



**Baker  
McKenzie.**

**Ukrainian Laws in Wartime:  
Guide for International and  
Domestic Businesses**

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# Introduction

On 24 February 2022, the Russian Federation launched a full-scale military invasion of Ukraine. Martial law is in effect in Ukraine since then. As a result, special legislation has been adopted in various areas, including that directly affecting business activity.

This guide provides a brief overview of the key features of such wartime legislation. The guide is structured as a set of responses to the most common questions raised and considered by international and Ukrainian businesses these days.

**Please note** that Ukrainian legislation undergoes frequent changes and adjustments during this extraordinary period. We aim to update this guide accordingly at regular intervals and as soon as feasible. Please look for and use the latest version of this guide. We cannot exclude that, from time to time, the text available to you may not be up to date or may lack the latest developments. This guide should not be regarded as a substitute for specific legal advice tuned in to your particular situation and needs. Please always seek our specific and personal advice to rely upon when making decisions or planning actions for your business. Our Ukrainian legal experts are available to assist you in the most efficient and reliable manner, with quality standards usual for our global Firm.

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# Martial Law and Special Legislation

# Martial Law and Special Legislation



## Martial Law

### What is the general legal framework of martial law?

In accordance with the President's Decree "On the Introduction of Martial Law in Ukraine" ("**Decree**") and the Resolution of the Cabinet of Ministers of Ukraine "Issues Related to Introduction and Ensuring the Implementation of Measures of Martial Law in Ukraine" starting from 24 February 2022 the military command together with military administrations either independently or together with the Ministry of Internal Affairs of Ukraine, other executive bodies and local self-government authorities are authorized to introduce various restrictions of rights and freedoms of individuals as well as rights and legal interests of legal entities, including, *inter alia*:

- forced alienation of private property for the needs of the state in the martial law conditions with full compensation of the value of the alienated property and the issue of relevant documentation;
- adjustment of legal entity's activity to the conditions of the special period; introduction of mobilization facilities of enterprises; release of goods of mobilization reserve (stock) by enterprises;
- use of enterprises' facilities and workforce for the needs of defense; change in their working schedules and other changes in business activity;
- conduct checks of documents, property, vehicles, luggage and cargo;
- introduction of a special regime for manufacturing and selling medicines that contain drugs, psychotropic substances and precursors, other potent substances pursuant to the list, determined by the Cabinet of Ministers of Ukraine;
- replacement of the company's management due to improper performance of their duties under the Law of Ukraine "On the Legal Regime of Martial Law";
- if needed, engagement of business entities dealing with manufacturing medicines, wholesale and retail trade in medicines, import of medicines, to the extent necessary to satisfy Armed Forces needs, other military units in medicines and medical devices.

# Martial Law and Special Legislation



## Martial Law

**How long will the martial law regime remain effective?**

On 12 August 2022, the President's Decree "On the Extension of the Period of Martial Law in Ukraine" extended the period of the martial law regime until 21 November 2022, but it can be further extended unlimited times. Martial law terminates in case of expiration of its period or adoption of the President's decree on the termination of martial law.

# Martial Law and Special Legislation



## Special Legislation

### (i) Expropriation Law

#### Who is targeted under the Expropriation Law?

Effective from 7 March 2022 the Law of Ukraine "On the Basic Principles of Forced Expropriation in Ukraine of Property of the Russian Federation and Its Residents" ("**Expropriation Law**") authorised Ukrainian authorities to expropriate the property directly or indirectly owned by:

- the Russian Federation;
- legal entities (their branches, representative offices) operating and registered in Ukraine in which:
  - the participant (shareholder) or beneficial owner (directly or indirectly) is the Russian Federation; and/or,
  - the Russian Federation (directly or indirectly), or legal entities directly or beneficially owned by the Russian Federation, directly or indirectly own interest in the capital, shares, membership units, or any other form or membership or participation in a legal entity.

On 1 April 2022, the Ukrainian Parliament adopted the law on amendments to the Expropriation Law ("**Amendments to the Expropriation Law**") which significantly expands the circle of persons affected by the Expropriation Law. As of now, the Amendments to the Expropriation Law have not become effective yet.

#### What property can be expropriated?

Any movable and immovable property, funds, bank deposits, securities, corporate rights and other property (assets) that are located (registered) in Ukraine and directly or indirectly owned by the Russian Federation or its residents specified above.

# Martial Law and Special Legislation



## Special Legislation

### (ii) Export/Import

**Have any changes to export/import settlements been introduced during martial law?**

Yes. The National Bank of Ukraine ("NBU") adopted Resolution No. 18 dated 24 February 2022 "On Operation of Banking System Under Martial Law" which reduces deadlines for settlements on export/import operations carried out starting from 5 April 2022 from 365 days to 180 days (with some exceptions).

The above deadline shall not apply to export/import operations in the amount of less than 400 000 UAH (or approximately 10 940 USD) (except for the fragmentation of such operations).

**Have any trade restrictions related to the Russian Federation been introduced during martial law?**

Yes. Starting from 9 April 2022, the import of goods to Ukraine from the Russian Federation is prohibited accordance with Resolution of the Cabinet of Ministers of Ukraine No. 426 dated 9 April 2022 "On Application of Ban on Import of Goods from the Russian Federation".

**Have any changes to the procedure of import of humanitarian aid been introduced?**

On 20 March 2022, the Cabinet of Ministers of Ukraine adopted Resolution No. 329 dated 20 March 2022 "On Amendments to Resolution of the Cabinet of Ministers of Ukraine No. 174 dated 1 March 2022 and to nullify para 1 of Resolution of the Cabinet of Ministers of Ukraine No. 224 dated 7 March 2022" ("**Amendments Resolution**") which simplifies the procedure of import of humanitarian aid into Ukraine.

According to the Amendments Resolutions, all legitimate goods which are heading to Ukraine as humanitarian aid can be imported into Ukraine without any limitations. A paper or electronic declaration will be needed only. Such imported goods will be recognized as humanitarian aid on a declarative basis without a decision of Ukrainian authorities as required before.



# Martial Law and Special Legislation



## Special Legislation

### (ii) Export/Import

**Have any changes to the procedure of import of humanitarian aid been introduced?**

However, please note that a specific procedure was introduced for some categories of military goods as follows:

- body armor plates;
- non-civil portable radio services;
- non-civil quadcopters;
- non-civil binoculars, monoculars and other optical tubes, magnifiers;
- non-civil collimator sights, optical sights;
- thermal imagers, night vision devices.

End-user warranty letter should be submitted and further registration by military authorities is needed to import these categories of military goods on the territory of Ukraine. All other military goods and double-use goods are imported into Ukraine on the basis of rules of state control of international transfers of military goods and double-use goods.

# Martial Law and Special Legislation



## Special Legislation

### (iii) Public Procurement

**Have any changes to public and defense procurement procedures been introduced during martial law?**

Yes. Both public and defense procurement procedures have been simplified for the period of martial law.

**What happens to the procurements initiated before the introduction of martial law?**

Procurement and simplified procurement procedures started before the introduction of martial law shall be completed in accordance with provisions of the Law of Ukraine "On Public Procurements". However, if the purchaser does not have the ability to complete such procurement due to circumstances beyond its control, the purchaser may declare the tender not to have taken place in accordance with Article 32(5) of the Law of Ukraine "On Public Procurements" ("conduction of procurement has become impossible due to force majeure").



