

15. CONSUMER PROTECTION AND PRODUCT LIABILITY

15.1 General

The principal legislative act in Ukraine in the area of consumer protection and product liability is the *Law of Ukraine “On the Protection of Consumer Rights”* (the *Consumer Rights Law*), dated 12 May 1991, amended on 1 December 2005. The core principles of the Consumer Rights Law have been further affirmed by the new *Civil Code* and the new *Commercial Code* effective from 1 January 2004.

Under the *Consumer Rights Law*, manufacturers of goods, providers of services, and merchants have an obligation to furnish consumers with goods and/or services, which comply with the established quality standards, the terms of the agreement with the consumer, and the information about the goods/services, which is publicized by the manufacturer/provider/merchant.

Pursuant to the *Consumer Rights Law*, manufacturers of goods must ensure the safe use of the goods for the duration of the service life period established by law or by the agreement with the consumer or, in the absence of any relevant provisions, for a period of ten years.

Furthermore, the *Consumer Rights Law* requires that a manufacturer of goods must ensure the availability of maintenance services for the goods during the relevant periods of time. It also sets forth the obligations of manufacturers (merchants) towards consumers with respect to the replacement of defective goods and warranty repairs.

15.2 Liability for Damage Caused by Defective Goods (Services)

Under the applicable Ukrainian legislation, damages which are incurred by a consumer with regard to his/her life, health, or property by a manufacturer’s (provider’s) goods (services) must be indemnified in full by the person who inflicted the damages. The right to claim damages, including “moral damages,” a concept similar to “emotional pain and suffering” in Western jurisdictions, is vested in every damaged consumer, regardless of whether such consumer had concluded a contract with the manufacturer

(provider, merchant). This right is deemed valid for the duration of the service life of the specific product or, if the service life of the product is unidentified, for ten years from the date of the manufacture of the goods (production of the works, rendering of services). The only exceptions to the above rule are cases where damages were inflicted due to the fault of the consumer or were caused by force-majeure.

15.3 Liability for Violation of Consumer Rights

The applicable Ukrainian legislation provides for civil, administrative, and criminal liability for the violation of a consumer's rights. The scope of penalties envisioned by the *Consumer Rights Law* for the violation of consumer rights ranges from 1% to 500% of the cost of the goods manufactured or sold, or the services rendered. The *Consumer Rights Law* also provides a fine for the violation of consumer rights in the amount of 2 to 100 non-taxable minimum monthly incomes (currently UAH17), *i.e.*, UAH34 up to UAH1700 (approximately US\$4 - US\$220 or EUR3 - EUR172). Meanwhile, the Code of Ukraine on Administrative Offenses provides a fine for the relevant offenses in the amount of 1 to 18 non-taxable minimum monthly incomes, *i.e.*, UAH17 - UAH306 (approximately US\$2 - US\$39 or EUR2 - EUR36). At the same time, under the Criminal Code of Ukraine, the maximum penalties for criminal offenses in the area of consumer protection are 200 non-taxable minimum monthly incomes, *i.e.*, currently UAH3,400 (approximately US\$442 or EUR344) or two years of correctional labor.

15.4 Control Over the Quality of Food Products

The *Law of Ukraine "On the Quality and Safety of Food Products and Food Raw Materials"* (the *Law*), dated 23 December 1997, sets forth for producers, suppliers, and sellers of food products requirements for the development, production, import, supply, storage, transportation, sale, usage, consumption, and utilization of food products and raw materials.

On 24 October 2002, the Verkhovna Rada (Parliament) introduced changes to the *Law* (the *Amended Law*), which modified the above requirements. The *Amended Law* no longer applies to tobacco products or to food products containing genetically modified components.

15.4.1 Quality Assurance

Under the *Amended Law*, all food products (except food products produced for personal consumption), un-processed food materials, and related materials may not be produced in or imported into Ukraine, or supplied for sale, sold, or otherwise used, before their quality and safety have been proven by means of the appropriate documents. These documents are:

- a declaration of conformity issued by the producer for every consignment of food products, food raw materials, and related materials; or, alternatively,
- a certificate of compliance or a certificate of acceptance of a foreign certificate issued by the State Center for Standardization, Metrology, and Certification, for food products produced in Ukraine or outside Ukraine and intended for sale on the domestic market or for domestically-produced food products to be exported from Ukraine;
- a positive conclusion of the State Sanitary-Epidemiological Examination Body (the SSEE), a state registration certificate, or a hygiene certificate;
- veterinary documents for food products of animal origin; and
- a certificate of quality and a quarantine permit for grain, fruit, and vegetables.

