

# REPORT

On Certain Changes in Legislative Regulation of Foreign  
Economic Activity during Martial Law in Ukraine



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УКРАЇНИ

02.08.2022



Supported by EQUITY Law Firm

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## 1. Banking and finance, taxes and fees

### 1.1. Issue: Restrictions on money transfers abroad

#### Details:

- Settlements under documentary and standby letters of credit/guarantees/counter-guarantees opened (confirmed, granted) from February 24, 2022 are prohibited, except when settlements are carried out for the purpose of operations of banks' clients as defined in subparagraphs 2 - 6 of paragraph 14 of the Resolution No.18.
- The transfer of currency valuables abroad from Ukraine shall be allowed in the following cases:
  - 1) banks' own operations, including international payment systems;
  - 2) import operations by residents to purchase critical imported goods according to the list approved by the Cabinet of Ministers of Ukraine; 2<sup>1</sup>) Currency operations by residents to fulfill obligations under a state guarantee; 2<sup>2</sup>) Currency operations of residents on fulfillment of obligations secured by a state guarantee; transfer of funds to fulfill obligations of a resident to a non-resident under a contract of sale of goods concluded between them, provided such transfer is made at the expense of funds received under a loan (credit) from MFI or under a sub-loan from the state, for the financing of which the state has attracted a loan (credit) from MFI; 2<sup>3</sup>) operations on repayment to non-resident of prepayment (advance payment) received by a resident to its current bank account in Ukraine after 23 February 2022 under the contract for the sale of goods concluded with a non-resident, due to the resident's failure to fulfill the obligations under this contract;
  - 3) currency operations by MFIs, including representative offices of MFIs, as well as currency operations of residents and non-residents to transfer funds in foreign/national currency to settle with MFIs or its representative office;
  - 4) for mobilization and other activities (needs) in the areas of national security;
  - 5) payments for treatment in foreign medical institutions, for tuition, expenses for transportation of patients, expenses related to death of citizens abroad;
  - 6) under certain permits (decisions) of the NBU on the basis of appeals of state bodies of Ukraine;
  - 7) transfers in favor of diplomatic missions, consular institutions of Ukraine and their employees;
  - 8) payments abroad using electronic means of payment **in the amount up to UAH 100 000 equivalent per calendar month from all accounts of the bank customer opened in national currency and without limitation of amount from all accounts of the bank customer opened in foreign currency**;
  - 9) up to **UAH 100 000** equivalent per one client per calendar month transfers from individual accounts to individual accounts with usage of payer's and recipient's electronic payment facility details (person-to-person) and settlements with usage of electronic payment facility for payment of operations with convertible assets (quasi cash). Such transactions include purchase of cryptocurrencies, replenishment of brokerage or forex accounts, replenishment of e-wallets, purchase of gift certificates, transfers to betting companies and payment of traveller's cheques. Merchant category codes that can be used for such transactions include: 4829; 6012; 6050; 6051; 6534; 6539; 6540; 7800; 7801; 7802; 7995;

- 10) settlements of the national postal operator, nonbank financial institutions, which are direct participants of international card payment systems, on liabilities to them;
- 11) transfers in favor of representative offices and branches abroad of legal entities, in the authorized capital of which the state directly or indirectly owns a share of 100 percent;
- 12) foreign currency transfer operations in order to promote the military defense of Ukraine by an individual who is not a subject of economic activity, for goods **classified under such codes UCG FEA according to the Law of Ukraine "On Customs Tariff of Ukraine": 8507, 6211 43 90 00, 6506 10 80 00, 61 - 62, 6403 - 6405, 3926, 6217, 9005 10 00 00, 9005 80 00 00, 8802 20 00 00, 8802 30 00 00, 9404 30 00 00, 3926 90 92 90, 30, provided such transaction/operations per calendar month in the equivalent of less than UAH 400 000;**
- 13) transfer abroad of foreign currency for payment of pensions in accordance with the legislation of Ukraine and international treaties of Ukraine, taking into account the restrictions established in paragraph 17 of this resolution;**
- 14) settlements of significant operators of payment infrastructure services with non-residents for ensuring functions in international card payment systems;
- 15) payments for legal services received/being received by the Deposit Guarantee Fund abroad;
- 16) operations on payment of insurance payments (insurance contributions, insurance premiums) or insurance payments (insurance compensations) under reinsurance contracts to foreign nuclear pools (or authorized persons on behalf of such pools), carried out by an authorized insurer on behalf of members of the "Nuclear Insurance Pool" Association;
- 17) operations on payment by the Motor (Transport) Insurance Bureau of Ukraine of insurance payments (insurance contributions, insurance premiums) under reinsurance contracts, operations on payment of insurance payments (insurance compensations) or claims on compensation of such payments by the Motor (Transport) Insurance Bureau of Ukraine under the international insurance agreements "Green Card";
- 18) operations on payment of insurance payments (insurance contributions, insurance premiums) or insurance payments (insurance compensations) under reinsurance agreements entered into with non-resident reinsurers, on the transfer of civil aviation risks in accordance with the Air Code of Ukraine in the presence of confirmation from the State Aviation Service of Ukraine, that the respective aircrafts continue to fly in open airspace, have valid certificates of airworthiness and availability of a valid aircraft operator's certificate;
- 19) operations on payment of insurance payments (insurance contributions, insurance premiums) under reinsurance contracts concluded with non-resident reinsurers, which provide for compensation for damages related to the operation, restoration, damage, destruction and/or loss of property of telecommunications networks and telecommunications infrastructure in Ukraine, including those caused by war;
- 20) transfers by non-resident individuals of foreign currency purchased for the funds received in the event of death of a serviceman, in accordance with Cabinet of Ministers Resolution No. 168 of 28 February 2022 "Issues of Certain Payments to Servicemen, Privates and Commanding Officers, Police Officers and their Families" (as amended);

- 21) the transfer to a foreign investor/non-resident of funds received in connection with the repayment/payment of income on domestic government loan bonds of Ukraine after 1 April 2023 in accordance with the terms of their placement (emission).
  - 22) *transfer of funds by the Central Securities Depository to its account opened with a foreign depository bank for the purpose of payment for the services of that foreign depository bank.*
  - 23) *transfer of funds in foreign currency from correspondent accounts of non-resident banks in foreign currency opened with resident banks;*
  - 24) *transfer of funds by residents (legal entities, individuals - subjects of entrepreneurial activity) for the purpose of making settlements under the contracts of leasing of vehicles, lease of motor vehicles*
  - 25) *Settlements under international technical assistance/boundary cooperation projects/programs financed by the European Union.*
- At the same time, currency oversight for transactions permitted by subparagraphs 1, 21, 3, 4, 6, 7 of paragraph 14 of the Resolution No.18 is carried out **in a simplified manner without further analysis of documents on currency transactions, the sources of origin of funds and other measures.**
  - Foreign investors are allowed to transfer funds abroad, which will be received after April 1, 2023 in connection with repayment or payment of income on domestic government loan bonds (BISL) of Ukraine according to the terms of their placement.
  - The National Bank allowed transfers abroad for the purpose of alimony payments.
  - Temporarily prohibited settlements abroad for the purchase of securities, stocks, bonds and payments for brokerage services for these operations carried out with the use of cards issued by Ukrainian banks.
  - The National Bank stops conducting daily non-cash transactions for buying and selling currency in euros and will conduct such operations only in US dollars.

*Legal act:*

Resolution of the Cabinet of Ministers of Ukraine No. 18 of 24.02.2022 "On the operation of the banking system during the period of martial law"

Resolution of the Cabinet of Ministers of Ukraine No. 15 of 24.02.2022 "On the List of Goods of Critical Import"

***Resolution of the Board of the National Bank of Ukraine No. 122 of 14.06.2022 "On Amendments to Resolution of the Board of the National Bank of Ukraine No. 18 of 24.02.2022"***

***Resolution of the Board of the National Bank of Ukraine No. 125 of 16.06.2022 "On Amendments to Resolution of the Board of the National Bank of Ukraine No. 18 of 24.02.2022"***

***Resolution of the Board of the National Bank of Ukraine No. 142 of 07.07.2022 "On Amendments to resolution of the Board of the National Bank of Ukraine No. 18 of 24.02.2022"***

***Resolution of the Board of the National Bank of Ukraine No. 154 of 21.07.2022 "On Amendments to resolution of the Board of the National Bank of Ukraine No. 18 of 24.02.2022"***

***Resolution of the Board of the National Bank of Ukraine No. 157 of 22.07.2022 "On Amendments to resolution of the Board of the National Bank of Ukraine No. 18 of 24.02.2022"***

***Resolution of the Board of the National Bank of Ukraine No. 159 of 26.07.2022 "On Amendments to resolution of the Board of the National Bank of Ukraine No. 18 of 24.02.2022"***

**Resolution of the Board of the National Bank of Ukraine No. 161 of 28.07.2022 "On Amendments to resolution of the Board of the National Bank of Ukraine No. 18 of 24.02.2022"**

**1.2. Issue: Deadlines for the settlement of export and import transactions**

*Details:*

- The deadlines for the settlement of transactions on the export and import of goods **are 180 calendar days** and apply to transactions made from April 05, 2022. At the same time, the settlement deadlines:
  - a. do not apply to the operation on export, import of goods, the amount of which (in equivalent) is less than **UAH 400 000** (hereinafter - the insignificant amount), for splitting of operations on export of goods or splitting of currency operations;
  - b. apply subject to the exceptions established by the National Bank of Ukraine and (or) peculiarities of certain goods and (or) sectors of the economy.

*Legal act:*

Resolution of the Cabinet of Ministers of Ukraine No. 18 of 24.02.2022 "On the operation of the banking system during the period of martial law"

**Resolution of the Board of the National Bank of Ukraine No. 142 of 07.06.2022 "On Amendments to resolution of the Board of the National Bank of Ukraine No. 18 of 24.02.2022"**

**1.3. Issue: Restrictions on currency withdrawal and exchange**

*Details:*

The National Bank of Ukraine introduces a number of currency restrictions for the period of martial law, which concerns the withdrawal of funds abroad. At the same time, for some categories of goods the procedure of confirmation of the sources of funds and provision of other documents is simplified.

*The Resolution of the Board of the National Bank of Ukraine No. 102 of 20.05.2022 amended the Resolution of the Board of the National Bank of Ukraine No. 18 of 24.02.2022.*

Limits on cash withdrawal:

- Withdrawal of cash abroad from accounts opened in Ukrainian banks in hryvnia - up to **UAH 12,500 for every seven calendar days**.
- Alternative methods of withdrawal of cash hryvnia: enterprises, trade, pharmacies, gas stations. Cash can be withdrawn starting from 500 UAH but not more than 6 000 UAH.
- Limits on withdrawal of cash in foreign currency - up to UAH 100 000 a day.
- Abroad cash withdrawal from accounts opened in Ukrainian banks in foreign currency.
- Abroad cash withdrawal from accounts opened in Ukrainian banks in hryvnia.
- Citizens are allowed to sell bank metals with or without physical delivery to banks.

*Legal Act:*

Resolution of the Cabinet of Ministers of Ukraine No. 18 of 24.02.2022 "On the operation of the banking system during the period of martial law"

The Resolution of the Board of the National Bank of Ukraine No. 102 of 20.05.2022 "On Amendments to the Resolution of the Board of the National Bank of Ukraine No. 18 of 24.02.2022".

**Resolution of the Board of the National Bank of Ukraine No. 154 of 21.07.2022 "On Amendments to resolution of the Board of the National Bank of Ukraine No. 18 of 24.02.2022"**

#### 1.4. Issue: Restrictions on foreign currency transactions

Details:

- There are no restrictions on the sale of foreign currency (cash and non-cash).
- The official exchange rate of hryvnia to dollar is fixed at **36.5686 UAH/USD (starting from 9:00 on July 21, 2022)**.
- Purchase of foreign currency is prohibited from February 24, 2022, with the following exceptions:
  - 1) purchase of foreign currency, bank metals in the branches of banks located in the territories under threat of occupation. The decision shall be made by the bank manager, who may delegate such decision to the branch manager.
  - 2) purchase of foreign currency in cash by the clients-individuals. Authorized institutions carry out operations on sale of foreign currency to clients in cash within the amount, which is determined as **the sum of two components: the volume of excess of purchase of cash foreign currency over the volume of its sale for all foreign currencies, calculated starting from April 13, 2022 and during the following operational/working days; 50% of the volume of purchase of non-cash foreign currency from individuals for all foreign currencies, calculated starting from April 13, 2022 and during the following operational/working days. The amount of components is calculated in the dollar equivalent, which is calculated on the basis of the official exchange rate of the hryvnia to foreign currencies, set by the National Bank of Ukraine on the date of such calculation.**
  - 3) **sale of non-cash foreign currency by the bank to one natural person in the amount not exceeding the equivalent of UAH 50000 per calendar month for placement in this bank of a term deposit. Term of placement of funds acquired on a term deposit account with the bank shall be not less than three calendar months without the right of early termination of the bank deposit agreement and return of such deposit to a natural person before expiry of the term.**
  - 4) trade in foreign currency valuables, which is performed by banks with ~~other banks on swap terms~~, foreign financial institutions, the National Bank of Ukraine, international financial organizations, of which Ukraine is a member, and international financial organizations;
  - 5) **performance by the bank of foreign currency exchange operations with foreign financial institutions;**
  - 6) currency exchange operations within Group 1 of the Classifier;
  - 7) for the purposes of performing permitted currency transfers as defined in item 14 of the Resolution No. 18;
  - 8) swap transactions: **with resident banks and/or a central counterparty that has the right to conduct clearing activities of a central counterparty and has received a license of the NBU to conduct settlements for foreign exchange transactions on a swap basis and foreign currency settlements for transactions in respect of government bonds, as well as other foreign exchange transactions necessary to perform/secure such settlements within the clearing activities of a central counterparty; with other clients-residents on foreign currency exchange within Group 1 of the Classifier and/or on purchase and sale of foreign currency, if the first part of the transaction envisages purchase of foreign currency by the bank from the client;**
  - 9) **swap transactions with a foreign depositary bank which has a securities account with the National Bank of Ukraine on purchase and sale of foreign currency, if the first part of the transaction provides for sale of foreign currency by the bank to the foreign depositary bank which has a securities account with the National Bank of Ukraine;**
  - 10) purchase of currency on forward conditions under forward contracts concluded before February 23, 2022 (inclusive);



