

TO: Clients and Friends of the Firm
FR: Frishberg & Partners
RE: Licensing of Certain Business Activities

I. Introduction

In the early days of independence, the licensing of so-called “forbidden goods” (weapons, narcotics, etc.) or life’s necessities (water supply, medical services) was mandatory in Ukraine. As the bureaucracy grew, so did the number of activities requiring a license. Accordingly, the number of Ministries and administrations that issued licenses grew, as did the number of licensing procedures and documentation requirements. Today, the Law No. 1775-III “On Licensing Certain Types of Economic Activity” (the “Law”), dated June 1, 2000 (as lastly amended on April 27, 2007), lists over 75 types of activities subject to licensing.

Under pressure from various international organizations demanding order in the licensing system, the Ukrainian Parliament passed the Law with the aim of establishing a unified licensing procedure, a unified list of activities subject to licensing and one authorized licensing body. The unified list includes the following activities of interest to foreign investors: the exploration and prospecting of minerals, the production and sale of medicines, activities in the spheres of telecommunications and television, precious metals and stones, oil and gas transport, construction, passenger transportation, education, insurance and securities market activities, just to mention a few. Any individual or business engaged in the activities set forth in the Law without a license is subject to hefty penalties and even criminal sanctions.

Below we describe the new unified licensing procedure.

II. Discussion

A. Licensing Bodies

Pursuant to the Law, a specially authorized body is responsible for licensing (the “Licensing Authority”). Among its many functions, the Licensing Authority is responsible for developing and consenting to any normative acts in the sphere of licensing, creating licensing terms and conditions, supervising licensing bodies and licensees, publishing explanations about the application of licensing legislation, determining the form of licenses and the documents required for receiving a license, maintaining the unified licensing register, training qualified specialists and controlling the presence of valid licenses in licensed activities.

Interestingly, with respect to the last aforementioned function, the Licensing Authority and other authorized executive bodies may control the presence of licenses via so-called “planned and unplanned” inspections. The introduction of this amendment to the Law on January 17, 2002, and the subsequently introduced requirement for a license to import/export CDs, is in direct connection to the heavy crackdown efforts on CD piracy and other violations of intellectual property rights with the aim of joining the World Trade Organization.

In order to effectively carry out the above functions, the Law permits the Licensing Authority to establish territorial bodies of the executive branch of government, which must function according to so-called “Regulations” approved by the Licensing Authority. In turn, these territorial bodies may delegate their authorities to their territorial subunits. Generally, the territorial bodies serve the same purpose as the Licensing Authority on their own territories. That is, they exercise control over licensed activities, set the terms and conditions for working under such licenses, issue licenses and duplicate licenses, annul licenses, minimize violations, etc.

All licensing issues are reviewed internally by the so-called “Expert and Appeal Board” (the “Board”) of the Licensing Authority. Decisions of the Board are effectively expert conclusions, and are obligatory for the Licensing Authority’s review. The Board is responsible for rendering expert opinions on the draft legislation and the Licensing Authority’s supportive acts, submitting recommendations to resolve existing problems in the licensing sphere, providing preliminary conclusions on the expediency of licensing certain economic activities and reviewing applications, claims and complaints towards the decisions of the Licensing Authority in regard to violations of licensing conditions.

The Board also acts on the basis of “Regulations”, approved by the Cabinet of Ministers, and consists of state employees, members of scientific bodies, other specialists and representatives of public organizations. However, at least 20% of the Board’s members must consist of independent experts and representatives of public organizations.

Draft normative acts, propositions and appeals must be reviewed by the Board within 20 working days after their registration with the relevant Licensing Authority. All decisions of the Board are passed by a simple majority of votes, which are put into a protocol and form the basis for issuing orders to combat violations of licensing legislation by licensing bodies.

B. Licensing Terms and Conditions

All subjects of economic activity must comply with the effective licensing terms and conditions, which are described in normative acts and regulations, governing the qualification, organizational, technological and other requirements for carrying out certain types of business activities.

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