

# LEGAL ALERT

Arzinger 

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*This publication is not a legal advice and provides only general information.*

*In order to avoid any risks prior to making any decisions related to information contained in this publication, please, seek legal counsel.*

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Topic of the issue:

## **NEWS OF LEGAL REGULATION ON THE TEMPORARILY OCCUPIED TERRITORY OF CRIMEA**

Please find below our next newsletter containing a legal analysis of the newly adopted and most important regulations in the following areas:

- [Real Estate;](#)
- [Tax;](#)
- [Corporate;](#)
- [Employment and Migration;](#)
- [Energy;](#)
- [Life Sciences & Healthcare;](#)
- [Food & Drinks;](#)
- [Expanded EU sanctions](#)

Lawyers included in the cross-industrial task force “Crimea” at Arzinger keep monitoring the legislative initiatives. They analyze regulations related to doing business in Crimea and take part in conferences, seminars and round tables on the topical problems of business activities in Crimea. This allows Arzinger to keep abreast of the recent developments, to inform you about the changes in the regulations (both contemplated and adopted), and to provide tailor-made solutions to our clients for their business activities on the temporarily occupied territory.

## REAL ESTATE

The most interesting events of the period after [our previous Legal Alert issue](#) were the adoption of the law on the forced buy-out of property and the actual redistribution of powers in the state registration of rights to immovable property. Let us consider the news in more detail.

### Forced buy-out of real estate

On July 9, 2014 the State Council of the Republic of Crimea passed the Bill "On Specifics of Buy-out of Strategic Assets in the Republic of Crimea" into law (hereinafter, the Law), which quickly became tagged "the law on forced buy-out of real estate." The Law states that assets of strategic importance for the Republic of Crimea, regardless of who their owners are – individuals or entities, shall be subject to forced buy-out. However, the text of the Law contains no definition of "strategic assets."

The Russian legislation, too, contains neither a definition of strategic assets nor provisions on the buy-out of strategic assets. The Civil and Land Codes of the Russian Federation (hereinafter, the RF) stipulate the buy-out rules for land plots\_for state and municipal needs and provide an exhaustive list of such needs.

The list of such assets that are strategically important for the peninsula is established by the Council of Ministers of the Republic of Crimea. According to the authorities, such enterprises as "Ukrtelecom", "Krymenergo", "Krymgaz", etc. are among the first candidates. How much money the owners should get will also be decided by the Crimean Council of Ministers. The amount of payment will be calculated based on the outcome of monetary valuation to be carried out by a third-party organization accredited (licensed) in Russia. At the same time, the possibility and consequences of challenging the amount of damages are not spelled out expressly.

In practice it means that having misappropriated the state property of Ukraine and local communities, the Crimean authorities intend to seize (take control over) private companies that are historically either natural monopolies or significantly influence certain markets due to their dominant position. Other businesses that may be fancied by the existing regime are also at risk, since the wording of the law is too vague and lays the foundation for raider schemes and economic reprisals against "wrong" owners that are disloyal to the government.

One of the methods of abuse is the scheme for buy-out notification. If the Crimean Council of Ministers decides to buy out an object, the authority that has proposed that buy-out shall notify the relevant owner within five days. The notice is sent to the owner by registered mail. If the owner's location (place of residence) is unknown, the information concerning the buy-out is published in the media. The owner of the assets to be bought out is deemed informed upon the publication of information in the media (which are not specified either).

As the situation in the region in terms of citizenship, registration and employment is rather complicated and confusing, many people do not stay on the Crimea peninsula, while companies have not been re-registered. In other words, if an owner does not read Crimean media and received no letter from the government agencies, it will not be an obstacle for buying out his/her assets. It is also far from certain that the refund will wait for the owner. Therefore, based on our experience, we expect numerous abuses on the part of local authorities and interested individuals.

## **Redistribution of powers in the field of state registration of rights**

Multiple sources among real estate specialists confirm that not a single legal (under the law of RF) real estate transaction has been concluded during the period of occupation of Crimea. This is due to the necessity to re-register ownership, to obtain cadastral numbers, to make new technical plans (passports) for real estate, etc., which takes some time.

