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NEW FX RESTRICTIONS AFFECTING UKRAINIAN IMPORTERS



Roman Stepanenko

Partner
Banking & Finance, Capital Markets
r.stepanenko@epap.ua

On 23 February 2015, the National Bank of Ukraine (the “NBU”) adopted resolution No.124 “On Peculiarities on Carrying out of Certain Foreign Currency Transactions” (the “**Resolution 124**”) which, in addition to already existing FX transfer limitations, introduces restrictions on certain FX transactions carried out by Ukrainian importers. In the situation of economic deterioration and Ukrainian hryvnia devaluation, the Resolution is reported to aim at further prevention of capital outflows from Ukraine. The Resolution 124 is effective from 24 February 2015 and provides for the following restrictions:

Use of UAH loan proceeds to purchase foreign currency. The NBU has prohibited use of any proceeds of UAH loans obtained from Ukrainian banks in order to purchase foreign currency funds. This restriction, however, does not apply to individuals who are entitled to purchase foreign currency for the purposes of repayment of their consumer loans.

Advance payments under import contracts. Pursuant to Resolution 124, Ukrainian banks are now required to process any advance payments by Ukrainian residents under import contracts with the total contract value exceeding USD500,000 (or its equivalent) exclusively via letter of credit mechanics. Moreover, such letters of credit (LC) settlements under import contracts shall meet the following criteria:

- 1 LC shall be confirmed by a bank having a rating of a first-class bank (not lower than investment grade) as assigned by one of leading international agencies (Fitch Ratings, Standard & Poor’s, Moody’s);
- 1 Purchase of foreign currency within this structure would only be allowed to provide cash coverage for the confirming bank and for payment of fees of foreign banks participating in the LC transaction;
- 1 Payment of funds under LC is made upon receipt of documents and confirmation of their complying presentation.



Kateryna Oliynyk

Senior Associate
Banking & Finance, Capital Markets
k.oliiynyk@epap.ua

The above rules apply to import contracts entered into after the date of Resolution 124 as well as to import contracts entered into before such date, provided that the total outstanding value of such contract exceeds USD500,000 (or its equivalent). Further, such rule applies to a series of advance payments made by a Ukrainian importer to the same foreign supplier under different import contracts where the aggregate amount of all such payments exceeds USD500,000 (or its equivalent) per one calendar month.

Limitation on USD 50,000 advance payments under import contracts. A Ukrainian bank is now prohibited from processing any advance payment initiated by a Ukrainian importer which exceeds USD50,000 (or its equivalent) in case the NBU notifies such Ukrainian bank on its “refusal to approve” such payment. For the purposes of approval of such payments by the NBU, Resolution 124 sets forth that Ukrainian banks are required to compile and submit to the NBU a register of advance payments (together with supporting documents). However, provisions on such a register of advance payments as well as on NBU’s approval of advance payments are new to NBU regulations. Thus, it is not clear what particular data and supporting documents would need to be included into the register and what criteria would be taken into account by the NBU for the purposes of approval. The NBU, however, states in Resolution 124 that a Ukrainian bank may not submit for NBU’s approval more than one operation of a particular Ukrainian resident with the same non-resident per one day.

This limitation does not apply to import operations where payments are made pursuant to LC mechanics described above (regardless of the amount of such operation).