

Legal Update – 27 October 2015

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



As discussed in our Legal Alert dated 9 September 2015, 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", 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. This ban was further prolonged until 4 December 2015, and, to certain extent, liberalized by the Resolution of the Board of the NBU No. 581 on 3 September 2015 "On Correcting the Situation on the Monetary and Currency Markets of Ukraine" ("**Resolution 581**").

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On 22 October 2015 the NBU issued the Resolution of the Board of the NBU No. 718 "On Amendments to the Resolution of the Board of the NBU No. 581 dated 3 September 2015" ("**Resolution 718**"), in which it further liberalized some of the previously introduced restrictions.

Resolution 718, while expanding the list of exceptions, keeps in effect until 4 December 2015 the 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. Such changes to loan agreements still cannot be registered with NBU.

At present according to the Resolutions 581 and 718, 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.

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 or creditor is made due to its merger with the new debtor or creditor, or due to the initial debtor's or creditor'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);
- loan agreements under which loans have been issued to a resident through participation of a foreign export credit agency.

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