GOLAW

LEGISLATIVE CHANGES IN UKRAINE: ANALYSES, FORECASTS

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FINANCIAL MONITORING IN UKRAINE:

What are the consequences arising from the law on money laundering prevention?

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Business community will remember 2020, not only as the time of the global pandemic, but also on April 28, the new Law "On Preventing and Combating the Legalization (Laundering) of Proceeds from Crime, Terrorism Financing and Financing the Proliferation of Weapons of Mass Destruction" No. 361-IX (hereinafter referred to as the "Law") became effective.

The Law contains many provisions changing the process of conducting financial transactions, which are common for Ukraine, — both personal and business ones, as well as those affecting many other spheres, which were not previously closely regulated by state authorities.

What new information do all Ukrainians need to know about financial transactions?

1. From now on, ordinary financial transactions, which were previously conducted in the format "request submitted — received", will be supplemented with additional stages of client verification. Such transactions include applications to auditors, attorneys, notaries, accountants, real estate agent concerning the provided services for:

- sale and purchase of real estate or property management when financing the construction of housing;
- sale and purchase of business entities and corporate rights;
- fund, securities, or other asset management;
- opening and/or management of bank accounts or securities accounts;
- attracting funds required for setting up legal entities and funds, ensuring their activity or management thereof;
- setting up, ensuring the activity or management of legal entities, funds, trusts, and other similar legal establishments.

Therefore, one needs to be ready to prepare paperwork and clarify issues since representatives of these professions must identify a client and verify the source of funds involved in the transaction.
It should be noted that one should not rely on the "cooperation" of representatives of the above professions. Failure to comply with the requirements of the legislation on verification will result in a large penalty (which have become very large).

If a client fails to pass the financial verification and refuses to provide information, his transaction may be declined. Relevant procedures are also stipulated by the Law.

2. Furthermore, the number of threshold financial transactions is fixed at a reduced amount.

Threshold financial transactions are transactions during the conduct of which a person will most certainly be inspected by relevant state authorities. They include transactions for which the amount exceeds UAH 400,000or the equivalent amount in foreign currency, bullions, other assets, and have one of the following signs:

- transaction is conducted in cash (deposits, transfer, receipt of funds);
- transactions involving politically exposed persons;
- transfer of funds abroad (especially for offshore areas);
- transaction is conducted with the participation of persons in the place of registration from countries, which fail to comply with the FATF[1]

Moreover, issues may arise concerning "suspicious" transactions —those in an unusually large amount (payment for an expensive purchase), transfer of charity support, sale of property/real estate at a significantly higher price than market price, etc.

Of course, not all financial transactions will be strictly verified. Thus, non-risk banking transactions will be deemed the following:
- withdrawal of funds from one's own account (though the bank may obtain an acknowledgement from a person concerning his/her plans to spend the money);
- payment of the loan in the amount of up to UAH 30,000;
- transfer of funds in order to pay taxes, duties, payments, mandatory state pension and social insurance duties, penalties, utilities (irrespective of the amount);
- payment for goods/works/services (provided that there are agreements on goods supply, works performance, services provision, loan granting);
- carrying put cash transfers within Ukraine for the amount of up to UAH 5,000 (if the amount is larger, one will have to provide an identification document or use a bank card);
- wire transfers from card to card/from account to account.

[1]The Financial Action Task Force on Money Laundering ("FATF") is an inter-governmental body. Its goal is to develop and introduce at an international level the measures and standards that aim to prevent money laundering.

What should the business pay attention to?

One should pay attention to the fact that the Law updated the requirements for determining the submission of information about an ultimate beneficial owner (UBO). To carry out certain registration actions, legal entities must provide the following documents to a state registrar:

- information about the ownership structure subject to the form and content under the Law;
- extract, excerpt, or another document from a trade, bank, court register, etc. confirming the registration of a non-resident legal entity in the country of location (if a non-resident legal entity is a founder of the legal entity);
- notarized copy of an identification document of a person who is UBO — for an individual non-resident, and if such document is executed with applying the means of the Unified State Demographic Register, for an individual resident.

Who falls under special supervision of the Law?

Politically exposed persons — persons who are domestic, foreign **public figures**, and figures entrusted with public functions in international organizations — should prepare themselves that it will take more time to conduct financial transactions with the requests for additional documents confirming the source of their financial receipts, and **to provide information about their family members and business partners**.

Politically exposed persons are now automatically recognized as ones who may be involved in a money laundering transaction in respect to the proceeds of crime, terrorism financing and the proliferation of weapons of mass destruction.

Which business spheres are subject to significant legal changes?

Virtual assets are now also subject to financial monitoring under the Law. The Ministry of Digital Transformation of Ukraine has officially become the state financial monitoring entity and must control and supervise the turnover of virtual assets in Ukraine and providers of services related to turnover of virtual assets (cryptocurrency exchanges, marketplaces, etc.). Auditors, accountants, persons trading in precious metals and stones, and persons providing lottery and gambling services should also familiarize themselves with the Law.

Conclusions

The Law on financial monitoring has definitely made significant adjustments to life of each and every financial market participant: procedures and priorities have changed, penalties have increased, and liability for failure to comply with the new requirements has expanded.

Nevertheless, adoption of the Law is a very important step within the implementation by Ukraine of international obligations under the EU-Ukraine Association Agreement. It is necessary to understand that such a control instrument has been in place for a long time in the most developed countries with sustainable and efficient economic system. Hence, there is no need to consider the Law as an intention to pressure business or common citizens.