Moreover, the offices of the Russian State Register, which started their activities in Crimea and Sevastopol not a long time ago, have temporarily suspended their activities at the beginning of August 2014. The reason was a change in the organizational structure, under which the state registration powers are transferred to local authorities. Accordingly, the documents to perform any actions during the relevant period are not accepted.

In addition, there is information that Moscow gave an instruction not to register ownership of property in Crimea for Ukrainian banks. Supposedly, a procedure to nationalize the property Ukrainian banks (not pledged property, but bank-owned property) is planned for September. In view of this information, we carefully monitor the situation and elaborate asset rescue schemes.

## **TAX**

### **No Free Economic Zone in Crimea and Sevastopol yet**

As we reported in [our previous issue](#) on June 19, 2014 the Parliament of Ukraine passed Bill No.4032a "On Tax and Customs Control in the Free Economic Zone of Crimea and the Peculiarities of Business Activities in the Temporarily Occupied Territory of Ukraine" to regulate the specifics of business on the temporarily occupied territory of Ukraine in accordance with Article 13 of the Law of Ukraine "On Protection of Rights and Freedoms and the Legal Regime in the Temporarily Occupied Territory of Ukraine."

On July 24, 2014 the Bill was prepared for second reading and was expected to be passed quickly. However, it is currently being discussed by MPs and undergoes a number of changes, as is clear from the bill passage map on the Website of the Parliament.

### **Changes in Crimean tax acts**

On June 25, 2014 Crimean authorities approved the Regulations on the administration procedure for certain taxes and duties in the Republic of Crimea in the transition period, including the application of the Federal Law as of May 5, 2014 №124-FL (hereinafter, the "Regulations"), which *inter alia* amend the Regulations on the administration procedure for certain taxes and duties in the Republic of Crimea in the transition period as of May 5, 2014.

The new Regulations govern the procedure for applying Russian tax rules, particularly regarding income tax for organizations, VAT and tax on personal income, before and after the date of registration of Crimean taxpayers with the Russian Unified Register of Legal Entities and the Unified Register of Individual Entrepreneurs in accordance with Russian legislation.

It should be noted that the Regulations stipulate that tax statements prepared in accordance with the Tax Code of RF and submitted after the inclusion of data on a legal entity into the Russian Registry shall be subject to tax control under the Russian rules.

At the same time, tax audits and other tax control measures that have not been completed by the date of re-registration under the Russian rules will be carried out and formalized according to the rules in force as of February 21, 2014.

In addition, the Regulations govern the procedure for reporting on controlled transactions in case of transfer pricing:

1. For the period from September 1 to December 31, 2013 reports shall be submitted by November 20, 2014 in the form valid as of 21 February 2014;
2. For the period from January 1, 2014 till the date of registration of a legal entity with the Russian Registry, reports shall also be submitted in the form valid as of February 21, 2014. However, the deadline for filing reports for the said period is not specified in the Regulations.

## **CORPORATE**

### **Functioning of the stock market in Crimea and Sevastopol**

On July 21, 2014 Russian President signed the Federal Law № 257-FL "On Amending the Federal Law "On the Specifics of Functioning of the Financial System of the Republic of Crimea and the Federal City of Sevastopol during the Transition Period" (hereinafter, the Law).

The Law stipulates that non-bank financial institutions registered on the territory of Crimea and Sevastopol and licensed for depository activities shall have the right until January 1, 2015 to obtain a permit from the Bank of Russia to conduct such activities or to maintain registers of securities owners. Persons that have obtained a permit to operate in maintaining a register of securities owners shall bring their own funds into line with the requirements of Russian legislation by January 1, 2017.

