

# Ukraine Banking and Finance Regulatory Newsletter

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Welcome to the Ukraine Banking & Finance Regulatory Newsletter, which gives you a selection of key developments in the Ukraine financial market during the last year, including further reforms, currency liberalizations and new perspectives.

In this issue:

- Key supervisory priorities and work programs
- Recent supervisory trends and developments

We hope you enjoy this edition and wish you a great start to the year! Please stay tuned to our periodic banking and finance updates.

## Key supervisory priorities

### **The comprehensive program of Ukrainian financial sector development until 2025 ([link](#))**

The Comprehensive Program of Ukrainian Financial Sector Development Until 2025 approved by the National Bank of Ukraine (the “NBU”), the National Securities and Stock Exchange Commission (the “NSSMC”), the Ministry of Finance of Ukraine, the Deposit Guarantee Fund and the Financial Services Commission (ceased to exist) in 2020 remains relevant in 2021.

According to the program, progress should be made in the following five areas:

- Ensuring financial sector stability
- Macro-economic development
- Financial inclusion
- Financial markets development
- Innovative development

The program contains the status of implementation of actions under the program and a road map for further actions.

### **Fintech development strategy of the NBU until 2025 (the “Strategy”) ([link](#))**

Based on the above Strategy, in July 2020 the NBU approved the mid-term strategy of development of the fintech sector in Ukraine until 2025. In particular, this document structures and details the trends and directions of financial

innovation development for the next five years.

The key elements of the fintech strategy:

- Development and implementation of the concept of a full-fledged regulatory "sandbox" for rapid testing of innovative projects;
- Raising the level of financial awareness and involvement (inclusion) of the population and business;
- Launching an academic base with a focus on outdoor banking.

The implementation of the Strategy will also largely depend on the implementation of related digital projects, including: the introduction of remote identification and verification; implementation of the European directive PSD2; granting of an opportunity of realization of instant payments from one account to the account in the System of Electronic Payments in the 24/7 format; strengthening the regulatory perimeter in the field of cybersecurity and other innovative projects.

## Capital markets developments

**The Ukrainian parliament passed the Law “On Introduction of Amendments into Certain Laws of Ukraine regarding the Attraction of Investments and Introducing of New Financial Instruments” (the “Capital Markets Law”) (link)**

Most of the provisions of the Capital Markets Law are to enter into full force and effect on July 1, 2021, however, certain provisions (for example, such as governing the close-out netting, settlement finality under derivatives and securities transactions, etc.) became effective on August 16, 2020.

The Capital Markets Law aims to address the key fundamental provisions of the EU legal framework (MiFID II, MiFIR, EMIR, FCAD, SFD and MAR).

Among the key novelties of the Capital Markets Law are the following:

- **Updated capital market infrastructure model**

Under the Capital Markets Law, trading activities, instead of taking place in stock exchanges, as currently, will be carried out in organized capital markets, including:

- 1) **Regulated markets.** In a regulated market will be traded securities, derivatives and FX assets pursuant to its non-discretionary rules. Given its nature, a regulated market should serve as a trading platform for major business.
- 2) **Multilateral Trading Facilities (“MTFs”).** Pursuant to MTFs’ non-discretionary rules, securities and derivatives will be traded at MTFs. MTFs should serve as a trading platform for medium-sized and small businesses.
- 3) **Organized Trading Facilities (“OTFs”).** Pursuant to OTFs’ discretionary rules, non-equity securities, specifically – bonds and derivative contracts – will be traded at OTFs.

The Capital Markets Law also restates the Law of Ukraine “On Commodity Exchange”. According to this law, commodity exchanges would operate based on the respective license (the licensing requirements are expected to be adopted by the NSSMC).

The Capital Markets Law introduces the concept of a **trade repository**. A trade repository would consolidate information on derivative transactions and keep records as to the concluded derivative contracts.

Also an updated model of a **clearing system** of the capital markets is introduced, whereby the clearing activities are divided into:

- Clearing activities related to determining liabilities; and
- Clearing activities of the central counterparty.

Settlements under agreements concluded at the regulated market and MTF (if such obligation is provided by the MTF rules) are made exclusively through the central counterparty.

- **New instruments on capital markets**

The Capital Markets Law introduces a wide range of financial instruments, which now include options, futures, swaps, forwards and other **derivative contracts**, the underlying assets of which are products, securities, currencies, rates, yields, exchange rates, etc. Also money market instruments are defined by the Law.

Moreover, the list of securities is expanding; in particular, option certificates, stock warrants, credit notes, and depository receipts have been introduced. The Capital Markets Law also presents such new types of securities as green bonds and infrastructure bonds.

- **Derivative contracts**

The derivative contracts are divided into:

- Delivery contracts (which provide for delivery of the underlying asset);
- Settlement contracts (which provide for settlements between the parties depending on a value of the benchmark); and
- Mixed contracts (which provide for the possibility of settlements, both via delivery of the underlying asset and settlements).

By type of the underlying asset, the following derivative contracts are envisaged:

- Money market derivative contracts;
- Commodity derivative contracts;
- Stock derivative contracts; and
- Other derivative contracts.

