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ENERGY

Stimulating Usage of the Alternative Energy Sources

- On 01.04.2009 the Verkhovna Rada of Ukraine adopted the law of Ukraine “On Introduction of Amendments to the Law of Ukraine “On Electrical Power Engineering” to stimulate usage of the alternative energy sources”. The Law entered in force on 22.04.2009.

The adopted Law establishes the “green” rates for each economic entity that produces electrical power with the usage of the alternative energy sources, for each type of alternative energy and for each electrical power object. Now the “green” rate will be calculated by way of multiplication of the retail rate for consumers of the second class tension as for January 2009 (and for objects producing electrical power from the solar radiance and small hydroelectric power plants the rate will be calculated with the application of the rate index for heavy hours) by the special index of the “green” rate for each kind of the alternative energy.

The index of the “green” rate hovers in between 0,8 (for electrical power produced by a small hydroelectric power plant) and 4,8 (for electric power produced from the solar radiance by land electrical power objects).

The “green” rate index for the electrical power produced by the electrical power objects commissioned (or significantly upgraded) after 2014, 2019 and 2024 will be decreased accordingly by ten, twenty and thirty per cent from its base figure. For economic entities producing electrical power with the usage of the alternative energy sources the “green” rate is established by 1 January 2030.

The mentioned stimulating procedure for the electrical power production from the alternative energy sources is applied on the condition that beginning from 1 January 2012 the relative weight of raw material, material supplies, capital assets, works and services of the Ukrainian origin amount to not less than 30 per cent, and beginning from 1 January 2014 not less than 50 per cent, in the construction price of the corresponding electrical power object producing electrical power with the usage of the alternative energy sources.

Also the Law establishes that the National Energy Regulation Commission of Ukraine in the process

of endorsement of the investment programs of the electrical grids’ owners should take into complete account the costs for connection to electrical grid of electrical power objects, which produce electrical power with the usage of the alternative energy sources.

In this way, power suppliers performing the activity of transmitting electrical power with the usage of their own grid cannot deny access to this grid of the economic entities producing electrical power with the usage of the alternative energy sources.

Electrical Power Export

- The Verkhovna Rada of Ukraine adopted the Law No. 1164-VI dd. 19.03.2009, which introduced amendments to the Law of Ukraine “On Electrical Power Engineering” concerning regulation of electrical power export issues. The Law has not entered in force as of 28 April 2009.

For performing electrical power export power suppliers will purchase the necessary volume of energy at the wholesale electrical power market of Ukraine for the wholesale price. Access to the throughput of the transnational power grids of Ukraine for electrical power export will be provided on the auction conditions. Those enterprises, which have license for performing the activity of supplying electrical power, are members of the wholesale electrical power market of Ukraine and do not have outstanding indebtedness for electrical power purchase at the wholesale market of Ukraine, can participate in the auction.

The access will be given to the winner of the auction for the period no longer than one year. In case the winner of the auction during two calendar months on end uses the throughput of the transnational electrical grids’ of Ukraine obtained in the result of the auction less than 70 per cent in the average during a month, than this throughput of the transnational electrical grids of Ukraine will be put on auction again.

REAL ESTATE

Procedure for Housing Rent with its Further Purchase

- The provisions of the Law of Ukraine “On Prevention of the Impact of the Financial Crisis on the Development of the Construction Industry and Residential Construction” have introduced the concept of housing rent with the right of its purchase. For implementation of the abovementioned prescription the Cabinet of Ministers of Ukraine endorsed the Procedure for housing rent with its further purchase with its Resolution No. 274 dd. 25 March 2009. According to the Procedure under a lease agreement one party - an enterprise (the lessor) transfers to the other party – a natural person (a lessee) housing for long term (to 30 years). After expiration of the term or pre-term on the condition of rental payments’ settlement in full amount, the title to housing transfers to a lessee. A lease agreement shall be concluded in writing, certified by a notary and is subject to the state registration.

RETAIL

Establishment of Boundary Rent Rates for Use of Trade Areas

- For the purpose of stabilization of prices at the consumer market and monopolization control in conditions of the financial and economic crisis the Cabinet of Ministers of Ukraine endorsed the Resolution No. 278 dd. 05.03.2009, which empowered local self-regulatory bodies with the authorities to establish the limits of rent rates for services rendered in trading objects, and in food and nonfood markets, as well as boundary levels of prices, profitability norms (in the amount not exceeding 20 percent) for lease of trade areas, and trade technical and/or refrigerating equipment in trading objects and in markets. Besides, a standard lease agreement of trading premises (areas) in trading objects, and in food and nonfood markets (including maintenance services) was adopted.

EMPLOYMENT

Resolution On the Approval of the Procedure for Issuance, Extension, and Annulment of Work Permits for Foreigners and Stateless Persons

- On 8 April 2009 the Cabinet of Ministers of Ukraine adopted Resolution No. 322 “On the Approval of the Procedure Issuance, Extension, and Annulment of Work Permits for Foreigners and Stateless Persons” (hereinafter “Resolution No. 322”), which enters in force on 15 of May 2009.

