

TO: Clients and Friends of the Firm

FR: Frishberg & Partners

RE: Debt Financing: Procedure For Obtaining Foreign Currency Loans From Foreign Creditors

I. History

Until May 7, 1997, much to the ongoing dismay of the Western financial world, debt financing was not an option for most Ukrainian companies. The key obstacle was the now-cancelled National Bank's Resolution No. 329, dated December 29, 1995, which strictly required all Ukrainian residents to obtain a special license prior to receiving loans in foreign currency from foreign creditors. Naturally, such licenses were not generally granted to the average Ukrainian company, barring most Ukrainian enterprises from dealing with foreign creditors altogether.

In light of the above prohibition, the National Bank's Resolution No. 144 "On Adoption of the Regulations 'On the Procedure of Registration of Loans in Foreign Currency Received by Residents From Foreign Creditors,'" dated May 7, 1997, was nothing short of revolutionary: the beginning of debt financing practices in Ukraine, at last! Resolution No. 144 specifically granted Ukrainian resident legal entities the right to obtain loans in foreign currency from foreign creditors to conduct activities provided for in their foundation documents. Technically, borrowers would repay all of their obligations under the loan agreement (including interest and any fines) by purchasing with Hryvnia the necessary amount of foreign currency on the Interbank Currency Market and transferring it abroad.

On June 27, 1999, the President of Ukraine issued Edict No. 734/99 "On Performing the Procedure for Obtaining Credits and Loans in Foreign Currency by Residents from Non-residents and Application of Fines for Violation of Currency Legislation." and based on this Edict, on December 22, 1999, the National Bank approved Resolution No. 602 "Regulations on the Procedure for Registering Agreements Which Provide for the Fulfillment of Debt Obligations by Residents to Non-residents Under Credits and Loans in Foreign Currency Procured From Non-residents."

Resolution No. 602 set forth the mechanism for Ukrainian residents to obtain funds from non-residents in order to carry out their business activities. Importantly, the above Presidential Edict contained sanctions for the failure to register loan agreements. Specifically, if a loan agreement was not registered as provided by law, the resident debtor was subject to a fine in the amount of 1% of the principal of the loan. The fine had to be paid in Ukrainian currency according to the official exchange rate established by the National Bank as of the date of the receipt of the loan. Further,

payment of a fine did not relieve the debtor from the mandatory registration of the loan agreement.

On June 17, 2004, the National Bank once again amended the rules for the granting of loans from non-residents to residents in Resolution No. 270 simply entitled “On Approval of the Regulations on the Procedure of the Receipt by Residents of Credits and Loans in Foreign Currency from Non-residents and the Granting by Residents of Loans in Foreign Currency to Non-residents” (Resolution No. 270). Resolution No. 270 marked the first time that the National Bank referred to the ability of residents to provide loans in foreign currency to non-residents, surely a sign of the further liberalization of Ukraine’s currency market.

II. The New Resolution

Resolution No. 270 contains the procedure for the receipt by residents of credits and loans in foreign currency from non-residents, including the procedure for the registration of agreements providing for the performance by residents of debt obligations before non-residents for the receipt of such credits or loans. Once such agreements are registered, the resident will receive a registration certificate, allowing it to conduct foreign currency transactions pursuant to such agreements.

Resolution No. 270 also sets forth the procedure for the granting of loans by residents in foreign currency to non-residents and the issuance of individual licenses to transfer foreign currency abroad for the purpose of granting loans in foreign currency to non-residents. The novelty here is that the National Bank has provided Ukrainian companies and individuals with the possibility to finance their companies registered abroad or to provide loans to foreign entities and individuals.

According to Resolution No. 270, any resident entity (including joint stock companies and limited liability companies with foreign investment) or natural person (“Resident”) may receive loans in foreign currency from non-residents, including financial aid, for the purpose determined in the relevant agreement registered with the National Bank. Because the loan/credit agreements must be registered with the National Bank, it is difficult for resident debtors to deny the receipt of a loan, especially since credits may only be received in non-cash form. By registering such agreement, however, the National Bank does not take any obligations upon itself before the parties to an agreement.

Procedurally, Residents receive loans from non-residents via authorized banks of Ukraine, which agree to service the operations of the residents under their agreements with non-residents (“Servicing Bank”). In general, Residents are required to register loan/credit agreements before they can receive the credit itself. If, however, a loan/credit agreement with a non-resident provides for the receipt of credit by the transfer of funds to an account of a Resident in a foreign bank and/or on the condition that the repayment of the debt shall be effectuated from the Resident’s foreign bank, then the Resident must obtain an individual license to place currency valuables on accounts and in investments abroad.

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