC of Ukraine No. 422 dd. 06.06.2012.

Changes to the Provision on the State Service on Medicinal Products

Preparation for Implementation of Licensing Procedure of Medicines Import

On August 27, 2012 the web-site of the President of Ukraine published draft decree of the President of Ukraine “On Amendments to the Provision on the State Service on Medicinal Products”. These amendments envisage powers of the State Service on Medicinal Products to issue licenses for import of medicines. That was approved on the legislative level by signing by the President of Ukraine of the Law of Ukraine “On Amendments to certain legislative acts of Ukraine as to licensing of medicines import and definition of the term “active pharmaceutical ingredient”. Similar changes concern resolution of the CMU No. 1698 dd. 14.11.2000 “On approval of the list of licensing authorities”, draft of amendments to which is under public discussion as well.

Regulation on the Procedure for Customs Warehouses Opening

On August 20, 2012 the Procedure for providing and annulment of a customs warehouse status enacted by decree of the Ministry of Finance of Ukraine No. 835 dd. 16.07.2012 came into force. This procedure was developed according to article 405 of the Customs Code of Ukraine. It shall be noted that with coming into force of the new version of the Customs Code of Ukraine the situation with customs warehouses was unclear for over 2 months as customs warehouses operating was mainly based on a permit issued by the customs authority at the location of a warehouse but there was no procedure for issuance of such permits. This procedure sets requirements to facilities of a customs warehouse, procedure of its registration in the customs warehouse register and procedure for permit re-issuance, suspension and annulment. While issuing a permit, information on the business entity shall be included to the State Customs Warehouse Register. It shall be noted that unlike a license that was issued for opening and operation of customs warehouses such permit is issued free of charge for an indefinite period time.

Change of the Procedure for Registration of Medicines and Medical Devices

On August 10, 2012 resolution of the CMU No. 717 dd. 27.06.2012 “On Amendments to certain CMU resolutions on registration of medicines” introducing amendments to resolution of the CMU No. 73 dd. 15.01.1996 on procedure of the state registration of medicinal immunobiological preparations and to CMU resolution No.376 dd. 26.05.2005 on the procedure of state registration of medicines and to resolution of the CMU No. 1165 dd. 14.11.2011 came into force. According to these amendments medicinal immunobiological preparations are now registered pursuant to the procedure on state registration of medicines as regulated by CMU resolution No. 376 dd. 26.05.2005 above.

Moreover, these amendments determine that an application on registration of a medicine or an immunobiological preparation is submitted to the MHC of Ukraine. The MHC considers the application and sends a copy of the same along with a letter-referral to the SE “State Expert Centre” for expert examination purposes. It is important that after receipt of documents sent by the MHC of Ukraine to the SE “State Expert Centre” the applicant shall provide a copy of the document issued by the State Service on Medicinal Products confirming that production of the medicine submitted for state
Changes to the Procedure for Issuance of Permits for Import from, Export to and Transit through Ukraine of Narcotics, Psychotropic Substances and Precursors

On August 10, 2012 the website of the State Drug Control Service of Ukraine published for public discussion a draft of amendments to the resolution of the CMU “On Amendments to the procedure of issuance of permits for import from, export to and transit through Ukraine of narcotics, psychotropic substances and precursors”. This procedure is approved by resolution of the CMU No. 146 dd. 03.02.1997. The proposed amendments simplify the procedure of obtaining permits for import of narcotics, in particular – it is suggested to provide the permit issuance free of charge, to cancel the compulsive notarization of copies of documents to be submitted to the State Drug Control Service for obtaining a permit. It also suggests the reduction of the term for permit execution and issuance from 30 to 10 working days. Therefore, due to adoption of these amendments it will be easier for business entities to obtain permits for import from, export to and transit through Ukraine of narcotics, psychotropic substances and precursors.

Changes to Licensing Terms for Medical Practice

On August 13, 2012 the official website of the Ministry of Healthcare of Ukraine has published a draft of amendments to decree of the MHC of Ukraine No. 49 dd. 02.02.2011 “On Approval of Licensing Terms for Medical Practice”. The main goal of this decree is to ensure patient’s rights and safety and to improve level of the medical service provided by business entities, in particular through setting organizational, qualification and other requirements for business entities. In general, the new version extends requirements for healthcare facilities and specifies unified organizational and other requirements for private entrepreneurs intending to practice medicine.