We can only hope that the newly created mechanisms will actually work and be regarded positively by society. If so, they will become a significant contribution to prevention of crime and corruption not only in Ukraine, but also at the international level.

LEND LEASE OF STATE-OWNED AND MUNICIPAL PROPERTY: How does the new Procedure regulate the lease auctions?

The new Law of Ukraine "On Lease of State-Owned and Municipal Property" (hereinafter - the "Law"), which provides for the launch of the lease procedure on e-auctions, came into effect back on February 1, 2020. However, the question concerning the new order and procedure for auctions holding remained open for a while.

The Procedure[1] for Lend Leasing State-Owned and Municipal Property (hereinafter - the "Procedure") setting new rules of state-owned and municipal property lease for all current and future tenants, came into force on June 6, 2020.

In particular, the Procedure introduces the following important changes:

- **Right to rent-free periods for 6 months** for those tenants who have carried out renovation works and 2.5 years rent-free periods for those tenants who have carried out the restoration of neglected listed buildings. During the rent-free periods, tenants pay only half of the rent.

- **Tenants may extend valid lease agreements only at auctions**. At the same time, the exercise of tenants' pre-emptive right to extend an agreement has been ensured. Current tenants may participate in an auction without bidding a higher price.

Once the auction is over, a tenant may either agree with the proposed price of a winning bidder or waive the winning bidder's price. The winning bidder of the auction for extension of existing lease agreements will be able to enter into lease agreements only if an advance payment of at least 6 monthly rent payments and a security deposit amounting 2 monthly rent payments are paid.

- **The procedure on compensation for the inseparable improvements of a leased site has been specified in detail.** The winning bidder of the auction for extension of existing lease agreements, to whom the rent will be increased, will obtain the right to set off the amount of the rent increase towards the value of inseparable improvements of a leased site. If a current tenant refuses to extend the agreement at a price of a winning bidder, the winning bidder will be obliged to compensate the current tenant for the costs of inseparable improvements. Inseparable improvements will be compensated on the basis of an independent assessment report.

- **The Procedure makes the sublease of the property received for lease at an auction more efficiently**. From now on, tenants will know before the start of an auction whether or not it will be possible to sublease property received following the auction. At the same time, an announcement on the holding of an auction will directly contain consent to the sublease. The new rules of the Law and Procedure cancel the obligation to transfer the profit from sublease to the budget. Tenants will be able to keep the profit from sublease

[1] The Procedure is approved by Resolution of the Cabinet of Ministers of Ukraine (CMU) No. 483.

• **The Procedure has determined a new "scoring" system of the property lease without holding an auction.** According to the new rules, tenants from the non-commercial sector will receive premises based on the assessment of their activity following the results of counting up points pursuant to criteria determined in the Procedure. The criteria include, inter alia, the number of members of an organization, duration of its operation, amount of membership fee or charitable contributions, etc. Tenants from the business sector (private educational institutions, publishing houses) will receive the lease objects based on the assessment of closed bids — the one who offers the highest rent will win.

• **The list of property, which can be leased through the e-auctions** is extended due to creation of additional impetus for overcoming the practice of covert leasing of property. A full-scale inventory and publishing of all the agreements on the basis of which the state-owned or municipal property is used, are introduced. Certain categories of quasi-lease agreements will be terminated and re-executed into a lease at e-auctions, including the agreements on transferring rights to operate parking lots, which were widely used in certain cities in violation of the principles of competitive access to such assets.

• **The procedure for changing the designated purpose, changing the terms of lease agreements**, or leased area is detailed. From now on, it is prohibited to change "non-commercial" designated purposes of leased property to "commercial", and the lease period or leased area may only be changed through an auction. However, there are some exceptions.

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Without holding an auction, the lease period may only be changed in lease agreements, which were concluded for less than 5 years and have not been extended yet. As to changing the size of leased areas, it is allowed to increase them only by acceding adjacent premises, the area of which shall not exceed the main leased area.

The new lease procedure has been blocked for some period of time due to the lack of all subordinate regulations, including the absence of new forms of standard lease agreements. However, on August 12, 2020, the Cabinet of Ministers of Ukraine adopted the Resolution "On Approval of Standard State Property Lease Agreement". Once the specified Resolution was published, the lease process was finally launched under a new procedure stipulated by the Law and Procedure. There are no other obstacles left.

Conclusions

It should be noted that the introduction of the Procedure was necessary since the new Law on lease would not be able to operate without it. The positive aspects also include the possibility to sublease property and keep the profit. This instrument may stimulate the attraction of investment into the renovation and improvement of leased sites.

The Procedure closes those schemes, which were corrupting competition and provided illegal advantages for certain mala fide tenants, as well as corruption options.

TAXES IN UKRAINE: WHICH CHANGES IN 2020 WILL DETERMINE THE DEVELOPMENT OF THE COUNTRY FOR MANY YEARS TO COME? WHAT SHOULD WE BE READY FOR TODAY?

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After ratifying the MLI Convention[1], Ukraine started in 2019 the active process of implementing the main actions of the BEPS plan[2]. A large number of tax changes came into effect in 2020, to which business, especially international business, will have to comply quickly. In particular, most provisions of Law No. 466-IX, previously known as draft law 1210, came into effect on May 23, 2020 with further amendments introduced by the Law No. 786-IX. The Law No. 466-IX provides, inter alia, for a number of changes. Let us review them in more detail.