- 11) for provision of payments during business trips of the employees of the offices of military attachés and representatives of the Ministry of Defense of Ukraine.
- 12) sale of remnants of commemorative and investment coins of Ukraine and souvenir products, if there is no threat to life and health of employees and clients.
- 13) purchase of foreign currency by Financial Department of the General Staff of the Armed Forces of Ukraine.
- 14) purchase of foreign currency by state aviation enterprise for operational expenses for providing, organizing and performing of aircrafts of literal aviation flights.
- 15) ***purchase of foreign currency by a resident to cover the letter of credit opened by the issuing bank in favour of a non-resident under the operation defined by sub point 2 of point 14 of this regulation.***
- 16) ***purchase of foreign currency by state bodies authorized under legislation of Ukraine to carry out operational and investigative, counterintelligence, intelligence or pre-trial investigation activities.***
  - Banks are not allowed to sell currency at the rate that differs from the NBU rate by more than 1%. Exchange of one currency for another is possible within the Group 1 of the Classifier of foreign currencies and bank metals in USD - at the rate that can deviate no more than 1% from the official NBU rate valid on the day of transaction.
  - ~~— A bank is allowed to buy cash in UAH from a foreign financial institution for non-cash currency in the amount not exceeding EUR 1 000 000 per day.~~
  - The banks are temporarily prohibited to conclude a number of money market derivative contracts (except for swaps), namely
    - a. contracts based on which arise the obligations of the parties to this contract to purchase, sell foreign currency or bank metals for hryvnia;
    - b. contracts the basic indicator of which is the exchange rate of foreign currency to hryvnia; the currency index (exchange rates of several currencies) is stated in UAH or the price of bank metals in UAH;

*The Resolution of the Board of the National Bank of Ukraine No. 102 of 20.05.2022 amends the Resolution of the Board of the National Bank of Ukraine No. 18 of 24.02.2022. The document entered into force on May 21, 2022.*

- Established the rate for issuing banks for debiting/crediting of funds from/crediting to the client's account for transactions made with the use of electronic means of payment, if the currency in which the interbank transfer is made does not coincide with the currency of the client's account.
  - o UAH/foreign currency exchange rate set by the issuing bank effective on the date of transaction reflection by the bank - in case of write-off from the client's account in hryvnia, if the interbank transfer under such client transaction is carried out in foreign currency;
  - o UAH/foreign currency exchange rate not lower than the official exchange rate of the National Bank of Ukraine effective on the date of transaction reflection by the bank - in case of debiting the client's account in foreign currency, if the interbank transfer under such client transaction is made in UAH or in case of crediting the client's account in national currency, if the interbank transfer under such transaction is made in foreign currency.
- The National Bank has also prohibited banks from conducting operations that violate the restrictions imposed or contribute to or facilitate their avoidance.
- In addition, banks are temporarily prohibited:
  - o to transfer funds for the purpose of granting loans to non-residents (except for financial institutions);
  - o to grant loans to legal entities in national currency to repay loans in foreign currency;
  - o to change the currency of execution of loan agreements concluded with legal entities (except for banks) from foreign currency to hryvnia.

***The Resolution of the Board of the National Bank of Ukraine No.142 of 07.07.2022 introduced amendments to the Resolution of the Board of the National Bank of Ukraine No.18 of 24.02.2022.***

- ***A resident client is obliged to use the foreign currency purchased from July 11, 2022 through the bank in the prescribed manner no later than two business days after the day it was credited to his current account for the needs specified in the application for the purchase of foreign currency.***

***However, these requirements do not apply to foreign currency purchased by:***

- ***Residents for mobilization and other activities (needs) determined by the laws of Ukraine governing relations in the sphere of national security and defense;***
- ***State agencies authorized under the laws of Ukraine to carry out operational investigative, counterintelligence, intelligence or pre-trial activities.***
- ***The State Treasury Service of Ukraine;***
- ***On the basis of certain permits (decisions) of the National Bank of Ukraine taken on the basis of appeals of the Cabinet of Ministers of Ukraine, ministries, the National Security and Defense Council of Ukraine, the Security Service of Ukraine, signed by the head of the state body or the person performing his/her duties.***

*Legal Act:*

Resolution of the Cabinet of Ministers of Ukraine No. 18 of 24.02.2022 "On the operation of the banking system during the period of martial law"

The Resolution of the Board of the National Bank of Ukraine No. 102 of 20.05.2022 "On Amendments to the Resolution of the Board of the National Bank of Ukraine No. 18 of 24.02.2022".

***Resolution of the Board of the National Bank of Ukraine No. 122 of 14.06.2022 "On Amendments to Resolution of the Board of the National Bank of Ukraine No. 18 of 24.02.2022"***

***Resolution of the Board of the National Bank of Ukraine No. 142 of 07.07.2022 "On Amendments to resolution of the Board of the National Bank of Ukraine No. 18 of 24.02.2022"***

***Resolution of the Board of the National Bank of Ukraine No. 149 of 14.07.2022 "On Amendments to resolution of the Board of the National Bank of Ukraine No. 18 of 24.02.2022"***

***Resolution of the Board of the National Bank of Ukraine No. 154 of 21.07.2022 "On Amendments to resolution of the Board of the National Bank of Ukraine No. 18 of 24.02.2022"***

***Resolution of the Board of the National Bank of Ukraine No. 157 of 22.07.2022 "On Amendments to resolution of the Board of the National Bank of Ukraine No. 18 of 24.02.2022"***

***Resolution of the Board of the National Bank of Ukraine No. 159 of 26.07.2022 "On Amendments to resolution of the Board of the National Bank of Ukraine No. 18 of 24.02.2022"***

### ***1.5. Issue: Restrictions on settlements related to the Russian Federation/Republic of Belarus***

*Details:*

- servicing banks have stopped debit operations on accounts of residents of the Russian Federation/Republic of Belarus and on accounts of legal entities, the beneficial owners of which are such persons, except for the execution on the territory of Ukraine:
  - 1) transfers to a special account for the collection of funds to support the Armed Forces of Ukraine;
  - 2) social payments, salaries, payment of utilities, payment of taxes, fees and other obligatory payments;

- 3) expenditure transactions from the accounts of individuals resident in the Russian Federation and the Republic of Belarus contained in the lists of the Security Service of Ukraine and/or state authorities of Ukraine.
- 4) sale of non-cash currency, except for Russian rubles and Belarusian rubles;
- 5) payment of bank commissions and other payments for the performance of service provision operations and for fulfillment of own liabilities to banks under loan agreements (including interest);
- 6) transfer of funds to other own current accounts of such persons opened in banks in Ukraine (except for funds in Russian rubles/Belarusian rubles);
- 7) insurance payments by means of payment to health care institutions for the cost of medical and other assistance, in connection with the occurrence of an insured event under the contracts of voluntary insurance;
- 8) insurance compensation of damage to life, health, property of victims, inflicted up to February 23, 2022 (inclusive), under the contracts of compulsory civil liability insurance of owners of land transport vehicles;
- 9) payment of contributions to the centralized insurance reserve funds of the Motor (Transport) Insurance Bureau of Ukraine in accordance with the Law of Ukraine "On compulsory civil liability insurance of owners of ground transport vehicles";
- 10) payment of income, amounts of repayment in cash on issues of own securities, payment of services of depository institutions for making such payment/repayment;
- 11) insurance payments under contracts of compulsory and voluntary third-party liability insurance for owners of land transport vehicles, as well as voluntary accident (transport) and land transport insurance for the benefit of insurers of the vehicles leased till February 23, 2022 (inclusive).
- 12) **debit transactions from such accounts of individuals - residents of the Russian Federation/Republic of Belarus, who are clients of Ukrainian banks, within the concluded agreements on implementation of payroll projects with military units of the Armed Forces of Ukraine and the National Guard of Ukraine without the approval of the Security Service of Ukraine.**
  - At the same time, the National Bank of Ukraine decides on the implementation of debit operations on the accounts of the above-mentioned legal entities by servicing banks based on the relevant requests of the Ukrainian state authorities which are provided in connection with the implementation of important functions and/or the provision of important services by such legal entities.
  - In addition, the regulator prohibited Russian citizens, as well as persons permanently residing in Russia, and Russian companies, which are owners of a substantial participation (from 10%) in insurance, leasing, financial, factoring companies and other providers of non-banking financial services, directly or indirectly exercise voting rights and participate in company management until the lifting or termination of martial law in Ukraine.

*Legal Act:*

Resolution of the Cabinet of Ministers of Ukraine No. 18 of 24.02.2022 "On the operation of the banking system during the period of martial law"

Resolution of the Board of the National Bank of Ukraine No. 93 of 04.05.2022 "On Amendments to the Resolution of the Board of the National Bank of Ukraine No. 153 of December 24, 2021 and regulation of some issues in the activities of financial services providers".

Resolution of the Board of the National Bank of Ukraine No. 96 of 09.05.2022 "On Amendments to Resolution of the Board of the National Bank of Ukraine No. 18 of 24.02.2022".

**Resolution of the Board of the National Bank of Ukraine No. 122 of 14.06.2022 "On Amendments to Resolution of the Board of the National Bank of Ukraine No. 18 of 24.02.2022"**

## ***1.6. Issue: Restrictions on the use of Russian and Belarusian currency***

### *Details:*

- It is prohibited to credit the accounts of the clients of individuals on the transfers initiated with the use of electronic payment means, issued by the participants of the international payment systems, carrying out their activities on the territory of the Russian Federation and the Republic of Belarus.
- It is prohibited to accept in Ukraine electronic means of payment (including transfers, settlements and cash withdrawal) issued by the participants of international payment systems operating on the territory of the Russian Federation and the Republic of Belarus.
- It is prohibited for the issuing banks to issue e-money, replenish e-wallets with e-money, distribute e-money.
- It is prohibited to carry out currency transactions using Russian and Belarusian rubles, where the participant is a person located (registered/residing) in the Russian Federation or the Republic of Belarus or to perform obligations to the above persons, except for the following transactions:
  - transfer of funds (except for Russian rubles and Belarusian rubles) to the special account for the collection of funds to support the Armed Forces of Ukraine;
  - transfer of funds (except for Russian rubles and Belarusian rubles) to residents' bank accounts for export transactions and refunds for import transactions;
  - transfer of funds (except for Russian rubles and Belarusian rubles) in Ukraine for the purpose of social payments, wage payments, payment of utilities, payment of taxes, fees and other obligatory payments;
  - transfer of funds (except for Russian rubles and Belarusian rubles) on currency transactions of the natural persons specified in sub-item 3 of item 15 of the present Resolution;
  - transfer of funds (including receipt of funds in Russian/Belarusian rubles) from abroad to the correspondent account of the bank opened in another bank on the territory of Ukraine;
  - transfer of funds on the territory of Ukraine from the account of a legal entity/individual having location (registered/residence) in the Russian Federation or the Republic of Belarus [current, deposit (escrow) account] to another current account of such entity (not including funds in Russian/Belarusian rubles);
  - transactions on sale of non-cash foreign currency on the territory of Ukraine by a legal entity/individual having the location (registered/residence) in the Russian Federation or the Republic of Belarus, except for Russian rubles and Belarusian rubles.
  - Hryvnia transfer in the territory of Ukraine for the purpose of payment of bank commissions and other payments for performance by the bank of operations on provision of banking and other financial services, as well as Hryvnia/foreign currency (except Russian rubles and Belarusian rubles) for the purpose of performance of own obligations under credit agreements (including interest) to banks.

Residents and non-residents have the right to carry out operations on transferring funds in foreign currency in Ukraine and from abroad to the special account of the National Bank for raising funds to support the Armed Forces of Ukraine and/or to the accounts of the Cabinet of Ministers of Ukraine, ministries and other state bodies of Ukraine, as well as charity funds whose objectives and areas of charity activities are to promote the country's defense and mobilization readiness, support of the Armed

Forces of Ukraine and territorial defense of Ukraine, social protection, health care and other urgent issues of protection of the population under martial law.

*Legal Act:*

Resolution of the Cabinet of Ministers of Ukraine No. 18 of 24.02.2022 "On the operation of the banking system during the period of martial law"

### ***1.7. Issue: Exemption from liability of taxpayers for failure to meet deadlines for tax payments and reporting***

*Details:*

- for the period until the termination or cancellation of martial law on the territory of Ukraine taxpayers are exempt from the stipulated liability for compliance with the deadlines for payment of taxes and fees, reporting, registration in the relevant registers of tax invoices.
- for reporting period February 2022 - tax liabilities and tax credit are formed on the basis of tax invoices registered in URTI (registered in URTI till 24.02.2022) and primary accounting documents, prepared according to the Law of Ukraine "On Accounting and Financial Reporting in Ukraine" (on operations not confirmed by registered in URTI tax invoices and calculations of adjustment to them) (further - primary (settlement) document) available for payer.
- for the following reporting periods during the martial law period - tax liabilities and tax credit should be formed on the basis of the primary (settlement) documents available to the payer.
- in addition, automatic generation of new user public key certificates was introduced one day before the expiration of old certificates for a period of one year. **In this case the user's private key does not change.**
- liability for late submission by an individual of a property and income tax declaration is removed;
- the form of tax declaration of a single tax payer of the third group with a 2 percent income rate is approved by Decree of the Ministry of Finance of Ukraine No. 124 of April 26, 2022 "On Approval of the Form of Tax Declaration of a Single Tax Payer of the Third Group for the Period of Military Law or Emergency in Ukraine", registered with the Ministry of Justice of Ukraine on May 05, 2022 under No. 495/37831. This Decree shall come into force as of its official publication.
- at the same time, as of April 16, 2022 the bodies of the State Tax Service of Ukraine are granted additional powers to control the sphere of pricing, therefore during actual inspections the tax authorities will control, inter alia, the taxpayers' compliance with legislative requirements regarding the fixed prices established by the state, observance of maximum prices and limiting sales markups for certain types of products.
- from now on and until the termination or cancellation of martial law in Ukraine, the tax authorities will monitor taxpayers' compliance with the legislation on fixed prices, maximum prices and marginal levels of trade markups established by the state, except for control over pricing and tariff policy in the energy and utilities by means of actual inspections. Such inspections will be carried out, in particular, if:
  - o receiving information from state or local authorities in the manner prescribed by law, which indicates possible violations of the law on prices and pricing by the taxpayer;
  - o receiving a written request from the purchaser (consumer), drawn up in accordance with the law, concerning the violation by the taxpayer of the established procedure of formation, establishment and application of the state regulated prices.
- At the same time, service of taxpayers (single fee payers), in particular, the provision of administrative services, the performance of other functions of service is carried out by STS bodies regardless of the place of registration of the taxpayer.