Among key novelties concerning private entrepreneurs practice the following shall be mentioned:

• providing a list of organizational requirements as to accounting, adherence to sanitary and other norms. Previously, similar requirements were set only for legal entities establishing healthcare facilities;
• possibility to employ healthcare professionals only provided the availability of the highest qualification category in the declared specialty and over 5 years of medical practice experience. This novelty limits essentially the circle of persons entitled to employ healthcare professionals;
• employment of healthcare professionals is limited with specialty of the private entrepreneur. Previously, there was no clear regulation of this issue, now it is impossible to employ professionals with qualification different form the one of the private entrepreneur.

Approval of the Procedure for Maintenance of the State Register of Medical Equipment and Medical Devices

On August 20, 2012 the Procedure for maintenance of the State register of medical equipment and medical devices as approved by decree of the MHC of Ukraine No. 533 dd. 16.07.2012 has come into force. According to this decree the State register of medical equipment and medicinal products is created and kept by the State Service on Medicinal Products. Medical equipment and medical devices (hereinafter – medical devices) shall be entered to the register based on decrees of the State Service on Medicinal Products on state registration of medical devices. It is important to note that the procedure provides that information about medical devices registered in Ukraine can be obtained free of charge by submitting a respective enquiry to the State Service on Medicinal Products. Confirmation of the state registration is given by the State Service on Medicinal Products within 5 working days.
Changes to Technical Regulations Governing Requirements Concerning Medical Devices

— On August 14, 2012 drafts on amendments to resolution of the CMU dd. 11.06.2008 No. 536 “On Approval or the Technical regulations for medical devices”, resolution of the CMU dd. 09.07.2008 No. 621 “On Approval of the Technical regulations for medicinal products to be implanted” and resolution of the CMU dd. 16.07.2008 No. 641 “On Approval of the Technical regulations for medicinal products for laboratory in-vitro tests” were provided for public discussion. The above drafts are aimed at bringing current technical regulations for medicinal products in accordance with EU requirements and requirements of resolution of the CMU dd. 31.08.2011 No. 920 “On Amendments to resolution of the CMU dd. 07.10.2003 No. 1585”. In general, these amendments regulate the issues connected with implementation of these technical regulations and requirements strengthening the quality of medical devices.

Increasing of Control of Turnover of Medicines containing Small Amounts of Narcotics, Psychotropic Substances or Precursors

— On August 28, 2012 the website of the MHC of Ukraine published draft law of the MHC of Ukraine “On Amendments to Decree of the MHC of Ukraine dd.19.07.2005 No. 360”. In order to minimize abuse and prevent irresponsible self-treatment, pursuant to this draft law, pharmacies shall be allowed to sell maximum 2 packages of combined OTC medicines containing small amounts of narcotics, psychotropic substances or precursors.

State Regulation of Medicines Prices Is Extended

— On August 13, 2012 resolution No.762 “On Expansion of the List of Medicines Subject to State Price Regulation” which amends resolution of the CMU dd. 17.10.2008 No.955 “On Measures of Stabilization of Prices for Medicines and Medical Devices” has been adopted. At present, medicines included to the compulsory minimal assortment (socially oriented) medicines and medical devices for pharmacies as approved by the MHC of Ukraine are subject to state price regulation, except for medicines included to the National list of basic medicines and medical devices (safe narcotics, psychotropic medicines, precursors and medical gases). Therefore, the state price regulation is extended to 55 medicines in general. Now, threshold supply-sale mark-ups for such medicines are set at the level not exceeding 12% of the wholesale and 25% of the retail price.

New Attempt to Implement Compulsory Medical Insurance

— The Draft Law of Ukraine “On Compulsory State Medical Insurance”, as registered in the Parliament on 13.08.2012 under No. 11077, was elaborated in order to ensure functioning of the system of compulsory medical insurance in Ukraine which envisages regulation of legal relations between entities of the medical insurance system. It shall be noted that the draft law itself does not contain definition of the “system of medical insurance” or the “compulsory medical insurance”. At the same time, introduction of another draft law proposing to regulate legal relations in the sphere of medical service provision does not surprise – pursuant to provisions in section VII Schedule of specific commitments of Ukraine by joining WTO foreign insurance companies are entitled to provide insurance services through their branch offices in Ukraine 5 years after Ukraine’s accession to the WTO which shall take place on 16.05.2013. Therefore, the state takes active efforts of implementing a compulsory state insurance system till then. Otherwise, there is a risk that after starting a full-scale work in Ukraine by foreign insurance companies result in a number of difficulties might occur, for example unwillingness of people to pay “twice”. Besides, there have been regular attempts to transfer provision of medical services in Ukraine to private hands and to introduce a system of “insurance medicine” – thus, on 12.12.2003 the Parliament of Ukraine has registered a draft law “On Compulsory State Medical Insurance” under No. 4505 which was not passed on 15.06.2004 despite the fact that the Main Scientific and Expert Department of the Parliament of Ukraine recommended this draft law for passing in general. A similar draft law was registered on 18.12.2007 under No. 1040-1 but it was rejected on 17.12.2010 as well.