The Law provides for a mechanism to continue the trust management of mutual funds formed in the Republic of Crimea and Sevastopol prior to March 16, 2014, which is carried out by asset management companies, by registering such funds as mutual funds that meet the requirements of the Russian legislation. It also establishes the specifics of such registration, which include pre-state registration of an asset management company that manages a mutual fund and its obtaining the appropriate license. The date of completion of the investment fund formation is the date of registration of its trust management rules.

Provisions of the Law are also aimed at shaping the mechanism to convert the shares of issuers of issue-grade securities with the par value denominated in UAH, the place of issue being the Republic of Crimea and Sevastopol, into shares with the par value denominated in rubles. In particular, they:

- determine the date of placement of shares with the par value denominated in rubles and the maturity date of issued shares with the par value denominated in UAH;
- establish a mechanism for determining the persons to whom shares are placed upon conversion;
- set the time limit for the provision of a report on the results of the converted shares issue and impose a ban on the transfer of ownership of shares with the par value denominated in rubles, until six months after the state registration of the report on the outcome of the issue of shares;
- determine that the set of and requirements for documents submitted for the conversion of shares, as well as the specifics of their placement and registration of rights to such shares may be determined by acts of the Bank of Russia.

They also establish a mechanism to protect the rights of the owners of shares with the par value denominated in UAH, details of which have not been provided within the conversion of shares and, consequently, to which the issued shares with the par value denominated in rubles will not be placed. The trust management of such shares is carried out by the independent non-profit organization "Foundation for the Protection of Depositors." The duration of such trust management and the way to restore the rights to shares are determined as well.

Also, transactions that entail a change of ownership of shares of issuers that are not registered with the Unified State Register of Legal Entities shall be banned after January 1, 2016.

The Law establishes the specifics of applying the legislation in the sphere of counteraction to legalization (laundering) of proceeds from crime and terrorism financing regarding individuals and legal entities involved in various activities in the financial sector registered and (or) operating on the territory of the Republic of Crimea and Sevastopol. In particular, it is the duty of such persons to notify the tax authorities at the place of their registration of accounts (deposits) in banks outside the territory of the Russian Federation open before March 16, 2014. This requirement does not apply to accounts opened at banks licensed by the National Bank of Ukraine and located on the territory Ukraine as at March 16, 2014.

The Law provides for the right of individuals and legal entities that are included in the register of auditing firms and auditors of the Audit Chamber of Ukraine as at March 16, 2014 to carry out audit activities within the territory of the Republic of Crimea and Sevastopol in the transition period on the basis of the relevant documents. It also implements a mechanism for the integration of such persons into the legal system of the Russian Federation and sets out a number of duties. Thus, they should obtain an auditor's qualification certificate from one of the self-regulating auditors' organizations and pass a training program for auditors by January 1, 2015. It is envisaged that no routine quality checks of their work will be carried out till January 1, 2015.

Thus, Russia has formally settled the procedure to transfer joint-stock companies in Crimea under its jurisdiction. However, the procedure is not yet implementable due to the lack of the relevant Ukrainian regulatory framework as well as the official position of the State Registration Service of Ukraine and the lack of cooperation of the National Depository of Ukraine and the National Commission for Securities and Stock Market with their Russian colleagues regarding the described matter.

### **Registration of Crimean Entrepreneurs**

By its Order dated July 23, 2014 No.1197/5 the Ministry of Justice of Ukraine established that registration actions in respect of legal entities and individual entrepreneurs located/resident in Crimea and the city of Sevastopol shall be carried out by state registrars of registration service agencies at territorial offices of the Ministry of Justice in accordance with the approved Annex (in Kherson and Zaporizhzhya regions and in Kherson).

The Ukrainian State Register has been instructed to provide the state registrars' access to registration files. In addition, the access to the Unified State Register for registration actions to change the location / residence of legal entities and individual entrepreneurs from other regions of Ukraine and Kyiv for Crimea and Sevastopol should be temporarily suspended. In connection with the above-mentioned Order, the previous Order of the Ministry of Justice of Ukraine "On Registration Actions to Change

the Location of Legal Entities and the Place of Residence of Individual Entrepreneurs" dated 14.03.2014 No.525/5 has been rendered invalid.