*On May 27, 2022 the Law of Ukraine "On Amendments to the Tax Code of Ukraine and other laws of Ukraine on peculiarities of tax control and administration of taxes, fees and single contribution during the period of martial law or state of emergency" (Law No. 2260-IX) entered into force.*

The amendments imply in particular:

- the renewal of tax liability of taxpayers with the ability to perform their tax obligations in terms of compliance with the deadlines for registration of tax invoices and calculations of adjustments in the Unified Register of tax invoices, submission of tax declarations, payment of taxes;
- Resumption of cameral and documentary audits of tax declarations;
- resumption of VAT refunds from the budget.

If a taxpayer fails to timely perform its tax obligation to meet the deadlines for payment of taxes and fees, reporting, registration in the appropriate registers of tax or excise invoices, adjustment calculations, submission of electronic documents containing data on the actual balances of fuel and volume of circulation of fuel or ethyl alcohol, etc., taxpayers are exempt from the liability provided by the Tax Code with the obligatory performance of such obligations within 6 months after termination or cancellation of martial law in Ukraine.

If taxpayers have the opportunity to perform such duties, they will be exempt from liability provided:

- registration of tax invoices and adjustment calculations in URTI by 15.07.2022 by such payers;
- submission of tax declarations by 20.07.2022;
- payment of taxes and fees until 31.07.2022;

The Law No. 2260-IX entered into force on May 27, 2022, except for changes to subparagraphs 69.2 and 69.11 of paragraph 69 of subsection 10 of section XX of the Tax Code of Ukraine in respect of desk audit declarations and clarifying calculations (if submitted), to which an application for a refund of the budget reimbursement is filed, which will enter into force on June 2, 2022.

That is, the procedure and terms of cameral audits of tax declarations (specifying calculations) with the stated amount of budget refund for VAT shall enter into force on June 2, 2022.

*Legal Act:*

Law of Ukraine No. 2118 - IX of 03.03.2022 "On amendments to the Tax Code of Ukraine and other legislative acts of Ukraine on peculiarities of taxation and reporting during the period of martial law".

Law of Ukraine No. 133/2022 of 14.03.2022 "On prolongation of martial law in Ukraine".

Law of Ukraine No. 2260-IX of 12.05.2022 "On Amendments to the Tax Code of Ukraine and other laws of Ukraine on peculiarities of tax control and administration of taxes, fees and single contribution during the period of martial law or state of emergency"

### ***1.8. Issue: Tax changes for single tax payers at the rate of 2% starting from 16.04.2022***

*Details:* Law of Ukraine of No. 2173-IX 01.04.2022 "On amendments to the Tax Code of Ukraine and other legislative acts of Ukraine on the administration of certain taxes during the period of martial law or state of emergency in Ukraine", which entered into force on 16.04.2022, provides a number of tax and customs changes:

- During the period of martial law or state of emergency, non-profit organizations will be able to provide charity assistance at the expense of their income to third parties specified in item 63 subsection 4 of Section XX of the Tax Code of Ukraine even if provision of such assistance is not stipulated by their statutes without threat of loss of non-profit status.
- There are a number of special features for corporate taxpayers temporarily transferring to the single tax of the third group at a rate of 2%:

- overpaid amount of monetary liabilities on corporate income tax existing at the date of transition to the single tax at the rate of 2% can be set off against monetary liabilities on this tax arising after the resumption of payment of corporate income tax;
- advance corporate income tax contributions on the payment of dividends that remained unaccounted for in reducing the accrued amount of tax liability on the date of transition to the single tax at the rate of two percent may be taken into account in reducing such amount after the resumption of payment of corporate income tax;
- if the taxpayer, who during a calendar year has switched to the single tax at the rate of 2%, in the same year resumes the payment of corporate income tax, the taxpayer shall prepare and submit a tax declaration on corporate income tax on an accrual basis since the beginning of that calendar year;
- the amount of annual income from any activity of a payer of corporate income tax for the purposes of determining the value criterion of not applying tax differences and the possibility of applying exclusively the annual reporting period (40 million UAH) and the value criterion for determining controlled transactions for transfer pricing purposes (150 million UAH) is calculated for the entire reporting year, including income received for periods of such year, in which such taxpayer was subject to a single tax at the rate of two percent.

*Legal Act:*

Law of Ukraine No. 2173-IX of 01.04.2022 "On amendments to the Tax Code of Ukraine and other legislative acts of Ukraine on the administration of certain taxes during a period of martial law or state of emergency in Ukraine".

***1.9. Issue: Tax changes from 01.07.2022 in accordance with the Law of Ukraine No. 2325-IX of 21.06.2022 "On Amendments to the Tax Code of Ukraine and other legislative acts of Ukraine on the revision of certain tax benefits"***

*Details:*

*The taxation, abolished by the Law of Ukraine No. 2142, was resumed:*

- *for goods imported by single tax payers of the first, second and third group;*
- *for enterprises that do not pay import duty;*
- *for vehicles imported by citizens.*

*At the same time, amendments were made to the Law of Ukraine "On the levy on compulsory state pension insurance" to exempt those who acquire ownership of passenger cars equipped exclusively with electric motors (one or more) from paying the levy on compulsory state insurance.*

*Legal Act:*

*Law of Ukraine No. 2325-IX of 21.06.2022, "On Amendments to the Tax Code of Ukraine and other legislative acts of Ukraine on the revision of certain tax exemptions"*

***1.10. Issue: Reflection of amounts of tax liabilities in the tax declarations for VAT***

*Details:*

- If available, taxpayers can reflect in Table 1.1 of Annex 1 to the tax declaration for VAT information about the amounts of VAT included in the tax liabilities for the reporting (tax)

- period, for tax invoices/calculations not registered in URTI and for primary (settlement) documents, on the date of submission of the tax declaration for VAT.
- Namely the data displayed in Table 1.1. (on tax invoices/calculations of adjustment not registered in URTI) will contribute to further registration in URTI of tax invoices and calculations of adjustment at the expense of the indicator  $\Sigma$  Excess ("second registration limit" calculated in accordance with paragraph 2001.9 of Article 2001.9).
  - The amounts of VAT tax credit are formed on the basis of the primary (settlement) documents received from suppliers of goods/services should be reflected by VAT payers in Table 2.1. information on transactions of acquisition with value added tax subject to taxation at the basic rate and rates of 7% and 14%, Annex 1 to the tax declaration for VAT, and at the same time the buyer, if possible, includes in the statement of the seller of goods/services errors in indicating the mandatory details of the tax invoice and/or violation of the deadline for registration of the tax invoice and/or calculation of the adjustment of Annex 7 to the tax declaration for VAT (submission of such a statement has no consequences for liability).
  - When submitting tax declaration for VAT, which reflect the tax liabilities formed on the basis of the primary (settlement) documents available to the payer, and on tax invoices and calculations of adjustment not registered in URTI, the taxpayer will form in EAS VAT indicator  $\Sigma$  Excess and, accordingly, reduce the registration limit in EAS VAT.
  - After the end of martial law, taxpayers must ensure that all tax invoices and adjustment calculations whose registration is delayed for the duration of martial law are registered in the URTI.
  - Taking into account the provisions of paragraph 2001.9. of Art. 2001 of the Tax Code of Ukraine taxpayers will have the opportunity to register tax invoices/calculation adjustments in the URTI (even with a negative value of the registration limit determined in accordance with paragraph 2001.3 of Article 2001 of the Tax Code of Ukraine), in particular when paying accrued tax liabilities for February 2022 and other reporting periods during martial law, due to the "second registration limit" calculated in accordance with paragraph 2001.9 of Article 2001 of the Tax Code of Ukraine
  - All tax liabilities and tax credit declared by taxpayers during such martial law on the basis of the primary (settlement) documents available to the payer shall be subject to mandatory clarification (bringing into compliance) with the data of tax invoices and adjustment calculations registered in URTI.
  - For goods/services, non-current assets purchased/produced subject to VAT before the start of the application of the special taxation features established by paragraph 9 of subsection 8 of section XX "Transitional Provisions" TCU, which are used (supplied, sold) by a single tax payer of the third group during the period of application of the taxation specialties in operations that are not subject to taxation, VAT payer shall not later than the last day of the accounting period in which it was made the restoration of registration as a VAT payer, accrue tax liabilities in accordance with paragraph 198.5 of Article 198 of the TCU.
  - If non-current assets for which the tax credit on the date of transition to the simplified tax system at the rate of 2 percent of income, were used during the period of stay under the simplified tax system and continue to be used after the resumption of its registration as a VAT payer, accrue tax liabilities for VAT on such non-current assets is not required.
  - Within six months after termination or cancellation of martial law, taxpayers shall ensure that all tax invoices and adjustment calculations which registration is postponed for the duration of martial law and the tax credit declared by taxpayers during martial law on the basis of primary (settlement) documents available to the payer, is subject to mandatory clarification (bringing into compliance) with these tax invoices and adjustment calculations, registered in URTI.
  - For the duration of martial law, state of emergency, nonprofit organizations will be able to provide charitable assistance from their income to outsiders specified in paragraph 63 of subsection 4 of section XX of the Code, even if the provision of such assistance is not provided by their charter documents without threat of loss of nonprofit status.



*Legal Act:*

Law of Ukraine No. 2118 - IX of 03.03.2022 "On amendments to the Tax Code of Ukraine and other legislative acts of Ukraine on peculiarities of taxation and reporting during the period of martial law".

Law of Ukraine of No. 2173-IX 01.04.2022 "On amendments to the Tax Code of Ukraine and other legislative acts of Ukraine on the administration of certain taxes during a period of martial law or state of emergency in Ukraine".

***1.11. Issue: Peculiarities of payment of value added tax***

*Details:*

- Payment to the budget of the agreed tax liabilities for value added tax, which are declared by the payer in the filed tax declarations for VAT, is made by the payer by replenishing the electronic account in the EAS VAT.
- Further, within the terms established by the TCU, the State Tax Service will generate appropriate registers for the transfer of tax amounts to the budget on the basis of taxpayers' submitted tax declarations (clarifying calculations). Such registers will be sent within certain terms to the central executive body which carries out the state policy in the sphere of treasury service of budgetary funds (the State Treasury), for the transfer of such amounts to the budget.
- Accordingly, the funds that the taxpayers have credited to the electronic account in the EAS VAT will be taken into account when calculating the amount of the registration limit calculated in accordance with paragraph 2001.3 of Article 2001 of the TCU.
- For the duration of martial law in Ukraine are exempt from VAT operations on imports to the territory of Ukraine by business entities registered as single tax payers of the first, second and third group, except for persons who have elected a single tax rate of 3% of income.
- The total monthly (annual) taxable income of a taxpayer does not include the amount (cost) of charitable assistance paid (provided) by charity providers, including charity providers - individuals, in accordance with the Law of Ukraine of July 5, 2012 No. 5073-VI "On charity activities and charitable organizations" with amendments, during the legal regime of martial law, state of emergency **in favor of the combatants, individuals residing in the territory of settlements where combat operations are conducted**, employees of enterprises, institutions, organizations, civil defense forces involved and taking direct part in the implementation of measures to ensure national security and defense, repulse and deter armed aggression of individuals residing (resided) in the territory of settlements where combat operations are (were) conducted, and/or forced to leave their place of residence in connection with the conduct of combat operations in such settlements.
- In addition, payers of the single tax of the third group are exempt from the obligation to accrue and pay VAT, in particular when importing goods into the customs territory of Ukraine.
- Exemption from taxation does not apply to the import of goods to the customs territory of Ukraine in the customs regime of import of goods originating from the country, recognized as the occupant state by law and/or recognized as the aggressor state.
- Temporarily, starting from April 1, 2022 for the period of martial law on the territory of Ukraine there shall be no VAT or excise tax on operations related to import by individuals to the customs territory of Ukraine of cars, car bodies to them, trailers and semi-trailers, motorcycles, means of transport intended for transportation of 10 and more persons, means of transport for transportation of goods in the customs regime of import.
- Temporarily, for the period of martial law, exempt from VAT import to the customs territory of Ukraine and the supply on the customs territory of Ukraine: special means of personal protection, medicines and medical devices in accordance with subparagraph "c" paragraph 193.1 of Art. 193 of the Tax Code of Ukraine, defense goods, defined as such in accordance with paragraph 29 of the first part of Art. 1 of the Law of Ukraine "On Defense Procurement".