It shall be noted that article 4 of the analysed draft law provides for implementation of a three-level medical insurance, in particular:

1 level – solidarity system of compulsory medical insurance based on a principle of solidarity and subsidy assistance

2 level – compulsory medical insurance contribution system based on the principle of accumulation of contributions of insured persons in the Insurance fund

3 level – system of non-governmental medical insurance based on the principal of voluntary participation.

It is obvious that the third place of the non-governmental medical insurance in the medical insurance system is not acceptable, primarily, for population, that have to pay “three times” in this case. Moreover, according to its name, this draft law should govern the system of the state medical insurance and disregard other insurance
types which Ukrainian citizens could find appropriate for themselves.

It is interesting that development of such draft law first of all shall be based on the principle of optionality according to which all Ukrainian citizens should have a medical insurance but the state shall not oblige to apply to any of insurance funds. On the other hand, taking into account provisions in paragraph 9 article 26 of the draft law which determine cases and scope of persons entitled to receive insurance payments from account of a deceased person who was insured with and paid contributions to the Medical Insurance Fund of Ukraine, there are only few cases when relatives and family of the deceased are entitled to receive payments. At the same time, based on the medical insurance practice in the USA and the EU it shall be noted that the law governing the medical insurance shall stipulate legal relations in this sphere based on the principle of succession and inheritance of accumulated insurance money. Considering the fact that this draft law does not comply in full with the above principles and the fact that the amount of the minimum insurance payment will be set in the contract by the medical insurance fund with approval of the CMU, a number of restrictions shall be acknowledged which are forced upon Ukrainian citizens by such system of the medical compulsory state insurance and which hinder the efficiency of the medical insurance system in Ukraine in general.

Special attention shall be given to the fact that the draft law defines the medical insurance fund as self-governing non-profit organization acting based on its charter approved by the board of directors which is stipulated in paragraph 2 part 1 article 37 of the draft law. Taking into account the fact that the fund will accumulate on its accounts insurance practically all Ukrainian citizens money that constitutes a great amount, exercise of its activity based on the carter approved by its board of directors presents a number of risks, especially due to the fact that the medical insurance fund shall be managed on the equal share basis by representatives of the state (the CMU), professional organizations, employers’ organization, insured persons and medical community organizations. At the same time, the draft law determined that members of the board of directors of the medical insurance fund shall perform their duties as a public service, but decisions of the board of directors of the medical insurance fund made by majority of votes shall be binding for all insured persons and insurance companies. At this, the draft law specified that decisions of the fund shall be made within limits of its competence. An example of such decision is amount of contribution for compulsory state medical insurance to be approved by the CMU and rules as to investment of reserves in order to cover deficit of the fund (upon coordination with the State Securities and Capital Market Commission). Therefore, making such strategic decision with majority of votes of persons participating in the activity of the medical insurance fund on a public service basis, involves essential corruption risks. Besides, there are no provisions about any liability.

Therefore, the conclusion is that it is impossible to implement the compulsory medical insurance in Ukraine based on this draft law in its current version and that this draft law shall be improved based on principles of optionality, succession and personal liability of employees in the system of medical insurance management.

Changes to the State Procurement Procedure

On August 23, 2012 the Parliament of Ukraine has registered Draft Law On Amendments to the Law of Ukraine On State Procurement No.11100, hereinafter – Draft law. Pursuant to Draft law it’s proposed to amend current qualification criteria setting up by the client (stated in part 2 article 16 of the Law of Ukraine On State Procurement, hereinafter - Law) with the criteria of provision by the participants in state procurement procedure their own production facilities and/or service centres in Ukraine.

It shall be noted that the use of such qualification criteria firstly causes the risks of state procurement participation impossibility for foreign manufacturers, in particular, foreign medicine manufacturers which may not have their own production facilities and/or service centres in Ukraine.

Secondly, companies ordering the manufacturing of medicinal products on terms of contract manufacture may be not allowed to participate in abovementioned procedure, as far as:

- the manufacturer providing its facilities for the manufacturing respective products may not be entitled to dispose of finished goods in connection with the restriction of his rights provided by the client;
- the client of the contract manufacture has no his own facilities.

Thirdly, the term “service centres” as of today is not regulated by the current legislation of Ukraine. However, different interpretation of aforesaid term by the officials may cause the additional restriction for the state procurement procedure participation of respective subjects.

The use of above-mentioned qualification criteria also may lead to incompatibility with the principle of equal opportunity provided by the part 1 of article 5 of Law stating that national and foreign participants are admitted to the state procurement on equal terms.