Main Changes

• **Introduction of the "sound economic reason" and "principal purpose"**

Any transaction with a non-resident must meet the "sound economic reason" principle. Otherwise, a resident must increase its income by the amount of expenses under such a transaction. It shall be deemed that there is no business purpose if the principal purpose of the transaction is non-payment of tax, or if a resident would not enter into such an agreement with a non-related non-resident on the same conditions. Furthermore, a taxpayer may not enjoy the benefits of a double taxation treaty if the mentioned principle is not met This may occur when a taxpayer is subject to a reduced withholding tax rate of 5% when paying royalties (instead of the common tax rate of 15%) and if a tax authority proves that the purpose of the transaction with a non-resident was to obtain these tax benefits.

• **Expansion of the permanent establishment definition**

New rules for taxation of non-residents make the presence of the latter in Ukraine much more difficult without being registered as a permanent establishment. For instance, any resident using the corporate mail of a non-resident, who helps the latter to enter into agreements, or a person providing services in Ukraine on behalf of a non-resident for more than 183 days a year may be considered a permanent establishment.

In this case, according to the additional amendments to the Tax Code (Law No. 786-IX), starting from January 1, 2021, non-residents will have to register with a regulatory authority before commencing their business activity through a permanent establishment.

- **Introduction of a "look-through approach" to determine a beneficial owner of income**

Another novelty is that it is possible to use the international convention, not with the direct owner of income, but with the beneficiary. It means that if a taxpayer understands that he/she pays income to an intermediary company and then transfers it to a real beneficiary, the real beneficiary may apply to the tax authorities for confirmation of its status as an owner of the income. In this case, the resident will be able to enjoy the benefit under the international convention with the actual beneficiary of income and reduction of the withholding tax rate.

- **Taxation of income from controlled foreign companies (CFC)**

Amendments concerning the CFC are to come into effect on January 1, 2021, but will most likely be postponed until 2022. The new rules will de facto allow Ukraine to tax the incomes of foreign companies controlled by individual and corporate residents of Ukraine. In this case, the rules for determining control are quite universal and rather hard to avoid. Under the CFC rules, Ukrainian residents will be obliged to submit reporting on CFC and pay taxes on adjusted incomes of such companies. At the same time, rules on CFC taxation contain a lot of exceptions from which one may benefit. For instance, a CFC will not be taxed for its income in Ukraine if there is a double tax treaty between Ukraine and the country of CFC registration, unless the company's income consists of 50% or more passive income. Moreover, even passive income may be recognized as active for tax purposes should it be possible to prove that the company has real substance in the country with staff and fixed assets.

What else should be noted?

In addition to the foregoing, the Law introduced other changes with respect to tax administration: controlled transactions, definition of the constructive dividends and expanding the definition of a beneficial owner, completed the rules of thin capitalization, introduced the mutual agreement procedure and procedure for taxation of indirect sale of real estate in Ukraine by non-residents, etc.

Further details of the Law can be found in the article through the following link.

The beginning of 2020 also marked a relaunch of the VAT invoice blocking system.

Provisions of the CMU Resolution, by which the new procedure on terminating the registration of VAT invoices (**Procedure No. 1165**) was approved, came into effect on February 1, 2020. From now on, the transaction and taxpayer riskiness criteria are contained in the Procedure No. 1165, which essentially has resolved a number of legislative discrepancies and court disputes concerning the lawfulness of determining these criteria by the State Tax Service, as under former Procedure No. 117.

Furthermore, this Procedure includes submitting and considering information and documents to exclude a taxpayer from the list of risky entities. At the same time, for business, especially agricultural enterprises, the issue of classifying them as risky taxpayers is still the most pressing issue. However, such a decision of tax authorities cannot be a surprise since it is sent to a taxpayer electronically once it is made. For now, it is directly possible to challenge such a decision in court.

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[1] Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS — Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting.

[2] Base Erosion and Profit Shifting - is the Base Erosion and Profit Shifting project of the Organisation for Economic Co-operation and Development .

In addition, it should be noted that the Ukrainian tax system has been greatly modernized through the adoption of a number of laws, in particular:

- a number of regulatory acts[3], which introduced the use of program cash registers (**PCR**), came into effect on August 1, 2020. In particular, it concerns the disclosing of settlements in the trade and services sphere.

Entrepreneurs are now able, inter alia, to apply the PCR on different electronic devices (for instance on a smartphone or tablet), which makes it significantly easier for them to use cash registers.

- amendments[4] , which greatly improve the operation of electronic cabinet and electronic document management between a taxpayer and tax authorities, will come into effect on November 8, 2020. In particular, taxpayers will no longer have to enter into an electronic document recognition agreement, the sudden termination of which became grounds for numerous tax disputes.

Conclusions

The first half of 2020 appeared to be really fulfilling for the tax area of Ukraine. The direction on rapprochement to international practices in the taxation sphere chosen by the country requires implementation of fundamental and significant changes. This is due to the level of trust and interest of foreign investors needed for developing long-term relations with Ukraine.

It is too early to speak about the success or failure to reform the tax system of Ukraine. The proposed changes make it harder for the entrepreneurs to avoid taxes, which positively affects the economic climate in the country. However, the issue of whether or not our citizens are ready for such changes remains an open question. This is not about the readiness of people to accept something new, but about the material and technical resources required under this new law more often than usual, and it is especially true for public structures.

The second half of 2020 will also be fulfilling for tax authorities. However, we should wait for the actual result as early as tomorrow: changes at the state level require months and even years of implementation.