- If a taxpayer who during the reporting period performed operations for the supply of fuel and oil products, according to the results of such reporting period, the amount of VAT determined by the tax declaration according to paragraph 200.1 of Art. 200 of the Tax Code of Ukraine has a negative value (formed as a result of operations of purchase in Ukraine, and when imported into the customs territory of Ukraine), then such tax amount may not be declared (neither in the current reporting period or in subsequent reporting periods) to the budget refund, including in repayment of tax debt on VAT or other tax (can not be declared in the tax declaration on VAT in lines 20. 1, 20.2, 20.2.1 and 20.2.2), but is subject exclusively to enrollment in the tax credit of the next reporting period (reflected only in line 20.3 of the tax declaration on VAT).
- Temporarily, for the tax periods February, March, April, May 2022, taxpayers for transactions for the purchase of goods/services for which tax invoices and/or calculations of adjustments to them have not been registered in the Unified Register of tax invoices by suppliers:
  - o include in the tax credit reporting (tax) period amounts of value added tax paid (accrued) in the cost of purchased goods/services based on the primary (settlement) documents available to the payer, made (received) by the taxpayer on operations of purchasing goods/services in accordance with the Law of Ukraine "On Accounting and Financial Reporting in Ukraine";
  - o recipients of services supplied by non-residents whose place of supply is located in the customs territory of Ukraine, in case such recipient of services accrues value added tax in the tax liabilities defined in the tax return for respective reporting (tax) period such tax payers are entitled to assign such tax amounts to the tax credit of respective reporting (tax) period based on the primary (settlement) documents available to the payer, prepared (received) by the taxpayer on the operations of service purchase in accordance with the Law of Ukraine "On Accounting and Financial Reporting in Ukraine".
- Tax credit amounts are included for those goods that were later destroyed as a result of the war are included in the tax credit, but are not subject to budgetary reimbursement.

*Legal Act:*

The Law of Ukraine No. 2120-IX of 15.03.2022 "On Amendments to the Tax Code of Ukraine and other legislative acts of Ukraine on the validity of regulations during the period of martial law" amendments to the Tax Code of Ukraine No. 2755-VI of 02.12.2010.

"Transitional Provisions" of the Tax Code of Ukraine No. 2755-VI of 02.12.2010 with amendments and additions.

Law of Ukraine No. 2260-IX of 12.05.2022 "On Amendments to the Tax Code of Ukraine and other laws of Ukraine on peculiarities of tax control and administration of taxes, fees and single contribution during the period of martial law or state of emergency".

***Law of Ukraine No. 2325-IX of 21.06.2022, "On Amendments to the Tax Code of Ukraine and other legislative acts of Ukraine on the revision of certain tax exemptions"***

***1.12. Issue: Exemption from environmental tax***

*Details:*

- Temporarily, from January 1, 2022 to December 31 of the year in which martial law is terminated or cancelled, environmental tax is not accrued and paid by payers of this tax, registered (taken on record) at the location of stationary sources of pollution, for the formation of radioactive waste and temporary storage of radioactive waste in the territories where military activities are (were) conducted, and in the territories temporarily occupied by armed formations of the Russian Federation.

- The list of territories where military activities are conducted and territories temporarily occupied by armed formations of the Russian Federation is determined by the Cabinet of Ministers of Ukraine.
- For objects subject to environmental taxation by payers registered (taken into account) at the location of stationary sources of pollution, for generation of radioactive waste and temporary storage of radioactive waste on the territories where military operations are (were) conducted or on the territories temporarily occupied by the armed formations of the Russian Federation as determined by the Cabinet of Ministers of Ukraine, environmental tax shall not be accrued and shall not be paid for I, II, III and IV quarters of 2022 for all volumes and types of contamination by stationary sources of contamination provided for by the legislation of Ukraine and all volumes of formed radioactive waste and volumes of temporary storage of radioactive waste.

*Legal Act:*

Law of Ukraine No. 2118 - IX of 03.03.2022 "On amendments to the Tax Code of Ukraine and other legislative acts of Ukraine on peculiarities of taxation and reporting during the period of martial law".

Law of Ukraine No. 2142-IX of 24.03.2022 "On Amendments to the Tax Code of Ukraine and other legislative acts of Ukraine on improvement of the legislation during the period of martial law".

***1.13. Issue: Exemption from the single contribution to the compulsory state social insurance and the single tax***

*Details:*

- Temporarily, from March 1, 2022 until the termination or cancellation of martial law in Ukraine and for another 12 months, individuals entrepreneurs - payers of the single tax, have the right not to accrue, not to calculate and not to pay SSC for themselves.
- Until termination or cancellation of martial law in Ukraine and for another 12 months the persons specified in paragraphs 4, 5 and 51 part 1 of Art. 4 of the Law on SSC shall have the right not to accrue, not to calculate and not to pay SSC for themselves. In this case, the provisions of subparagraph 2 of paragraph 2 of part 1 of Art. 7 of the Law on SSC for such periods do not apply to such persons. At the same time, such persons do not fill SSC calculation in the tax declaration for the period in which SSC was not calculated and paid.
- Individuals - entrepreneurs - single tax payers of the first and second groups have the right not to pay a single tax. In this case, such persons are not required to fill out a single individual entrepreneur tax payer's declaration - for the period in which the single tax was not paid.
- Limits on the amount of income for single tax payers of the third group at a rate of 2 percent have been abolished.
- The law provides an opportunity to register as single tax payers of the third group at a rate of 2 percent of income along with businesses engaged in retail sales of fuels and lubricants in containers of up to 20 liters, business entities engaged **in retail sales of excisable goods, extraction of ground and surface waters by enterprises that provide centralized water supply and drainage services.**
- During the mobilization period, employers - single tax payers who have chosen the simplified taxation system - individuals - entrepreneurs belonging to the second and third groups of single tax payers, as well as legal entities belonging to the third group of single tax payers, have the right by their own decision not to pay the single fee for obligatory state social insurance (hereinafter - the single fee) for employees called up for military service in the Armed Forces of Ukraine during mobilization

*Legal Act:*

Law of Ukraine No. 2118 - IX of 03.03.2022 "On amendments to the Tax Code of Ukraine and other legislative acts of Ukraine on peculiarities of taxation and reporting during the period of martial law".

The Law of Ukraine No. 2120-IX of 15.03.2022 "On Amendments to the Tax Code of Ukraine and other legislative acts of Ukraine on the validity of regulations during the period of martial law".

Law of Ukraine of No. 2173-IX 01.04.2022 "On amendments to the Tax Code of Ukraine and other legislative acts of Ukraine on the administration of certain taxes during the period of martial law or state of emergency in Ukraine".

#### ***1.14. Issue: Taxation of goods transported in international postal and express consignments***

*Details:*

- On April 30, 2022 the Law of Ukraine No. 1998-IX "On Amendments to the Tax Code of Ukraine on the taxation of transported (sent) goods in international postal and express consignments" dated 25 January 2022 entered into force.
- The law improves the administration of VAT on transactions for importation of goods into the customs territory of Ukraine in the international mail and express items and simplifies the payment of VAT by recipients through the assignment of functions of its payment to postal operators and express carriers in case of declaring such goods with the appropriate electronic registers of international mail and express parcels.
- Responsible for charging and payment of VAT to the budget in the case of importation of goods into the customs territory of Ukraine in the international mail and express parcels designated postal operator, express carrier, if they declare such goods by submitting registers (temporary and/or additional).
- It is stipulated that the VAT base is a part of their customs value (for legal entities or individuals - entrepreneurs) or a part of their total invoice value (for individuals), exceeding the nontaxable minimum (equivalent to 150 euros).
- provides for the possibility of deferral of payment of VAT - within 30 days from the date of registration of the temporary register with the simultaneous submission of an additional register.
- subsection 2 of section XX of the Tax Code of Ukraine was supplemented by paragraph 68 p. 1, which establishes that the rules of paragraph 180.2 p. 1 of Art. 180 and subparagraph 191.1.3 of paragraph 191.1 of Art. 191 of the Tax Code shall not apply for six months from the date of entry into force of the Act.

*Legal Act:*

Law of Ukraine No. 1998-IX of 25.01.2022, "On Amendments to the Tax Code of Ukraine on the taxation of transported (sent) goods in international postal and express consignments".

#### ***1.15. Issue: Tax liabilities of excise tax payers - producers of electricity***

*Details:*

- temporarily, from March 1, 2022 until the termination or cancellation of the martial law, state of emergency on the territory of Ukraine, the date of occurrence of tax obligations on excise tax on transactions for the sale of electric energy is the date of credit (receipt) of funds to the bank account or the date of receipt of other types of compensation for the sold electric energy.
- Further, at the end of the temporary validity of the above rules provided that for all producers of electricity: from the first tax period following the period of termination or cancellation of martial law, state of emergency - the date of the document certifying the supply of electricity under paragraph 216.10 of Article 216 of the Tax Code and the date of enrollment (receipt) of funds in the bank account or the date of receipt of other compensation (for electricity sold in the period from March 1, 2022 to the last tax year).

- In addition, for all producers of electricity changed the date of occurrence of tax liabilities for the supply of electricity. Such date is the date of drawing up a document certifying the fact of electric power supply, whereas previously it was the date of signing of the act of electric power delivery and acceptance. This norm will also be in force after the end of the martial law or state of emergency period.
- Beginning with the reporting period April 2022, we recommend that before making appropriate changes to the current form of excise tax declaration, producers of electricity should submit Annex 10 to the excise tax declaration in the form provided in Annex 1 to the Letter of State Tax Service of 02.02.2029, No. 209/99-00-21-03-03-07.

*Legal act:*

Law of Ukraine of No. 2173-IX 01.04.2022 "On amendments to the Tax Code of Ukraine and other legislative acts of Ukraine on the administration of certain taxes during the period of martial law or state of emergency in Ukraine".

***1.16. Issue: Automatic renewal of licenses for production and circulation of alcohol, alcoholic beverages, tobacco products and liquids used in electronic cigarettes, production, storage, wholesale and retail trade in fuel, for which before the termination or cancellation of martial law in Ukraine the next license fee has not been paid and / or expired***

*Details:*

- Are considered valid licenses for which before the termination or cancellation of martial law, state of emergency on the territory of Ukraine or in the presence of force majeure the next payment of the license fee has not been paid and / or expired license term for the right of:
  - a. production and circulation of alcohol, alcoholic beverages, tobacco products and liquids used in electronic cigarettes;
  - b. production, storage, wholesale and retail sale of fuel and places of production, storage, wholesale and retail sale of fuel.
- Obligations to pay the regular payments/renewal actions for the license must be satisfied by the business entity within 30 days following the date of termination or cancellation of martial law, state of emergency in Ukraine.

*Legal Act:*

Law of Ukraine No. 481/95- BP of 19.12.1995 "On state regulation of production and circulation of ethyl, cognac and fruit alcohol, alcoholic beverages, tobacco products, liquids used in electronic cigarettes and fuel".

***1.17. Issue: Legislative changes in ethanol production incentives***

*Details:*

On June 17, 2022, Law of Ukraine No. 2284-IX of 31.05.2022 "On Amendments to the Tax Code of Ukraine and Other Laws of Ukraine on Stimulation of Production of Denatured Ethyl Alcohol" (hereinafter - Law No. 2284) came into force, which amended the Tax Code of Ukraine as of December 2, 2010 No. 2755-VI as amended and the Law of Ukraine No. 481/95-BP of 19.12.1995, "On State Regulation of Production and Circulation of Ethyl, Cognac and Fruit Alcohol, Alcoholic Beverages, Tobacco Products, Liquids Used in Electronic Cigarettes and Fuels" as amended and supplemented.

Law No. 2284 provides for:

- application of penalties for failure to equip and/or lack of registration in the Unified State Register of flow meters of volume of ethyl alcohol produced (hereinafter - the Unified Register)

of mass flow meters at the place of receipt and release of ethyl alcohol, located on the excise train, and/or place of receipt/release of ethyl alcohol in the production of products defined in paragraphs. "e" - "g" clauses. 229.1.1 of clause 229.1 of Article 229 of the Code;

- determination of the tax base in the presence of excess losses of ethyl alcohol, including bioethanol, cognac alcohol, fruit, grain distillate and other alcoholic distillates and rectifications, alcoholic beverages, admitted through the fault of the producer in the production of excisable goods (products), in the amount (quantity) of these goods that could be produced from the excess loss goods (products);
- permission to obtain ethyl alcohol at the rate of 0 UAH per 1 liter of 100% alcohol for the production of products listed in par. "e", "f", "is" par. 229.1.1 clause 229.1 of Article 229 of the Code only by business entities (including foreign business entities acting through their registered permanent representative offices) included in the Electronic Register of business entities using ethyl alcohol for production of chemical and technical products, perfumes and cosmetics, vinegar from food raw materials, maintenance of which is performed by the central executive authority implementing the state tax policy;
- The need for equipment by business entities that use ethyl alcohol for the production of the products defined in par. "e" - "g" clauses. 229.1.1 clause 229.1 of Article 229 of the Code each place of release of products for the production of which received ethyl alcohol is used, 2 mass flow meters registered in the Unified Register, or means of accounting for manufactured products;
- equipment of excise compositions on the territory of which ethyl alcohol, including bioethanol, is produced, at each place of receipt and release of ethyl alcohol denatured, including bioethanol, located on the excise composition, with mass flow meters designed for continuous measurement, memorization, recording, and reflection in electronic form of data on the receipt and/or release of ethyl alcohol denatured, including bioethanol, in kilograms, registered in the Single Register;
- the obligation to send the scheme for 24-hour video surveillance of the production and sale of ethyl alcohol in excise warehouses, in which ethyl alcohol, including bioethanol, is produced, to the central executive authority implementing the state tax policy, by electronic means no later than 10 working days following the day of putting such a system into operation.

In addition, temporarily, for the period of martial law or state of emergency in Ukraine, business entities licensed to produce ethyl alcohol undenatured are allowed to produce ethyl alcohol denatured and/or bioethanol in excise warehouses, where the production and/or storage of ethyl alcohol undenatured, based on the license for the production of ethyl alcohol undenatured, and the economic entities holding a license for production of ethyl alcohol denatured shall be allowed to produce bioethanol in excise warehouses for the production and/or storage of ethyl alcohol denatured on the basis of a license for the production of ethyl alcohol denatured, provided that they comply with the conditions established by art. 18 of Law No. 481.

*Legal Act:*

Law of Ukraine No. 2284-IX of 31.05.2022 "On Amendments to the Tax Code of Ukraine and other laws of Ukraine on the stimulation of the production of ethyl alcohol denatured"

### ***1.18. Issue: Peculiarities of excise taxation and circulation of excisable goods***

*Details:*

- Transactions on physical transfer (release, shipment) of fuel on the customs territory of Ukraine shall not be considered as sales of fuel: (a) as humanitarian aid in the manner prescribed by the Cabinet of Ministers of Ukraine; (b) carried out in connection with its forced alienation or withdrawal for the needs of the state without receiving compensation for the forced alienation

or withdrawn fuel; (c) carried out in connection with its transfer for the needs of state defense and the functioning of other areas of the state, without prior or subsequent reimbursement of its value.