In addition, provisions of Draft Law may lead to the violation by Ukraine the commitments stipulated in the Agreement “On State Procurements” (Ukraine signed it during WTO participation in 2008) regarding the provision of favorable regime of conducting state procurements and absence of foreign suppliers discrimination.

Therefore, application of any similar qualification criteria puts participants of state procurement into unequal position compared to national participants of state procurement.
In general, Draft law needs to be improved in accordance with the requirements of the current legislation and international commitments assumed by Ukraine during the WTO participation.

Procedure for Export of Medicines as Humanitarian Aid Was Settled

- Resolution of the CMU dd. 13.08.2012 No. 747 “On amendments to Paragraph 2 of the Procedure for Export from Ukraine or destruction of humanitarian aid goods (items) of poor quality or unsuitable for use” allows to export medicines as humanitarian aid. It is stipulated that at the moment of crossing the border expiry date of medicines, medical devices or veterinarian preparations shall be at least 50% of the term determined by the manufacturer, if such term is less than one year, and at least 6 months, if such terms amounts to one year or more.

Related Publications by Arzinger:

- **Clinical Trials in Ukraine: Legal and Practical Aspects** (in Russian)
  Lana Sinichkina, Counsel at Arzinger; Sergiy Mykhaylov, Chairman of the EBA Clinical Trials Subcommittee
  /Weekly Digest “Apteka”, No. 854 (33) 27.08.2012 (http://www.apteka.ua)/

- **Project on Compulsory Medical Insurance Implementation Requires Improvement** (in Russian)
  Timur Bondaryev, Managing Partner
  /Yurliga, August 2012 (http://jurliga.ligazakon.ua)/

- **The International Comparative Legal Guide to: Pharmaceutical Advertising 2012**
  Timur Bondaryev, Managing Partner; Svitlana Malynovska (Postrygan), Senior Associate

- **Memoranda of Understanding between the Government and National Pharma Producers: Legal Analysis (in Russian)**
  Lana Sinichkina, Counsel
  /Weekly Digest “Apteka”, No. 849 (28) 23.07.2012 (http://www.apteka.ua)/

- **Crimes without Punishment (in Russian)**
  Lana Sinichkina, Counsel; Maria Baranovych, Associate
  /“Yuridicheskaya Praktika”, No. 28 (759), 10.07.2012/

- **Enhanced Price Regulation in the Pharmaceutical Market (in Russian)**
  Lana Sinichkina, Counsel; Oksana Matsic, Associate
  /“Yurydychna Gazeta”, No. 26, 26.06.2012/

- **Comments on the Draft Law Limiting HCPs’ Cooperation with Pharmacies (in Russian)**
  Lana Sinichkina, Counsel; Nadiya Karlash, Associate
  /“PharmazevtPraktik”, June 2012 (http://fp.com.ua)/

- **Regulatory Changes in Pharmaceutics (in Ukrainian)**
  Svitlana Malynovska (Postrygan), Senior Associate; Leonid Shylorsky, Associate
  /“Yurydychna Gazeta”, No. 23, 05.06.2012/

**ENERGY**

Water and Heat Meters Will Be Mandatory

- The Ministry of Regional Development, Construction and Housing and Communal Services (the Ministry of Regional Development) published on its website a bill on mandatory commercial metering in the housing and communal services, which obliges the population to install heat meters by October 1, 2017, as well as cold and hot water meters by January 1, 2018.

Under the Bill, apartment meters should be used for commercial metering of water consumption. However, if co-owners of apartment buildings decide so, a common meter can be installed for the apartment building. As for heat supply, common meters shall be installed in apartment houses. At the same time, an individual (apartment) meter does not exempt from paying for public spaces. The obligation to install meters lies with the owner, but can also be performed on account of a service provider.

As stated in the explanatory note to the Bill, the main goal of the project is to introduce heat and water metering for all customers, ensure the rational use of resources and to reduce the negative impact on the economy of Ukraine due to a significant rise in prices for the imported natural gas. As it is, according to the Ministry of Regional Development cold-water meters are installed in 43.7%, hot water meters – in 15.9%, and heat and temperature control meters – in 38.3% of apartment buildings.

One cannot but agree that the installation of meters will
enhance the sustainable use of natural resources and encourage both consumers and service providers to reduce the losses and make timely repairs and improvements in the networks. Thus, if the heat producer is paid only for the heat virtually consumed in the apartment buildings, it will bear the risks of loss “on the way” to the consumer.

