

# NBU Changes Licensing and Disclosure Rules for Banks

Note from Baker & McKenzie International, Kyiv

## Recent developments

In November the National Bank of Ukraine (the "NBU") introduced new rules for registration and licensing of banks, their branches and representative offices and for informing the NBU about the ownership structure of banks (the "Rules").

The Rules replace NBU's Regulation No.275[1] and Regulation No. 375[2] and reflect changes introduced into the Banking Law[3] in 2011. However, the Rules introduce some additional requirements that directly affect the owners of substantial interests in banks and non-banking financial institutions.

## Implications of the Rules for banks and owners of substantial interests in banks and non-banking financial institutions

The Rules were adopted by the NBU on 8 September 2011 by virtue of Regulation No. 306 "On Approval of Certain Regulatory Acts of the National Bank of Ukraine" ("NBU Regulation No. 306"), which came into effect on 7 November 2011. The major changes introduced by NBU Regulation No. 306 affect banks and owners of substantial interests in banks and non-banking financial institutions, and are as follows:

- 1) written foreign currency permits of the NBU have been abolished: banks and accredited branches of foreign banks may carry out their banking operations in UAH on the basis of a banking license only. To enter into foreign currency transactions, banks and accredited foreign banks' branches would require a general or individual currency license from the NBU;
- 2) the NBU changed the banking license template and will replace existing banking licenses free of charge. The NBU is obliged to replace the banking licenses of commercial banks and foreign banks' branches before 17 December 2011[4];
- 3) non-banking financial institutions are no longer permitted to open and operate bank accounts or allocate monetary funds at their own risk[5];
- 4) the Rules set requirements for the business reputation and financial status of bank shareholders. The Rules also set out indicators for the absence of impeccable business reputation and adequate financial status of shareholders (for example, the shareholders'/controllers' losses for the last reporting period (year) or the absence of impeccable business reputation issues of senior managers of direct or indirect shareholders or ultimate beneficial owners if individuals);
- 5) a bank may be incorporated by a single shareholder: such incorporation would be based on such shareholder's resolution of intent on the foundation and incorporation of the bank. The signature of the sole shareholder should be certified notarially (in case of a shareholder who is an individual) or with the shareholder's corporate seal (if the signatory is the representative of a corporate shareholder);

- 6) the NBU outlined mechanisms for indirectly holding a substantial interest in a bank (however, this list is non-exhaustive). The NBU expressly excluded the option of voting at the bank's shareholders meeting pursuant to a power of attorney with voting instructions on the agenda items;
- 7) if an owner of the substantial interest in a bank intends to decrease its interest in the bank below any of the set thresholds (i.e., 10, 25, 50 or 75%), this shareholder must inform the NBU within five days of taking such decision;
- 8) by 1 December 2011 the owners of substantial shareholdings in commercial banks must disclose their ownership structure to the respective commercial banks in accordance with the forms envisaged by NBU Regulation No. 306;
- 9) by 17 December 2011 all commercial banks must fully disclose their ownership structure (specifying nominal shareholders and/or trustees) to the NBU with a graphical scheme and in accordance with the forms envisaged by NBU Regulation No. 306.

## Conclusions and Recommendations

The Rules generally reflect the changes earlier introduced into the Banking Law. However, the requirements on disclosure of bank ownership structures are new and it remains to be seen how they will work in practice.

As an initial step, we recommend that banks and branches of foreign banks review NBU Regulation No. 306 and check whether their activities and the business reputation of their senior managers are in compliance with the Rules. We also recommend banks to notify their shareholders about the new requirements on disclosure of their (and the banks') ownership structures, as well as the new business and financial reputation requirements applicable to the senior managers of the legal entities in the ownership structure of the banks. This will include revealing the ultimate beneficiary owner(s) holding substantial shareholdings in the bank.

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[1] NBU Regulation "On Approval of the Regulation on the Procedure for Issuance of Banking Licenses, Written Permits and Licenses for Certain Transactions to Banks" No. 275 dated 17 July 2001.

[2] NBU Regulation "On Approval of the Regulation on the Procedure for Incorporation and State Registration of Banks, Opening Branches, Representative Offices and Divisions" No. 375 dated 31 August 2001.

[3] Law of Ukraine "On Banks and Banking Activity" No. 2121-III dated 7 December 2000 as further amended.

[4] Pursuant to Law of Ukraine No. 3024-IV "On Amendment of Certain Laws of Ukraine regarding the Regulation of Banking Activity", dated 15 February 2011.

[5] NBU Regulation No.306 cancelled NBU Regulation No. 344 "On Approval of the Regulation on the Procedure for Issuing Licenses to Non-Banking Financial Institutions for Carrying Out Certain Banking Transactions" dated 16 August 2001 which gave non-banking financial institutions the possibility to carry out certain banking transactions on the grounds of the relevant license issued by the NBU.