

Client Alert



Month Year

Ukraine makes significant step forward towards electronic declaration of income and assets by public officials

Recent developments

On March 15, 2016, following many rounds of political seesawing, the Parliament has finally adopted changes to the Law of Ukraine "On Prevention of Corruption" (the "**Law on Prevention of Corruption**"), the Criminal Code of Ukraine and the Code of Administrative Offences of Ukraine (collectively - the "**Amendments**") with a view to finally unblocking the electronic declaration of income and assets (the "**e-Declaration**") by the persons vested with functions of State or local government ("**Public Officials**"). The Amendments entered into force on March 18, 2016.

Historical context of the Amendments

The adoption of the Amendments was an essential element in the package of anticorruption measures required from Ukraine as a precondition for a visa-free regime with the European Union.

The history of the Amendments goes back to October 2014 when the Law on Prevention of Corruption was adopted establishing the requirements of the e-Declaration. However, for the transitional period, until the official launch of the e-Declaration, Public Officials had to report their income, assets and liabilities under the earlier, far less comprehensive, reporting requirements.

In December 2015, with the adoption of the Law of Ukraine "On the State Budget for 2016", the Parliament deferred the introduction of the e-Declaration until January 1, 2017 with further conditions attached.

The public outrage at the delaying of the introduction of the e-Declaration caused the Parliament to reverse its decision. Consequently, on February 16, 2016, the Parliament formally cancelled the extended deadline for the implementation of the e-Declaration but, instead, introduced a whole range of changes effectively dismantling the anti-corruption safeguards. Once again the following widespread heavy criticism from Ukrainian civil society and European officials forced President Petro Poroshenko to veto the amendments and to propose the Amendments in their present form.

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While terribly unpopular among the majority of MPs, on March 15, 2016, the Parliament been finally pressured by public opinion to vote the Amendments into law.

The Amendments address the following pressing issues:

- i. accelerating the full-fledged introduction of the e-Declaration;
- ii. improving technicalities of its functioning; and
- iii. stiffening of the criminal and administrative liability for failure to comply with the e-Declaration requirements.

The Public Officials subject to the e-Declaration include not only the highest-ranked State and municipal officials, e.g. the President of Ukraine, the Prime Minister and members of the Cabinet of Ministers, MPs, etc., but also lower-ranked civil servants, military officers, judges, prosecutors, policemen, diplomats and officials of State companies.

The E-Declaration calls for disclosure of a wide range of information pertaining to (i) assets (immovable and valuable movable property, intangibles) either owned, leased or otherwise used by the Public Official or his/her family members, (ii) securities, shares and corporate rights in companies in which the Public Official or his/her family members are beneficial owners, (iii) monetary assets and financial liabilities, (iv) significant expenses, etc., both Ukraine and foreign based.

What the Amendments say

(i) On accelerating the introduction of the e-Declaration

The Amendments are aimed at eliminating the legislative barriers precluding the launch of the e-Declaration. With this goal achieved, there remain some organizational and procedural issues which need to be addressed before the e-Declaration enters full operation.

Thus, the launch of the e-Declaration depends upon appointment of National Anti-Corruption Agency members, election of its head, adoption of an implementing procedure and development of software. It is expected, though, that the e-Declaration would be fully functional still in 2016.

Once officially started, within 60 days the highest-ranked State and municipal officials, judges, prosecutors and selected military officers would be required to file the e-Declaration for 2015.

All other categories of Public Officials would be required to file their first e-Declaration in 2017 for 2016.

(ii) On the functioning of the e-Declaration

The Amendments additionally introduced a number of technical improvements for the functioning of the e-Declaration through, *inter alia*:

- increasing the threshold for declaring valuable movable property from 50 times the minimum statutory monthly salary ("**MSMS**") (presently UAH68,900 or c. USD2,500) to 100 MSMS (presently UAH137,800 or c. USD5,000);
- increasing the threshold for declaring expenses from 20 MSMS (presently UAH27,560 or c. USD1,000) to 50 MSMS (presently UAH68,900 or c. USD2,500);
- extending the period during which the e-Declaration is open for full audit from 90 days after filing to the whole period of the Public Official's term of office PLUS three years afterwards;
- establishing that a full audit is conducted using information obtained from third parties, the mass media and/or other available sources.

(iii) On criminal and administrative liability

The Amendments introduced criminal and administrative liability for filing false information in the e-Declaration. These depend on the magnitude of discrepancies between actual and reported information, namely:

- administrative liability if the discrepancy is more than 100 MSMS (presently UAH137,800 or c. USD5,000) but less than 250 MSMS (presently UAH344,500 or c. USD12,800);
- criminal liability if the discrepancies exceed 250 MSMS (presently UAH344,500 or c. USD12,800).

Additional notes

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