Upon the Resolution No. 322 entering in force the Resolution dd. 01 November 1999 No. 2028 “On the Approval of the Procedure of Issuance of Work Permits for Foreigners and Stateless Persons” (hereinafter – “Resolution No. 2020”) regulating the issues of obtaining work permits by foreigners and stateless persons (hereinafter – “foreigner”) will be abolished.

As compared to the Resolution No. 2028 the Resolution No. 322 expands the list of documents to be submitted to the employment center for obtaining permits to use foreigner’s labour and determines the list of documents for employing a foreigner, who belongs to the category of “intra-corporate transferee” or “persons providing services without commercial presence in Ukraine”.

Innovations in the list of required documents to be submitted to the employment center are as follows:

- certificate issued by the internal affairs authority on the absence (availability) of any previous criminal convictions of a foreigner, who stays in Ukraine at the moment of application;
- the certificate by the relevant authority from the home country (country of stay) which proves that the foreigner, who stays beyond the territory of Ukraine for the moment of application, is neither serving a sentence nor under a criminal investigation.

Concerning the “intra-corporate transferees”, instead of the certificate confirming that a working place or a position a foreigner is going to occupy is not connected with the necessity of the Ukrainian

citizenship and does not require the state secret clearance pursuant to the legislation of Ukraine, they should submit the following documents:

- the decision of a foreign economic entity to transfer a foreigner to the work in Ukraine;
- a copy of the contract between a foreigner and a foreign company on transfer to work in Ukraine determining foreigner's employment term in Ukraine;
- a copy of the contract on the direct provision of services in Ukraine (for a foreigner of the category "persons providing services without commercial presence in Ukraine").

Employment permit of a foreigner, who is in the "intra-corporate transferees" category, was previously issued for the term of employment, and now shall be issued only for a period not exceeding three years.

The essential condition is that all the documents to be submitted to the employment center for obtaining a work permit for a foreigner, which were issued in a foreign language by a foreign country, shall be translated into Ukrainian and certified in compliance with the legislation of the issuing country, and legalized at the Ministry of Foreign Affairs of Ukraine, unless otherwise envisaged by the international treaties ratified by the Verkhovna Rada of Ukraine

In general Resolution No. 322 as compared to the Resolution No. 2028 does not introduce any radical changes to the procedure for obtaining permits to employ foreigners; however it is to a greater extent aimed at the protection of national "employees' market" and establishes more severe requirements for foreigners, who are potential employees on the territory of Ukraine.

Hardened responsibility for violation of rules for foreigners' staying in Ukraine

- The Verkhovna Rada of Ukraine with the Law dd. 19 March 2009 No. 1159-VI introduced amendments to the Code on Administrative Offences, which provided for increase of penalties for:
 - violation of the employment procedure, acceptance for studying, provision of dwelling, registration, residence registration and de-reg-

istration of foreigners and stateless persons and execution of documents for them;

- failure to take measures to assure timely registration of foreigners and stateless persons;
- violation of the procedure for providing foreigners and stateless persons with dwelling, transport vehicles and assistance in rendering other services;
- illegal carriage of foreigners and stateless persons to the territory of Ukraine.

PUBLIC PROCUREMENT

Some Issues Concerning Public Procurements

- On 01 January 2009 the Ministry of Economy passed Decree No. 64 "On Approval of Agreement Procedure for Single and Restricted Tendering", which became effective on 21 March 2009.

The Decree determines the list of documents to be submitted to the Ministry of Economy of Ukraine for the agreement of the procedure for single and restricted tendering; also the form of technical and economical grounding for single tendering was established.

The Ministry of Economy shall ratify or deny ratifying application of the procedure for single and restricted tendering within 30 days upon registration of all the documents stipulated by the Decree. It also provides the for reasons to refuse a concurrence for the procedure, among them: non-compliance of the submitted documents with the established requirements; reveal of inadequate information in the submitted documents; applying to the applicant or a non-resident participant a special sanction in kind of either individual licensing or a temporary suspension of foreign economic activity pursuant to Article 37 of the Law of Ukraine "On Foreign Economic Activity", and as a reason for non-processing of the application can be considered inter alia the circumstance that the expected purchase value of goods and services amounts to less than 100 thousand UAH, and of works - 300 thousand UAH.

The decision on denial of agreement procedure and processing the application may be appealed in court by the customer pursuant to the procedure provided for by the legislation.

CORPORATE LAW

Certification of Documents

- The Verkhovna Rada of Ukraine adopted the Law dd. 3 March 2009 No. 1054-VI and introduced amendments to Articles 37 and 40 of the Law of Ukraine “On Notariat” and Article 245 of the Civil Code of Ukraine. The officials of the self-regulatory bodies in those residential areas where there are no notaries are allowed to certify the validity of documents’ copies and excerpts from them and also to certify signatures affixed to documents. Besides, those officials are entitled to certify powers of attorney of persons who reside in a residential area where there are no notaries except for powers of attorney authorizing to dispose immovable property, to govern and dispose corporate rights, and to use and dispose transport vehicles.