**CHPP Privatization**

- On August 6, 2012 the Cabinet of Ministers adopted Resolution No. 713 and instructed the NJSC Naftogaz of Ukraine within one month to transfer to the State Property Fund shares of four public joint stock companies: Dneprodzerzhinsk CHPP, Kherson CHPP, Odessa CHPP and Kharkov CHPP-5. This Resolution amends Resolution No. 747, according to which stocks of shares in these CHPPs have been excluded from the list of open joint stock companies to remain in state property.

**City Gas Companies Privatization**

- On August 8, 2012 the State Property Fund announced in the newspaper “News of privatization” about conduction of privatization auctions for shares of gas supply and gasification companies Poltavagas, Ivano-Frankovskgases, Khersongases, Gadyachgases and Sevastopolgases to be held on August 29, 30, 31 and September 3 and 4, 2012 respectively. The starting price for shares of these gas companies and volume of compulsory investment to be made by the purchaser within 3 years are indicated in this announcement as well.

On August 15, 2012 the State Property Fund decided on privatization of following 12 gas supply and gasification companies: Dnepropetrovskgases, Zaporozhugas, Luganskugas, Lubnygases, Kremenuchugas, Sumygas, Vinnitsagas, Zhytomirgas, Tismenitsagas, Krymgas, Volyngas, Chernovtsygases. Sale auctions on these companies will be held in September this year.

**Car Eco-Standards Raised**

- On August 1, 2012 the President of Ukraine signed the Law “On Amendments to the Law of Ukraine “On Certain Issues of Import to Ukraine and Registration of Vehicles” (on ecological standards Euro 3, 4, 5, and 6).

The purpose of this law is to considerably reduce the volumes of car emissions and significantly improve the air quality in cities and other settlement of Ukraine. The main goal of the document is a stage-by-stage implementation of requirements to ecologic safety complying with respective international ecological norms for wheeled vehicles in Ukraine.

Free turnover and first registration of the vehicles in Ukraine will be possible only for the vehicles both produced in and imported to Ukraine, new and used, that comply with following standards:

EURO-3 — as of January 1, 2013;
EURO-4 — as of January 1, 2014;
EURO-5 — as of January 1, 2016;
EURO-6 — as of January 1, 2018.

**Wind and Solar Parks Will Be Built in Chernobyl Zone**

- On July 18, 2012 the Cabinet of Ministers of Ukraine approved with its Instruction No. 535-p a Concept for implementation of the state policy for development of activity in single Chernobyl radioactive contamination zones.

The goal of the Concept is to determine the areas and priorities of organizational, production, scientific and technical, environmental or other activity in the exclusion zone aimed at minimization of ecologic danger and preservation of natural resources, material, spiritual and cultural values, provision of sustainability and biodiversity of its ecosystem and use of the exclusion zone territory for economic purposes.

This Concept shall be implemented based on necessity, among other things, to examine the issue of implementation of green energy projects:

- use of alternative and renewable energy sources, immobilization of a part of radionuclides mobile forms in the soil through utilization of radioactive wood (construction of wood-fired co-generation plants);
- cultivation of agricultural energy corps (rapeseed, quick-growing willow etc.) and construction of processing facilities;
- construction of wind and solar power plants.

It is planned to implement the Concept till 2017.
The Ministry of Finance of Ukraine Proposes to Establish a Unified State Register of Equipment for the Alcohol and Cigarettes Production

The Ministry of Finance proposes to introduce a mechanism of state registration of equipment used for producing alcohol, alcoholic beverages and tobacco products. The relevant Bill is available on the official website of the Ukrainian Ministry of Finance. It is assumed that the unified state register of equipment will be kept by the State Tax Service of Ukraine. The issuance of certificates for equipment registration shall be financed from the state budget.

Besides, the Bill provides that if equipment is stored or used without registration, the fiscal authorities may seize it. In addition, the infringer will be fined UAH 1,700.

It is important to note that this approach may cause inconvenience to the manufacturers of alcoholic beverages and tobacco products. The explanatory note to the Bill states that it is designed to prevent the illicit production and turnover of excisable goods and to improve the procedure for calculation and payment of excise tax in terms of the relevant action plan 2012. The effectiveness of such measures is questionable, since manufacturers do not always use the maximum capacity of the equipment. Also, as it may fail, it is not possible to determine the volume of production correctly based on the information concerning the equipment.

In addition, the Bill provides for the right to import cigarette paper and filters for cigarettes solely to companies licensed to produce tobacco products. Violation of this rule entails a fine amounting to 100% of the lot, however, not less than UAH 15 thousand. Thus, providers of the said goods which are not licensed manufacturers of cigarettes can no longer import cigarette paper and filters for cigarettes to Ukraine.

