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On 19 October Act No.1414-VIII On Financial Restructuring of 14 June 2016 came into force. How will this Act influence the stability of the financial system and the economic activity of debtors?

On 19 October 2016 a new *On Financial Restructuring Act* came into effect with the aim of creating an effective procedure for consensual restructuring of debt obligations of Ukrainian companies.

The Act regulates the process of initiating a financial restructuring and spells out the conditions of participation in the restructuring, negotiating and approval of a restructuring plan. It also introduces a number of new concepts, such as a statutory moratorium outside insolvency and standstill agreements, so as to allow debtors temporary relief in the course of restructuring negotiations, special tax treatment of certain operations related to restructuring and other benefits for those parties opting for restructuring.

The new restructuring procedures can apply to assets of a debtor located inside or outside Ukraine and to obligations arising under an agreement governed by a foreign law.

Special administrative bodies are to be established under the Act, such as the Supervisory Council, the Secretariat and the Arbitration Committee, which will be in charge of coordinating the restructuring process and dispute resolution.

In our opinion, the implementation of this Act should have a positive impact on the commercial activity of debtors, will ensure access to financial resources for recovery, and will generally strengthen the financial system by cleaning it from non-performing loans and restarting lending in the country.

At the same time, the Act introduces unnecessary formalistic procedures which may complicate the process of consensual debt restructuring. Involvement by administrative bodies adds unnecessary formalities to the process of restructuring, and may result in additional administrative burden and time delays. It remains to be seen how this will be implemented.



Eugene Blinov,
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A Parliamentary Committee recommended the adoption of Draft Act No.4496 in the second reading as well as its final reading. Its aim is to eliminate administrative barriers for the export of services. How will adoption of this Draft affect exporters?

The Draft Act will certainly simplify the regulatory field for export of services but carries a number of flaws in its wording and may be said to discriminate against other areas of business.

First of all, the Draft Act introduces an “electronic form” of an agreement and appears to distinguish it from the traditional written form. This may raise certain ambiguity as the Ukrainian *Civil Code* does not recognize “electronic form” of an agreement and in essence defines it as a written agreement concluded by way of exchange through modern means of electronic communications. On a practical note, this may be remedied by improving the wording in the Draft Act by referring to an agreement concluded by means of e-communications.

Furthermore, the Draft Act regulates the procedure for concluding an electronic contract for export of services but does not explain whether it may be applied for contracts on the export of goods. Obviously, it would have had a greater deregulatory effect if the operation of the Draft Act was extended to export of goods, which suffers from the same bureaucratic delays and unnecessary costs.

Finally, the Draft Act aims to liberalize the export of services and intellectual property rights by revoking the duty of Ukrainian residents to ensure deposition of proceeds therefrom on their foreign currency bank accounts. However, this would discriminate other businesses as opposed to exporters of services. Given the purpose of the Draft Act (i.e. to simplify the business climate for freelance professionals) it would have been prudent to establish a monetary limit (one-time or as an annual total), below which this privilege could be used.



Maxim Saliy,
associate, FCLEX

The Ukrainian Parliament adopted Draft Act No.4901 On Commercial Accounting of Utilities. How will this norm affect the consumption of energy, heat and water. What changes should consumers expect?

The Draft Act *On Commercial Accounting of Utilities* is another legal act aimed at compliance with the requirements set by the European Union needed to get the next tranche of macro-financial aid. As the legal system of the European Union is more progressive, almost all borrowings are useful for Ukraine.

The idea enshrined in the Draft is interesting and rational; it implies introduction of greater control over the supply of water and heating. The idea implies mandatory introduction of accounting/metering means for 100% of consumers.

Legislators intend to increase energy efficiency through optimization of consumption of service by consumers and, consequently, a decrease in the value of the resources by reducing the consumption of energy necessary to the producers to meet the needs of the population. Also, it is expected to arrange for more detailed information to consumers about the quantity, quality and cost of the resources used, which is in any case a positive innovation. From a theoretical point of view, this mechanism is effective for both the government and consumers.

However, it is necessary to introduce a more transparent pricing mechanism for utilities. As Ukraine is known for effective functioning of a range of schemes to artificially “inflate” prices to help a few enrich themselves at the expense of the population, the reforms in the industry regarding consumers will be useful to such persons only.