### **Termination of activities of individual entrepreneurs registered in Crimea by notification**

By its Order dated July 22, 2014 No.1183/5 the Ministry of Justice of Ukraine approved the list of areas where state registrars carry out the termination of business activities for Crimean individual entrepreneurs (hereinafter the IEs) by notification.

The Order concerns IEs registered in Crimea, who filed for termination of their activities but failed to provide the registration card to carry out such state registration. According to the final provisions of the Law No.1258-VII on the notification principle of termination of an IE's activities, a state registrar shall complete a registration card for state registration of the termination of business activities at the entrepreneur's own decision no later than 1 month from the date of entry into force of the Law, shall make a record on state registration of termination of the business activities in the Unified State Register and shall issue (mail with a list of enclosures) a notice of that record to the relevant individual.

The list includes the state registrars in Vinnytsia, Volyn, Zhytomyr, Transcarpathian, Ivano-Frankivsk, Rivne, Ternopil and Chernihiv regions.

## **EMPLOYMENT AND MIGRATION**

On July 21, 2014 Russian President signed the Federal Law No.208-FL "On Specifics of Providing Pensions to Citizens of the Russian Federation Residing in the Republic of Crimea and the Federal City of Sevastopol" (hereinafter, the Law).

Starting from January 1, 2015 the Russian legislation on compulsory social insurance, including compulsory pension insurance, should be applied in these regions. During the transition period, pensions, allowances (including one-time allowances), compensations and other social payments and warranties set in monetary form should be brought into line with the rate of such payments stipulated by the Russian legislation.

The Law sets preferential terms for citizens to apply for the award (recalculation) of pensions and (or) other payments established in addition to pensions. Such an application must be filed during 2015. Also, during 2015 citizens can provide additional information about their work records and earnings, if such information would change the amounts of payments. At the same time, regardless of the date of application with new documents the appropriate recalculation and settlement will be held after January 1, 2015. Pensions will be awarded (recalculated) with due regard to the privileged status of a citizen, which shall be confirmed by title documents issued on the territory of Ukraine before March 16, 2014 or in the Republic of Crimea or Sevastopol from March 17, 2014 till December 31, 2014.

The periods of work (other activities) and other periods that are included into the pensionable service (employment record) and taken account of in the award of pensions, which took place in Ukraine prior to March 16, 2014 or in the Republic of Crimea or Sevastopol from March 17, 2014 till December 31, 2014, will be the same as the periods of work included into the pensionable service or work record in the relevant occupations according to the Russian legislation.

The Law establishes that the amount of insurance premiums for pensions awarded to citizens who have worked in the period from 2002 till 2014 under an employment contract will be determined based on the average monthly salary of 24,245 rubles 70 kopecks. Pensions will be awarded to citizens that concluded civil agreements or were self-employed based on the cost of the insurance year for 2014. This rule is due to the fact that no individual records for awarding such pensions were available during that period in Crimea and Sevastopol.

On July 22, 2014 Russian President also signed the Federal Constitutional Law No.12-FCL "On Amendments to the Federal Constitutional Law "On the Adoption of the Republic of Crimea to the Russian Federation and the Formation of New Subjects – the Republic of Crimea and the Federal City of Sevastopol" laying down the specifics of legal regulation (areas of legislation) in the mentioned regions.

According to the Law, the Russian legislation on insurance premiums for compulsory insurance regarding organizations located on the territory of the Republic of Crimea and Sevastopol (branches and representative offices of Russian organizations) and recorded in the Unified State Register of Legal Entities and the Unified State Register of Individual Entrepreneurs as well as regarding separate subdivisions of Russian and foreign organizations will already be applied starting from August 1, 2014.

## **ENERGY**

### **Procedure for electricity procurement in Crimea**

In July 2014, a Special Settlements Center (similar to the Ukrainian Wholesale Electricity Market) was set up in Crimea. The Settlements Center is a legal entity defined as the only authority to procure electricity from all producers both in Crimea and beyond, for delivery to Crimean customers.