**Hanna Shtepa**

Counsel

[hanna.shtepa@bakermckenzie.com](mailto:hanna.shtepa@bakermckenzie.com)



**Hanna Smyrnova**

Associate

[hanna.smyrnova@bakermckenzie.com](mailto:hanna.smyrnova@bakermckenzie.com)



**Polina Korotka**

Associate

[polina.korotka@bakermckenzie.com](mailto:polina.korotka@bakermckenzie.com)

The background features a dark, almost black, space filled with intricate, flowing lines of light. These lines are primarily in shades of blue and orange, creating a sense of movement and energy. The lines are thin and translucent, overlapping and weaving together to form a complex, organic pattern that resembles smoke or liquid light. The overall effect is dynamic and modern.

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# Employment and Migration

# Employment and Migration



## Employment

**Does the employer have an obligation to relocate/evacuate employees in case of military attack?**

Employers in Ukraine do not have an obligation to relocate/evacuate their employees to a safe place in case of military attack. At the same time, the employer can permit the voluntary relocation of its employees to other cities in Ukraine or abroad by establishing distant work arrangements.

**Does the employer have an obligation to provide financial assistance to the employees during wartime?**

There is no obligation for Ukrainian employers to provide any special financial assistance to their employees during wartime. The employer may support its employees financially at its own discretion.

**Which work schedule is advisable during wartime?**

Employees in Ukraine are entitled to a safe working environment. Therefore, in case of a military attack, the employer cannot expect the employees to come to the office for safety reasons.

In such case, the employer is entitled to establish a distant work arrangement (in Ukrainian: дистанційна робота) for its employees, expressly allowing them to work from home or any other place of their choice (including abroad).

The company's CEO should issue an internal order allowing employees to work distantly from their place of residence or any other place of their choice (including abroad).

**Are there any guarantees provided for drafted employees?**

If the employee is called up for military service during a special period (such as the one currently in place), such drafted employee has the right to retain his/her job position until the end of the military service within the special period (unless the employee resigns earlier).

Law No. 2352-IX of Ukraine "On Amendments to Certain Laws of Ukraine on Optimization of Labor Relations" dated 1 July 2022 which came into effect on 19 July 2022 ("[Law No. 2352-IX](#)") abolished the employer's obligation to pay the average salary to employees summoned to the army.

# Employment and Migration



## Employment

### How have the employment and termination terms changed due to wartime?

On 24 March 2022, Law No. 2136-IX of Ukraine "On Labor Relations During Martial Law" came into effect ("**Law**"). The Law defines the peculiarities of employment relations during martial law (i.e., until at least 25 April 2022).

Regarding the specifics of employment and termination of employees during wartime, the Law allows the following:

- Establish a probation period for any newly hired employee
- Conclude fixed-term employment agreements with employees substituting employees absent due to evacuation, temporary disability, etc.,
- Terminate the employee at the employer's initiative during temporary disability or vacation (with certain exceptions)
- Suspend the employment agreement (without actual termination)

In addition, Law No. 2352-IX introduced the following new termination grounds (i) an employee's death or their recognition by a court as missing or dead; (ii) an employee's absence from work, including the absence of any information about the reasons for such absence; (iii) the employer's inability to provide the employee with relevant work, resulting from destruction of the necessary means of production, the employer's property, etc. caused by hostilities.

### Do employees need to be informed about changes in employment terms during wartime?

Yes. The employees must be informed about changes in employment terms any time before their implementation.

### What has changed regarding working time and vacation due to wartime?

For the employees working at critical infrastructure facilities, Law increased the employee's maximum working hours to 60 hours per week (and to 40 hours per week in case of reduced working hours). Regarding vacation, the employer has the right not to grant vacation to an employee (except for certain types of vacation) if the employee performs work at critical infrastructure facilities. The Law also allows granting unpaid vacation at the employee's request without taking into account the restrictions applicable to the vacation's maximum duration. In addition, the employee is entitled to 90 calendar days of unpaid vacation if he/she moved abroad or became an internally displaced person according to Law No. 2352-IX.

### Will the employer be liable for failing to pay a salary in a timely manner?

Under the Law the employer is released from liability for failing to pay a salary in a timely manner (under certain circumstances). The Law also enables the employers to suspend salary payments to the employees where the company is unable to make such payments due to military action/inability to perform its duties normally. The suspension can remain in place until the company resumes its normal business activity.

# Employment and Migration



## Employment

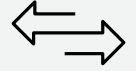
### **What has been simplified regarding employer and employee relations due to wartime?**

The relaxation of the employment regulation was introduced by Law No. 2434-IX of Ukraine dated 19 July 2022 ("Law No. 2434-IX").

Law No. 2434-IX applies to labor relations between small and medium enterprises (i.e., employers with 10 to 250 employees and with an annual income of up to EUR 50 million per year) and employees with a salary of more than eight times the statutory minimum monthly salary. It is in force for the duration of martial law and will lapse afterwards.

Law No. 2434-IX establishes the possibility for the parties to directly regulate the terms for employment and termination, remuneration, allowances, bonuses, rewards and other incentives, compensatory payments, work hours, vacation, rest, or other rights and guarantees in the employment agreement that are normally defined by the Labor Code of Ukraine. Also, if the above is introduced by the companies, employers will no longer need to maintain documentation (personnel, organizational and administrative, local normative acts) regarding matters regulated in the employment agreement.

# Employment and Migration



## Migration

### Are there any restrictions on leaving Ukraine?

Generally, Ukrainian men aged 18 to 60 are banned from leaving the country, subject to certain limited exceptions including, without limitation, the following:

- Men taking care of three or more children under the age of 18
- Men occupying certain positions (employees of military governing bodies, military units, enterprises, institutions, and organizations of the Ministry of Defense of Ukraine, the armed forces of Ukraine, etc.)
- Individuals with a disability together with accompanying persons, etc.



**Lina Nemchenko**

Partner

[lina.nemchenko@bakermckenzie.com](mailto:lina.nemchenko@bakermckenzie.com)



**Mariana Marchuk**

Counsel

[mariana.marchuk@bakermckenzie.com](mailto:mariana.marchuk@bakermckenzie.com)



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**Corporate**





## **Is it possible to sell participatory interest in a limited liability company (LLC), shares in a joint stock company (JSC) or other securities?**

Except for the involvement of persons associated with the aggressor state, no laws or regulations limiting the conclusion of sale and purchase contracts of the participatory interest in LLCs or shares in JSCs have been issued.

On 3 March 2022, the Cabinet of Ministers of Ukraine (CMU) adopted Resolution No. 187 "On ensuring the protection of national interests in future lawsuits of Ukraine in connection with military aggression of the Russian Federation," which imposed a moratorium on, among other things, alienation, pledge, and any other action that may result in the alienation of participatory interests or securities by legal entities associated with the aggressor state unless such disposal is made to Ukraine for no consideration and some other exceptions. Such restrictions apply to the following persons:

- The Russian Federation
- Citizens of the Russian Federation (except for individuals residing in Ukraine on legal grounds)
- Legal entities established and registered under the laws of the Russian Federation
- Legal entities established and registered under the laws of Ukraine, having anybody listed above among its ultimate beneficial owners, members or participants (shareholders) for 10 or more percent.

The resolution established that any contract, agreement, transaction, deed, power of attorney, or other arrangement made or issued in violation of the moratorium (including those providing for such alienation in the future) is considered null and void.

On a separate note, the Ukrainian authorities have limited the ability to carry out registrations in the Ukrainian Companies Register, including the registrations of a change in the composition of participants in the LLCs. Please refer to item 2 for more details.