- Transactions in connection with the voluntary transfer or alienation or withdrawal of excisable goods for the needs of the defense of the State and the operation of other areas of the State defined in this paragraph (without prior or subsequent refund) shall also not be considered sales transactions for tax purposes. No tax liability will arise on these transactions.
- Entities that: are payers of excise tax - producers of fuel or persons selling fuel will be obliged: to make an application for replenishment (adjustment) of fuel balance and respectively excise invoice, calculation of excise invoice adjustment for such operations, which are attributed to the lost fuel), to reflect in the Annex 1-1 and Annex 10 to the declaration the following transactions.
- Business entities that: receive fuel solely for the needs of their own consumption or industrial processing and are excise tax payers on the sale of fuel - will have the obligation to make excise invoice for such operations, which are attributed to the lost fuel (operation code for the assembly in one copy 2 - lost, spoiled, destroyed fuel). This does not create the obligation to obtain additional license for the right to wholesale and/or retail trade to carry out such operations.
- Business entities that: receive fuel solely for the needs of their own consumption or industrial processing and are not the managers of excise warehouses - excise tax payers on the sale of fuel - will not be required: to obtain a license to wholesale or retail trade in fuel; register as excise tax payers and register excise warehouses; take into account the volume of fuel transferred free of charge for these needs, while accounting for the volumes that business entities are entitled to receive during the year for storage for the sole purpose of using it for their own consumption (1000 cubic meters and the single tax payer of the fourth group - 10,000 cubic meters).
- The tax rate of excise tax on certain types of fuel, in particular: (a) motor gasoline, (b) heavy distillates (gasoil), (c) liquefied gas (propane or mixture of propane and butane) and other gases, (d) butane and isobutane, are **zero** for the period until termination or cancellation of the martial law in the territory of Ukraine.
- Payers of excise tax - producers of fuel when replenishing the balance of fuel in the system of electronic administration of sales of fuel and alcohol must make applications for replenishment (adjustment) of the balance, in column 6 which should indicate a zero rate of excise tax.
- Producers of ethylene, prior to receipt or prior to importation into the customs territory of Ukraine as raw materials for production of ethylene do not issue a tax bill for the amount of excise tax (paragraph 41 subsection 5 of section XX of the Code establishes a zero rate regardless of the direction of use of such fuel).
- Restoration of accounting of fuel and ethyl alcohol in excise warehouses, partially destroyed and located in areas of military operations or temporarily occupied territories will be carried out on the basis of data of the inventory carried out after the end of the martial law.
- Import of tobacco goods marked with excise tax stamps that are not documents of strict accounting and printed outside the customs territory of Ukraine by order of the manufacturers or importers of tobacco products is permitted. Taking into account that in this case there is no application - calculation for purchase of excise tax marks for labeling tobacco products and liquids used in electronic cigarettes, import of tobacco products marked with such marks to the customs territory of Ukraine is possible under certain conditions.
- The moratorium on actual inspections, including inspections of compliance with legal requirements, control over compliance with which is entrusted to regulatory authorities, has been terminated.
- The procedure for allocating the 5% excise tax on retail sales of tobacco products, tobacco and industrial substitutes for tobacco and liquids used in electronic cigarettes paid by their importers and manufacturers to local budgets was enacted - postponed to May 1, 2022, instead of January 1, 2023. Subjects of retail trade until the end of 2022 remain, in the manner and under the

conditions in force until April 1, 2022, payers of 5% excise tax on retail sales of tobacco products, tobacco and industrial substitutes for tobacco manufactured before April 1, 2022, including foreign producers and not sold to end users until April 1, 2022 (paragraph 40 of subsection 5 of section XX of the Code).

- **If the drawer of the excise tax bill cannot meet the requirements of the Tax Code of Ukraine** for the payment of excise tax and / or submit the appropriate documents, registration of excise bills to confirm the use of excisable goods - subject to the provisions of subparagraph 69.9 of paragraph 69 subsection 10 of Section XX of the TCU on stopping the clock, the maturity of the tax bill, the term of which fell within the legal regime of martial law in the territory of Ukraine is carried out only after the termination or cancellation of martial law.
- Excise tax from the sale by business entities of retail trade:
  - o *of tobacco products, tobacco and industrial substitutes for tobacco, liquids used in electronic cigarettes* - paid by manufacturers and importers when selling them from **January 1, 2023**;
  - o *tobacco products, tobacco and industrial substitutes for tobacco, regardless of the date of production* - shall be paid by retailers on the volume of these excisable goods sold until **January 1, 2023**.

*Legal Act:*

Law of Ukraine No. 2118 - IX of 03.03.2022 "On amendments to the Tax Code of Ukraine and other legislative acts of Ukraine on peculiarities of taxation and reporting during the period of martial law".

Law of Ukraine No. 2134-IX of 15.03.2022 "On Amendments to Section VI "Final and Transitional Provisions" of the Budget Code of Ukraine and Other Legislative Acts of Ukraine".

Law of Ukraine No. 2218-IX of 21.04.2022 "On Amendments to the Law of Ukraine "On the State Budget of Ukraine for 2022".

***1.19. Issue: The range of persons who can choose the third group of the single tax at a rate of 2% has been expanded***

*Details:*

- The Law of Ukraine No. 2192-IX of April 14, 2022 excluded par. 9.3 of subsection 8 of section XX "Transitional Provisions" of the Tax Code;
- As of April 26, 2022 there are no restrictions on the inability of selecting the third group of the single tax with special taxation (2% single tax), established by par. 9 of subsection 8 of section XX of the Tax Code, by business entities (legal entities and individuals - entrepreneurs) who organize, conduct gambling, lotteries (except for the distribution of lotteries), betting (bookmaker's parlay, totalizator betting).

*Legal Act:*

Law of Ukraine No. 2192-IX of 14.04.2022 "On Amendments to Section VI "Final and Transitional Provisions" of the Budget Code of Ukraine and Section XX "Transitional Provisions" of the Tax Code of Ukraine".

## **2. Import of goods and movement of people**

***2.1. Issue: Simplification of the procedure for customs clearance of certain goods***

*Details:*



A simplified procedure for the customs clearance of the following groups of goods has been established for the duration of martial law: medicines; medical devices; certain groups of food; critical imports, the list of which was approved by the Resolution of the Cabinet of Ministers of Ukraine № 153 of 24 February 2022; goods specified in the list of goods for military use, the international transfer of which is subject to state control. The procedure provides for:

- The option to submit the preliminary customs declaration that contains all necessary information for the release of goods without presenting such goods to the customs authority in accordance with part five of Article 259 of the Customs Code of Ukraine or at the place of crossing the customs border of Ukraine by submitting the customs declaration completed in the usual manner or to any customs authority according to the procedure provided for by the legislation;
- Non-application of non-tariff regulation of external economic activity (except for state export control)
- The option to defer the customs payments when importing to the custom territory of Ukraine goods listed in accordance with annex to this resolution on the grounds of written application of a taxpayer submitted simultaneously with the customs declaration (deferment period – within three months after the end of martial law).

***On 01.07.2022 the Law of Ukraine No. 2325- IX of 21.06.2022 "On Amendments to the Tax Code of Ukraine and other legislative acts of Ukraine on revision of certain tax exemptions" came into force, according to which the following amendments are introduced to the Customs Code of Ukraine and the Law of Ukraine "On Foreign Economic Activity":***

- ***In response to friendly actions of states on implementation of legal rights and interests of subjects of foreign economic activity of Ukraine, states with which Ukraine has concluded international treaties on free trade, as a measure on national security, which is introduced in accordance with article XXI of the General Agreement on Tariffs and Trade 1994, The Cabinet of Ministers of Ukraine in accordance with Article 29-1 of the Law of Ukraine "On Foreign Economic Activity" may decide on the temporary application of similar measures - the establishment of tariff benefits (tariff preferences) in the form of exemption from import duty, reduced import duty rates or the establishment of tariff preferences quotas - to goods originating from states that have made friendly actions on the implementation of the legal rights and interests of subjects of foreign economic activity of Ukraine, states with which Ukraine has concluded international treaties on free trade and unilaterally applied tariff preferences (tariff preferences) to the goods originating from Ukraine;***
- ***If other states, customs unions or economic groupings perform friendly actions for the implementation of the legal rights and interests of the subjects of foreign economic activity of Ukraine - establish tariff benefits (tariff preferences) in the form of exemption from taxation of import duties, reduction of import duty rates or the establishment of tariff quotas and other measures provided for by laws and international treaties of Ukraine - similar measures may be applied in response to such actions;***
- ***As a national security measure introduced in accordance with Article XXI of the General Agreement on Tariffs and Trade 1994 the Cabinet of Ministers may decide on the temporary application of similar measures - the establishment of tariff benefits (tariff preferences) in the form of exemption from taxation on import duties, reduction of import duty rates or the establishment of tariff quotas - in response to such actions may be applied similar measures, stipulated by the laws and international treaties of Ukraine to goods originating from states that have committed friendly actions for the legitimate rights and interests of the subjects of foreign economic activity of Ukraine, the states with which Ukraine has concluded international treaties on free trade and***

***unilaterally applied tariff benefits (tariff preferences) to goods originating from Ukraine.***

*Legal act:*

Resolution of the Cabinet of Ministers of Ukraine No. 236 of 09.03.2022

***Law of Ukraine No. 2325-IX of 21.06.2022. "On Amendments to the Tax Code of Ukraine and other legislative acts of Ukraine on the revision of certain tax benefits"***

***2.2. Issue: Facilitation of import of humanitarian aid***

*Details:*

- Declaration of aid under a simplified procedure when crossing the customs border (submission of a simplified document "Declaration on the list of goods recognised as humanitarian aid");
- Determination of an exhaustive list of documents required for the export from a donor country and import to Ukraine, which includes: a donation agreement or a gift certificate; a letter of request from the recipient of humanitarian aid addressed to the head of the customs authority in Ukraine, shipping documents: proforma invoice; CMR.
- Approval of a list of categories of goods recognized as humanitarian aid that do not require a procedure for recognizing such goods as humanitarian aid on a case-by-case basis, in particular: (a) goods not intended for sale and imported to ensure national security and defence in connection with the military aggression of the Russian Federation against Ukraine, civil defence of the population and their daily needs; (b) goods, the import of which is subject to a written decision of the head of the relevant military-civilian or military administration regarding the list of goods and the weight of cargo needed to ensure national security and defence in connection with the military aggression of the Russian Federation against Ukraine, civil defence of the population and their daily needs.
- Reduction of time and administrative costs, cancellation of all measures of non-tariff regulation of foreign economic activity (except for state export control), in particular phytosanitary and veterinary-sanitary control, state control of compliance with legislation on food products, animal feed, animal by-products, health and animal welfare, carried out under the legislation of Ukraine.

*Legal act:*

Resolutions of the Cabinet of Ministers of Ukraine No.174 of 01.03.2022

Resolution of the Cabinet of Ministers of Ukraine No. 224 of 07.03.2022

***2.3. Issue: Import of military goods***

*Details:*

- Expansion of the range of business entities that may import goods to Ukraine for the needs of national defence;
- Simplification of the procedure for registering such entities with the State Export Control Service and obtaining relevant permits;
- Removal of the requirement to obtain authorization from the Cabinet of Ministers for such imports.

*Legal act:*

Resolution of the Cabinet of Ministers of Ukraine No. 247 of 10.03.2022

## 2.4. Issue: Restrictions on crossing Ukrainian border

### Details:

Due to the imposition of martial law in Ukraine, men aged 18 to 60 are banned from leaving the country, with the exception of certain categories of persons who:

- are not subject to mobilisation or have a draft deferment under the law;
- have moved to other countries for permanent residence, which is properly documented by Ukrainian diplomatic institutions;
- are applicants for professional pre-higher and higher education, assistant trainees, post-graduate and doctoral students studying abroad as full-time students or through dual education (students, audit students)
- carry out transportation for the needs of the Defence Forces of Ukraine, transportation of medical, humanitarian cargo, as well as employees of railway transport enterprises who ensure the functioning and uninterrupted operation of the railway.

Regulation of the Cabinet of Ministers of Ukraine No. 615 of 20 May 2022 amended Resolutions of the Cabinet of Ministers of Ukraine No. 57 of 27 January 1995 and No. 194 of 3 March 2022.

The right to leave the country is granted for the period of 30 days to:

- sportsmen of national teams engaged in Olympic and non-Olympic sports;
- persons who prepare sportsmen;
- sports judges and other specialists who ensure organizational and medical assistance, anti-doping control, etc.

The rules for road carriers crossing the border have been changed.

### Drivers of unlicensed carriers (volunteer drivers):

- Drivers of unlicensed carriers (volunteer drivers) will be able to cross the border when transporting the following types of goods:
  - humanitarian aid;
  - medical cargo;
  - cargo for the needs of the Armed Forces of Ukraine or other military formations formed in accordance with the laws of Ukraine, the people of Ukraine.
- In order to cross the border, such carriers must provide justification for the volume of cargo and the number of vehicles needed for its transportation by presenting letters from: military, law enforcement agencies; military administrations; medical institutions; senders or recipients of humanitarian aid.
- A border crossing application must be submitted to the Ministry of Infrastructure to the email address [zmiu98916@gmail.com](mailto:zmiu98916@gmail.com), or to the regional, Kyiv city, military administrations.
- Such carriers can stay abroad for no more than 30 calendar days.

### Licensed carriers:

- Licensed carriers may make a border crossing application for persons aged 18-60 in the system "Shlyah", provided that the total weight of the vehicle ("Vehicle"), which is a means of business activity of the licensee, is not less than 3 500 kg.
- One driver in the cargo vehicle of the licensee; two drivers in the passenger vehicle (bus) of the licensee may cross the border in one such Vehicle at the same time.
- Persons may stay abroad continuously for no more than 45 calendar days.