At the same time, according to the Decision of the Cabinet of Ministers of Ukraine, from May 29, 2014 till June 1, 2014 only the state foreign trade company "Ukrinterenergo" may procure and supply electricity to Crimea. In turn, PJSC "DTEK Krymenergo" shall purchase electricity for Crimea from the company "Ukrinterenergo" and then sell it to the "Settlements Center."

It should be noted that in July 2014 the Ministry of Fuel and Energy of Crimea initiated changes to the Resolution of the State Council of Crimea "On Issues of Stable Operation of the Fuel and Energy Complex and Housing and Utilities in the Republic of Crimea" for the Crimean power generation enterprises to enjoy preferences in the internal energy market and a specific rate for selling the generated electricity. Thus, the Ministry expects that the State Council will set rates for electricity in accordance with the laws of Russia for generation companies that produce electricity from renewable energy sources in the amount recorded in the export and import contract between "Ukrinterenergo" and the branch DTEK "Krymenergo" of DTEK Krymenergo PJSC for 2014, which is 3.42 rubles per 1 kW/h (net of VAT), except for cases of regulated bilateral contracts between such generation enterprises and buyers with the rates established by the executive authority empowered to carry out state regulation in the relevant area in accordance with the laws of Russia.

## **LIFE SCIENCES & HEALTHCARE**

On July 17, 2014 the High Representative of the European Union for Foreign Affairs and Security Policy issued an information note addressed to EU business operating or investing in

Crimea/Sevastopol to inform it about the risks associated with the annexation of Crimea. The note states that while non-recognition by the EU of the illegal Russian annexation of Crimea/Sevastopol also means that the EU does not recognize new Russian legislation on Crimean issues as valid, any entities which desire to establish or continue business relations with Crimea/Sevastopol will have to do so bearing in mind that Russian legislation is *de facto* applied. In the pharmaceutical sector there appear to be contradictions between the relevant Ukrainian and Russian legislation and uncertainty persists as to the regulation of certain activities. It is noted that most pharmaceutical companies are in the process of closing their activities in Crimea or will transfer their employees to their affiliates in Russia in the coming months.

With regard to the regulation of relations in the pharmaceutical sector by Russia, the note refers to the information letter from the Russian Federal Service on Surveillance in Healthcare, according to which licenses and permits in relation to pharmaceutical and medical activities issued by the respective Ukrainian authorities will remain valid for an unlimited period of time (unless the opposite is directly stipulated in the information letter). This implies that Russia recognizes the licenses issued by Ukrainian authorities (presumably at least until the “official integration” of Crimea into Russia by 1st January 2015). We provided the relevant explanation in the [previous issue of our newsletter](#).

Besides, on June 30, 2014 the Council of Ministers of the Republic of Crimea adopted the Resolution "On Measures to Stabilize the Prices for Medicinal Products" No.179, which set limits on wholesale and retail mark-ups for medicinal products included in the list of vital and essential medicinal products approved by the Government of Russia. According to the Resolution, the wholesale mark-up limit shall not exceed 15 percent, and the retail mark-up shall be maximum 25 percent of the manufacturer's actual selling price (including VAT).

It should also be noted that the process of removal of private pharmacies from state and municipal healthcare institutions by termination of leases initiated by Acting Prime Minister of Crimea, which we highlighted in [our previous newsletter](#), still continues in Crimea. Thus, private pharmacies will be replaced by a network of state pharmacies.

## **FOOD & DRINKS**

### **Ban on the importation of certain categories of foodstuffs from Ukraine to Russia**

Difficulties on the temporarily occupied territory continue in relation to foodstuffs as well.

The official website of the Simferopol City Council informs that starting from July 28, 2014 it will be prohibited:

- to import all dairy products and milk from Ukraine to Russia. The Russian side argues that Ukrainian products, in its opinion, are not safe.
- to import all plant products in the luggage or hand luggage and mails from Ukraine.