## **Is it possible to sell participatory interest in a limited liability company (LLC), shares in a joint stock company (JSC) or other securities?**

**(continuation)**

Additionally, investors in Ukrainian JSCs or other securities may not sell these assets at present. On 8 March 2022, the National Securities and Stock Market Commission (NSSMC) passed Resolution No. 144 "On streamlining operations in the capital markets for the period of martial law." The NSSMC has put on hold any placement, circulation, and redemption of securities, except for sovereign debt securities, and initial placement securities.

The NSSMC has also put on hold operations in the depository system. Effectively, the following transactions are now limited:

- Sale and purchase of securities (unless the Securities Commission authorized the specific transaction)
- Use of securities as collateral
- Implementation of squeeze-out, sell-out, and buy-out procedures.

Technically, the repayment of dividends and interest or coupon payments are not restricted. However, several currency regulation restrictions apply. Please refer to [this page](#) for more details on applicable currency regulation restrictions.

# Corporate



## Have changes been made to the procedure for the registration of changes with the Companies Register?

Yes. Following the imposition of martial law, the Ukrainian government significantly limited access to all Ukrainian registers, including the Companies Register.

On 9 March 2022, the CMU passed Resolution No. 209 "Some issues of state registration and functioning of unified and state registers held by the Ministry of Justice under martial law," and instructed the Ministry of Justice to select a limited number of state registrars and provide them with access to the Companies Register. Additionally, the CMU started expanding the scope of allowed registration actions. Among others, the following registration actions are now allowed:

- Establishment of LLCs
- Change of director of a legal entity
- Change of registered address of a legal entity and, if applicable, changes to the charter of the legal entity reflecting the change of registered address
- Changes in the types of economic activity of a legal entity
- Registration, deregistration, changes to information about an individual private entrepreneur.

Registration of a change in the composition of participants in LLCs and charter capital increase/decrease is currently limited. Only the Ukrainian notaries included in the governmentally approved list are allowed to carry out such state registration actions. Documents serving as a ground for state registration (e.g., acceptance transfer act, resolution on charter capital increase/decrease, etc.) has to be executed before the notary who handles the registration.

# Corporate



## **Have changes been made to the procedure for the registration of changes with the Companies Register? (continuation)**

Notably, acts of transfer and acceptance and SPAs for state registration of participant change cannot be executed using PoA from a principal, who alienates the participatory interest if more than one month (more than two months, if it is certified by a consular institution (diplomatic representation) of Ukraine or under the legislation of a foreign country) has passed since the date of issuance of such PoA and without a duly certified statement of the principal confirming the PoA validity.

An extraterritorial principle, meaning that the location of the state registrar does not have to match the registered address of the legal entity, applies to the registration of legal entities whose location is within the territory of active hostilities included in the list of the Ministry of Justice.

To implement any permitted registration, a legal entity's representative may either make a personal visit to the state registrar or procure a remote registration. In case of the remote registration, the representative may use email to share scanned copies of the documents. However, the scanned copies should be signed with a qualified electronic signature using the [central certification authority's portal \(czo.gov.ua\)](https://czo.gov.ua).

# Corporate



## **Have any changes been made to the procedure of holding annual meetings of Ukrainian companies?**

The Ukrainian government has not extended the statutory deadlines for holding annual meetings of participants of LLCs. Therefore, LLCs should have held annual meetings until 30 June. Shareholders of JSCs must have held annual meetings of participants until 30 April, unless a JSC has legitimate grounds to delay the holding of the shareholders' meeting. In the latter case, such JSC should hold the shareholders' meeting within 90 days after martial law ends.

In terms of procedure, participants in LLCs enjoy a statutory right to hold an annual meeting via video conference, provided that all participants have the ability to see and hear other participants simultaneously. Shareholders of JSCs, corporate investment funds, and credit unions may hold remote meetings under a temporary procedure during martial law under Resolutions No. 176 "On amending the Temporary procedure for convening and remote holding of the general meeting of shareholders and the general meeting of participants of the corporate investment fund" and No. 177 "On the peculiarities of the functioning of the management bodies of the shareholders of the joint-stock company during the period of martial law" passed by the NSSMC on 16 March 2022.

The temporary procedure applies to both annual GSMs, which should be held to approve the results of the 2021 financial year, and to any extraordinary GSMs to maintain companies' business. The remote meetings will be available with the help of a new electronic service developed by the National Depository of Ukraine and made available for public use on 13 May 2020. To use the service, companies with the National Depository of Ukraine and shareholders will be required to conclude a special services agreement with their respective depository institutions.



**Have the deadlines for submitting financial information been extended?**

Yes. On 3 March 2022, the Ukrainian Parliament passed Law No. 2115-IX "On the protection of the interests of the reporting entities and other documents during martial law or war."

The Ukrainian Parliament extended the deadline for filing financial reporting documents until three months following the end of martial law. If some reporting entities are physically unable to comply with the extended term due to the immediate consequences of their participation in wartime hostilities, such reporting entities may file the financial reporting documents within one month after they are physically able to do so.

The financial reporting documents include accounting, financial, settlement documents, audit reports, and any other documents that must be submitted following applicable law in documentary or electronic form.

The law does not address matters related to tax reporting. Please refer to [this page](#) for more details on tax reporting.



## Have the deadlines for submitting regulated information by issuers of securities been extended?

Yes. On 13 March 2022, the NSSMC passed Resolution No. 161 "On disclosure of regulated information by issuers of securities," and exempted the issuers of securities from the obligation to disclose regulated information within the time limits established by Ukrainian legislation.

Following the termination of martial law, the issuers of securities will have to disclose:

- Regular annual information for 2021 within 90 days following the termination of martial law
- Regular quarterly information for each relevant quarter together with regular annual information
- Ongoing information on facts that took place during martial law within 30 days following the termination of martial law.



**Viacheslav Yakymchuk**

Partner

[viacheslav.yakymchuk@bakermckenzie.com](mailto:viacheslav.yakymchuk@bakermckenzie.com)



**Olha Demianiuk**

Partner

[olha.demianiuk@bakermckenzie.com](mailto:olha.demianiuk@bakermckenzie.com)

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# Financial Arrangements and Financial Sector



# Financial Arrangements and Financial Sector



## Lending Arrangements

**Can a Ukrainian bank lender increase the interest rate under an existing loan agreement?**

On 15 March 2022, the Verkhovna Rada of Ukraine adopted Law 2120-IX amending certain legislative acts due to martial law ("**Law 2120-IX**"). Law 2120-IX prohibits the increase of interest rates under consumer loans specifically for the period until 30 days after martial law ends. No general prohibition on the increase of interest rates due to martial law has so far been adopted.

**Will negative consequences be applied to borrowers who have failed to make relevant payments under loan agreements during martial law?**

Generally, no.

On 25 February 2022, the NBU introduced Regulation No. 23 approving "Rules of Banks' Activity Due to the Introduction of Martial Law" ("**Restructuring Regulation**"). The Restructuring Regulation liberalized certain regulatory requirements related to credit risk assessment, with the aim of not qualifying the nonpayments under loan agreements as defaults during martial law and for 30 days after, and encouraging Ukrainian banks to enter into debt restructuring arrangements ("**Restructurings**") with their clients suffering from the consequences of Russia's military aggression. In March, the NBU clarified that borrowers should agree on payment holidays (and possibly other restructuring measures) with banks individually.

In addition, the amendments to the Civil Code of Ukraine introduced by Law of Ukraine 2120-IX established that borrowers that fail to perform their obligations under loan agreements within the martial law period or 30 days after, should not bear the negative consequences of such failure, i.e., should not pay penalties or make other payments triggered by the failure. The borrowers, however, will not be released from the obligations to perform their underlying payment obligations under the loan, such as the payment of principal and interest, upon the expiry of the aforesaid period. Creditors still have the right to debit penalties, if the borrower's failure to pay occurred before or on 24 February 2022.