INFRASTRUCTURE & TRANSPORT

Organization of EURO-2012 Football Championship

- The Cabinet of Ministers of Ukraine adopted the Resolution dated 25.03.2009 No.273 enacting the Procedure on Use of State Budget Funds in 2009 devoted to Building and Reconstruction of Ring Roads around in Terms of Organisation and Holding of EURO 2012 Football Championship Finals in Ukraine and List of Respective Assets. According to this Procedure the Government of Ukraine will devote 500 000 000 UAH for building and reconstruction of 12,224 km of roads and 229,975 m of bridges at the 4 main regions of Ukraine, namely Donetsk, Dnipropetrovsk, Odessa and Kyiv regions.

BANKING & FINANCE

Draft Law on moratorium on licensing of new financial institutions in crisis conditions

- On 13.04.2009 the State Commission for Financial Markets Regulation made public the Draft Law “On Amendments to Some Laws of Ukraine”.

The Draft Law is aimed at creation of instruments for immediate response to overcome systemic crisis situations in financial markets. The Document envisages entitling NBU, State Commission for Financial Markets Regulation and Securities and Stock Market State Commission to set a moratorium on licensing of new financial institutions in crisis conditions. Such moratorium could be set for the term up to 1 year. With the Draft Law it is also proposed to enable regulators to set moratorium on licensing of new types of economic activity for financial institutions, which have not had such licenses previously.

BANKING & FINANCE

New NBU Regulations

- On 19.04.2009 came into force NBU Resolution No. 108 “On Amending Certain Regulatory Acts of the National Bank of Ukraine”.

According to the document, NBU temporary prohibits (by January 1st, 2010) spot and forward foreign exchange operations on buying-selling of foreign currency against UAH. Furthermore, the Resolution prohibits banks to buy and/or exchange foreign currency related to their provisions on foreign exchange debt for repayment of potential losses on credit operations.

The document envisages possibility to buy foreign currency within the limits of foreign exchange position, in case of maturity of bank’s obligations in this currency. Furthermore, the Document stipulates that amount of purchased by a bank-borrower currency for foreign currency credit repayment should not exceed amount of credit funds in foreign currency, which were earlier sold in interbank market.

DISPUTE RESOLUTION

New costs for informational and technical support of the judicial proceedings

- The Cabinet of Ministers of Ukraine adopted the Resolution dd. 14 April 2009 No. 361, which introduced amendments to the Resolution dd. 21 Decem-

ber 2005 No. 1258 “On Adoption of the Procedure for payment of costs for informational and technical support of the judicial proceedings connected with the consideration of civil and commercial cases, and the costs’ amount”. The Resolution in a new wording establishes costs for informational and technical support of the judicial proceedings connected with the consideration of civil and commercial cases. For the consideration of commercial cases the said costs amount to 50% of the minimum wages.

CAPITAL MARKETS

Initial dealers at the capital market

- The Cabinet of Ministers introduced the institute of initial dealers at the stock market by passing its Resolution dd. 14 April 2009 No. 363, and also endorsed the Provision on the institute of initial dealers.

Thus, the initial dealers are banks, which are determined by the Ministry of Finance and undertook obligations to cooperate with the Ministry in the sphere of development of the internal state stock market in exchange for the exclusive right to participate in public offerings of bonds of internal state loans and for the priority right to participate in other transactions carried out by the Ministry of Finance with such bonds.

Initial dealers can be banks, which have:

- license for execution of the professional activity at the stock market (securities trading activity);
- paid in charter capital equal to 10 million Euros
- practical work experience at the bonds market (total volume of bonds trading amount to not less than 1 billion UAH).

The total number of initial dealers cannot exceed 16.

COMPANY NEWS

The law firm Arzinger was officially announced a member of State Capital Group

- In April 2009 at the members’ meeting of the Association of independent law firms State Capital Group in Puerto Rico the law firm Arzinger was officially announced to be a new member of the Association representing Ukraine.

State Capital Group establishes high requirements for companies wishing to gain membership in the Association, i.e. high quality of services and their rendering, leader positions in the industry, efficiency for State Capital Group from the perspective of engagement in the international projects. The Association thoroughly studies information on the company: recommendations of other members of the State Capital Group, clients’ and partners’ references, membership in other legal associations, social activity and a position of the candidate company in the international listings. On the Association experts’ opinion, Arzinger absolutely complies with the requirements of the State Capital Group.

Due to its expertise, influence and regional partners member firms of the Association provide their clients with complex legal due diligence in all the business spheres across the globe.

Member firms of the Association have the possibility to coordinate effectively the international projects, to obtain promptly legal advice from the numerous jurisdictions all over the world and to organize multijurisdictional project groups.

The State Capital Group consists of 140 law firms from 90 states. The Association was founded in 1989.