

MONTHLY LEGAL UPDATE



Kyiv, June 2017

LABOUR LAWS

RECENT CHANGES IN THE PROCEDURE FOR OBTAINING WORK PERMITS AND TEMPORARY RESIDENCE CERTIFICATES FOR FOREIGN NATIONALS AND STATELESS PERSONS IN UKRAINE

On 23 May 2017 the Parliament of Ukraine adopted the *Law on Amendments to Certain Legislative Acts of Ukraine with a view to Eliminating Barriers to Attracting Foreign Investment*. The law will enter into force 3 months after its signing by the President of Ukraine and official publication.

The law is aimed at simplification of the procedure for obtaining work permits and temporary residence certificates for foreign nationals and stateless persons in Ukraine. Consequently, a foreign national may now be employed by more than one employer or hold several positions within the same company. Moreover, foreign employees whose salary constitute not less than 50 minimum wages (UAH 160,000.00 or approximately EUR 5,500) may have another (part-time) job without obtaining a new work permit.

The law also introduces new particular categories of foreign employees in Ukraine whose work permits may be issued for a period of up to 3 years (currently the maximum duration is 1 year). Among these particular categories are the following individuals:

- foreign employees whose salary constitutes not less than 50 minimum wages



(UAH 160,000.00 or approximately EUR 5,500);

- founders, participants and/or beneficiary owners of a legal entity established in Ukraine;
- graduates of the world's top 100 universities in accordance with the list of universities approved by the Cabinet of Ministers of Ukraine;
- artists (creative professionals);
- IT professionals;
- employees working under a secondment agreement.

The validity period of work permits obtained for other categories of foreign employees remains unchanged which is a 1-year term.

The law also reduces the number of required documents for obtaining and extending work permits, excluding, in particular, by abolishing the requirement to present a notarized copy of a diploma bearing an apostil.

In addition, the law increases the fee for issuance of the work permit and establishes the fee for extension of a work permit. Moreover, the law prescribes a minimum official wage of a foreign national employed in Ukraine of not less than 10 minimum wages (UAH 32,000.000 or approximately EUR 1,100) for employees of business entities and not less than 5 minimum wages (UAH 16,000.000 or approximately EUR 550) for employees of civil groups, charity organizations and academic institutions.

The law also introduces new grounds for issuance of a temporary residence certificate for foreign nationals and stateless persons, in particular, participation interest of such individuals in the charter capital of a Ukrainian legal entity amounting to not less than 100,000 Euros at the exchange rate of the National bank of Ukraine as of its payment date. In turn, temporary residence certificates for such foreign nationals and stateless persons are issued for a 2-year term.

OBLIGATIONS RELATED TO MOBILIZATION

On 18 May 2016, the Parliament of Ukraine adopted the *Law of Ukraine on Introduction of Amendments to the Law on Military Duty and Military Service*. The Law will enter into force after its signing by the President and official publication.

The Law aims at introducing the obligation of companies' directors to inform would-be conscripts and reservists them being requested to visit military commissariats to ensure their timely arrival at this calling. Moreover, the Law obliges companies' directors to inform district (city) military commissariats about employment (internship) and dismissal of would-be conscripts and reservists within seven days. Such obligations used to apply only to companies which are situated in territorial administrative units where there are no military commissariats.



NEW RULES ON LABOUR INSPECTIONS

On 16 May 2017, Resolution no. 295 of the Cabinet of Ministers of Ukraine 'Certain issues of implementation of Article 259 of the Labour Code and Article 34 of the *Law of Ukraine on Local Self-Government in Ukraine*'. The Resolution introduces new rules for exercise of the state control over the compliance with the labour laws.

These changes are envisaged as a next step of fighting against companies which do not respect labour regulations, and in particular, using employees under civil-law agreements or paying a portion of salaries 'under the table'.

Apart from the State Labour Service of Ukraine, the power to conduct labour inspections is given to executive bodies of local authorities. Both, officials of the State Labour Service of Ukraine and officials of local councils should have special certificates in order to be allowed to carry out an inspection. The form of such certificate must be approved by the Ministry of Social Policy (currently not approved), whereas the State Labour Service of Ukraine will maintain the register of such certificates.

According to the Resolution, inspections can be carried out on site or remotely. The duration of an inspection may not exceed 10 working days, or 2 working days for small businesses.

The Resolution introduces a number of new powers of labour inspectors in the implementation of control measures. In particular, during the inspection visit for the purpose of identifying undocumented labour relations, inspectors may, freely and without prior notice, visit any premises of the employer at any time of the day.

