Ukraine

Resolution No. 482: Should it Stay or Should it Go?

In the face of growing discontent and confusion, the National Bank of Ukraine (the"NBU") has issued a series of interpretative letters (the "Letters") attempting to clarify its position with regard to the application of Resolution No. 482, a controversial NBU enactment regulating foreign investment and the repatriation of profits, income and other funds obtained from investment activities in Ukraine ("Resolution No. 482"). The Letters have been issued in response to various appeals from foreign investors, Ukrainian banks, and the Ukrainian business community, including a dispute brought by a foreign investor in a Ukrainian court. The Letters seem to suggest that the NBU may be prepared to compromise on some provisions of Resolution No. 482, however, the extent of such compromise remains unclear.

Resolution No. 482 was adopted by the NBU on October 14, 2004, and took effect on November 12, 2004 (see the December 27,2004 issue of the *CIS & Central Europe Legal Newswire* for a more detailed discussion of Resolution No. 482). In brief, under Resolution No. 482 all foreign investors must open investment accounts in both foreign currency and in Ukrainian Hryvnia with a Ukrainian bank. Any funds transferred into or out of Ukraine in connection with a foreign investment must be channeled through these investment accounts. For example, under Resolution No. 482, a settlement for a sale of Ukrainian shares between a resident and a non-resident (or between two nonresidents) must be made in Hryvnia in Ukraine. Similarly, dividends paid by a Ukrainian company to a foreign shareholder must be paid in Hryvnia to the foreign shareholder's Hryvnia bank account before being converted into foreign currency and transferred abroad. Thus, the new rules expose foreign investors to economic risks associated with currency conversion (e.g., when converting Hryvnia received as profit from a foreign investment into foreign currency for transfer abroad). Moreover, foreign investors must also now contend with the administrative issues involved in opening investment accounts with a Ukrainian bank.

The burdensome consequences of Resolution No. 482 have provoked heated discussion among foreign investors, Ukrainian banks and the Ukrainian business community. Some banks and businesses have argued that Resolution No. 482 contradicts Ukrainian laws on foreign investments and exchange controls, and have called upon the NBU either to cancel Resolution No. 482 or, at a minimum, to amend it to bring it into compliance with such laws. In addition, a foreign investor disputed Resolution No. 482 in a Ukrainian court, causing its temporary suspension in accordance with Ukrainian procedural rules. Following the judicial suspension, some Ukrainian banks announced that they would service transactions settled in violation of Resolution No. 482.

In response to the judicial proceedings as well as the general outcry and confusion, the NBU has issued a series of Letters over the past month. In a Letter dated February 16, the NBU outlined proposed amendments to Resolution No. 482 and also invited the banking community to submit relevant proposals. Generally, if adopted, the NBU's proposed amendments would slightly relax the rules regulating foreign cash investments and related settlements (for example, to allow capital contributions in hard currency). In a Letter dated February 17, the NBU informed banks that the claim filed by the foreign investor had been rejected by the court, and as a result, Resolution No. 482 was reinstated and continues to remain in force.

It remains to be seen how the NBU will respond to the discontent expressed by the Ukrainian business community over Resolution No. 482: either by canceling Resolution No. 482 altogether, or by amending it to slightly relax the current stringent requirements. Generally, the NBU seems to be quite supportive of the objectives behind Resolution No. 482, and has referred approvingly to similar investment regimes in other countries.

Y. Deyneko, *Chadbourne & Parke LLP*

Ukrainian Companies Required to Confirm Registration Details

2004 witnessed several significant changes to Ukrainian company law that will continue to affect businesses in 2005. One such change imposes a duty on every Ukrainian company to confirm its

registration information with the company registration authority (the "Registrar").

Law of Ukraine No. 755-IV "On the State Registration of Legal Entities and Individuals Acting as Private Entrepreneurs," which took effect on July 1, 2004 (the "Registration Law"), requires all companies to confirm or update their registration information annually. Based on the date of their initial registration, many companies will be required to comply with the Registration Law for the first time in 2005.

Under the Registration Law, within one month of each annual anniversary of its registration, a company must provide a standard form confirming or, as the case may be, updating the information about the company filed with the State Register of Legal Entities (the "Register") to the Registrar. If the company fails to submit this form in a timely manner, the Registrar will send a reminder to the company. If the company fails to respond to the reminder within one month or the reminder is returned undelivered, the Registrar will then make an entry in the Register indicating either the company's failure to confirm its registration information or its absence at its registered address, as the case may be.

The information to be confirmed includes, in particular, the company's name, organizational form and shareholders, branches and representative offices, primary activities and location, as well as the individuals authorized to conclude legal transactions *(i.e.,* to sign contracts) on behalf of the company without a power of attorney, and any restrictions on the powers of authorized persons to act for the company.

Ukrainian companies should review their records to ensure compliance, as many will be affected by this requirement for the first time in 2005.

V. Fedichin, *Chadbourne & Parke LLP*