The Influence of the “Language Law” on Product Labeling


In particular, part 3 Article 26 of the new Law of Ukraine “On Principles of State Language Policy” states:

“Article 26. Language of advertisement and labeling of commodities”

1. Advertisements, announcements and other types of audio or visual advertisement products shall be made in state language or any other language at the discretion of the advertiser.

2. Trademarks for commodities and services shall be used in advertisements in their form as legally protected in Ukraine pursuant to the laws.

3. Labeling of goods, users manuals shall be made in the state language and in a regional or minority language. At the discretion of manufacturers, the text in the state language may be accompanied by its translation in other languages. Labeling of commodities for export purposes shall be made in any language.

Therefore, pursuant to the new Law, companies are entitled to choose in what language their commodities or services are to be advertised, whereby trademarks shall be used in advertisements in the language of their registration in Ukraine.

Besides, manufacturers are entitled to choose labeling language for commodities to be exported from Ukraine.

However, the wording of part 3 Article 26 of the Law of Ukraine “On Principles of State Language Policy” provides for its ambiguous interpretation with regard to the labeling language of commodities intended for sale in Ukraine and language of users manuals to such commodities.

In particular:

1) First sentence in part 3 Article 26 of the Law of Ukraine “On Principles of State Language Policy” may be interpreted as obligation of manufacturers to label commodities both in state language and a regional or minority language at the same time.

2) Taking into account second sentence of part 3 Article 26 of the Law of Ukraine “On Principles of State Language Policy”, the systematic analysis of the Law in general, the Explanatory note to the draft law “On Principles of State Language Policy” and the European Charter of Regional or Minority Languages” we can come to a conclusion that part 3 Article 26 of the Law allows commodities’ manufacturers when labeling products to place the translation into any other language including regional or minority language next to the text made in the state language, at their own discretion.
Misinterpretation of law as well as the relevant law enforcement practice exercised by both supervising authorities and companies may have negative impact on the market (including, food sector operators, retailers and wholesalers), including:

- imposing sanctions by supervisory authorities for “non-compliance” with the new Law;
- writing-off considerable volumes of unused packaging materials and labels, returning and writing-off final products;
- necessity to manufacture products with different labeling for regions and districts, cities and settlements with different regional languages or to produce universal oversized multi-language labels;
- impossibility to transfer products not having a universal label from one region to another and necessity to obtain authorizations for a large number of different package types;
- risks of corruption and increased pressure on businessmen in connection with “violations” of labeling regulations due to uncontrolled transfer of commodities from one region to another.

The aforesaid undesirable law enforcement practice could result in removal of single commodities’ types from circulation and, therefore, cause a deficit. Any attempt of companies to comply with requirements of this article based on its literal construction will require changing respective production and business processes and cause increase of the commodities self-cost and the price of such commodities for final consumers.

 Clarification by the State Veterinary and Phytosanitary Service of Ukraine Regarding Baby Food

On August 6, 2012 the State Veterinary and Phytosanitary Service of Ukraine (hereinafter the Service) provided a clarification on the issuance of permits for the production of baby food in Ukraine. The letter of the Service states that veterinary documents for baby food produced in Ukraine shall be issued exclusively at the initiative of the applicant or its authorized representative. Expert conclusions issued by a state veterinary laboratory are only grounds for issuing veterinary documents. At the same time, according to the mandatory minimum list of materials for products of animal and vegetable origin, animal feed raw materials, mixed fodder, vitamins, etc. studies which should be conducted in state veterinary laboratories, with a veterinary certificate to be issued upon their results (ф-2) in the form approved by Order of the State Veterinary Service dd.18.11.2003 No. 87, such expert conclusions are issued only for raw materials (meat, vegetables, oil), which are used for manufacturing of baby food and certain meat products.

Related Publications by Arzinger:

- **Comments to the Draft Law on the Newest Food Products (in Russian)**  
  Svitlana Malynovska (Postrygan), Senior Associate; Nadiya Karlash, Associate  
  /Food industry portal “Mir Produktov” (www.prodinfo.com.ua), August 2012/

CUSTOMS LAW

Clarifications to the Law of Ukraine “On Industrial Parks”

The State Customs Service of Ukraine, which is a controlling authority according to paragraph 41.1.2, section 41.1, article 41 of the Tax Code of Ukraine, also in respect of duty, provided clarifications to the Law of Ukraine “On Industrial Parks” (hereinafter referred to as the Law) in its letter No. 16/1-16.1/1702-EP dated 15.08.2012. In particular, the letter states the following.

Paragraph 1, section X of the final and transitional provisions of the Law provides that it shall enter into force one month after its publication, namely, on 5 September 2012.