Similar rules were enacted with respect to consumer loans.

# Financial Arrangements and Financial Sector



## Lending Arrangements

### Are all the borrowers eligible for a Restructuring?

According to the Restructuring Regulation, the credit risk regulatory easement and the Restructurings should be available to debtors that were not in default as of 24 February 2022. The implementation of the Restructuring is also subject to the following conditions:

- The need to enter into the Restructuring is caused by the borrower's financial difficulties due to Russia's military aggression against Ukraine.
- The loan agreement is restructured within the martial law period.
- The bank is able to justify the commencement of a Restructuring based on the debtor's evaluation in terms of the timeframes defined by the Restructuring.
- If the Restructuring leads to a decrease in the value of the loan for the bank by more than 10% compared to the value defined as of the day when the Restructuring Regulation became effective, additional requirements are triggered.

### What measures may be implemented pursuant to the Restructuring Regulation?

There is no exhaustive list of Restructuring measures; the set of such measures may be negotiated by a bank and its client on a case-by-case basis and may include a decrease of the interest rate, partial write-off of debt, deferral of the principal installments repayment and extension of maturity dates (payment holidays), introduction of a PIK interest option (accrued interest is capitalized and added to the principal amount), decrease of installments and other payments amounts, etc.,

### Do the payment holidays under Restructurings and consumer loans mean that the payment obligations accruing during martial law will be written off?

No. Payment obligations will be postponed for the period negotiated with the bank.

# Financial Arrangements and Financial Sector



## Lending Arrangements

**Can the introduction of martial law be treated as a force majeure event allowing to defer payments under loan agreements and to exempt borrowers from liability for the respective nonperformance of payment obligations?**

Generally, no. Unless otherwise expressly provided in the loan agreement (which would customarily not be the case), force majeure events (except those directly affecting the banking or payment systems) do not entitle the borrower to defer payments under the loan agreement and, accordingly, do not enable exemption from liability for the nonperformance of such obligations. However, please note the above comments to the questions on the non-application of penalties for the nonpayment under loan agreements during martial law.

# Financial Arrangements and Financial Sector



## Security Arrangements and Encumbrances

### **Can a lender enforce a pledge during the martial law period?**

Currently, there is no express prohibition on enforcement of pledges during martial law. However, the amendments introduced by Law No. 2120-IX permit the deferral of payment obligations under loans and prohibit the imposition of fines, penalties or other monetary sanctions for failure to perform payment obligations during wartime. Although there is no express indication that such prohibition should also apply to the enforcement of pledges (to the extent they secure consumer loans), it can be argued that such enforcement should not be permissible if it is triggered by a payment default occurring during the martial law period.

### **Is a lender allowed to enforce a mortgage during the martial law period?**

Law No. 2120-IX suspended articles of the Law of Ukraine "On Mortgage," which regulated certain aspects of enforcing real estate property under mortgage agreements, for the period of martial law and for 30 days after. Importantly, the prohibition on enforcing is applicable solely to the objects mortgaged to secure the obligations under consumer loans. The prohibition concerns the transfer of mortgaged property to a mortgagee, its sale to third parties (including by way of e-auctioning) and forced eviction from residential property.

The prohibition is not applicable to the mortgage agreements executed or restructured after Law No. 2120-IX became effective.

### **In case of urgency, are entities and individuals allowed to use their funds on the arrested bank accounts?**

Yes, but the Cabinet of Ministers of Ukraine gave this right subject to certain limitations. Individuals may withdraw funds from arrested accounts if the amount of the relevant enforcement document, based on which the account was arrested, does not exceed UAH 100,000. Meanwhile, legal entities-debtors are allowed to use arrested accounts to pay taxes and make other mandatory payments, as well as payments to their employees that do not exceed five minimum wages per employee.

# Financial Arrangements and Financial Sector



## Foreign Exchange Restrictions and Anti-money Laundering

<b>Are UAH cashless payments within Ukraine subject to any limitations or restrictions?</b>	No, cashless transactions in UAH made within Ukraine may be carried out without limitations.
<b>Have any new currency and capital restrictions been introduced during martial law?</b>	<p>Yes. Since 24 February 2022, the NBU has introduced significant currency and capital control restrictions in Ukraine. The measures imposed by the NBU include the following:</p> <ul style="list-style-type: none"><li>■ Starting from 21 July 2022, the UAH/USD official exchange rate has been fixed at <b>UAH 36,57 per USD 1</b></li><li>■ Cash withdrawals within Ukraine are limited to an equivalent of <b>UAH 100,000 per day for one client</b> (except for UAH payroll payments and other exceptions)</li><li>■ Cash withdrawals outside Ukraine using Ukrainian bank accounts are limited to an equivalent of <b>UAH 12,500 per seven calendar days</b> for all UAH accounts of a customer in one bank. Cash withdrawals from foreign currency accounts opened with Ukrainian banks are limited to an equivalent of UAH 100,000 per day</li><li>■ Cashless transactions outside Ukraine using cards issued by Ukrainian banks are limited to an equivalent of <b>UAH 100,000 per calendar month</b> for all UAH accounts in one bank</li><li>■ Maximum period for settlements under export and import contracts is <b>180 days</b> (with some exceptions)</li><li>■ Clients of Ukrainian banks are generally restricted from buying and selling foreign currency, with the exception of (among other things): selling foreign currency for UAH; buying foreign currency for UAH only in exceptional cases (including purchase of import goods and certain services); and exchanging one convertible currency (e.g., USD, EUR, GBP) for another</li><li>■ For cross-border transactions where purchase of foreign currency is permitted, Ukrainian companies will be required to first use the foreign currency available on their foreign currency accounts and only then purchase the remaining amount of foreign currency for UAH</li></ul>

# Financial Arrangements and Financial Sector



## Foreign Exchange Restrictions and Anti-money Laundering

**Have any new currency and capital restrictions been introduced during martial law?**

- Cross-border payments from Ukraine abroad are also restricted and may be carried out only in exceptional cases, which include:
  - Ukrainian banks' own transactions (including payments under loans from non-resident creditors)
  - purchase by Ukrainian residents of import goods (all categories) and certain services, works, intellectual property rights and other non-property rights intended for sale which are specified in CMU Resolution No. 153 dated 24 February 2022 “On Certain Issues Regarding Ensuring Implementation of Imports”
  - interest payments by Ukrainian corporate borrowers to non-resident creditors under cross-border loan agreements (subject to certain limitations)
  - payments of Ukrainian residents under transactions guaranteed by state guarantees
  - payments of international financial institutions (IFIs) and payments of residents and non-residents to IFIs
  - payments made based on separate permits of the NBU issued at the request of the Cabinet of Ministers of Ukraine
  - foreign currency payments made by individuals for import of some military categories of goods
  - payments of Ukrainian residents under vehicle leasing/rental contracts
- Restrictions on offsetting export-import transactions
- Prohibition on making debit transactions of residents of the Russian Federation and Belarus and Ukrainian entities whose ultimate beneficial owners are residents of the Russian Federation and Belarus (with some exceptions)
- Prohibition on making quasi-cash transactions from UAH bank accounts

# Financial Arrangements and Financial Sector



## Foreign Exchange Restrictions and Anti-money Laundering

### Can a company purchase foreign currency and transfer it abroad to repay or service its cross-border loan?

Currently, Ukrainian corporate borrower can only make interest payments under their cross-border loans, subject to certain limitations. Among the limitations set out by the NBU are the requirements that (1) interest payment must fall due during the period from 24 February to 10 August 2022, (2) the borrower should not be in default as of 24 February 2022, and (3) the borrower has carried out its business operations after 23 February 2022, in particular by paying salary to its employees.