The Capital Markets Law defines that the list of derivative contracts presented therein is not exhaustive and provides for the possibility of the NSSMC to establish other types of derivative contracts.

It is expected that the Capital Markets Law will provide a possibility to use standardized ISDA documentation as well as other standardized documentation, in particular, GMRA and GMSLA, when concluding derivative contracts, in particular with non-residents of Ukraine.

- **Close-out netting**

The Capital Markets Law introduces the concept of close-out netting into the Ukrainian legal framework. Relevant amendments were also introduced into the Bankruptcy Code of Ukraine.

Starting from August 16, 2020, the close-out netting mechanism is provided for securities derivatives and starting from

July 1, 2021, close-out netting will become effective for a wide range of derivative contracts.

- **Investment firms**

On the basis of the relevant license, investment firms may carry out professional activities related to trading in financial instruments, the list of which has been expanded and includes:

- Sub-brokerage activities;
- Brokerage activities;
- Dealer activity;
- Financial instruments portfolio management activities;
- Investment consulting;
- Underwriting and/or placement with issuance of guarantees; and
- Placements without issuance of guarantees.

Each type of trading with financial instruments is carried out on the basis of a respective license issued by the NSSMC.

- **The concept of qualified and institutional investors was introduced**

The Capital Markets Law establishes a separate category of investors in the capital markets - qualified investors. The qualified investors may independently assess risks and enter into transactions with financial instruments.

The list of **qualified investors** includes:

- International financial organizations;
- Foreign countries and their central banks;
- The State of Ukraine represented by the Ministry of Finance of Ukraine and the National Bank of Ukraine;
- Professional participants in capital markets and organized commodity markets, banks and insurance companies; and
- Foreign financial institutions, legal entities that meet the special criteria set by the NSSMC.

The Capital Markets Law also establishes the concept of **institutional investors** – entities/persons that carry out transactions with financial assets in the interests of third parties. The list of institutional investors includes:

- Mutual investment institutions;
- Investment funds;
- Mutual funds of investment companies;
- Private pension funds;
- Banking management funds;
- Insurance companies; and

- Other financial institutions.
- **Improvement of the requirements for combating abuses in the capital markets, prevention of market manipulation and misuse of insider information**

In particular, the key novelties include:

- Defining insider information and establishing a list of actions that the persons who possess such information are prohibited to take;
- Enabling capital market participants to provide market sounding; and
- Expanding the list of actions qualifying as manipulation in the capital markets.

The implementation of the regulation in line with the Capital Markets Law is in the pipeline for the NSSMC.

## Fintech and digitalization initiatives and developments

### Draft Law “On Payment Services” (link)

On November 12, 2020, the Ukrainian parliament registered the draft Law “On Payment Services” (the “ **Draft Law on Payment Services**”), which will regulate payment services, e-money transactions and the payment infrastructure in Ukraine. In particular, the Draft Law on Payment Services implements provisions that are designed to unify the legislation of Ukraine with the Second Payment Directive (PSD2) and the Electronic Money Directive (EMD).

The Draft Law on Payment Services is waiting for its adoption by the parliament.

Under the Draft Law on Payment Services, the following changes are introduced, among others:

- The Draft Law on Payment Services distinguishes seven financial payment services. Financial services may be provided by duly licensed institutions registered with the register of payment infrastructure which is maintained by the NBU;
- It introduces two new types of non-financial payment services: (i) initiation of payment operations and (ii) provision of consolidated information on the accounts;
- No license will be required for rendering non-financial payment services and the registration with the State Registry of Financial Institutions will suffice;
- Certain financial institutions would be automatically authorized to provide payment, on the basis of the basic license for provision of financial services (depending on the type of services, on a temporary or permanent basis);
- Non-banking institutions would be entitled to provide certain payment services, which currently can be provided only by banks (e.g. issuance of payment cards and e-money, opening of current bank accounts). Also, certain payment services may be rendered by so-called providers of "limited payment services", e.g., telecom and internet providers, etc;
- The requirement of membership in a payment system as a prerequisite for rendering payment services will be lifted and such a participation will be voluntary;
- The Draft Law on Payment Services implements the concept of open banking, which previously did not exist on the

Ukrainian market. The concept provides that Ukrainian banks and other providers of payment services shall grant access to their data to new market participants (so-called account information service providers and payment initiation service providers) authorized by the NBU. Open banking requires enhanced approaches to data security standards, which are also covered by the draft law.

It is expected that the new payment system infrastructure based on international standards (ISO 20022) will bring the Ukrainian payment market to a new level of development, encourage competition among market participants and, thus, ensure provision of customized client-oriented services.

### **Draft Law “On Financial Services” (link)**

In view of the NBU receiving supervisory powers over non-banking financial institutions, and considering the high market demand for the replacement of the outdated regulation on financial services, the new draft Law “On Financial Services and Rendering Financial Services” (the “Draft Law on Financial Services”) was designed. Currently it is under review in the relevant committee of the Parliament of Ukraine.

Besides setting a general legal framework for the industry, the Draft Law on Financial Services also provides a framework related to the activity of fintech firms.