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[3] Laws No. 128-IX and No. 129-IX

[4] Law No. 786-IX

CHANGES FROM THE NBU: Which changes have become significant for the banking sector of Ukraine?

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The National Bank actively made changes in the regulation of banking and other financial services throughout 2020. These changes primarily aim at the effective resolution of distressed debts, development of financial instruments and strengthening the protection of rights and interests of financial services consumers.

Keep in mind that the **Regulation on the Organization of Process for Managing Distressed Assets in the Banks of Ukraine approved by the NBU came into effect in July 2019, which is to allow state-owned banks to sell distressed assets at a discount**. The Regulation determined a relevant schedule of bank compliance with new requirements of the NBU and development of all relevant internal documents. Thus, Ukrainian banks must develop and approve distressed assets management strategies and operational plan by September 30, 2020.
Given the above, the CMU approved the criteria and conditions of determining by the state-owned banks of measures on distressed assets management in April 2020 (**Resolution No. 281**).

In particular, the **instruments for settling the debtor's debt are, inter alia:**
- **sale of the debt/assignment of claim to a debtor at a price lower than the gross balance-sheet value of an asset;**
- **writing off of part of debtor's debt due to partial debt forgiveness;**
- **conversion of part or entire debtor's debt into capital.**

At the same time, Resolution No. 281 determined the requirements for the sale of debt/assignment of claim to a debtor. It is determined that the specified actions may be carried out by state-owned banks by holding open transparent tenders (auctions), which provide for automatic step-by-step reduction of the initial price.
Furthermore, certain conditions must be met. In particular, a seller may **not** be the debtor, its ultimate beneficial owner, pledgor, guarantor, or related party.

Banks are also able to re-appraise an asset on certain conditions. These are pursuant to their intrabank policy and to reduce the expected minimum economic benefit. In other words – **to sell the distressed assets at a price lower than their balance-sheet value**.

It should also be noted that on **July 1, 2020, the National Bank assumed the functions of a regulator of the non-banking financial services market for: insurance, leasing, factoring companies, credit unions, pawnshops, and other financial companies**. According to the NBU, its goal is to foster a solvent, sustainable, and competitive non-banking financial services market in Ukraine with proper protection of the rights of consumers (as clients of financial institutions). To achieve this goal, the National Bank determined these priority tasks:

- creating and implementing an integrated model of regulation and supervision over financial markets;
- further formation and development of the non-banking sector pursuant to best international practices and international obligations of Ukraine;
- and the development of financial instruments and infrastructure of the financial market.

The NBU is currently developing the key draft laws for regulating the non-banking financial services markets. In particular, a draft law on financial services has already been provided to a relevant committee of the Verkhovna Rada. Proposals of new version of draft laws on credit unions, insurance, and financial companies must be presented soon

Conclusions

The adopted decisions meet not only the long-standing international practices, but also the actual needs of Ukrainian banks: sale of distressed assets with discounts is a long overdue instrument for state-owned banks. These instruments for working with distressed assets were restricted until recently. Instead, a distressed asset (even one under financial restructuring) remained registered, required reserves, maintenance, and generated further losses.

At the same time, the specified changes require further implementation and adoption of additional regulation.

NEW RULES ON DISCLOSURE OF INFORMATION ABOUT ULTIMATE BENEFICIAL OWNERS

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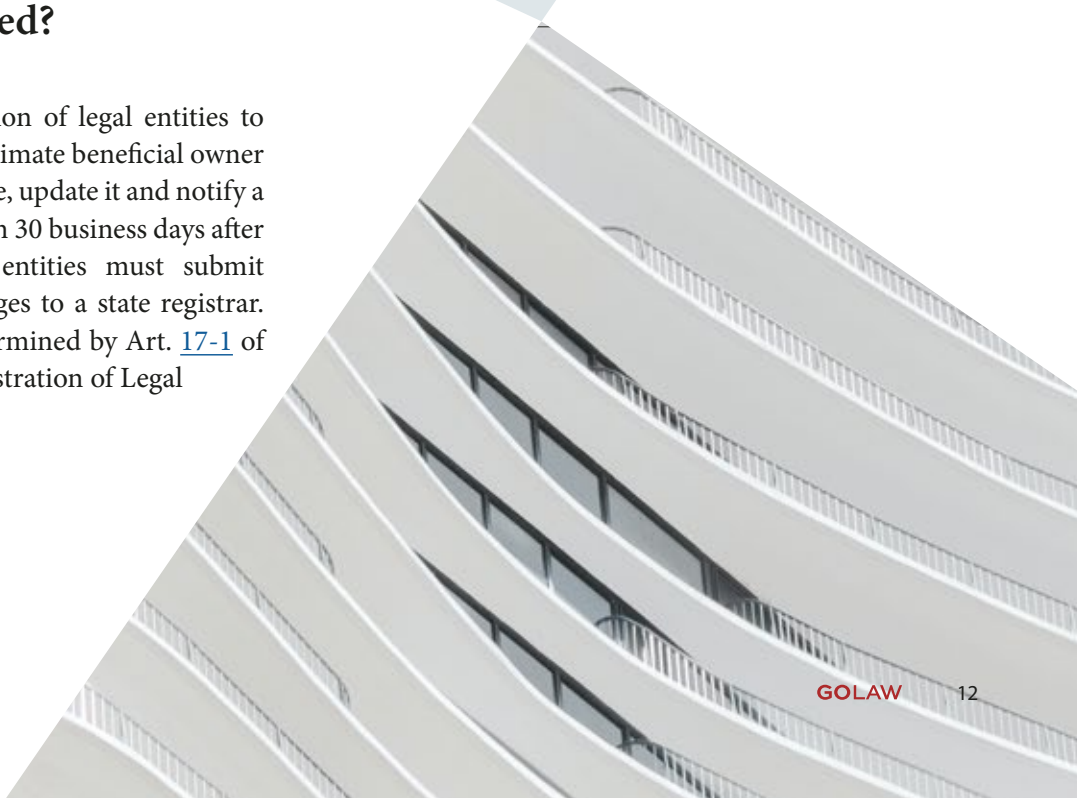
After the Law of Ukraine "On Preventing and Combating the Legalization (Laundering) of Proceeds from Crime, Terrorism Financing and Financing the Proliferation of Weapons of Mass Destruction" was enacted on April 28, 2020, the procedure for updating and submitting information about ultimate beneficial owners of legal entities has been modified.