As regards payment of interest by corporate borrowers, such payments remain prohibited at the moment.

Borrowing Ukrainian banks are also prohibited from repaying their cross-border loans attracted from non-resident creditors prior to the term specified in their relevant loan agreements.

### Is repatriation of dividends or other investment proceeds currently allowed?

Generally, no. Cross-border payments to repatriate dividends or other investment proceeds are not listed among the exceptions allowing to purchase and transfer foreign currency abroad. There are, however, several cases where such purchase and transfer may take place: (1) if payment is to be made to an IFI; or (2) if a company obtains a special NBU permit to make payment.

### How has martial law affected anti-money laundering (AML) rules in Ukraine?

The financial monitoring regulations and applicable AML rules have been simplified for transactions related to purchasing military bonds of the Ministry of Finance of Ukraine and supporting the Armed Forces of Ukraine or donating for humanitarian aid via bank accounts of the Armed Forces of Ukraine and the special accounts of the NBU. As a result, private customers of Ukrainian banks (both citizens of Ukraine and foreign citizens) depositing cash into their bank accounts for amounts exceeding the equivalent of UAH 400,000 have been exempt from the obligation to provide their banks with supporting documents evidencing the source of funds, if such funds are used exclusively for the above-mentioned purposes. The use of such unverified funds for any other purposes will be prohibited until the bank is provided with all necessary supporting documents.

The NBU has also suspended on-site AML-related inspections of banks for the duration of martial law.

The above exemptions and simplifications will remain effective until martial law is terminated or lifted.

# Financial Arrangements and Financial Sector



## Regulation of Banking Activity

<b>Will banks be liable for violating mandatory financial ratios or limits during martial law?</b>	<p>The NBU will not take actions against Ukrainian banks that violated capital, liquidity, credit risk or investment ratios, or the net foreign exchange position limit, if such violations took place on or after 24 February 2022 and were caused by the negative impact of Russia's military aggression against Ukraine. At the same time, the NBU imposes some limitations on banks that breach relevant ratios and limits.</p> <p>Similarly, no regulatory actions will be taken against banks for violating mandatory provisioning rules.</p>
<b>Can banks distribute dividends during martial law?</b>	<p>No, the NBU prohibits Ukrainian banks from paying dividends to shareholders with the exception of dividend distribution under preferred shares. Capital distribution in any form is also prohibited other than for applying profits toward increasing share capital, provisioning or covering for losses of previous years.</p>
<b>Are there any new restrictions or limitations for transactions of banks with their related parties?</b>	<p>Yes. Banks are prohibited from entering into new loan agreements or other financial commitments with their related parties. In addition, the NBU prohibits banks from amending existing agreements with their related parties that provide for the increase of the amount of loan or other commitment or extend loan tenor. Early withdrawal of related parties' deposits is also restricted.</p>
<b>Has the NBU facilitated the banks' access to liquidity financing?</b>	<p>Yes. The NBU introduced its Resolution No. 22 dated 24 February 2022 "On Peculiarities of Maintaining Banks' Liquidity During Martial Law," whereby access to "blank refinancing" (overnight loans and blank refinancing loans) was facilitated. In particular, the NBU eased the requirements for the state registration of encumbrances over the assets pledged to secure the refinancing and for the audit of the pledged assets. The total volume of blank refinancing extended to a bank may not exceed 30% of the funds of individuals held in such bank as of 23 February 2022.</p>



# Financial Arrangements and Financial Sector



## Regulation of Banking Activity

<b>Can banks use cloud services when servicing customers during martial law?</b>	<p>Yes. For the duration of martial law and for two years after its termination or lifting, Ukrainian banks may provide banking services and process transactions via electronic payment instruments, in particular, payment cards, using cloud services that are provided through the use of equipment located in the EU, the UK, the US and Canada.</p> <p>When processing banking transactions and the personal data of customers using cloud services, banks may use both domestic cryptographic information protection tools and foreign tools that meet the legal requirements of the state where the equipment for providing cloud services is located.</p>

# Financial Arrangements and Financial Sector



## Regulation of Non-banking Financial Institutions

**Will non-banking financial institutions (NBFIs) be liable for violating mandatory financial ratios or other mandatory requirements during martial law?**

The NBU committed not to take any actions against NBFIs for violating equity capital availability requirements, deadlines for submission of reporting and financial statements, and obligations for paperwork filing and provision of information to the NBU. However, certain conditions should be met depending on the type of violation.

**Does the NBU impose any regulatory restrictions on the functioning of NBFIs during martial law?**

Generally, a number of sectoral limitations have been introduced, including the following restrictions:

- Paying bonuses and other additional material rewards to the management of insurers, credit unions and other NBFIs
- Paying dividends to shareholders/participants of insurers, with the exception of dividend distribution under preferred shares
- Changing collateral under facility agreements for credit unions
- Conducting operations with related parties of credit unions and other NBFIs

**What changes have been introduced in respect of licensing and registration rules of NBFIs?**

Time frames for licensing and registration procedures and obligations have been suspended until the termination or lifting of martial law.

Moreover, the NBU has postponed the deadlines for bringing NBFIs activities in line with new licensing requirements adopted back in December 2021. Thus, NBFIs will need to bring their activities in line with the new requirements within 6 months following cancelation or lifting of martial law.

# Financial Arrangements and Financial Sector



## Regulation of Non-banking Financial Institutions

### What shareholding restrictions have been introduced in respect of NBFIs?

For the period of martial law, the NBU has prohibited the exercising of voting and management rights by the following individuals and legal entities that own more than 10% of shares / participatory interests in an NBFi:

- Citizens of the Russian Federation
- Individuals having permanent residence in the Russian Federation
- Legal entities registered in the Russian Federation

The affected individuals and legal entities will be able to apply to the NBU for designating authorized persons to exercise the voting and management rights during the prohibition period.

# Financial Arrangements and Financial Sector



## Capital Markets

### Do capital markets still function in Ukraine?

Yes, although many operations are currently suspended. On 24 February 2022, the National Securities and Stock Market Commission (NSSMC) issued a decision (replaced with a similar regulation on 8 March 2022) on the temporary suspension of operations by depository institutions. The NBU published an analogous regulation dated 24 February 2022 (both documents referred to as the "**Suspension Regulations**"). According to the Suspension Regulations, from 24 February 2022, the following operations on the market should be suspended: (i) the placement, trade in and repurchase of securities; (ii) operations in the depository system; and (iii) clearing operations. The general restriction is subject to a few exceptions related, in particular, to the trade in state securities and military bonds and the performance of functions of the NBU and the Ministry of Finance of Ukraine.

### Are there any peculiarities in issuing military bonds during martial law?

Yes, as stated above, military bonds are an exception to the general restriction of running operations on capital markets in Ukraine during the war. In addition, the NSSMC and other relevant authorities significantly simplified the procedure for opening a securities account and the execution of relevant agreements with market participants by entities willing to purchase military bonds. In particular, the securities accounts are opened based on a simplified set of documents submitted by clients (for individuals a passport). The identification and verification procedure may be conducted remotely, including via cellphone and email. Similarly, the NBU eased the requirements for the identification and verification of individuals opening bank accounts for purchasing military bonds (relevant checks are conducted remotely). The banks are also allowed to not check the source of the funds transferred by the clients for buying military bonds.



