

Ukraine: new procedure for registration of the cross-border loans

Law-Now Ukraine
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On 15 June 2012 the Board of the National Bank of Ukraine (NBU) adopted NBU Resolution No 246 "On Amendments to Certain Regulations of the National Bank of Ukraine" (the "**Resolution**"). The Resolution *inter alia* introduces amendments to the NBU Resolution No 270 "On the Procedure for Obtaining by Residents of Foreign Currency Credits, Loans from Non-Residents and Provision by Residents to Non-Residents of Loans in Foreign Currency" dated 17 July 2004 and significantly changes the rules for registration of cross-border foreign currency loans. These changes will take effect starting from 10 November 2012.

In particular:

- The new registration rules are applicable to loans (credits) extended to or obtained by Ukrainian borrowers (except for banks) ("**Borrower(s)**");
- The NBU registration procedure will be initiated by the Borrower notifying its Ukrainian servicing bank about the execution of the loan agreement and submitting a loan agreement notification and supporting documents (currently the Borrower is required to approach the NBU directly);
- The servicing bank has 4 business days to review the notification and the loan agreement submitted by the Borrower and either request additional information or send the documents to the NBU. All communication between the servicing bank and the NBU in relation to the registration will be in electronic form through specific software for the registration by the NBU of agreements between resident-borrowers and non-resident-lenders (the "registration software");
- The NBU will review the documents provided for the registration of a loan agreement, i.e. the loan agreement notification and the servicing bank's consent to service the agreement. The loan agreement itself is not specified in the list of the documents to be sent by the servicing bank to the NBU. The Resolution, however, entitles the NBU to request any additional information from the servicing banks which should be provided within 3 business days upon such request;
- No time limits are expressly provided for in the Resolution for the registration by the NBU. It appears, however, that such registration should be carried out within 4 business days after receipt by the NBU of all required documents, since this term is set for the NBU to inform the servicing bank about the NBU's rejection to register the agreement;
- Provided that all the documents submitted to the NBU for the loan agreement registration are compliant with Ukrainian law, the NBU completes the registration in electronic form by means of the registration software. The NBU will no longer issue registration certificates for cross-border loans. Instead, the NBU will register agreements in the electronic register of loan agreement notifications held by the NBU (the "electronic register") and by placing a registration stamp, containing the number and date of registration, on the loan agreement notification submitted for the registration;
- The Resolution provides *inter alia* the following grounds for cancellation of the loan agreement registration by the NBU: (i) if the loan has not been obtained (partially or in full) within 180 days following the registration date and consequently the registration has expired (based on the application submitted by the Borrower or its servicing bank); (ii) if the statistical reports with respect to the operations under the loan agreement have not been submitted to NBU within three reporting periods (in a row);
- The NBU will report to the tax authorities on any unregistered foreign currency loans disbursed to Borrowers within 7 days after this information becomes known to NBU;
- The servicing bank before servicing any payments under the loan agreement will have to check registration of the agreement in the electronic register; after effecting payments, relevant notes specifying, among other things, the amount and date of payment will need to be made by the servicing bank on the agreement and notification on its registration;

In addition to the changes in the registration procedure, the Resolution reinstates a rule permitting foreign lenders to disburse a loan by directly paying to a non-resident supplier of the Borrower without needing to transfer the loan funds to the Borrower's bank accounts in Ukraine. In such case, the Borrower will be required to submit to the servicing bank a confirmation of the foreign lender's payment of the loan funds to a non-resident supplier. If the lender is a foreign bank, the payment may be confirmed by a SWIFT/telex message.

LAW: the NBU Resolution No 246 "On Amendments to Certain Regulations of the National Bank of Ukraine" dated 15 June 2012

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