

## Fresh Measures to Save the Ukrainian Banking System

On 24 July 2009 the Verkhovna Rada (Ukrainian parliament) passed the Law of Ukraine No.1617-VI “*On Introduction of Amendments to Certain Legislative Acts of Ukraine Regarding Peculiarities of Carrying out Measures Aimed at the Financial Recovery of Banks*” (the “Law”).

The Law, which came into effect on 5 August 2009, introduced certain important changes to the Ukrainian banking and commercial legislation aimed, primarily, at improving the rules for financial recovery of Ukrainian commercial banks and, ultimately, at saving the Ukrainian banking system in the aftermath of the credit crunch in the international financial markets and its severe effect on the Ukrainian financial system.

While not trying to describe all of the relevant changes introduced by the Law, this legal alert will focus primarily on some of the most important changes to the rules of the game for commercial banks operating in the current dire conditions of the financial market in Ukraine.

The following list outlines certain of the most significant changes introduced by the Law to the Law of Ukraine “*On Banks and Banking Activity*” (the “Banking Law”):

- (a) the 50% threshold for the maximum amount of *subordinated debt* in the bank’s Tier-II capital was lifted and now commercial banks should be permitted to form their Tier-II capital with subordinated debt in an amount of up to 100% of their equity capital;
- (b) *reorganization of the bank by means of transformation* is no longer regarded as one of the means for the termination of a commercial bank. In case of such termination, each creditor of the bank could become entitled to terminate or request the early performance of any contractual obligations of the bank. This new rule removes an illogical rule that used to apply, on its face, to the transformation of a commercial bank from an open or a closed joint stock company into a public joint stock company to comply with the requirements of the Law of Ukraine “*On Joint Stock Companies*”. Surprisingly, the old rule still applies to reorganizations of joint stock companies, which are not commercial banks;
- (c) *holders of a substantial interest* in a commercial bank (holding more than 10% of the bank’s equity capital), based on the Law, would be obliged to take timely measures to prevent the bank’s insolvency. Such shareholders could become liable for orchestrating the bank’s bankruptcy;

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- (d) *rules for the disclosure of banking secrecy* now permit the bank to disclose information constituting banking secrecy to a person which acquires the bank's assets and liabilities during the performance of measures aimed at the financial recovery of the bank or during the bank's liquidation procedure;
- (e) the Law extends the grounds for the introduction *temporary administration* in commercial banks by the National Bank of Ukraine, permits the appointment of the same temporary administrator for several banks, and extends the period for the introduction of temporary administration to 1 (one) year;
- (f) Article 85 (*Moratorium*) of the Banking Law was restated in its entirety and now provides that the NBU may impose a moratorium during the administration of the bank for a period of up to three months. At the same time, under the Law, the NBU may extend the term of the moratorium for a period of up to 6 (six) months for those banks on which the moratorium was already imposed at the time when the Law was adopted;
- (g) Article 86 was added to the Banking Law and provides the possibility for the Cabinet of Ministers of Ukraine upon submission by the National Bank of Ukraine to create a specialized rehabilitation ('*sanaziynyi*') bank or a toxic assets bank for the purpose of protecting the interests of the depositors and creditors of commercial banks. The toxic assets bank is supposed to be licensed by the National Bank of Ukraine.

## Additional notes

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