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## The Ukrainian Parliament Changes the Procedure for Acquisition of Material Shareholding in Ukrainian Banks

On 15 February 2011, the Parliament of Ukraine adopted amendments to the *Law of Ukraine "On Banks and Banking"*, which will become effective on 16 June 2011 (the "**Amendments**").

The Amendments introduce a more complex procedure for acquiring or increasing a material shareholding in Ukrainian banks, under which an acquirer of 10, 25, 50 or 75 per cent of the Ukrainian bank's charter capital will be required to make a 3-month prior notice (the "**Notice**") to the National Bank of Ukraine (the "**NBU**") and the respective target bank regarding its intention to acquire or increase its shareholding if it would reach any of the foregoing thresholds.

### Review Period and Application Requirements

Along with the Notice, the acquiring party must also submit a set of documents, yet to be defined by the NBU, for the NBU's review. The acquisition of a material shareholding will be deemed approved, if the NBU will not issue a prohibition for acquisition within 3 months from the date of obtaining of a complete set of documents. By contrast, the existing procedure envisaged by Regulation No. 375 "On the Procedure for Creation and State Registration of Banks, Opening of Bank's Branches, Representative Offices and Outlets" dated 31 August 2001 sets a 1-month review period by the NBU. Thus, when in effect, the Amendments will extend the current review period from 1 to 3 months.

In addition, the Amendments do not seem to reduce the current rather extensive list of documents required to be submitted to the NBU together with the Notice. According to the Amendments, the NBU is given a wide discretion to define the ultimate list of documents required for the review. Among the groups of documents there are, in particular, the following:

- i. documents which are necessary for the *identification* of the applicant and all the entities acquiring indirect control in the Ukrainian bank;
- ii. information on the *ownership structure* of the applicant as per the NBU's requirements (which are yet to be established). We understand that one of the key requirements in respect of the *ownership structure* would be *transparency* as the NBU would see it in its relevant regulations;
- iii. documents confirming the "*business reputation*" of the applicant, business reputation of members of its executive and supervisory boards, holders of material shareholding in the applicant and other entities which will exercise control over the Ukrainian bank;
- iv. documents confirming the *financial standing* of the applicant and *sufficiency of personal funds* for making the proposed acquisition.

## Conditions to NBU's Approval of the Acquisition of the Material Shareholding in Ukrainian Bank

The Amendments provide that the NBU will only approve acquisition of the material shareholding in the Ukrainian bank if the following conditions are met (in the view of the NBU):

- i. the country, in which the applicant is incorporated, complies with the international standards on prevention of and counteraction to the legalisation of money-laundering and the financing of terrorism; and
- ii. banking supervision in the country of incorporation of the applicant, "*in the opinion of the relevant international bodies*", is substantially in compliance with the Core Principles for Effective Banking Supervision of the Basle Committee on Banking Supervision; and
- iii. the banking supervising authority of the country of incorporation of the applicant has entered into an *agreement on cooperation* in respect of banking supervision, harmonization of banking principles etc., with the NBU.

## Grounds for the Prohibition by the NBU of the Acquisition of the Material Shareholding in the Ukrainian Bank

According to the Amendments, the NBU is entitled to prohibit the acquisition of or increase in the material shareholding in the Ukrainian bank by the applicant on the basis of any of the following reasons (in view of the NBU):

- i. submitted set of documents is not complete; documents contain "*incorrect*" information or do not meet the NBU's requirements generally;
- ii. the "*business reputation*" of the applicant, business reputation of members of its executive or supervisory boards, owners of material shareholding and other entities exercising indirect control over the applicant does not meet the requirements set by the NBU;
- iii. the *financial standing* of the applicant and entities acquiring indirect ownership in the Ukrainian bank does not meet the requirements set by the NBU;
- iv. the applicant does not possess personal funds for the acquisition or increase of a material shareholding in the Ukrainian bank;
- v. the acquisition (in the view of the NBU) will threaten interests of the bank's customers and creditors or contradict the requirements of the antimonopoly legislation of Ukraine;
- vi. the ownership structure of the applicant does not meet the "*transparency requirements*" set by the NBU.

## Other Notification Requirements

The Amendments also require legal entities-holders of a material shareholding in a Ukrainian bank to notify the NBU on all changes in their ownership structure, and provide information on business reputation of their newly appointed directors within 1 month from the date of the respective change. Further, owners of material shareholding in the Ukrainian bank will be required to inform the NBU (in a manner to be established by the NBU) of any transfer of their shares in the Ukrainian bank if as a result of such transfer their shareholding would decrease below the thresholds of 10, 25, 50 or 75%.

## Implementation of the Amendments by the NBU

The Amendments establish that the NBU must bring its current regulations in compliance therewith within 3 months from the date when the Amendments have become effective, i.e., by 16 September 2011. Accordingly, the NBU may suspend reviewing any new applications for the acquisition of a material shareholding in a Ukrainian bank pending approval by the NBU of its new regulations aiming at the implementation of the Amendments.

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