**Serhiy Chorny**

Managing Partner

[serhiy.chorny@bakermckenzie.com](mailto:serhiy.chorny@bakermckenzie.com)



**Bogdan Dyakovych**

Associate

[bogdan.dyakovych@bakermckenzie.com](mailto:bogdan.dyakovych@bakermckenzie.com)



**Stepanyda Badovska**

Associate

[stepanyda.badovska@bakermckenzie.com](mailto:stepanyda.badovska@bakermckenzie.com)



**Hanna Smyrnova**

Associate

[hanna.smyrnova@bakermckenzie.com](mailto:hanna.smyrnova@bakermckenzie.com)

The background features a complex, abstract pattern of thin, flowing lines in shades of blue and orange, creating a sense of movement and depth against a dark background.

**5**

# Tax and Customs Regime

# Tax and Customs Regime



## Which tax reliefs are available in Ukraine?

Since 24 February 2022, the Ukrainian Parliament has introduced a range of corporate income tax (CIT), value-added tax (VAT), personal income tax (PIT), single tax and other tax/customs-related reliefs aimed at ensuring the support of taxpayers during wartime.

One of the key measures relates to the new special single tax regime, which applies to businesses and individuals registered as private entrepreneurs (PEs). The single tax regime is not a new concept in Ukraine. For the martial law period, however, the special rules significantly extend the scope of eligible taxpayers and reduce the tax rates.

Please see below for more details.

## How does the special single tax regime apply?

Legal entities and PEs may opt for the special 2% single tax levied on the taxpayer's revenue. The regime has been introduced from 1 April 2022 and for the duration of martial law.

The 2% single tax will allow to opt out of CIT, VAT, land tax and PIT (in the context of the activities of PEs).

**Eligible taxpayers:** Starting from 17 April 2022, the special Single Tax regime is available to taxpayers irrespective of their revenue threshold. The earlier introduced UAH 10 billion (USD 340 million) revenue threshold is no longer applicable in light of the changes enacted by Law No. 2173-IX dated 15 April 2022 (Law No. 2173-IX).

# Tax and Customs Regime



## How does the special single tax regime apply?

Nonresidents and their branches in Ukraine, financial institutions, insurance companies and taxpayers involved in certain activities, e.g., gambling, transactions with excise goods (except for vehicles and certain other operations), may not opt for the regime.

Law No. 2173-IX also regularizes the matters related to the advance/overpaid CIT payments and accrued losses by companies that have switched to the special single tax regime.

Unlike the regular single tax system, the special 2% regime does not impose any restrictions on the number of employees that may work for the taxpayer.

**VAT regime:** Taxpayers opting for or switching to the special single tax regime will be relieved of the obligation to accrue, pay and report VAT on their supplies/imports into Ukraine. Law No. 2142 – IX of 24 March 2022 (Law No. 2142 - IX), establishes that the VAT registration of taxpayers switching to the special tax regime will be suspended for the martial law period.

**Applying for the regime:** In order to benefit from the regime, the taxpayers should submit a relevant application to the tax authorities. The new regime will be applicable from 1 April 2022 for the taxpayers that applied before this date. Otherwise, the taxpayers will be able to switch to the regime from the next working day upon submission of their application.

## Are there any CIT reliefs?

Eligible CIT payers may opt for the special single tax regime discussed above.

For CIT purposes, funds (value of goods) transferred to selected organizations (e.g., designated bank account opened by the National Bank of Ukraine) would not be subject to the tax adjustment calling for the increase of financial results by an amount exceeding 4% of the profits of the previous reporting year.

# Tax and Customs Regime



## Are there any other reliefs available for single tax payers?

During martial law period, single tax payers falling into the category reported as Groups I and/or Group II, i.e., a small-scale business, are released from the obligation (i) to pay single tax and (ii) to submit tax reports.

Payment of single tax is voluntary for such taxpayers.

## What are the VAT reliefs?

The VAT-related changes pertain to the operation of the VAT electronic system and certain VAT exemptions, particularly:

- The taxpayers were allowed not to register the VAT invoices. Input VAT may be recognized in the absence of such invoices based on the available primary supporting documents. The taxpayers will be obliged to register VAT invoices within six months following the cancellation or termination of martial law in Ukraine. Starting from 27 May 2022, the Law No. 2260-IX has changed the VAT invoices registration procedure. Please see section ["Filing tax returns and tax payments"](#) for more details.
- The list of VAT-exempt operations is extended to include the import and supply of: (i) special personal protective equipment designated for law enforcement agencies, armed forces and other military formations, including territorial defense units; (ii) certain pharmaceutical and medical devices; and (iii) defense goods supplied under the applicable procurement procedure.
- Import and supply of fuel for motor vehicles is subject to a reduced 7% VAT rate. Full excise tax exemption for such goods is also available.

Until 30 June 2022, no VAT was due on the supply or import of goods by single tax payers, including those opting for the special single tax regime. Starting from 1 July 2022, the VAT import exemption has been abolished. Please see section ["Are there any import relaxation measures adopted during martial law?"](#) for more details.

## Are there any PIT reliefs?

Individuals may claim tax relief of up to 16% (instead of the earlier applicable 4%) of their taxable income for the reporting period. The tax relief now includes the amount of donations provided for the benefit of charitable organizations.

Taxation of salary income remains intact.



# Tax and Customs Regime



## What are the tax reliefs available with respect to rent and land tax?

From 1 March 2022 until 31 December of the year following the year in which martial law ends, i.e., at least until 31 December 2023, land tax and/or rent (for state and municipal land) should not be levied on land plots or shares located in certain territories. The list of such regions is to follow and is expected to include, among others, the territories (i) where military actions are being (were) conducted, (ii) which are temporarily occupied by the armed forces of the Russian Federation, and (iii) those littered with explosive devices.

Law No. 2142 – IX introduced similar changes concerning real property (other than land) tax.

## How does the Diia City regime apply?

The Diia City virtual economic zone (VEZ) is up and running, with over 150 taxpayers having already joined the VEZ. Martial law did not affect the tax benefits offered by the VEZ, thus, allowing the Diia City residents to fully enjoy its status, including the option of a 9% distributed profit tax (instead of 18% CIT).

On 29 March 2022, the Cabinet of Ministers of Ukraine introduced the simplified Diia City residence criteria. It is expected that during the martial law period, the Diia City residents would be permitted to maintain their status even if they fail to comply with one or more eligibility criteria, e.g., minimum salary or number of employees criteria. The submission of the Report on Meeting the Eligibility Criteria and the audit report are also suspended.

## Are any other tax-related changes expected?

The Ukrainian Parliament is very active in the tax field, for example, it proposed to increase the standard tax rate by one and half times for companies conducting business in or having economic ties with the "aggressor states" (the Targeted Businesses). The discussed draft law No. 7232 has been registered by the Parliament on 30 March 2022 (Draft No. 7232).

Under Draft No. 7232, the increased rates (by factor 1.5) would apply to CIT (except for withholding tax), property tax, environmental tax, as well as a charge for subsoil usage (rent). For example, the Targeted Businesses will have to pay 27% CIT instead of the standard 18% tax rate.

# Tax and Customs Regime



## Are any other tax-related changes expected?

The Targeted Businesses are defined based on multiple broad criteria. They include, for example, Ukrainian legal entities - members of multinational enterprise groups (MNE), if any of the group members receives Russian-sourced income or provides economic support to Russia.

On 1 April 2022, Draft No. 7232 was adopted in the first reading. The Parliament has ruled to prepare a text for the second reading under the 7-day expedited procedure.