What exactly has changed?

The Law provides for the obligation of legal entities to maintain information about the ultimate beneficial owner and ownership structure up-to-date, update it and notify a state registrar of any changes within 30 business days after they occur. Furthermore, legal entities must submit documents confirming such changes to a state registrar. The list of such documents is determined by Art. 17-1 of the Law of Ukraine "On State Registration of Legal Entities, Individual Entrepreneurs and Public Organizations". If there are no changes to the ownership structure and information about the ultimate beneficial owner, legal entities must notify a state registrar of the absence of relevant changes when carrying out state registration of any changes to an information about a legal entity contained in the Unified State Registrar.



As to the legal entities registered before **28/04/2020**, they need to submit information to a state registrar about the ultimate beneficial owner and ownership structure **within three months** from the date of entry into force of the regulationwhich approving the form and content of ownership structure. The form and content of the ownership structure shall be determined by the Ministry of Finance following the approval of the Ministry of Justice. It should be noted that the document has not been adopted yet, hence currently submission of the relevant information to a state registrar **is not possible**.

At the same time, the form of application for confirming information about the ultimate beneficial owner has been already approved by the Order of the Ministry of Justice.

Information to be submitted

Information about the ultimate beneficial owner shall be submitted to a state registrar in the following cases:

- **during the performance of certain registration actions** (state registration of a legal entity or introduction of changes to information about a legal entity);
- **in the event of change of any information about the ultimate beneficial owner** — within 30 business days after the change of such information;
- **in the event of detecting incompleteness, inaccuracies, or errors in information about the ultimate beneficial owner and ownership structure** —no later than within three business days after the date of detection;
- **annually** — within 14 calendar days following the date of state registration of a legal entity for confirming relevant information;
- **within three months** after the regulation approving the amendments comes into effect.

Penalties for violation

Article 166-11 of the Code on Administrative Offenses of Ukraine establishes a penalty for a director of a relevant legal entity amounting from UAH 17,000 to UAH 51,000 for failure to submit or late submission to a state registrar of information about the ultimate beneficial owner or absence thereof stipulated by the Law, as well as documents for confirming the information about the ultimate beneficial owner.

Conclusion

The new requirements for disclosure of information about the ultimate beneficial owner require constant control from the companies over timely and correct submission of data. Failure to correctly comply with the requirements may lead to adverse consequences in the fields of antimonopoly, banking, tax and corporate legislation.

REMOTE WORKING AND FLEXIBLE WORKING HOURS:
How does employment law regulate work during the quarantine period?

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Quarantine has catalyzed significant changes not only in our everyday lives, but also at the legislative level, and employment law is no exception. In 2020, remote working, flexible working hours, downtime and a number of other matters in the employee-employer relationship were regulated at state level. Read more about each innovation below.

In order to be able to monitor the performance of duties by employees, it is recommended to specify in the employment agreement (or in the order) the procedure for setting tasks to employees (for example, using corporate email) and monitoring their performance (alternatively, sending a daily report by email to the director on the performance of tasks).
Remote (home-based) work does not entail any restrictions on the scope of the labour rights of employees. At the same time, remote (home-based) working provides for payment in full and within the terms specified in the effective employment agreement, unless the employee and the employer have agreed otherwise in writing.

Remote working

With quarantine measures commenced, most office employees started working at home and the notion of "remote (home-based) working" was first introduced to the Labour Code of Ukraine (hereinafter - the Labour Code).

- **General requirements**

In remote (home-based) working, the work is performed by an employee at his/her place of domicile or anywhere at his/her choice. In other words, the legislation gives an employee the right to choose a place to work independently, and it does **not** have to be the employee's home address. At the same time, it is the duty of an employer to provide an employee with the necessary means for work.
When working remotely (at home), employees allocate working hours at their own discretion. Internal labour regulations do not apply to them. The total duration of working time may not exceed established norms (not more than 40 hours per week).

- **Hiring procedure**

An employment agreement for remote (home-based) working must be concluded in writing. However, for the duration of the quarantine, remote work may be established **without** a written agreement — it is sufficient for the employer to obtain the written consent of the employee and issue the corresponding order.

Flexible working hours

The flexible mode provides for the establishment of a working mode that differs from the one defined by internal labour regulations. The condition is that the standard on working time (per day, week, etc.) is observed.

- **General requirements**

The flexible work arrangement may provide:
- **fixed time during which an employee must be present at his/her workplace and perform his/her official duties;**
- **variable time during which the employee, at his/her own discretion, determines the periods of work within the established norm of working hours;**
- **break time for rest and food.**

In other words, this type of work arrangement enables the employer to divide the working day into parts that are convenient for both parties to the employment relationship. It should be noted that previously this possibility had been envisaged only in jobs with special conditions and type of work.