- If a driver fails to return after the 45-day period of stay abroad, the State Service of Ukraine for Transport Safety may terminate the licensee's access to the Unified Complex of Information Systems for 3 months.
- If the purpose of travel is not confirmed, carriers (licensed and unlicensed) may be denied the ability to cross the border by the State Border Guard Service of Ukraine.

*Legal Act:*

Resolution of the Cabinet of Ministers of Ukraine No. 383 of 29.03.2022

Resolution of the Cabinet of Ministers of Ukraine No. 399 of 01.04.2022

Resolution of the Cabinet of Ministers of Ukraine No. 615 of 20.05.2022

## **2.5. Issue: Export of agricultural commodities**

*Details:*

- Ban on exports of a number of agricultural commodities: ~~(a) oats; (b) millet;~~ (c) buckwheat; ~~(d) sugar; (e) salt; (f) rye;~~ *mineral or chemical nitrogen fertilizers (UCG FEA code 3102).*
- Exports are allowed subject to declaratory licensing: **wheat and mixture of wheat and rye (meslin); corn; oats; rye; millet; sugar;** domestic chicken meat; domestic chicken eggs; sunflower oil; live cattle; meat and cattle by-products, frozen brine, **fertilizers, mineral or chemical, nitrogen (code UCG FEA 3102); fertilizers, mineral or chemical, phosphorus (code UCG FEA 3103); fertilizers, mineral or chemical, potassium (UCG FEA code 3104); mineral or chemical fertilizers with two or three nutrients: nitrogen, phosphorus and potassium; other fertilizers; goods of this group in tablets or similar forms or in packages with a gross weight not exceeding 10 kg (UCG FEA code 3105)** etc. This means that the export is allowed upon proper notice to the Government and the issuance of a free license within twenty-four hours.
- There is also a de facto ban on exports of fertilizers from Ukraine, in particular nitrogen, phosphorus, potash and compound fertilizers, namely: fertilizers, mineral or chemical, nitrogen (Ukrainian Classification of Goods for Foreign Economic Activity ("UCG FEA") code 3102); fertilizers, mineral or chemical, phosphorus (UCG FEA code 3103); fertilizers, mineral or chemical, potash (UCG FEA code 3104); mineral or chemical fertilizers with two or three nutrients: nitrogen, phosphorus and potassium; other fertilizers; goods of this group in tablets, packages with a gross weight not exceeding 10 kg (UCG FEA code 3105).

*Legal act:*

Law of Ukraine "On Foreign Economic Activity"

Resolution of the Cabinet of Ministers of Ukraine No. 207 of 05.03.2022 on amendments to Annexes 1 and 5 to the Resolution of the Cabinet of Ministers of Ukraine of 29.12.2021 № 1424

Resolution of the Cabinet of Ministers of Ukraine No. 422 of 09.04.2022 on amendments to Annexes 1 and 5 to the Resolution of the Cabinet of Ministers of Ukraine of 29.12.2021 № 1424.

**Resolution of the Cabinet of Ministers of Ukraine No. 759 of 01.07.2022 On Amendments to Annexes 1 and 5 to Resolution of the Cabinet of Ministers of Ukraine No. 1424 of 29.12.2021**

**Resolution of the Cabinet of Ministers of Ukraine No. 832 of 26.07.2022 On Amendments to Annexes 1 and 5 to Resolution of the Cabinet of Ministers of Ukraine No. 1424 of 29.12.2021**

## **2.6. Issue: Full embargo on imports of goods from Russia**

*Details:*

- The government has banned the import of goods from the Russian Federation into the customs territory of Ukraine due to the Russian military aggression against Ukraine.
- ***Goods that were transported through the territory of the Russian Federation and goods imported from the Russian Federation, including goods originating from third countries, may be placed in the customs regime of import, if their importation into Ukraine was made before February 24, 2022 inclusive.***

*Legal act:*

Law of Ukraine "On Foreign Economic Activity".

Resolution of the Cabinet of Ministers of Ukraine No. 426 of 09.04.2022 "On application of the ban on imports of goods from the Russian Federation"

***Resolution of the Cabinet of Ministers of Ukraine No. 688 of 14.06.2022 "On Amendments to paragraph 1 of the Resolution of the Cabinet of Ministers of Ukraine No. 426 of 9.04.2022".***

## ***2.7. Issue: Simplification of rules for issuance of international freight transport permits***

*Details:*

The Ministry of Infrastructure of Ukraine has simplified the rules for issuing permits for international freight transport as of 4 April 2022. The decision was taken due to the "closure of transit through the territory of Belarus and Russia", as well as "an increase in the amount of freight transported by road".

In view of this, the Ministry of Infrastructure has decided to:

- extend the period of validity of the electronic application for permits from 7 to 10 days;
- increase to 5 all types of Polish permits per vehicle from April to May;
- increase to 2 all Czech permits per month for vehicles with a gross vehicle weight of up to 10 tonnes;
- remove restrictions on transport through Serbia (vehicles weighing less than 10 tonnes are allowed); before Romania decided to allow transit through its territory without permits, it was decided to issue BSEC permits to the road hauliers transporting goods to Georgia, Azerbaijan, Kazakhstan and Uzbekistan. for vehicles of Euro-3 emission standard and higher.

As of 4 April, it has been agreed to cancel bilateral and transit permits for transport through the territory of seven European Union countries, in particular from Bulgaria, Denmark, Estonia, Hungary, Italy, Latvia, Lithuania, as well as through the territory of Georgia and Turkey. Slovakia has also agreed to allow transit transport without permits.

*Legal act:*

Procedure for issuance, exchange and registration of permits for trips across the territories of foreign states when transporting passengers and goods by road on international routes, approved by the Order of the Ministry of Transport of Ukraine No. 757 of 20.08.2004;

Order of the Ministry of Infrastructure of Ukraine "On Approval of the Minutes No. 51 of the meeting of the Commission for reviewing issues related to the issuance, registration and analysis of the effectiveness of the use of permits for trips across the territories of foreign states" No. 173 of 02.04.2022.

## ***2.8. Issue: Multimodal transport and the concept of "dry port"***

*Details:*

JSC Ukrzaliznytsia (“UZ”) tries to perform all its standard duties as efficiently as possible, as well as provides assistance to the rest of the business.

In the context of martial law, UZ offers:

- its production facilities in Central and Western Ukraine for the relocation of production from the east of the country. Part of the former warehouses and unused production facilities can be used by exporters (importers) for temporary floor storage of agricultural commodities and other goods when forming consignments of goods;
- assistance to private businesses in building railway or multimodal terminals (dry ports) at the junctions with Poland, Slovakia, Hungary and Romania. The railway provides its infrastructure, and local authorities should help with other business issues.

A dry port is a multimodal logistics centre with infrastructure allowing importers and exporters to enjoy all the advantages of a seaport, but on land.

It offers the cargo owner a full range of cargo handling services other than loading/unloading or from a vessel. Some of the main services offered by dry ports are: cargo handling and storage; container stacking and unstacking; bulk cargo handling and storage; customs clearance and inspection; packaging, repackaging and marking; repairs of container equipment and transport; forwarding services; banking, insurance, cash services; transport reservation; brokerage services; transshipment to other modes of transport; transportation of the goods to the final destination – last mile delivery.

The dry port of the Odesa company Imtrex is already operating in the Rivne region and the Western Container Terminal is operating in the west of Ukraine. In the new situation, their logistics capabilities become much more important, including for the transshipment of cereals. These terminals work both for exports and imports. At a time when it is impossible to get cargo from our seaports, many are already considering unloading in other Black Sea ports, for example in Romania, and delivery to Ukraine by rail across the western border.

To date, the scheme of delivering cargoes by road to the ports is no longer working. The fuel and road situation has become more difficult, and it is no longer possible to transport goods to the ports - they no longer dispatch cargoes.

Such routes are replaced with the scheme of loading grain into wagons and sending it by train to Europe across the western border. At the same time, traders have to explore a new field of work – cooperation with Ukrzaliznytsia, or when they do not have their own capabilities, pay forwarding companies that can organise such transport.

*Legal act:*

Law of Ukraine "On Multimodal Transport"

## ***2.9. Issue: Simplification of phytosanitary measures for imports of agricultural products of plant origin***

*Details:*

- simplification of phytosanitary measures imposed on imports of agricultural products of plant origin and creation of uninterrupted supply of such products for the period of martial law, the government has simplified the requirements for import and movement of agricultural products of plant origin, including seeds, during the martial law;
- receipt of documents, administrative services and phytosanitary procedures at any territorial office of the State Consumer Service, as well as phytosanitary examination (tests) conducted at any phytosanitary laboratory of the State Consumer Service;

- simplification of phytosanitary control of imports of goods belonging to groups 07-12 under the UCG FEA by carrying out inspections without taking samples and phytosanitary examination (tests). Full phytosanitary control is carried out if phytosanitary certificates are missing or invalid; the cargo does not correspond to the information stated in the phytosanitary certificate, the inspection revealed infection (its signs) or pest damage;
- cancelation of the requirement to conduct phytosanitary inspection of the accompanying wooden packaging material (pallets, packing boxes, crates etc.), in which goods that do not belong to the products of plant origin are imported;
- cancelation of the obligation to have an accompanying quarantine certificate when transporting regulated imported goods, including seeds, through the territory of Ukraine. A quarantine certificate is issued solely at the request of a person.

*On 27.05.2022, the Law of Ukraine "On Amendments to Certain Laws of Ukraine regarding the Uninterrupted Production and Supply of Agricultural Products during Martial Law" (Law No. 2246-IX) entered into force.*

Main changes:

- Cancellation until the end of martial law and for 90 days after its termination of state registration of agrochemicals imported into Ukraine, including certain types of nitrogen fertilizers, ammonium nitrates, ammonia in aqueous solution, thiosulphates, potassium, calcium and aluminium phosphates, borates, chelates of other mineral fertilizers.
- Cancellation of state registration for the production, sale, use and advertising of the above fertilizers.
- Simplification of phytosanitary requirements for export, import and movement of products of plant origin within Ukraine; in particular, it will now be possible to obtain a phytosanitary certificate in the electronic form.
- Also, during martial law and for 90 days after its termination or cancellation, the list of entities that may take samples and conduct phytosanitary examination is expanded, in particular, introducing a simplified authorization procedure for private laboratories and allowing their specialists to take samples.

*On 26.07.2022 the Resolution of the Cabinet of Ministers of Ukraine No. 818 came into force.*

Main changes:

- ***Registration of quarantine certificate regarding the reduction of cases where such a certificate is mandatory in the movement of agricultural products of plant origin and seeds in Ukraine. In particular, requirement to obtain quarantine certificate was abolished for movement of cargoes with imported seeds; quarantine certificate is obligatory only in case of export of plant products from quarantine zone and if such products can spread quarantine organism subject to quarantine regime.***
- ***Simplification of the procedure for reissuance of phytosanitary certificates required for export of agricultural products of plant origin, namely:***
  - ***for the reissuance of these certificates, the conclusion of phytosanitary examination (analyses) is not always necessary, but only in case of change of the country of cargo destination, provided that phytosanitary measures of such country require the absence of pests for which phytosanitary examination (analyses) was not conducted;***
  - ***nowadays 100% of phytosanitary examination is required for the issuance of a phytosanitary certificate;***
- ***The issuance of a phytosanitary certificate and a phytosanitary certificate for re-export in electronic form and not exclusively in paper form as it is today.***

Legal act:

Resolution of the Cabinet of Ministers of Ukraine "On certain issues of implementation of phytosanitary measures and procedures during martial law" No. 398 of 01.04.2022.

Law of Ukraine "On Amendments to Certain Laws of Ukraine regarding the Uninterrupted Production and Supply of Agricultural Products during Martial Law" No. 2246-IX of 27.05.2022.

***Resolution of the Cabinet of Ministers of Ukraine On amendments to the Order of inspection, examination, phytosanitary examination (tests), repeated phytosanitary examination (tests), supervision, inspection, monitoring, disinfection of regulated objects, registration of certificates, under the Law of Ukraine "On Plant Quarantine", control over inspection as regards sampling and sampling control over phytosanitary expertise (analyses) No. 818 of 26.07.2022***

### 3. Property and contractual issues

#### 3.1. Issue: Expropriation of property from citizens for the defence needs of the state

*Details:*

During martial law, property may be seized (expropriated) from citizens for the defence needs of the state. Such expropriation of property may take place solely upon the decision of the command of the AFU or upon the approval from the state administration. In this case the seizure of property is possible only with full compensation of its value, and the procedure itself must involve the execution of mandatory documents.

**The subject of the decision on seizure, expropriation** – the decision is made by the military command upon the approval from the regional, district or city state administration or the executive body of the local council. In areas where hostilities are taking place, the expropriation or seizure of property is carried out solely upon the decision of the military command without approval from the above-mentioned bodies.

**The legal execution is carried out by drafting an act** using the template approved by the Cabinet of Ministers of Ukraine. This act must be signed by the owner of the property or the legal representative of the owner and the authorised persons that approved such seizure, and sealed with the stamps of the military command and/or the said bodies. **The right of state ownership of the seized property is acquired from the date when the act is signed.** In order to ensure a fair assessment of the amount of compensation, a valuation must also be attached to the act on seizure. If it is not possible to engage valuation agents for property valuation, such valuation is conducted by state or local authorities upon the approval from the owner of the property. In case of refusal or absence of the owner of the property, the above-mentioned bodies have the right to carry out valuation on their own. However, such property valuation may be challenged in court.

Legal entities in communal and private ownership and individuals whose buildings, facilities, vehicles and other property have been expropriated for the needs of the state under martial law and, accordingly, their successors and heirs, are **entitled to compensation**. Compensation with a prior full reimbursement of its value is carried out by the military command or the body that took the decision on such expropriation, at the expense of the state budget – within the next five budgetary periods after the cancellation of the legal regime of martial law.

Prior full reimbursement of the value of expropriated property is made based on the valuation carried out at the time of expropriation. In order to obtain subsequent full compensation after the lifting of martial law, the former owner must submit to the Territorial Recruitment and Social Support Centre at the place of property expropriation an application, accompanied by an act and a document containing valuation of the property.