On 2 May 2022, the text of the Draft for the second reading (Second Draft) has been published. The Second Draft has both (i) broadened the triggering criteria and (ii) introduced additional mechanisms aimed at discouraging the business presence in Russia. Such mechanisms include, e.g., restricting access to martial law-related positive developments and imposing new obligations in the consumer protection area.

The Second Draft also proposes to limit the access to the Diia City Tax Regime and new special single tax regime for the Targeted Business. The relaxations on tax payments and reporting, such as suspension of statutory deadlines, will also not apply to the Targeted Businesses.

The triggering criteria were revised. The revisions relate to the expanded list of activities of the Ukrainian legal entity/ its parent/ another MNE group member that will be considered in assessing whether the Ukrainian legal entity is a Targeted Business.

Finally, the Second Draft proposes to change the laws in the field of consumer protection, advertisements and food labeling. The advertisements and product labels will have to be amended with the information that the sponsor/ producer/ importer is being reported in the Register of Targeted Businesses.

As of 2 August 2022, the Second Draft has not been scheduled into vote by the Parliament.

# Tax and Customs Regime



## Filing tax returns and tax payments

Initially, the statutory deadlines for filing tax returns and tax payments were suspended for the duration of martial law for all taxpayers. The taxpayers were obliged to perform their tax obligations within six months after the expiration of the martial law regime.

Starting from 27 May 2022, the said rule applies to taxpayers that are *'unable to perform their tax obligations'* only. The Law No. 2260-IX has established new rules for tax reporting and payments. The tax reporting and payment obligations now depend on whether the taxpayer *'has an ability to perform its tax obligations'*.

The taxpayers which are able to submit tax reports/ pay taxes will not be fined for the late submissions/ payments as long as:

- for VAT purposes: the VAT invoices/ adjustments are registered until 15 July 2022,
- for other taxes: the tax reports are submitted until 20 July 2022, and
- the taxes are paid until 31 July 2022.

The taxpayers who were able to restore their ability to submit tax reports/ pay taxes will have 60 calendar to fulfil their tax obligations starting from the month of such restoration.

# Tax and Customs Regime



## Tax audits and penalties

Starting from 27 May 2022, the Law No. 2260-IX has introduced new rules on tax audits and penalties during the martial law.

- The Law No. 2260-IX introduced a number of exceptions to the freeze on new tax audits and suspension of those that are ongoing. The moratorium does not apply to chamber audits, certain documentary unscheduled and instant (factual) audits. The suspended audits may be renewed and the new ones may be started. For chamber tax audits, the new rules will apply from 2 June 2022.
- The Law No. 2260-IX has also changed the rules on the suspension of tax-related deadlines and statutory terms. The suspension does not apply with respect to the (i) VAT invoices/ adjustments registration, submission of tax returns, (ii) statutory terms for conducting chamber audits and relevant administrative appeal procedure, calculation of late payment interest, as well as (iii) statutory terms for conducting instant (factual) and documentary unscheduled tax audits and relevant administrative appeal procedure.

Law No. 2173-IX introduces special rules on primary supporting documents storage for taxpayers that have lost or that were unable to transport such documents due to the military actions or other administrative obstacles. The affected taxpayers will be allowed to submit a list of missing documents to the tax authorities and recognize their transactions for tax purposes without the underlying supporting documentation.

# Tax and Customs Regime



## Are there any import relaxation measures adopted during martial law?

In March 2022, Ukraine introduced a number of import relaxations to ensure efficient operation of customs formalities.

The key relaxations were established in Law No. 2142 – IX and applied until 30 June 2022. Starting from 1 July 2022, the following relaxations have ceased to apply:

- No import duty for goods imported by legal entities for free circulation (except for certain excise goods, e.g., ethyl alcohol and other alcohols distillates, alcoholic beverages, tobacco products)
- No VAT, import duty and excise tax on cars and other vehicles imported by individuals
- No VAT on goods imported by taxpayers under single tax groups I to III. The earlier introduced simplified customs formalities procedure also ceased to apply.

An import duty exemption and suspension of nontariff regulations for the listed goods, such as:

- Special personal protective equipment (helmets, tactical vests, etc.) supplied for the purposes of law enforcement agencies, armed forces and other military formations, including territorial defense units
- Listed medicine and medical devices, including those without registration in Ukraine remains effective.

## Customs audits

Law No. 2142 – IX introduces a freeze on the current documentary customs audits and suspension of new ones. Certain customs-related statutory deadlines are suspended.



**Hennadiy Voytsitskyi**

Partner

[hennadiy.voytsitskyi@bakermckenzie.com](mailto:hennadiy.voytsitskyi@bakermckenzie.com)



**Roman Koren**

Associate

[roman.koren@bakermckenzie.com](mailto:roman.koren@bakermckenzie.com)



**Tetyana Zhuravska**

Associate

[tetyana.zhuravska@bakermckenzie.com](mailto:tetyana.zhuravska@bakermckenzie.com)



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# Real Estate



**Could the parties to a lease claim that Russia's military aggression against Ukraine is a force majeure event, which excuses the parties from performing the lease obligations?**

Potentially yes, depending on specific circumstances. The International Chamber of Commerce in Ukraine (ICCU) recognized Russia's military aggression against Ukraine as a force majeure event. The ICCU posted a general statement dated 28 February 2022 on its official website ("**ICCU Statement**") calling the circumstances caused by the military aggression of the Russian Federation against Ukraine, which led to the imposition of martial law, as "extraordinary, unavoidable and objective circumstances for business entities and/or individuals". The legal strength of the ICCU Statement is, however, not entirely clear, as applicable regulations do not grant the ICCU the authority to issue such generalized statements.

We also note that the enforcement of force majeure provisions is not automatic. The general rule is that the force majeure event relieves the affected party from the liability for non-performance, rather than from performing the obligation per se. The affected party would be required to approach and notify the other party of the force majeure event, and prove that performance of relevant contractual obligations was affected by such force majeure event. As a practical matter, the vast majority of leases require submission of an individual force majeure certificate. Furthermore, the ICCU Rules on Certifying Force Majeure Circumstances provide for the issuance of force majeure certificates, where each such certificate is issued based on a request of a particular business entity and in relation to a particular contract.

To the extent feasible, we recommend applying to the ICCU to obtain such individual force majeure certificate, which would confirm whether a party is indeed unable to perform under the lease due to Russia's military aggression against Ukraine. If this is not feasible, however, you may cautiously consider relying on the ICCU Statement when commencing the discussions regarding the force majeure.

Please note, however, that even the individual certificate does not constitute an irrevocable evidence of force majeure, and the court may rule otherwise on a case-by-case basis.

**If the tenant cannot use its leased premises due to Russia's military aggression against Ukraine, does it have to continue paying rent?**

A tenant may not have to continue to pay, but this depends on the terms of the lease and the discussions with the landlord. Some leases may contain a rent suspension clause, entitling the tenant to cease the payment of rent if the premises are damaged, destroyed or inaccessible due to various reasons.

Statutory remedies are also available. Under Article 762 (6) of the Civil Code of Ukraine, a tenant is relieved of its obligation to pay rent for the period during which the tenant could not use the leased property, where this is due to circumstances for which the tenant is not responsible.

# Real Estate



**If the tenant cannot use its leased premises due to Russia's military aggression against Ukraine, does it have to continue paying utilities and operational expenses?**

Statutory provisions do not address these types of payments. As such, tenants may have to continue to pay for the utilities and operational expenses, unless otherwise agreed with the landlord.