- **Hiring procedure**

Employees time-sheets are kept by the employer. The flexible work arrangement does not require any changes in the measurement, remuneration, and does not affect the scope of labour rights of employees.
Flexible working hours may be provided for a certain period of time or indefinitely, both when hiring and thereafter. However, it is important to remember that the specified regime can only be established by agreement between the employee and the employer.

Paying for downtime

Due to quarantine restrictions, some enterprises were forced to stop the work of separate departments or even completely suspend their activities.
The amendments to the Labour Code have clearly defined the procedure for the payment of downtime for the period of quarantine: **at least two thirds** of the employee's salary. However, it is necessary to pay attention to the terms of the employment agreement with the employee and the provisions of the collective agreement (if concluded at the enterprise), since they may envisage a different procedure for paying for downtime through no fault of an employee.

A detailed overview of current issues of employment legislation during the pandemic can be found in the GOLAW webinar on our YouTube channel.

YouTube

Conclusions
Changes in employment legislation have increased the possibilities for parties to labour relations to establish flexible working hours and remote working, both during and after periods of quarantine.
Employers should bear in mind that the new legislation does not provide for the repeal or mitigation of liability for violations of labour law during quarantine, and hence such violations will have to be fully punishable. It is, therefore, important that decisions on labour issues be taken and formalized in accordance with the requirements of the law in order to avoid any problems with the State Labour Service of Ukraine in the future.
The question that remains open is how long will the quarantine last, and will the new format of work become routine for us? Legislative changes in the field of employment law will then also await us in the future.

LAND MARKET INTRODUCED IN UKRAINE:
WHAT EXACTLY DOES THE LAW PROVIDE FOR?

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There is no doubt that one of the most notable novelties of 2020 in Ukraine was the introduction of the agricultural land market. On March 31, 2020, the Verkhovna Rada has adopted the Law of Ukraine "On Amending Certain Legislative Acts of Ukraine On the Turnover of Agricultural Lands" (Law No. 552-IX) (the "Law"), which **will come into effect on July 1, 2021**.

Who can buy the land?

The law lifts the moratorium on the sale of agricultural land: individuals and legal entities will be able to acquire a title and alienate agricultural land plots considering the restrictions to the list of owners and the area of land plots "per one person".

The following will be able to be owners of agricultural lands:
- **citizens of Ukraine;**
- **legal entities of Ukraine, participants of which are citizens of Ukraine and/or the state, and/or territorial communities;**
- **territorial communities;**
- **the state.**

Banks are classified by the Law as a separate category of owners. Banks will be able to acquire the ownership title to land plots as a result of foreclosure on land as collateral with the obligation of its further alienation on land tenders within the next two years.

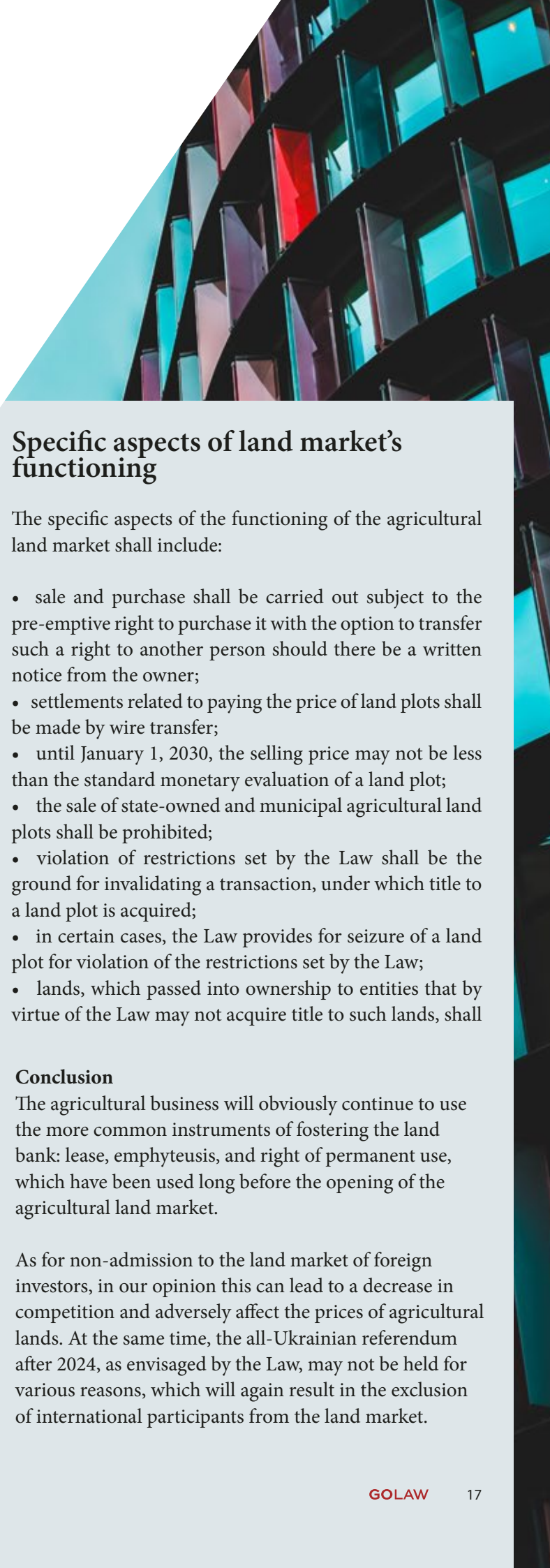
The Law establishes a direct prohibition for Ukrainian legal entities, participants or ultimate beneficial owners of which are **not** citizens of Ukraine, to acquire agricultural lands into a title until a national referendum is held.