Persons who have been deprived of their homes as a result of circumstances related to the state of emergency, including emergency prevention or liquidation activities, are provided with residential premises in accordance with the law. Persons affected by emergencies, including during rescue operations, are reimbursed for material damage and provided with other necessary assistance on the terms and according to the procedure established by law.

*Legal act:*

Law of Ukraine “On Transfer, Expropriation or Seizure of Property in the Conditions of Martial Law or State of Emergency” No. 4765-VI of 17 May 2012

Law of Ukraine “On Mobilization Preparation and Mobilization” No. 3543-XII of 21 October 1993

Law of Ukraine "On the Legal Regime of State of Emergency" 1550-III of 16 March 2000

### ***3.2. Issue: Requisition of vehicles and equipment of enterprises, institutions and organisations during mobilisation***

*Details:*

During mobilisation, vehicles and equipment of enterprises, institutions and organisations irrespective of their ownership form may be requisitioned on condition that they are returned after the announcement of demobilisation.

- Territorial Recruitment and Social Support Centres (formerly the Military Commissariat) requisition vehicles and equipment within the limits approved by the Cabinet of Ministers of Ukraine, both separately and as part of special formations, which are transferred to military formations during mobilization.
- **Heads of enterprises, institutions and organizations ensure the delivery and transfer to military formations within the established time limits** at designated transfer points of vehicles and equipment in a technically sound condition with relevant registration documents and documents certifying their technical condition, as well as with spare parts, entrenching tool and refuelling equipment.
- Such requisition of vehicles and equipment during mobilisation **is executed** on the basis of a relevant Transfer and Acceptance Act. The Act must be drawn up in triplicate, sealed and signed by the head of the enterprise, the head of the Territorial Recruitment and Social Support Centre and the commander (head) of the military unit (subdivision), institution and organisation of the military formation to which the vehicle or equipment is transferred.
- The Act must contain the residual (book) value of the vehicle or equipment determined in accordance with the balance sheet data of the enterprise, institution or organisation drawn up as of the last reporting date (the last day of the quarter (year)).
- At the initiative and expense of the owner, an independent valuation of the property may be carried out by engaging a valuation agency.
- After the vehicles and equipment have been recorded at the relevant military unit (subdivision), institution, their institutional registration is carried out.
- The vehicles and equipment must be **returned** within 30 calendar days from the date of announcement of demobilization through Territorial Recruitment and Social Support Centres that requisitioned them.
- For the vehicles to be returned, the heads of enterprises must apply to the Territorial Recruitment and Social Support Centre at the place of requisition.
- The term and place of return are determined by the Territorial Recruitment and Social Support Centres and are communicated to the heads of enterprises.

- The scope of damage to vehicles and equipment resulting from requisition is determined when the property is prepared for return. The scope of damage is determined by a valuation agency or a forensic expert.
- Upon the return of the vehicles and equipment requisitioned during the mobilisation, an Act to that effect must be executed. An expert report (expert examination) or property valuation report ("property valuation act") must be attached to the Act.
- Legal entities of communal and private form of ownership whose property was requisitioned have the **right to compensation for the damage** caused to their vehicles and equipment. Compensation is paid from the state budget within the next five budget periods after the demobilisation and the return of the property.
- To receive compensation, the head of an enterprise must submit to the Territorial Recruitment and Social Support Centre at the place of requisition an application accompanied by the Transfer and Acceptance Act, (expert examination) or property valuation report.
- The Territorial Recruitment and Social Support Centre examines the application within 10 working days from the date of its submission.
- Based on the results of examination of the application, the Territorial Recruitment and Social Support Centre issues a report on the payment to compensate for the damage. The payments are made in the order in which the reports are issued.
- If property has been destroyed following its requisition during mobilisation, the owner of the property is compensated for the property damage determined on the basis of an independent valuation, as at the date of that valuation.
- Vehicles and equipment that have been destroyed as a result of being requisitioned during mobilization must be written off the companies' balance sheets. Disputes relating to the payment of compensation are to be resolved in courts.
- Legal entities, whose property and resources were used to prevent or eliminate situations that caused the state of emergency, must be reimbursed for the full value of property and resources in accordance with the procedure established by law.
- If the property expropriated from legal and natural persons is preserved after the lifting of the legal regime of the state of emergency, the former owner or the person authorized by the former owner has the right to demand the return of such property in court or to demand the provision of another property in its place, if it is possible.

*Legal act:*

Law of Ukraine "On Transfer, Expropriation or Seizure of Property in the Conditions of Martial Law or State of Emergency" No. 4765-VI of 17 May 2012

Law of Ukraine "On Mobilization Preparation and Mobilization" No. 3543-XII of 21 October 1993

Law of Ukraine "On the Legal Regime of State of Emergency" 1550-III of 16 March 2000

### ***3.3. Issue: Nationalisation of the property of the Russian Federation and its residents***

*Details:*

On 03.03.2022, the Law of Ukraine No. 2116-IX "On the basic principles of forcible seizure of property of the Russian Federation and its residents in Ukraine" was adopted. Pursuant to the law:

- property owned by the RF or its residents is subject to forcible seizure;
- property of the RF and its residents is seized without any compensation (reimbursement) of its value;

- decision on forcible seizure of the property of the RF and its residents in Ukraine is adopted by the National Security and Defence Council (“NSDC”) and enacted by the decree of the President of Ukraine;
- draft decision on forcible seizure of property objects of the Russian Federation and its residents must be submitted to NSDC by the Cabinet of Ministers of Ukraine;
- not later than within six months after cancellation or termination of martial law in Ukraine, the Decree of the President of Ukraine on forcible seizure of the objects of property rights of the Russian Federation and its residents in Ukraine must be approved by the Parliament of Ukraine by adopting respective law;
- the objects of property rights of the Russian Federation and its residents that have been forcibly seized are transferred into economic management on a temporary or permanent basis to a specialized state enterprise, which, if necessary, is created upon the decision of the Cabinet of Ministers of Ukraine;

Also, the Parliament of Ukraine adopted the Draft Law on Amendments to the Law of Ukraine "On Fundamental Principles of Forcible Seizure of Property of the Russian Federation and its Residents in Ukraine" on clarification of certain provisions (Draft Law № 7169 as of 15.03.2022) in order to expand the scope of the Law of Ukraine № 2116-IX. So far, this Law is awaiting the signature of the President of Ukraine and has not entered into force.

*Details:*

- “residents” involve Russian citizens and persons who are not Russian citizens but who have "the closest connection with the Russian Federation, in particular those who reside or have their main business there";
- “residents” also involve legal entities (their branches, representative offices) operating in Ukraine in accordance with the legislation of Ukraine:
  - a) the founder (member, shareholder) or beneficiary of which is directly or indirectly the Russian Federation and/or
  - b) in which the Russian Federation holds directly or indirectly a stake in the registered (share) capital, shares, participatory interest or any other membership (participation in any form) in a legal entity
  - c) or in which legal entities, where the Russian Federation is directly or indirectly a founder (member, shareholder) or a beneficiary, have a stake in the registered (share) capital, shares, participatory interest, other membership (participation in any form) in a legal entity.
- individuals or legal entities, regardless of their citizenship, place of residence, location or main activity, who publicly deny or support the Russian military aggression against Ukraine, the establishment of a temporary occupation in Ukraine and have not stopped their business activities in Russia during martial law, are also considered residents of an aggressor country upon a decision of the NSDC or a court.

*Legal act:*

Law of Ukraine No. 2116-IX of 03.03.2022 "On the Basic Principles of Forcible Seizure of Property of the Russian Federation and its Residents in Ukraine"

Law of Ukraine “On Transfer, Expropriation or Seizure of Property in the Conditions of Martial Law or State of Emergency” (Draft Law No. 7169 of 15.03.2022)

**3.4. Issue: Martial law as a ground for release from liability (force majeure)**

*Details:*

- Under Ukrainian law, a person who has breached an obligation is released from liability for the breach if the person proves that the breach was due to an accident or force majeure.
- Such force majeure circumstances include, but are not limited to: threat of war, armed conflict or serious threat of such conflict, including (but not limited to) enemy attacks, blockades, military embargoes, acts of foreign enemy, general military mobilisation, military actions, declared and undeclared war. Consequently, starting from 24 February 2022, when martial law was declared, the territory of Ukraine is subject to force majeure circumstances.
- The Ukrainian Chamber of Commerce and Industry (“UCCI”) has simplified the procedure for certifying force majeure and issuing certificates.
- Thus, in order to avoid overload and to accelerate the process, the UCCI posted on its official website a notification letter dated 28.02.2022 No. 2024/02/02.0-7.1 evidencing force majeure circumstances (force majeure): military aggression of the Russian Federation against Ukraine, which led to the imposition of martial law from 05:30 on February 24, 2022 for 30 days, according to the Decree of the President of Ukraine of February 24, 2022 № 64/2022 "On the imposition of martial law in Ukraine".
- Thus, UCCI certified the fact that the above circumstances from 24 February 2022 until their official end are extraordinary for business entities and/or individuals under contracts. Since the UCCI letter is addressed to an indefinite number of persons (marked "to whom it may concern"), it is sufficient to provide the counterparty with this letter, exempting the person from penalties in connection with the non-compliance with the terms of a contract from 24 February 2022.

*Legal act:*

Civil Code of Ukraine (Article 617)

Law of Ukraine "On Chambers of Commerce and Industry in Ukraine" (Article 141)

Notification Letter of the UCCI of 28.02.2022 No. 2024 / 02.0-7.1

## **4. Investments (peculiarities, incentives)**

### ***4.1. Issue: Activity of investors with significant investments***

*Details:* On 13.02.2021 the Law of Ukraine "On State Support for Investment Projects with Significant Investments in Ukraine" of 17 December 2020 No. 1116-IX entered into force.

On 28.03.2021 the following laws entered into force:

- The Law of Ukraine "On amendments to section 4 of chapter XXI "Final and transitional provisions" of the Customs Code of Ukraine regarding exemption from import duty of new equipment and its components imported to carry out an investment project with significant investments under special investment agreement" of 02.03.2021 No. 1294-IX
- The Law of Ukraine "On amendments to the Tax code of Ukraine regarding peculiarities of taxation of undertakings that carry out investment projects with significant investments in Ukraine" of 02.03.2021, No. 1293-IX.

*Key provisions of the Laws:*

An investor with significant investments means a legal entity registered in Ukraine, established specifically to carry out an investment project with significant investments, a party to a special investment agreement and the business activity of which is aimed exclusively at carrying out the

investment project with significant investments and the performance of the special investment agreement.

Significant investment projects are defined as projects with investments exceeding EUR 20 million, implementation period up to five years and creation of at least 80 new jobs with an average salary exceeding by at least 15% the previous year average salary for the equivalent type of activity in the region where the project is carried out.

The following spheres have been identified as priority areas for investment projects: processing industry, mining, waste management, transport, storage, postal and courier services, logistics, education, scientific and technical activities, health, art, culture, sport, tourism and recreation. Investment projects must involve the construction, modernisation, technical and/or technological re-equipment of investment objects in the said areas.

The state, in return, will provide support in the amount of up to 30% of the scope of the investment project, consisting of

- tax exemptions, i.e., money not paid to the budget as taxes will remain at the disposal of the investor;
- reimbursement of the value of related infrastructure necessary for the implementation of the investment project.

Law No. 1116-IX provides for a special government authorized institution in charge of supervising investment projects through investors for the whole duration of the project.

These Laws also provide for a number of tax incentives for investors making significant investments in Ukraine.

Such legal entities benefit from the tax exemptions:

**Exemption from VAT:**

- Until 1 January 2035 the operations of import of new equipment and its components to the customs territory of Ukraine by an investor with significant investments are exempt from VAT. This exemption is provided when such equipment and products are imported solely for the implementation of the investment project with significant investments to fulfil a special investment agreement (paragraph 76 of subsection 2, section 20 of the Tax Code of Ukraine);
- Subparagraph 15, paragraph 4, section XXI "Final and Transitional Provisions" of the Customs Code of Ukraine specifies the codes of goods under the UCG FEA, the import of which is exempt from VAT on the basis of the said rule. Such goods must be manufactured not earlier than three years prior to the date of their import into the customs territory of Ukraine and must not be used. The list and volume of the import of goods are approved by the Cabinet of Ministers of Ukraine together with the execution of a special investment agreement;
- The tax relief can be applied only within the period of implementation of the investment project and within the limits of the total volume of the state support determined by the special investment agreement and not used at the time of the customs clearance of goods;
- In case of misuse of goods or early termination of special investment agreement, an investor with significant investments must pay, in addition to tax liabilities for VAT, which should have been paid at the time of import, also penalty fee in accordance with the provisions of the Tax Code of Ukraine.

**Exemption from corporate income tax:**

- Until 01 January 2035, investors who are parties to a special investment agreement will be exempt from corporate income tax, provided that the profit is derived from the performance of such agreement;
- Exemption from corporate income tax may be applied for a period of five years and not before the commissioning of the object of an investment project;
- In order to be exempted, an investor must submit an application to the controlling authority at the place of registration concerning the exercise of the right to the exemption from corporate income tax;
- A prerequisite for the application of exemption from corporate income tax is the fulfilment of obligations by the investor with a substantial investment under a special investment agreement;
- The exemption does not apply to controlled operations performed by an investor within the framework of an investment project;
- The law provides for the determination of a separate taxable object and the application of a total tax rate to it.

**Land tax relief:**

- Until 1 January 2035 the law allows local self-government authorities to reduce land tax rates and rent for state and communally owned land or to exempt from land tax on land parcels used for the implementation of investment projects with significant investments;
- The law establishes limits on tax relief within the limits of the total amount of state support granted. Thus, when the amount of state support established by the terms of the special investment agreement is reached, tax relief ceases to apply and the investor pays taxes under the general procedure.

