Ukraine: New Currency Law and Regulatory Framework Effective As Of 07 February 2019

January 23, 2019


To implement the new Currency Law, on 2 January 2019 the National Bank of Ukraine (NBU) adopted a number of regulations that will come into force concurrently with the Currency Law (the “NBU Regulations”).

New currency regulation framework

The Currency Law is designated as the main legislative act in Ukraine in the currency regulation sphere. Its provisions should have priority over all other laws and regulations covering currency regulation issues.

The Currency Law introduces the “everything is allowed, unless expressly forbidden” principle vs the former “everything is forbidden, unless expressly allowed” principle for cross-border currency transactions. Any ambiguous provisions in the Currency Law and the NBU Regulations should be interpreted in favour of companies (individuals) which perform currency transactions.

A number of currency restrictions are lifted

Subject to introduced anti-crisis measures (see below), the Currency Law and NBU Regulations lift a number of currency restrictions, in particular:

- Individual licences of the NBU for cross-border transactions (i.a., foreign investments, placing money on foreign accounts, making cross-border FX payments, cross-border payments under suretyships securing loans to foreign borrowers, etc.) are cancelled. Instead the new “E-Limits” system (see below) is introduced.

- Cross-border loans no longer need to be registered with the NBU. Instead, servicing banks should notify the NBU about the executed cross-border loan agreements before effecting any payments outside Ukraine.

- The requirement to provide in a cross-border loan agreement (or amendments to it) that it comes into force upon its registration with the NBU is also cancelled.

- The NBU maximum interest rate cap is cancelled. Instead, a Ukrainian servicing bank is required to monitor if payments under cross-border loans are at arm’s length. According to the NBU’s guidelines, servicing banks should take into account the following indicators:
  - the cost of financing, established on world markets (e.g., LIBOR, loan rates of central banks of other countries, where the lender is registered etc.);
  - the margin, which should correspond to the sovereign risk rate of Ukraine and the individual risk rate of a particular
borrower; and

- interest rates under sovereign eurobonds of Ukraine (for intra-group loans).

The list of indicators is neither exhaustive, nor mandatory, which allows a Ukrainian servicing bank to introduce its own indicators.

- The prohibition on early repayment under cross-border loan agreements, as well as the limitation on purchasing foreign currency for making payments under cross-border suretyships are lifted.

### Anti-crisis measures

At the same time, the NBU introduced a number of anti-crisis measures, in particular:

- The maximum term for repatriation of goods export proceeds (delivery of pre-paid import goods) to Ukraine – 365 days (previously – 180 days);

- Mandatory conversion of 50% FX proceeds into UAH (subject to certain exceptions);

- Purchasing foreign currency can only be made for fulfilling obligations in foreign currency. The list of documents to be submitted to the bank for FX purchases is partially determined by the NBU Regulations and can be supplemented by the servicing bank upon its discretion;

- Prohibition for set-off under goods export-import contracts;

- Prohibition to purchase foreign currency for UAH funds, received as a loan;

- Subject to certain exceptions, the prohibition to purchase foreign securities;

- Paying dividends for 2018 on wards are prohibited;

- Introduction of limitations for certain cross-border payments and “E-Limits” system (see below).

#### Cross-border payment limitations and the E-Limits system

Under the NBU’s anti-crisis measures the following limits for purchasing FX, certain cross-border payments/ payments in UAH to non-resident bank accounts opened in Ukraine ("limits") are introduced:

**Legal entities:**

- €7 million per month (in equivalent) – dividends payments for periods until 2017 (inclusive);

- €5 million per month (in equivalent) – payments for shares, other securities, reducing of or exit from the charter capital of a Ukrainian company; and

- €2 million per year (in equivalent) – all other cross-border payments, unless exceptions apply (i.a., payments under import-export contracts, loan agreements and security documents, agreements with international financial institutions, etc.).

**Individuals:**

- €50,000 per year (in equivalent) – payments under life insurance policies, foreign investments/placing funds on foreign bank accounts.
The limits will be monitored by the NBU through the "E-Limits" electronic system. Each servicing bank would have to check with NBU for compliance of the respective cross-border payment with established limits.

**FX Risks Hedging Allowed**

Under the NBU anti crises measures:

Borrowers are allowed to purchase and accumulate foreign currency on their bank accounts for making payments under cross-border loans for the entire term of the loan.

Residents are allowed to conclude forward and swap contracts with banks for hedging their currency risks under export-import contracts and cross-border loans.

**New bank accounts for non-residents**

Non-residents are allowed to open bank accounts in Ukrainian banks (in both UAH and foreign currency), which can be used for a wide range of transactions (i.a., import-export payments, lending, debt/security enforcement, etc.).

Previously, only investment accounts were available, which could be used for only a limited range of transactions.

**Currency oversight**

Ukrainian servicing banks will be required to carry out currency oversight in respect of any currency transactions which exceed UAH 150,000 (approx. €4,700).

Ukrainian servicing banks will be allowed to request documents from their clients related to the currency transaction and will be responsible for the compliance of the currency transaction with Ukrainian currency legislation. Any transaction in breach of the Ukrainian currency regulations should be blocked by the servicing bank.

Ukrainian servicing banks would be required to carry out additional check in respect of payment transactions demonstrating indicators of suspicious transaction such as, inter alia, ones where the substance of the transaction does not comply with the core business of the client, payments under cross-border loans are not at arm’s length, or in the case of payments under suretyships or in other cases that may be determined by a Ukrainian bank at its discretion. Based on the results of such a check, a Ukrainian bank may refuse to effect the transaction.

The Currency Law as well as the NBU Regulations are new and we expect that further clarifications from the NBU may follow.

**Source:** Law of Ukraine "On Currency and Currency Transactions" No. 2474-VIII dated 21 June 2018.

Resolution of NBU No. 1 dated 02 January 2019 "On Approval of Regulation On Foreign Currency Market of Ukraine Structure, Terms and Order for Foreign Currency and Banking Metals Trading on Foreign Currency Market of Ukraine".

Resolution of the NBU No. 2 dated 02 January 2019 "On Approval of Regulation On Currency Transactions".

Resolution of the NBU No. 3 dated 02 January 2019 "On Approval of Regulation On Currency Cross-Border Transfer".

Resolution of the NBU No. 4 dated 02 January 2019 "On Approval of Regulation On the List of Anti-Crisis Measures, the Procedure and Criteria for their Introduction, Extension and Termination".

Resolution of the NBU No. 5 dated 02 January 2019 "On Approval of Regulation On Anti-Crisis Measures and Procedure for Carrying Out of Certain Foreign Currency Transactions".

Resolution of the NBU No. 6 dated 02 January 2019 "On Approval of Regulation On Notification of the National Bank..."
of Ukraine about Cross-Border Loan Agreements”.

Resolution of the NBU No. 7 dated 02 January 2019 “On Approval of Regulation On Control of the Banks of Payment Terms under Goods Export-Import Goods Transactions”.

Resolution of the NBU No. 8 dated 02 January 2019 “On Approval of Regulation On Making Analysis and Verification of Information about Currency Transactions by Authorised Institutions”.


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