Also, the Website of the Russian Federal Service for the Oversight of Consumer Protection and Welfare informs that, as of July 29, 2014 it is prohibited:

- to import Ukrainian canned fruit and vegetables and canned fish from Ukraine to Russia.

The Russian Federal Service for the Oversight of Consumer Protection alleges that some of the products of Ukrainian enterprises violate the requirements of the consumer protection legislation.



## Excisable goods

In addition, we should mention the clarification provided by the Ministry of Finance of the Republic of Crimea on July 21, 2014 for Crimean companies producing excisable goods, which concerns the Regulations on the application of legislation on taxes and duties on the territory of the Republic of Crimea in the transition period No.2010-6/14 dated 11.04.2014 (hereinafter the Regulations).

According to the Regulations, taxpayers operating in the production of excisable goods with regional excise marks obtained on the basis of these Regulations and excise stamps of Ukraine shall pay excise taxes at the rates in effect as of March 21, 2014.

As stated in the clarification of the Ministry of Finance of the Republic of Crimea, in view of the fact that the Tax Code of Ukraine sets the excise tax rates in UAH, to determine the excise tax liability the tax rate of the Central Bank of the Russian Federation in effect as of March 21, 2014 should be applied, which is 3.55395 rubles per 1 UAH.

## EXPANDED EU SANCTIONS

The EU continues economic pressure on Russia and Crimea in connection with unilateral the inclusion of the peninsula into Russia. As we reported in [our previous newsletter](#) the EU and its Member States have prohibited the importation of goods from the territory of Crimea. On July 30, 2014 the EU Council passed Decision No.2014/507/CFSP to approve the new restrictive measures against Crimean economy.

The said decision amends the previous Decision No.2014/386/CFSP dated June 23, 2014, which largely restricts the cooperation of European companies with Crimean businesses.

In particular, the new restrictive measures impose a ban on the sale, supply or transfer of key technologies for the creation, acquisition or development of infrastructure projects in the areas of transport, telecommunications and energy. A similar ban is imposed on oil, gas and minerals production projects.

Apart from the direct participation in the above ways it is prohibited to provide technical assistance and other services as well as to finance and promote sales for the purposes of project implementation in the mentioned areas.

Finally, it is prohibited to acquire or expand enterprises that are involved in the creation or development of projects in the above areas on the territory of Crimea.

The new Council Decision applies to EU citizens and legal entities established under the laws of the EU, supplies from the territories of the EU as well as to ships and aircraft registered in the EU Member States.

## EVENTS

### **Andriy Selyutin told about the consequences of the annexation of the Crimean Peninsula at the ABA conference call**

On July 24, 2014 at the conference call, organized by the American Bar Association (ABA), Andriy Selyutin, Head of the South Ukrainian office of Arzinger Law Office spoke on the topic: «Crimea in the

scope of Ukrainian Law». In his presentation he disclosed the main consequences of the annexation of the Crimean peninsula. [Read more](#)

## **PUBLICATIONS**

- [Dispute Resolution and Protection of Investments Related to Crimea](#)
- [Important Issues of the New Legal Regulation on the Crimean Peninsula](#)
- [Changes in the Legal Framework in Relation to Current Developments in Crimea](#)
- [Aggravated Problems with Legal Regulation in Crimea](#)
- [New law of Ukraine on Crimea as Temporarily Occupied Territory](#)
- [Novelties of Legal Regulation in Crimea](#)
  
- [Business with Crimea under the protracted political conflict](#) (in Russian)  
*Andriy Selyutin*, Counsel, *Oleg Milchenko*, Associate  
/ Analytical Issue "Yuryst i Zakon", 11.07.2014 – 17.07.2014, No. 27/

Lawyers from the cross-industrial task force "Crimea" at Arzinger continue analyzing the legislation and seeking optimal solutions for our clients whose business is connected to Crimea and thus helping them to adapt to the new environment and protect their business to the greatest extent possible.

Should any further questions arise, please do not hesitate to contact us.

Kind regards and best wishes,

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