In addition, until a referendum is held, foreigners, stateless persons and legal entities shall be prohibited from acquiring shares (stock, equity, membership) in the authorized capital of legal entities owning agricultural land plots, except for the authorized capital of banks.
At the same time, even if a referendum is held, the following will be prohibited from acquiring title to agricultural land plots:

- legal entities, participants or the ultimate beneficiaries of which are foreigners — to land plots located closer than 50 km from the state border of Ukraine (except for the maritime state border);
- legal entities, participants or ultimate beneficiaries of which are citizens of the Russian Federation;
- persons who are, or have been, members of terrorist organizations;
- legal entities, participants or ultimate beneficiaries of which are foreign states;
- legal entities, the beneficiary of which is unidentified;
- legal entities, the beneficiaries of which are registered in offshore zones (according to the CMU list of offshore zones);
- individuals and legal entities, as well as their related parties under sanctions pursuant to the Law of Ukraine "On Sanctions" in the form of prohibition on the acquisition of land plots into title;
- Ukrainian legal entities, the controllers of which are registered in states from the FATF[1] list.

[1] Financial Action Task Force on Money Laundering — an inter-government body whose aim is the development and introduction at international level of anti-money laundering measures and standards.

The Law actually restricts the ability of a business to structure the title of agricultural lands using holding structures both Ukrainian or using foreign companies. An agricultural business, which plans to acquire land plots into a title, will have to disclose information about the beneficiaries, review their corporate structures and in any event exclude the offshore companies from them.



Limitations of the land area

By January 1, 2024, the total area of agricultural land plots owned by one citizen may not exceed 100 ha. The area of land plots acquired by a citizen before the Law came into effect shall not be taken into account. Starting **from 2024, the general restriction that applies to citizens shall be increased to 10 thousand ha "per one person".**

Legal entities will be able to acquire agricultural land plots into title only starting from January 1, 2024, and only up to 10 thousand ha and not exceeding the total area of agricultural land plots, which can be owned by all their participants. The specified restriction does **not** apply to banks, which will acquire land as a result of foreclosure on land plots as collateral.

It should be taken into account the that the area of land plots owned through holding a share in the authorized capital of a legal entity shall be **added** to the area of land plot owned by a citizen.

Therefore, if a citizen owns 10 thousand ha of agricultural land, a legal entity, in which he/she is a sole participant, will not be able to acquire an agricultural land plot into the title.

Failure to comply with the specified restrictions will result in invalidation of land plot alienation transactions and will be grounds for seizure of the land plot.

Specific aspects of land market's functioning

The specific aspects of the functioning of the agricultural land market shall include:

- sale and purchase shall be carried out subject to the pre-emptive right to purchase it with the option to transfer such a right to another person should there be a written notice from the owner;
- settlements related to paying the price of land plots shall be made by wire transfer;
- until January 1, 2030, the selling price may not be less than the standard monetary evaluation of a land plot;
- the sale of state-owned and municipal agricultural land plots shall be prohibited;
- violation of restrictions set by the Law shall be the ground for invalidating a transaction, under which title to a land plot is acquired;
- in certain cases, the Law provides for seizure of a land plot for violation of the restrictions set by the Law;
- lands, which passed into ownership to entities that by virtue of the Law may not acquire title to such lands, shall

Conclusion

The agricultural business will obviously continue to use the more common instruments of fostering the land bank: lease, emphyteusis, and right of permanent use, which have been used long before the opening of the agricultural land market.

As for non-admission to the land market of foreign investors, in our opinion this can lead to a decrease in competition and adversely affect the prices of agricultural lands. At the same time, the all-Ukrainian referendum after 2024, as envisaged by the Law, may not be held for various reasons, which will again result in the exclusion of international participants from the land market.

BEWARE: "CODE-BOUND THIEVES" WHY DOES THE NEW LAW AFFECT EVERYONE?

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The legislative initiative of the Verkhovna Rada of Ukraine to start an active combating "code-bound thieves" and crimes committed by criminal communities came as a quiet surprise at the end of December 2019.

At first glance, such an idea seemed right: war on crime in the country should be put right and strengthened. However, the draft law, which was made public, contained inhuman rules to say the least, in this respect. The document put the liability upon a person only for the fact that crime figures defined him as a "code-bound thief".

It is clear that the criminal laws of our country do not provide for liability for just having any status. In addition, the draft law was full of jargon explicitly humiliating the official document - the Criminal code of Ukraine.

Words ran high about the draft law. Someone noted that there are not so many "code-bound thieves" in Ukraine for the whole text of the Criminal code to be amended for them. Others commented that despite a person's belonging to certain criminal elements, a person has the same rights as a law-abiding person.

As a result, the draft law was finalized, and on June 4, 2020, the Verkhovna Rada adopted the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine regarding Liability for Criminal Offences Committed by a Criminal Community".

The word combination "code-bound thief" was nevertheless introduced into the Criminal Code of Ukraine and the liability is established for certain actions of such persons and certain contacts with a person "crowned" by criminals was also established.

In a view of the amendments to the Criminal Code of Ukraine, one must be very cautious and particular over his contacts and participation in mass events.