Prior to the enactment of the *Amended Law*, all food products had been subject to mandatory certification with authorities accredited by the State Committee on Standardization, Metrology, and Certification, but the *Amended Law* takes a more flexible approach. The conformity of food products with the applicable quality requirements may now be ascertained either by a declaration of compliance, a certificate of compliance, or a certificate of acceptance of a foreign certificate.

15.4.2 State Products Examination

Under the *Law of Ukraine “On Ensuring the Sanitary and Epidemiological Well-Being of the Population,”* dated 24 February 1994, all food products are subject to the following regular mandatory examinations carried out by the State Sanitary and Epidemiological Service:

- (i) quarterly examinations, including the sampling and subsequent testing of products for the microbiological index;

- (ii) semi-annual examinations, including the sampling and subsequent testing of the products for toxic elements, pesticides, and radionuclide; and
- (iii) annual examinations of those products, with respect to which certificates of compliance of the product were issued. Such annual examinations are concluded in the authorized laboratories of the authority, which issued the certificates of compliance of the product.

In addition, under the *Law of Ukraine On the Quality and Safety of Food Products and Food Raw Materials*, dated 23 December 1997 all producers of food products must obtain a sanitary exploitation permit for each of its food production units. This permit is issued to legal entities producing/trading food products by the relevant main sanitary doctor.

15.4.3 State Registration of Food Products

Under the *Amended Law*, all special and new food products are subject to mandatory state registration. Special food products - dietetic, medicinal, and illness-preventing food products, biologically active food supplements, and food products designated for children, sportsmen, *etc.* - must be entered into the State Register of Special Food Products. New food products - those food products developed or imported into Ukraine for the first time, or produced using new technologies or components - must be recorded in the Register of Conclusions of the SSEE. Producers and/or suppliers must obtain the conclusion of the SSEE before introducing into the market new food products, food raw materials, or related materials. The procedure for the state registration of food products and the amount of the payment for such registration was established by the Resolution of the Cabinet of Ministers, dated 26 July 2006.

15.4.4 Labeling Requirements

The *Amended Law* establishes additional requirements for the labeling of food products. Such labeling must be in Ukrainian and convey the required information in a manner intelligible for consumers. Under the *Amended Law*, such labeling should indicate all components, including the presence of genetically modified components or additives, if any, as well as the country of origin of imported products packaged in Ukraine. The labeling of a food product must also caution certain groups of consumers (such as children, pregnant women, the elderly, sportsmen, and those suffering from illnesses) of the potential adverse effects of the product.

The *Amended Law* provides that the description of special symbols used in labeling and the definition of a particular food product so as to cause it to belong to a certain category of special food products, such as dietetic or those designated for children, must be carried out in the manner provided by the Cabinet of Ministers.

15.4.5 Hazard Analysis and Critical Control Point System

Under the *Amended Law*, subjects of entrepreneurial activity (defined as individuals and legal entities which engage in the development, production, transportation, storage, import, sale, usage, and/or utilization of food products and food raw materials), are obliged to take measures with respect to the stage-by-stage implementation of the international system of food products quality assurance “Hazard Analysis and Critical Control Point” (the HACCP) at their respective enterprises. The terms and conditions of such stage-by-stage implementation will be governed by the Ukrainian legislation to be adopted in relation to particular categories of food products.

16. INDUSTRY REGULATION

16.1 Banking

16.1.1 The Ukrainian Banking Sector

The Ukrainian banking sector has a two-tier structure made up of the National bank of Ukraine (the “NBU”) and commercial banks of various types and forms of ownership. The banks act in accordance with the *Constitution of Ukraine*, the *Civil Code of Ukraine*; the *Commercial Code of Ukraine*, the *Law of Ukraine “On the National Bank of Ukraine”* dated 20 May 1999 (the *National Bank Law*), the *Law of Ukraine “On Banks and Banking Activity”* dated 7 December 2000 (the *Banking Law*), and the *Law of Ukraine “On Financial Services and the State Regulation of the Markets of Financial Services”* dated 12 July 2001, Ukrainian legislation on joint stock companies and other business entities, as well as the NBU regulations and their respective constituent documents.