**State guarantees:**

- The state guarantees the stability of the conditions of business activities during the implementation of investment projects with significant investments carried out on the basis of special investment agreements, observance of the rights and legitimate interests of applicants and investors with significant investments, fulfilment of its obligations to provide investors with significant investments with state support in the form and scope determined by the Law and the special investment agreement;
- The rights and obligations of an investor with significant investments established by a special investment agreement are subject to the legislation of Ukraine in force on the date of execution of the special investment agreement (except for the legislation that reduces or eliminates taxes or levies, simplifies regulation of business activities, relaxes the procedures of state supervision (control) in the field of business activities, lessens the liability of an investor with significant investments or otherwise improves the position of an investor with significant investments, which must be applied from the date of entry into force of such legislation);
- Business activities of an investor with significant investments during the implementation of an investment project with significant investments may be suspended in whole or in part in the manner prescribed by law. As soon as an investor with significant investments eliminates the conditions that led to the suspension of its activities in full or in part, its activities are to be restored in full;
- If state or local self-government authorities adopt decisions that violate the rights of an investor with significant investments, the damage caused to the investor as a result of such decisions must be reimbursed by such authorities in accordance with the law.

**Applicable law and dispute resolution:**

- A special investment agreement is governed by Ukrainian law, unless otherwise provided by the agreement;
- Parties to a special investment agreement are free to choose a dispute resolution mechanism, including recourse to a court in Ukraine, mediation, non-binding expert evaluation, national or international commercial or investment arbitration, including arbitration seated abroad (if an investor with significant investments is an entity with foreign investments within the meaning of the Law of Ukraine "On the Regime of Foreign Investments"), and procedural rules for dispute resolution, unless otherwise provided for by law.

*Resolution of the Cabinet of Ministers of Ukraine No. 515 of 19.05.2021 approved the Requirements for feasibility studies of investment projects with significant investments.*

This document outlines general requirements for the design and submission of a feasibility study of an investment project with significant investments and requirements for the content of the feasibility study.

*Resolution of the Cabinet of Ministers of Ukraine No. 647 of 23.06.2021 approved the Procedure for interaction between the authorized institution and applicants, investors with significant investments, state authorities, local authorities on the issues related to the support of the preparation and implementation of investment projects with significant investments.*

This Procedure determines the mechanism of interaction between the authorised institution and applicants, investors with significant investments, state authorities, local authorities on issues related to support of preparation and implementation of investment projects with significant investments, in accordance with the Law of Ukraine "On State Support for Investment Projects with Significant Investments in Ukraine".

*Resolution of the Cabinet of Ministers of Ukraine No. 648 of 23.06.2021 approved the requirements for an applicant regarding financial capacity to implement an investment project with significant investments.*

These requirements do not apply to projects implemented in accordance with the Procedure for preparation, implementation, monitoring and completion of projects of economic and social development of Ukraine supported by international financial institutions, approved by the Resolution of the Cabinet of Ministers of Ukraine No. 70 of 27 January 2016.

The applicant must meet all the criteria of the applicant's financial capacity for the implementation of an investment project determined by these requirements, namely:

- the criterion of equity sufficiency;
- the criterion of sufficiency of net operating cash flow;
- the criterion of availability of sources of financing to cover significant investments.

The minimum values for these criteria are set taking into account the size of significant investments in investment objects during the term of an investment project.

Compliance with the criteria for applicant's financial capacity to implement an investment project is demonstrated by submitting as a part of an application relevant documents in paper form to the Ministry of Economy or in electronic form using the Unified State Web Portal of Electronic Services (if technically possible).

The requirements also establish a list of documents to be submitted by the applicant:

1) a certificate containing the list of legal entities that submit the application, indicating in particular their full name, information on the registration of the legal entity, information on the authorised persons, contact information for each legal entity submitting the application;

- 2) a certificate containing the list of applicant's shareholders (members) holding more than 5 per cent of shares (stakes) in the applicant's authorised capital, related companies and beneficial owners, as well as ownership structure of the applicant submitting the application;
- 3) copy (copies) of audit report, prepared by the auditor, based on the audit of financial statements, which complies with the requirements for auditors of the applicant specified in paragraphs 25 and 26 of these requirements, financial statements of the applicant for the last fiscal year or penultimate fiscal year (in the absence of audit results for the last fiscal year), prepared in accordance with national regulations (standards) of accounting or international standards of accounting. In addition, the applicant must in any case submit the financial statements for the last fiscal year, including in the absence of the results of the audit of the financial statements for the last fiscal year;
- 4) letter of confirmation from the auditor regarding compliance with the requirements for the auditor of the applicant set out in paragraphs 25 and 26 of these requirements;
- 5) letter of intent (letters of intent) from bank(s) meeting the requirements of bank reliability specified in paragraphs 27-29 of these requirements, or from the International Finance Corporation, European Bank for Reconstruction and Development, European Investment Bank and governmental financial institutions set up by the government(s) of foreign country(countries), expressing readiness to provide financing to the applicant in the amount sufficient for implementation of investment project, where the applicant intends to finance part of the significant investments in the object of investment with borrowed funds or a letter of confirmation from the International Finance Corporation, the European Bank for Reconstruction and Development, the European Investment Bank and the governmental financial institutions set up by the government(s) of foreign country (countries), confirming the conclusion between the applicant or the investor with significant investments and the relevant international financial institution of a loan agreement for the implementation of an investment project with significant investments. These letters must be effective for at least 24 months from the date of application;
- 6) bank statement(s) or other document(s) confirming the availability of funds or respective liquid assets;
- 7) a certificate of compliance with all criteria to the applicant with reference to relevant supporting documents and information in them, as well as calculation of indices indicating sources of obtaining information confirming such compliance. Such certificate must be signed by an authorised person of an applicant or, where several legal entities apply together, the certificate must be signed by the authorised persons of all the legal entities applying together.

In addition to the aforementioned documents, the applicant that is a legal entity registered in a foreign state must submit:

- 1) a copy of an official document issued by the competent authority of the foreign state where the applicant is registered or the person carrying out organisational support confirming the applicant's legal status;
- 2) a copy of the certificate of incorporation or another similar document (e.g., an extract from the trade register or an extract from the company register).

*Legal act:*

Law of Ukraine "On State Support for Investment Projects with Significant Investments in Ukraine" of 17.12.2020 No. 1116-IX.

Law of Ukraine "On amendments to section 4 of chapter XXI "Final and transitional provisions" of the Customs Code of Ukraine regarding exemption from import duty of new equipment and its components imported to carry out an investment project with significant investments under special investment agreement" of 02.03.2021 No. 1294-IX.



Law of Ukraine "On amendments to the Tax Code of Ukraine regarding peculiarities of taxation of undertakings that carry out investment projects with significant investments in Ukraine" of 02.03.2021 No. 1293-IX.

Resolution of the Cabinet of Ministers of Ukraine "On approval of the Requirements for feasibility studies of investment projects with significant investments" of 19.05.2021 No. 515

Resolution of the Cabinet of Ministers of Ukraine "On approval of the Procedure for interaction between the authorized institution and applicants, investors with significant investments, state authorities, local authorities on the issues related to the support of the preparation and implementation of investment projects with significant investments" of 23.06.2021 No. 647

Resolution of the Cabinet of Ministers of Ukraine "On approval of the Requirements for an applicant regarding financial capacity to implement an investment project with significant investments" of 23.06.2021 No. 648

Resolution of the Cabinet of Ministers of Ukraine "On approval of the methodology for calculating the scope of state support for the implementation of an investment project with significant investments" of 07.07.2021 № 714.

## **5. Administration of justice**

### ***5.1. Issue: Operation of Ukrainian courts during martial law***

*Details:*

According to Article 26 of the Law of Ukraine " On the legal regime of martial law" the reduction or acceleration of any form of judicial proceedings under martial law is prohibited. That is, martial law does not formally halt the administration of justice.

On 24.02.2022 the Council of Judges of Ukraine adopted the decision "On taking urgent measures to ensure stable functioning of the judiciary in Ukraine under the conditions of termination of the powers of the High Council of Justice and martial law in connection with the military aggression by Russia", which in particular resolved that: in case of threat to health, life and security of court visitors and employees, the administration of justice by a particular court may be suspended until the elimination of circumstances that caused such danger.

On 02.03.2022, the Council of Judges of Ukraine published guidelines for the operation of courts during martial law, stating in particular that:

- the peculiarities of the operation of a court must be determined on the basis of the current situation in the region concerned;
- when determining the working conditions of a court during wartime, the real current circumstances in the region should be taken into account;
- all available court staff should, where possible, work remotely;
- the minimum number of persons who must be in the courthouse during the working day is determined. The shift work of judges and court officials is arranged;
- citizens are informed of the possibility of adjourning court hearings due to military operations and of the possibility of holding court hearings via videoconference;
- access to court hearings by persons not taking part in the proceedings is restricted;
- consideration of cases is adjourned whenever possible (with the exception of urgent hearings) due to the fact that many litigants cannot file an application for adjournment or cannot come to court due to danger to life;

- cases that are not urgent are heard only with the written consent of all participants in the proceedings;
- procedural time limits are extended, if possible, at least until the end of martial law;
- the focus is solely on urgent proceedings (taking into custody, extension of custody);
- If, due to objective circumstances, a participant in the proceedings is unable to attend the hearing, the court may allow that participant to participate via videoconference using that participant's own technical means;
- if proceedings are heard collegially and a panel of judges cannot meet in one room, cases may be heard from different court facilities, including using their own technical means.

On 07.03.2022 the Law of Ukraine "On amendments to part seven of Article 147 of the Law of Ukraine "On the Judiciary and the Status of Judges" regarding determination of the territorial jurisdiction over court cases" came into force. The amendments to part seven of Article 147 of the Law provide for the possibility to ensure proper functioning of the judiciary in case of extraordinary circumstances. In particular, the law provides that due to a natural disaster, hostilities, counter-terrorism measures or other extraordinary circumstances, the operation of a court may be discontinued with simultaneous determination of another court that will administer justice in the territory of the court whose operation was discontinued and that is geographically the closest to the court whose operation was discontinued or to another designated court, upon the decision of the High Council of Justice made upon the proposal of the Head of the Supreme Court, or, if the High Council of Justice is unable to exercise its powers, upon the order of the President of the Supreme Court.

The Supreme Court has issued more than 15 orders changing the territorial jurisdiction of courts under martial law in Kharkiv, Donetsk, Luhansk, Kherson, Chernihiv, Zhytomyr, Zaporizhzhia, Kyiv and other regions, but some courts have already resumed jurisdiction.

*Additional information:*

- the State Judicial Administration of Ukraine is responsible for compiling a list of temporarily non-operational courts that can be found on the official website of the administration: <https://dsa.court.gov.ua/dsa/>;
- the order of the President of the Supreme Court on the change of territorial jurisdiction due to the impossibility to administer justice during martial law is published on the official website of the SC: <https://supreme.court.gov.ua/supreme/>;
- it is recommended to send correspondence to the courts via "Ukrposhta" and/or the "e-Court" system;
- information on the status of cases can be obtained by calling the unified contact centre of the judiciary of Ukraine.

*Legal Act:*

Law of Ukraine "On the Legal Regime of Martial Law" (Article 26).

Decision of the Council of Judges of Ukraine "On taking urgent measures to ensure stable functioning of the judiciary in Ukraine under the conditions of termination of the powers of the High Council of Justice and martial law in connection with the military aggression by Russia".

Law of Ukraine "On Amendments to the Law of Ukraine "On the Judiciary and the Status of Judges" regarding changing the jurisdiction of courts (Draft Law No. 7117).

Order of the President of the Supreme Court of 06.03.2022 No. 1/0/9-22 "On change of territorial jurisdiction over court cases under martial law", of 08.03.2022 No. 2/0/9-22, of 25.03.2022 No. 14/0/9-22, of 04.04.2022 No. 15/0/9-22, of 06.04.2022 No. 16/0/9-22, of 08.04.2022 No. 17/0/9-22, of 21.04.2022 No. 18/0/9-22, of 21.04.2022 No. 24/0/9-22, of 22.04.2022 No. 25/0/9-22, of 29.04.2022 No. 26/0/9-22, of 04.05.2022 No. 27/0/9-22, of 05.05.2022 No. 28/0/9-22, of 10.05.2022 No. 29/0/9-



*22, of 05.07.2022 No. 36/0/9-22; of 12.07.2022 No. 37/0/9-22; of 22.07.2022 No. 40; of 25.07.2022 No. 41; of 25.07.2022 No. 42.*



This Report has been prepared by the Ukrainian non-governmental organization Ukrainian Advocates Association, based on the legislation as of May 31, 2022, within the support and cooperation with the Ministry of Foreign Affairs of Ukraine and the assistance of the General Partner of the Association – EQUITY Law Firm.

**Ukrainian non-governmental organization Ukrainian Advocates Association** is an all-Ukrainian public non-profit organization founded on the basis of professional affiliation and uniting lawyers for assistance in development and strengthening of the institute of advocacy in Ukraine, increasing the level of legal assistance, the role and authority of bar in the society and satisfaction and protection of rights and legitimate interests of Association members. The Advocates Association has over 5.5 thousand members from all over Ukraine, who joined together on a voluntary basis to improve the level of protection of rights and legitimate interests of Ukrainian people.

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Since the beginning of the war the Association appealed, on behalf of thousands of its members, to international companies to cease their economic activities in Russia; to the Verkhovna Rada of Ukraine, the Cabinet of Ministers of Ukraine and the National Bank of Ukraine to facilitate the voluntary financing of the Ukrainian army, territorial defense and civil protection; and together with other organizations representing the Ukrainian legal community appealed to lawyers from all over the world, in particular, directly to the 152 states that have signed the Convention on the Prevention and Punishment of the Crime of Genocide, about the obligation of these states to immediately intervene and stop the genocide.

**The EQUITY Law Firm** is a national leading law firm that has extensive experience in the areas of judicial dispute resolution, banking, finance, administrative, customs and corporate law, criminal procedure, white-collar crime and other practices of judicial (procedural) protection of clients confirmed at the international and national level. Thus, for the second year in a row the Company is among the top 5 law firms according to the rating "Top 50 Law Firms of Ukraine", occupies the top positions at the team and individual level in its specialized practices according to the research "Ukrainian Law Firms: a Handbook for Foreign Clients", "Best Lawyers", "Who is Who Legal", "Chambers Europe", "Legal 500" and others.

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