One may be sentenced up to **twelve years' imprisonment with confiscation of property** for participating in a gathering, which the Law may equate to an "underworld convention " (this very term has been is chosen by the legislator), and for seeking help from a "code-bound thief" one may get from three to seven years' imprisonment with or without confiscation of property.

Conclusions

It is interesting to note that the Law also expands the general concept of "establishment and participation in an organized organised crime group". Whereas the establishment of an organised crime group was previously applied to committing serious and exceptionally serious crimes, currently such restrictions no longer exist. Now any person can be found liable for a crime who, in the opinion of law enforcement officers, has committed any crime, even a minor one, as part of a group of persons.

We are sure that such innovations will turn the heads of quite a large number of people, and tons of new and interesting cases on the protection individuals in criminal proceedings are waiting for criminal defence attorneys.

FURTHER CHANGES IN TRIAL PROCEDURE

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Impact of the novelty on court proceedings

The effective protection of infringed rights, freedoms and interests of individuals and legal entities in court can be ensured only if there is a properly organized judicial system and clear rules of court proceedings in place. That is why the judicial reform that has been implemented in Ukraine for several years and amendments aimed at improving court proceedings are made to procedural codes.
Below we will try to look into the changes made in 2020, which have affected the trial procedure, and the consequences we have today.

- **It has become more difficult to delay consideration of a case: a judge may be disqualified only in accordance with a clearly-defined procedure**

Court hearings have since December 2017 been conducted under the then new procedural codes. Those codes provided that in the case of an unjustified disqualification of a judge, a particular issue was referred to another judge. It is obvious that this resulted in the adjourning of a court hearing in that particular case.
Unfortunately, there were many cases of unfounded disqualification on the very day or the day before the scheduled court hearing. That is, this procedural tool was used by unscrupulous litigants to delay court proceedings. In order to prevent such abuses of procedural rights and to ensure that cases are considered within a reasonable time, Law No. 460-IX was adopted in January 2020, which amended the Commercial Procedure Code of Ukraine, the Civil Procedure Code of Ukraine and the Code of Administrative Judicial Procedure of Ukraine.

Thus, since February 8, 2020 there may be no injunctive relief that provides for (or results in) suspension, postponement, termination or other interference in the conduct of a competition, auction, bidding, tender or other public tender procedures conducted on behalf of the state (state authority), territorial community (local self-government authority) or with the participation of a person appointed by a state body as a member of the commission conducting such competition, auction, bidding, tender or other public tender procedure.

The above Law stipulates that a petition for disqualification of a judge received by a court later than three working days before the next court hearing may not be referred to another judge, and the issue of disqualification of a judge is decided by the court considering the case.

- **It is now almost impossible to stop public tender procedures by injunctive relief: the rules have been changed**

|Legislators also took into account such a tool as injunctive relief. This time the novelties concern limitations on the possibility of injunctive relief.

Grounds for cassation appeal against court decisions

In addition, new filters have been created in the procedural codes for a cassation appeal against court decisions.
From February 8, 2020, the cassation appeal must indicate the specific grounds for the filing of such an appeal, in particular it must:

- indicate the decision of the Supreme Court setting out the conclusion on the application of the rule of law in similar legal relations, which was neglected in the court decision under appeal, or
- justify the need for deviation from the conclusion on application of the rule of law in such legal relations, set out in the decision of the Supreme Court, or
- note the absence of an opinion of the Supreme Court on application of the rule of law in such legal relations.

Conclusions
The above novelties are due to the presence of mutually-exclusive legal opinions in court decisions. Thus, the above changes are aimed at improving the mechanism of grounds for a cassation appeal and facilitating the Supreme Court in the performance of its task: to ensure the sustainability and uniformity of judicial practice.

CHANGES BROUGHT ABOUT BY QUARANTINE:

Impact of the pandemic on court proceedings and the consequences

The global pandemic in 2020 and the introduction of quarantine in Ukraine have made their adjustments to court proceedings. Thus, legislators had to make urgent changes to the procedural codes in connection with the spread of COVID-19.

Extension of procedural terms

In March 2020, the Commercial Procedure Code of Ukraine, the Civil Procedure Code of Ukraine and the Code of Administrative Judicial Procedure of Ukraine were supplemented with provisions on **extension of the procedural terms** for the period of the quarantine established by the Cabinet of Ministers of Ukraine.
It was stipulated that the term set by the court in its decision could not be less than the period of the quarantine aimed at preventing the spread of COVID-19 coronavirus.
However, that novelty has led to litigants abusing their procedural rights in an unjustified way and an unjustified delay in the consideration of court cases.
Legislators addressed this problem by adopting a new law on June 18, 2020 . Thus, the procedural terms extended due to the quarantine period expired on August 6, 2020. At the same time, in the event of omission of procedural terms, including because of the quarantine, a person may request the court to extend them, though the person must substantiate the validity of such omission.

[1]Law No. 731-IX

Participation in a court hearing via video conference

On this occasion, it is a case of the quarantine speeding up the positive changes in court proceedings.
Thus, due to the introduction of quarantine, the litigants were given the opportunity to participate in the hearing through video conference beyond the courtroom using their own technical means and electronic signature. To do this, one needs to register on the Easycon online video service and file an appropriate petition to the court.

Conclusions
Those changes ensured proper and, at the same time, safe consideration of cases within a reasonable timeframe, and while the extension of procedural terms concerned only the first months of the quarantine, video conferencing may become a quite common thing once the pandemic has ended.

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