May we remind you that the amount of the penalty is determined by the Labour Code which provisions were modified by the *Law of Ukraine on Amendments to Certain Legislative Acts of Ukraine* dated 06.12.2016. The maximum fine can reach UAH 320,000.00 (or approximately EUR 11,000) for a failure to allow a labour inspector to carry out his responsibilities with regard to identifying undocumented labour relations.

INTELLECTUAL PROPERTY

PROTECTION OF COPYRIGHT AND RELATED RIGHTS IN THE INTERNET STRENGTHENED

On 6 May 2017, important amendments in the field of protection of copyright and related rights from online infringements entered into force. These amendments are aimed at harmonization of the Ukrainian IP laws with the EU legislation in the field of IP rights protection.



In particular, the final provisions of the *Law of Ukraine on State Support of Cinematography in Ukraine* (no. 1977-VIII dated 23 March 2017) introduced amendments to the *Law of Ukraine on Copyright and Neighbouring Rights*, the Code of Administrative Offences, the Code of Civil Procedure, the Code of Commercial Procedure, and some other laws, giving effect to the following novelties:

- Introducing a detailed ‘notice-and-takedown’ mechanism of protection from pirated content on the Internet. An IP rights holder is granted with the right to give a notice to a website owner, a webpage owner and/or, in certain cases, a hosting provider, asking to cease infringements related to the illegal use of audiovisual works, musical works, computer programs, videograms, phonograms, and broadcasts (programs) of broadcasting organizations;
- Obliging the person who submits a notice to act exclusively through a lawyer and setting a number of formal requirements to the notice of termination of infringements;
- Establishing liability of the person who submits a notice for deliberately giving false information in the notice;
- Providing a possibility of forced termination of online copyright infringements by means of a court’s ruling;
- Establishing liability of websites owners, web page owners, and hosting providers for non-compliance with the ‘notice-and-takedown’ procedure;
- Setting requirements on disclosure of information about websites owners and hosting providers on their websites and/or in publicly available databases (WHOIS) and establishing liability for failure to comply with them;
- Granting exclusive jurisdiction to civil and commercial courts in Kyiv at the seat of the State Intellectual Property Service of Ukraine to consider cases related to online infringements upon intellectual property rights etc..

BANKING & FINANCE

NBU relaxed certain currency control limitations

By virtue of NBU Resolution No.41 dated 25 May 2017 (the “Resolution”) the following currency control restrictions were eased:

- with effect from 26 May 2017, the maximum term for settlements under export and import contracts was extended from 120 calendar days to 180 calendar days. In other words, Ukrainian entities are now required to ensure that (a) the receivables in foreign currency under export contracts are transferred to their accounts in Ukraine within 180 days after the services (works) have been



rendered or goods have been shipped abroad, and (b) pre-paid goods and services (works) under import contracts must be actually shipped to the territory of Ukraine and/or rendered within 180 days from the day of prepayment;

→ with effect from 12 June 2017, Ukrainian residents will be allowed:

- + to buy and transfer foreign currency due to foreign investors as a result of the sale of securities, participatory interests or decrease of the share capital in Ukrainian companies. However, any such payments may not be in excess of the equivalent of USD 5,000,000 per month; and
- + to make early repayments under cross-border agreements extended, guaranteed or covered by IFIs provided, however, that the prepayment may not exceed the amount actually guaranteed or covered by IFIs.

REAL ESTATE

CHANGES IN TOWN-PLANNING/ARCHITECTURE LAWS

On 10 June 2017 major changes in the laws concerning town-planning and architecture will come into effect pursuant to the Law of Ukraine on Amending Certain Laws of Ukraine with a view to Improving Town-Planning Activities (no. 1817 as of 17.01.2017 ("Law no. 1718").

The changes concern the following:

1) Change of the categories of complexity of buildings to consequence (liability) classes buildings, structures

In place of five categories of complexity of buildings there will be introduced three consequence (liability) classes, which will correspond as follows:

I-II category of complexity – insignificant consequence class (CC1);

III-IV category of complexity – medium consequence class (CC2);

V category of complexity – significant consequence class.

Insignificant consequence class (CC1) includes: buildings where the level of possible danger to life and health of people, who are permanently there, concerns less than 50 individuals, who are there occasionally – up to 100 individuals, the amount of financial losses in the event of cessation of operation does not exceed 2,500 minimum wages (8 million Hryvnias as of today), is not a cultural heritage site and is not being constructed within the limits of its protection zone, is not a heightened danger building, does not have more than 4 stories;

Significant consequence class (CC3) includes: cultural heritage sites, heightened danger and public buildings more than 100 metres high, where the level of danger to life and health concern more than 400 individuals who are permanently there.



