

Legal Alert – 9 September 2015

**NBU BAN ON REPLACING A LENDER OR A
BORROWER (INCLUDING THROUGH THE ASSIGNMENT
OF A CLAIM) IN CROSS-BORDER LOAN AGREEMENTS**



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On 20 August 2015 the National Bank of Ukraine (the "NBU") issued Resolution of the Board of the NBU No. 551 "On the Amendments to the Resolution of the Board of the NBU dated 3 June 2015 No. 354" ("**Resolution 551**"), in effect introducing a ban on replacing a party (a lender or a borrower), including through the assignment of a claim, in cross-border loans. Because all cross-border loans and changes to them are subject to mandatory registration with NBU, the Resolution 551 achieved this effect by banning (with some exceptions) registration of changes to cross-border loans aimed at assignment of a claim in the cross-border loans, and replacement of a creditor or a borrower.

It should be mentioned, that all these actions, banned by NBU, are perfectly legal under Ukrainian law, in particular this ban is in direct conflict with Article 512 of the Civil Code of Ukraine, which expressly allows replacement of a creditor/lender (including by the assignment of claim) in the loan agreement.

Later, on 3 September 2015 the NBU issued the Resolution of the Board of the NBU No. 581 "On Correcting the Situation on the Monetary and Currency Markets of Ukraine" ("**Resolution 581**"), which provides for certain relaxation of the restrictions introduced by previous Resolution No. 354 as amended by Resolution 551, while both of them lose effect on 4 September 2015.

New Resolution 581, which will remain in force until 4 December 2015, in its point 6.23) reformulated the above restrictions.

Subject to certain exceptions, NBU continues its ban on replacing a party (a lender or a borrower), including through the assignment of a claim, in cross-border loans, as well as on assignment of local loans, denominated in foreign currency, to non-resident entities. Relevant changes to the loan agreements still cannot be registered with NBU.

In particular, according to the Resolution 581, the NBU will not register:

- amendments to loan agreements regarding the replacement of a lender and/or a borrower under cross-border loan agreements with Ukrainian borrowers; and
- assignment of rights under local loan agreements by a Ukrainian lender to a non-resident entity.

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The exceptions from the above ban are allowed in the following cases:

- cross-border loan agreements where the borrower is a Ukrainian bank;
- loan agreements between Ukrainian borrowers and international financial institutions;
- loan agreements where the change of the initial debtor is made due to its merger with the new debtor, or due to the initial debtor's liquidation;
- transactions if the lender(s) and/or the borrower(s) are affiliated through corporate control (the NBU can decide on registration of each specific transaction on *ad hoc* basis).

We would like to also remind you that pursuant to the Resolution of the Board of the NBU No. 465 dated 20 July 2015, currently the cross-border loans are registered by the NBU itself, and not by its territorial departments.