In particular, the Draft Law on Financial Services distinguishes between financial services and subsidiary services such as agent services and ancillary services (i.e. consulting, information services, identification and verification of customers, collection and analysis of documents, data processing, etc.). Such service providers may be subject to registration pursuant to the NBU regulations.

In addition, the Draft Law on Financial Services allows the NBU or NSSMC (as applicable) to apply a simplified authorization procedure for legal entities that intend to provide financial and subsidiary services by using innovative technologies and instruments, without the need to obtain a license (for a term up to two years) and establishes specific procedures for their business activity.

Among other things, the Draft Law on Financial Services defines both “outsourcing” and “outstaffing”. It indicates that a financial company can outsource certain types of its activity, processes and functions. In order to outsource certain services a financial service provider will need to inform the regulator about its intention to outsource certain processes and/or functions and enter into an outsourcing agreement in compliance with the requirements of the regulator. The detailed requirements and procedures for outsourcing/outstaffing are yet to be developed. It is expected that the changes will provide regulatory certainty, give another push for collaboration between banks and fintech firms, and generally support the development of fintech in the Ukrainian financial market.

### **Draft Law “On Virtual Assets” (link)**

On September 16, 2020, the draft Law “On Virtual Assets” (the “Draft Law on Virtual Assets”) was registered in the Parliament of Ukraine. The Draft Law on Virtual Assets has been adopted in the first reading by the parliament and now is waiting for the second reading.

The Draft Law on Virtual Assets aims to establish legal certainty for virtual assets in Ukraine.

Virtual asset are defined as a separate category of intangible benefits; there are, however, some contradictory provisions that need to be addressed.

The Draft Law on Virtual Assets envisages the following types of intermediary services:

- Virtual assets exchange;
- Virtual assets transfer;

- Custody and administration of virtual assets and virtual asset keys; and
- Financial services related to public offer and/or sale of the financial virtual assets.

Under the Draft Law on Virtual Assets, intermediary services providers in order to provide the aforementioned intermediary services have to be registered with the Ministry of Digital Transformation of Ukraine.

The intermediary services providers are subject to compliance with the AML legislation.

### **Promotion of BankID in Ukraine (link)**

On March 17, 2020, the NBU adopted Resolution No.32 “On Approval of Regulation on the BankID System of the NBU” (the “**BankID Resolution**”) in order to further develop a remote identification system. The BankID Resolution replaced the former Resolution No.378 approved back in 2016 and introduced a number of novelties.

By way of background, the main purpose of creating BankID in Ukraine is to provide reliable and convenient user identification for the provision of administrative, banking and other services via the Internet on special portals.

The system provides for online requests from service portals to the banking system of a particular bank and performs data transfer in an encrypted form. All requests go exclusively through the central node BankID of the NBU.

In order to benefit from the BankID identification system, a customer should be a client of a bank connected to the BankID system and the service provider should be connected to the same BankID system.

The NBU created a special authority controlled by the NBU – the Council – which will be responsible for general management and coordination of the BankID System, developing target regulations and monitoring their implementation.

In order to promote development of BankID, the BankID Resolution allows Ukrainian banks that participate in the NBU’s BankID verification system to receive fees from the commercial services providers for authenticating their clients (as the banks will be performing identification of their clients).

## **COVID-19 regulatory response**

### **The Law of Ukraine “On Amendments to Certain Legislative Acts Aimed at Ensuring Additional Social and Economic Guarantees Connected to the Spread of Coronavirus Disease (COVID-19)” (the “COVID Law”)**

The COVID Law introduced several anti-crisis measures to mitigate the negative impact of the COVID-19 pandemic, which include, among others:

- Prohibiting the raising of interest rates under loan agreements;
- Possibility to conduct distance shareholders’ meetings for securities market participants.

On April 16, 2020, the NSSMC, pursuant to the COVID Law, adopted the Temporary Regulation on Convening and Remote Holding of General Shareholders’ Meetings and General Meetings of Participants of Corporate Investment Funds. The regulation stipulates the procedure by which joint stock companies and corporate investment funds can convoke and hold remote general meetings during the COVID-19 pandemic.

For more information in English, please click [here](#).

For the full text of the COVID Law in Ukrainian, please click [here](#).

# Currency control liberalization

## **The NBU allowed non-resident banks to purchase and sell foreign currency by using Ukrainian Hryvnia ([link](#))**

Starting February 8, 2020, the NBU enabled foreign banks to carry out hryvnia settlements for FX deals with other foreign banks under agreements concluded outside of Ukraine using their correspondent accounts in Ukrainian banks.

Additionally, foreign banks have been allowed to enter into agreements with Ukrainian banks to buy and sell foreign currency for hryvnias.

## **The NBU relieves FX requirements for FX forward transactions ([link](#))**

Starting from January 17, 2021, the NBU eases FX requirements for FX forward transactions for clients (both international and local) of Ukrainian banks.

Now, local and foreign clients of Ukrainian banks can enter into forward contracts with Ukrainian banks to sell foreign currency and purchase UAH.

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