

Changes Abound

The last few months have seen new legislative changes and developments in various dimensions of business regulations. In this section the UJBL editorial team has enlisted the help of experts to comment upon some of them. Our latest digest includes, to a greater extent, initiatives that touch upon tax reform, e-commerce, transfer pricing, preventing corruption, intellectual property and not only.



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On 15 September 2015 the Parliament adopted the Act of Ukraine On Amending Certain Acts of Ukraine Regarding Fixing a Date of the Beginning of Temporary Occupation, No.685-VIII. The Act sets 20 February 2014 as the date of temporary occupation of the territory of the Autonomous Republic of Crimea (the ARC). Previously, this date was fixed on 27 March 2014 as the date of adoption of the UN General Assembly Resolution, No.68/262. How does revising the date of occupation affect businesses?

By 15 September 2015 there had been identified two dates of occupation of the ARC, namely, 27 March 2014 and 27 April 2014. It has already been proven in practice and described by scientists that any rule of law must be formulated clearly and unambiguously so as to avoid dual application; the principle, however, was not observed in this specific legal relationship.

Not until September 2015, that is, after the adoption of the Act of Ukraine No.685-VIII, were all the legal debates about the date of occupation of the ARC dropped, because it was clearly fixed as

20 March 2014 at the legislative level. All participants of civil relations in Ukraine could refer to the clear date of the commencement of force majeure, according to which participants of civil relations in Ukraine in their relations connected with the ARC could not perform their obligations properly.

In addition, the date is that starting point where after juridical acts regarding assets on the territory of Crimea have reasonably been questioned, as there is a high probability that the latter were committed without compliance with the general principles of civil law, such

as the inadmissibility of arbitrary deprivation of property rights, freedom of contract, etc.

Furthermore, the legislative enshrinement of the date of occupation provides certain persons suffering from the occupation with that starting point of which the period of charging compensation from the guilty party runs. This is an important element in protecting the rights of citizens and legal entities that suffered damage in connection with occupation. Therefore, adoption of Act No.685-VIII was a necessary decision by the legislator.



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How does the On E-Commerce Act of Ukraine of 3 September 2015, No.675-VIII affect development of e-commerce and the main e-business players?

According to many online businesspersons, enactment of the *On E-Commerce Act* is a positive signal for foreign investors *per se*. It should demonstrate that Ukraine is nurturing e-commerce and doing its best to please the online business. However, would it be more appreciable than numerous armed searches that IT-companies have been facing for the last few months?

Most provisions in the *On E-Commerce Act* establish well-known definitions and manners. For example, once again the Act stated that an Internet shop buyer

has all the rights of a consumer. Then, the mailing out of commercial electronic messages is illegal, unless the addressee has an option to unsubscribe. On the other hand, the Act does not provide any liability for non-compliance with such requirement.

Remote contracting without electronic digital signatures is the main innovation introduced by the Act. Earlier on, it was popular to reject the receipt of ordered goods that were not paid for, but now any online shop is entitled to claim against such activities of the client. However, it is not commercially rea-

sonable to take the client to court in such a case. In addition, the question whether courts will enforce such forward-looking provisions remains open. They may find plenty of formal reasons not to do so.

Another innovation is online consent to processing personal data when getting registered on an Internet shop. Anyway, officials have declared verbally that registration on websites is one of the acceptable ways to obtain such consent.

Currently, nobody can say for sure whether the Act will drastically change the situation on the Ukrainian e-commerce market.