

New Regulations for Municipal Borrowers

In February 2011, the Cabinet of Ministers of Ukraine approved a new regulation on the procedure for municipalities to borrow money (the "New Regulation") which, while on the one hand clarifies certain aspects of the old procedure, on the other hand gives significantly more control to the Ministry of Finance of Ukraine (the "Ministry") in approving the terms of both new financial indebtedness, and any restructuring of existing financial indebtedness, of a Municipality.

According to the New Regulation, the Autonomous Republic of Crimea and Ukrainian cities (the "Municipalities") are still only permitted to borrow money through (i) a loan from a financial institution, or (ii) a municipal bond placement. As per the previous law, the relevant municipal council must pass a resolution approving the terms of any financial indebtedness and the terms still require approval of the Ministry.

In contrast to the old regulation though, the New Regulation does not set out a list of conditions which may result in non-approval by the Ministry, meaning that the Ministry has now wide discretion when deciding whether to approve the terms of any financial indebtedness by a Municipality. Further, as opposed to the old regulation, under the New Regulation, in case of a public offering of municipal bonds such bonds can be offered only for a price that equals or exceeds their par value.

The New Regulation permits Municipalities to restructure their debt obligations (both loans and bonds). Similar to the old regulation, the New Regulation prescribes that a restructuring of existing municipal debts shall not be treated as a new borrowing. However, the real practical value of this provision remains unclear because any restructuring still requires approval of the Ministry.

Pursuant to the New Regulation, a restructuring of municipal bonds cannot result in an increase of the municipal debt. A municipal bonds' restructuring requires registration with the Securities and Stock Market Commission (the "SSMC") and while the SSMC does not approve the terms of any restructuring, but merely registers the new terms of financial indebtedness, it will only do so if such new terms are approved by the Ministry.

The most significant change which the New Regulation introduces is to simplify the process by which the terms of bonds and loans can be subsequently amended. The old regulation only allowed amendments of the terms of the relevant loan or bond by unanimous consent of all lenders or bondholders. The New Regulation allows the Municipality to now agree in the terms of loan or bond a procedure whereby these terms may be amended upon consent of less than 100% of all lenders or bondholders.

Jurisdiction -Ukraine

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URL link(s)

<http://www.kmu.gov.ua/control/>

The CMU's homepage

<http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=110-2011-%EF>

The CMU's Regulation No. 110 dated 16 February 2011

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