Medium consequence class (CC2) may include all other buildings.

A consequence class is assigned by the design institution upon approval of the owner of the construction.

2) Construction permits

Due to the change of categories to consequence (liability) classes, construction related documents also changed. Declarations on commencement of construction works and the building's operational availability were abolished, and instead notices on commencement of construction works and construction works permits will be used.

A notice on commencement of construction will serve as the basis for construction of buildings with insignificant consequence class (CC1) and those being constructed on the basis of a contraction passport (individual residential buildings);

A construction works permit will be issued by an architectural and construction supervising authority for buildings and medium (CC2) and significant (CC3) consequence classes. Construction works permits will be issued free of charge within 10 business days. A refusal in the permit may be appealed in court. Permit may be cancelled on the grounds set forth by the laws.

Developers may receive a permit for preliminary works prior to the issuance of the construction works permit.

3) Powers with regard to issuance, registration, cancelation of constructions related permits

Powers regarding issuance, registration cancelation of permits are divided as follows:

- Executive bodies responsible for architecture and town-planning of local councils with up to 50 thousand inhabitants have powers with regard to buildings which have insignificant consequences (liability) class (CC1) and are located within the boundaries of the town;
- Executive bodies responsible for architecture and town-planning of local councils with more than 50 thousand inhabitants have powers with regard to buildings which have insignificant (CC1) and medium (CC2) consequences (liability) classes and are located within the boundaries of the town;
- A central executive authority responsible for state architectural and construction supervision (the State Architectural and Construction Inspectorate of Ukraine) have powers with regard to: (i) buildings of all consequences (liability) classes (CC1, CC2, CC3), located outside of boundaries of towns or located within the boundaries of several administrative and territorial units; (ii) buildings of medium consequence (liability) class (CC2) within boundaries of towns apart from buildings located in oblast capitals and towns with more than 50 thousand inhabitants; (iii) all buildings with significant consequence classes (CC3) located within boundaries of towns.



Changes to the Law distinguish and update the notions of architectural and construction supervision and control.

4) Issuance of town-planning conditions and limitations

Availability of town-planning conditions is a mandatory prior condition for the issuance of a construction permit.

Town-planning conditions and limitations are issued by local town-planning and architecture authorities free of charge upon application of the owner, which must be accompanied with certain required documents (in particular, a title document for the land plot, a title document for immovable property (in the event of construction, reconstruction, capital repair), a statement from the State Land Cadastre, geodesic (land-surveying) map.

Town-planning conditions must be issued or refused within 10 business days.

The State Architecture and Construction Inspectorate of Ukraine will maintain a register of town-planning conditions. Users will have free of charge access to the register through the website of the Inspectorate.

5) Expert examination of construction projects

A mandatory expert examination must be carried out with regard to construction projects which:

- fall within the medium (CC2) and significant (CC3) consequence classes;
- are being constructed at the expense of budget funds;
- are being constructed on sites with difficult engineering and geological conditions.

Construction projects for buildings of insignificant consequence class (CC1) are not subject to mandatory expert examination.

6) Liability

Law 1718 introduces changes to the Code of Ukraine of Administrative Offences and the law of Ukraine on liability in the Field of Town-Planning Activities with regard to the amounts of fines and the procedure for imposing the same..

CRIMINAL LAW

THE SO-CALLED 'SAVCHENKO' LAW REPEALED

On 18 May 2017, the Parliament of Ukraine voted for draft law No. 5534 (the “New Law”) concerning the abolishment of the ‘1 day of pre-trial detention accounts for 2 days of sentence’ rule (the “1-to-2 Rules”).



In terms of the historical background, the 1-to-2 Rule was adopted a year ago and provoked heated discussions as being the ground for potentially corruptive legal strategies. More specifically, the public discussion, which finally resulted in the abolishment of the Rule, was provoked by several cases when lawyers attempted to delay pre-trial investigations for various erroneous reasons.

The rule that had been in force until 2015 – 1 day of pre-trial detention accounts for 1 day of sentence – is expected to be reinstated following the adoption of the New Law. At the same time, with respect to persons already sentenced under the old law the provision for non-retroactivity could be invoked. In particular, Clause 2 of the New Law indicates that the New Law is not applicable to persons who are already convicted at the time the law comes into force. In other words, these persons will continue to be entitled to exercise the 1-to-2 Rule.

The New Law will however have a particularly negative impact on those persons, with relation to whom the courts have neither issued a final sentence, nor are expected to issue one before the day of publication the New Law.

The New Law is expected to be published after it is signed by the President of Ukraine.

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