The Law amends Article 287 of the Customs Code of Ukraine, according to which the following products being imported into the customs territory of Ukraine shall be exempt from customs duty:

- Equipment and component parts as well as materials that are not produced in Ukraine, are not excisable goods and are imported by initiators of their creation – business entities or management companies of industrial parks for arranging industrial parks;
- Equipment and components thereto, which are not produced in Ukraine and are not excisable goods imported by participants of industrial parks for economic activities within the industrial parks.

The lists of such equipment and its components as well as materials approved by the State Agency for Investment and National Projects of Ukraine in the manner estab-
lished by the Cabinet of Ministers of Ukraine.

According to the Law, the Cabinet of Ministers of Ukraine shall approve the procedure for determining the lists of equipment, component parts and materials that are not produced in Ukraine as provided by the Law, within three months after the publication of the Law.

On Extending the Period for Temporary Admission of Goods

— By the letter No. 11.1/2-12.2/9330-EP dated 16.08.2012 “On extending the period of temporary admission of goods that have been temporarily imported into the customs territory of Ukraine until 01.06.2012” the State Customs Service of Ukraine provided the following clarifications.

Extension of the period of temporary admission of goods, including those that have been temporarily admitted before 01.06.2012, is possible subject to the payment of customs duties in accordance with section 4, article 106 of the Customs Code of Ukraine (hereinafter the Code), or provided that the obligation to pay customs duties is secured, except for items for which no guarantee of compliance with the customs treatment requirements is needed under section 3.110 of the Code. According to section 2, article 110 of the Code, financial guarantee shall be returned (released) after the completion of temporary admission.

The term of temporary admission of goods may be extended at the declarant’s request in accordance with section 3, article 108 of the Code for maximum one month, by the customs authority, by the permission which permitted to place the goods and vehicles in the warehouse.

Sections 3 and 4, article 06 of the Code establishes that the amount of customs fees must be paid when the goods are temporarily admitted, with partial conditional exemption from tax, and shall be calculated for the term of temporary admission set by the customs authorities. Customs fees for the extension of the term of temporary admission of such goods shall be paid in the same manner in accordance with article 108 of the Code.

AGRICULTURE

The Ministry of Agriculture has approved the list of questions used when checking compliance of entities with the land law, as well as the form of the inspection report (Order No. 424 dd. 12.07.2012)

— In particular, the following will be checked: available documents certifying the right of ownership/use to a land plot, observance of the boundaries of a land plot, use of land according to its purpose, compliance with the conditions of removal, retention and use of topsoil, recultivation of disturbed soils, compliance with standards and regulations in the erosion control, agricultural, agrochemicals, irrigation and other activities related to land conservation, preservation and improvement of soil fertility, etc.

The above list is quite extended, but exhaustive. Inspections for other reasons shall be prohibited.

The unified form of the inspection report includes, in addition to the part to be filled by an official body of the State Agricultural Inspection, a part that shall be filled in by an entity’s authorized person. In particular, companies shall provide information on compliance with the inspection requirements (10 calendar days’ prior notice; inspectors should produce their identification cards, present an inspection ordinance, make an appropriate record in the register of inspections; extent of inspection). Also, a company’s authorized person may provide explanations, comments and/or objections regarding the conducted inspection and the relevant inspection report.

The State Tax Service of Ukraine issued Letter (No. 20001/7/15-1217 dd. 24.07.2012) providing Guidelines for the tax authorities regarding the algorithm for determining the normal price of products (goods) in foreign trade operations

— The Guidelines determine the list of information sources used to determine regular prices:

1) Statistical data of state statistics bodies;
2) Prices of specialized exchanges for trade in particular products;
3) State External Information Service (Derzhzovnishinform), the journal “Review of prices of Ukrainian and world commodity markets”, the Commodity Monitor “Exchange Commodities”, the Metallurgical Monitors “Steel products”, “Raw Materials”, the catalog “Importers and Exporters of Ukraine”;
4) Websites:
   • visnik.kiev.ua – crop prices under contracts concluded on commodity exchanges;
   • agriagency.com.ua – prices for wheat, corn, sunflower, soybean, rapeseed;
   • cropcongress.org – prices for agricultural products (corn, barley, wheat, etc.);
   • zernoua.org – prices and analysis of purchase prices for grain, etc.;
   • metaltorg.ru – prices for metals;
   • metalcourier-online.com – world prices for metals, coal and ferroalloys;
   • icis.com – analysis of prices for chemicals and petroleum products in the world markets of Asia, Africa and Europe;
   • commodityonline.com – prices for metals on world commodity exchanges;
   • ugmk.ua – prices for metals and metal products in the Ukrainian market;
   • me.kmu.gov.ua – the Website of the Ministry of Economic Development and Trade of Ukraine (monitoring of prices for metals on world exchanges);
   • visnik.kiev.ua – prices for crops under contracts concluded on commodity exchanges;
   • agriagency.com.ua – prices for wheat, corn, sunflower, soybean, and rapeseed;
5) Information from fiscal authorities of other countries;
6) Results of an independent assessment of property and property rights held in accordance with the Law of Ukraine “On Assessment of Property, Property Rights and Professional Appraisal Activity in Ukraine”;
7) Explanations provided by a taxpayer at the request the State Tax Service of Ukraine on the reasoning of the level of regular prices.

Also, the Guidelines specify the steps to be taken by inspection bodies prior to and during inspections. In determining the level of regular prices, the inspectors, according to the Guidelines, should take into account the specifics of transactions or businesses: property specifics, the parties' functions, contractual terms, economic circumstances and business strategies observed by the parties.

The Ministry of Agricultural Policy extended the term of applicable regulations, specifications, instructions and other legal acts of Ukraine and the former Soviet Union by 01.01.2014 (Order as of July 2, 2012 No. 386)

   − In particular, extended are the terms of standards, specifications and regulations controlled by Department of Agriculture, Food Department, State Veterinary and Phytosanitary Service of Ukraine, Department of Livestock Farming and State Agriculture Inspectorate of Ukraine.

The Ministry of Agricultural Policy approved the form of documents for rendering financial support to agricultural entities through the mechanism of lease payment compensation (Order dd. 06.07.2012 No. 400), and similarly through the credit cheapening mechanism (Order dd. 06.07.2012 No. 401)

   − Financial support shall be provided according to the Procedure for the Use of State Budget funds for financial support of agriculture through the credit cheapening mechanism and lease payment compensation (CMU Resolution No. 794 dd. 11.08.2010).

Thus, the following forms have been approved: bidder application, certificate of obtaining the right for partial compensation, the register of filing the participants, register of bidders’ documents, register of lessees (borrowing enterprises) that are entitled to compensation, etc.

— As a result, any known international customs, guidelines, rules of international agencies and organizations can be used along with Incoterms to determine the terms of delivery in contracts (the Act of July 5, 2012 No. 5060-VI).

The Parliament of Ukraine passed the Law “On Amendments to the Land Code of Ukraine concerning land auctions” amending the Land Code in terms of land auction procedure (Law dd. 05.07.2012 No. 5077-VI)

— Land plots shall be sold on a land auction. Upon the results, an agreement on sale and purchase, lease, superficies, emphyteusis of the land plot shall be concluded with the bidder (best bidder) in the auction, which offered the highest price for the land plot or a higher fee for its use as fixed in the course of the land auction.

Land plots in state or municipal ownership or rights to them (lease, superficies, emphyteusis) shall be sold solely on land auctions. Registration fees shall be determined by the performer and may not exceed 50 percent of the minimum wage on the date of publication of a notice on land bidding. The guarantee fee for the lot shall be 5 percent of the starting sale price of the land plot or the starting amount of the annual fee for the use of the land plot (in the case of a sale of land rights (lease, superficies, emphyteusis)). The registration fees paid are non-refundable. The guarantee fees paid shall be returned by the land auction performer to all bidders that failed to succeed.

Land auctions shall be held no earlier than 30 days and no later than 90 days after the publication of the notice.

The National Commission on Regulation of Financial Service Markets of Ukraine published the draft regulation that defines the requirements for state-supported insurance of agricultural products (Draft Resolution of the National Commission dd. 26.06.2012 No. 400 “On approval of the Requirements regarding the participation of insurance companies (insurers) in the state-supported insurance of agricultural product”).

— The regulatory act provides for the establishment of requirements for insurers who intend to participate in the state-supported agricultural insurance, the procedure to list such insurance companies or withdraw them from the list, which, in its turn, is an integral part of solution to create an effective system of public financial support for risk insurance in Ukrainian agriculture.

According to the resolution, the right to insure agricultural products with state support shall be given to insurers that meet the requirements of the Law of Ukraine “On Insurance”; received a license for insurance of agricultural products; are members of the Agricultural Insurance Pool. In particular, to enter the letter organization one must meet several requirements, including the following: experience in the insurance of products within the past two years; experience in the transfer of all or part of the agricultural risks, either directly or through other insurers, insurance and/or reinsurance brokers to non-resident reinsurers; the net asset value of the insurer at the end of the second and each subsequent fiscal year after the date of registration of the information about the applicant in the State Register of Financial Institutions should be at least the amount of the insurer’s registered capital and must be confirmed by an auditor’s report as of the last reporting date prior to the attainment of membership in the Agricultural Insurance Pool, etc.