**Can lease amendments or lease termination agreements be executed during martial law?**

Under Ukrainian law, all leases signed for a term equaling or exceeding three years are subject to notarial certification. The registration of the relevant lease right in the Ukrainian Property Rights Register ("**Register**") is also required.

At present, both the operation of the Register and the certification of lease amendment or lease termination agreements have been resumed. To this end, the Government's Resolution No. 480, effective as of 28 April 2022 ("**Resolution 480**"), allowed the notaries included into the list approved by the Ministry of Justice of Ukraine ("**List**") to certify certain real estate related agreements (including amendments to leases signed for a term equaling or exceeding three years).

To be included in the List, the notaries have to submit an application to the Notarial Chamber of Ukraine or directly to the Ministry of Justice of Ukraine and undergo a special procedure for verifying their compliance with the prescribed requirements. The last version of the List was made available on 30 August 2022.

In the meantime, if you for any reason are unable to address the notary, but have reached an arrangement with your counterparty, we recommend temporarily affixing such arrangement in a form of written correspondence (formal notices exchange or amendment / termination agreement signed with the use of e-signature), and following up by signing a notorially certified amendment / termination agreement when practically feasible.

The amendment or termination of lease agreements signed for a term of less than three years is legally possible.





## Are any specific reliefs or allowances available in respect of the state or municipal leases during martial law?

Effective as of 13 April 2022, Law of Ukraine No. 2181-IX "On amendments to the Law of Ukraine on the lease of state and municipal property" authorized the Cabinet of Ministers of Ukraine (CMU) to determine wartime-specific rules of the lease of state and municipal property regarding, in particular, rent discounts, lease term, automatic lease term extensions, etc. Relevant CMU's Resolution No. 634 ("**Resolution 634**") became effective on 1 June 2022.

Resolution 634 provides for certain reliefs for tenants of state and municipal property. Note that below reliefs are only available to tenants that are parties to (i) leases that have already been effective as at 24 February 2022, or (ii) leases that have been executed after 24 February 2022 as a result of auctions that were held on 24 February 2022 or earlier.

**A.** The following tenants are released from rent for the period of martial law and three months after it ends, but not longer than until 31 December 2022:

- citizens and individual entrepreneurs that were called up / accepted for military service after introduction of martial law;
- tenants leasing property located in areas where access to the state registers administered by the Ministry of Justice of Ukraine was terminated (i.e. Crimea, Donetsk and Kherson region, certain territories of Zaporizhzhia, Luhansk, Mykolaiv, Kharkiv regions).

**B.** The following tenants are released from rent for the period of martial law, but not longer than until 30 September 2022:

- tenants leasing property located in Kyiv and Kyiv, Chernihiv, Sumy, Kharkiv, Zaporizhzhia, Mykolaiv regions (save for the aforementioned areas where access to the state registers administered by the Ministry of Justice of Ukraine was terminated);
- tenants leasing property located in cultural and educational institutions on an hourly basis.

Starting from 30 September 2022 and during three months after the martial law ends, such tenants will only be required to pay 50% of contractual rent amount.

# Real Estate



## Are any specific reliefs or allowances available in respect of the state or municipal leases during martial law?

(Continued)

C. The following tenants are released from rent for the period of martial law, but not longer than until 30 May 2022:

- tenants leasing state or municipal property located in Kirovohrad, Dnipro, Zhytomyr, and Odesa regions.

Starting from 30 May 2022 and during three months after the martial law ends, such tenants will only be required to pay 50% of contractual rent amount.

D. The following tenants (safe for those mentioned above) are granted rent reduction for the period of martial law and during three months after the martial law ends:

- tenants leasing integral property complexes (its structural branches) will be required to pay 75% of contractual rent amount;
- all other tenants that were not mentioned above will be required to pay 50% of contractual rent amount.

The abovementioned reliefs are also applicable to rent payments made for the period from 24 February 2022 until 1 June 2022. Such rent payments, if made in excess of the amounts calculated taken the above reliefs into account, are to be set-off by the landlords against future rent payments.

Resolution 634 also granted the tenants the right to terminate their leases by sending PDF scan-copy of signed termination notice to landlord's email address specified in the lease agreement.

## What if a term of a farmland lease expires during martial law?

Ensuring continuity of farmland use during martial law is essential for Ukraine's agromarket. Thus, effective as of 7 April 2022, Law of Ukraine No. 2145-IX "On amendments to certain legislative acts of Ukraine regarding the establishment of conditions for ensuring food security under martial law" ("**Farmland Law**") allows automatic extension of those farmland lease (sublease, emphyteusis) agreements that expire during martial law for a one-year period. Neither expression of will for such extension, nor the introduction of changes to the Register (Register) are required.

Such automatic extension applies to the use of (i) state or municipal farmland, (ii) privately owned farmland, (iii) unclaimed or unallocated farmland, which was intended to be privatized, and (iv) farmland in collective ownership (i.e., former post-soviet collective enterprises), which were managed and leased out by local authorities.

# Real Estate



## Are there any reliefs in respect of transferring state or municipal land into lease during the martial law?

Yes. Farmland Law simplifies the procedure for transferring state and municipal farmland into the lease. In particular, during the martial law:

- farmland will be transferred into the lease by a relevant district military administration without land auction;
- lease agreement will be executed in e-form and signed by e-signature;
- lease right will not need to be recorded in the Register;
- district military administration will need to record the lease agreement in the Book of Land Ownership and Use.

At the same time, some restrictions will apply to the new leases signed under the Farmland Law:

- lease term cannot exceed one year and cannot be extended;
- rent rate must not exceed 8% of the land's normative monetary value;
- lessee will not have the right to (i) transfer such land into a further sublease or create an easement; (ii) extend the lease term or sign a new lease agreement using the lessee's statutory preemptive right, (iv) buy out such land using the lessee's statutory preemptive buyout right, (v) split such land or attach such land to another land plot; (vi) change such land's designated use, etc.

## Will the lifting of martial law impact farmland leases entered into or extended under the Farmland Law?

No, lifting of martial law will not trigger termination of or any amendments to land use agreements entered into or extended under the Law. Such agreements will terminate upon the expiry of one year following their execution or extension, as applicable.

# Real Estate



## **What about the transferability of farmland leases (subleases)?**

Under the Farmland Law, lessees (sublessees) of farmland have the right to assign their lease (sublease) rights to any third party for a period of up to one year without the land owner's consent. Relevant assignment agreement will be made in e-form and signed by e-signature.

The land owner will simply need to be notified of such assignment within 5 days following the registration of an assignment agreement in the Book of Land Ownership and Use.

## **Are any simplifications available for the formation of new farmland plots?**

Yes. No land allocation project will be required. Instead, a land plot will be formed based on the so-called "technical documentation on land management regarding land inventory". Such technical documentation will only require the approval of a relevant military district administration. No registration of a newly formed land plot in the State Land Cadaster will be performed.

## **Can real estate alienation transactions be executed during martial law?**

The abovementioned Resolution 480 is aimed at de-freezing the real estate market in Ukraine and, thus, allows the notaries included in the List to certify certain real estate transactions (such as sale and purchase, mortgage, long-term leases, etc.) subject to certain restrictions (in particular, the buyers of real estate may not further alienate acquired real estate earlier than within one month following the acquisition).

The Government's Resolution No. 719 dated 24 June 2022 further lifted the most of restrictions previously introduced by Resolution 480, namely:

- the individuals are now able to alienate real estate via proxy; if proxy was issued more than 1 month ago the individuals will have to notarially confirm the effectiveness of such proxy no earlier than 7 days prior to the transaction;
- real estate may be alienated by contributing it to the charter capital of legal entities or transferring it into the ownership of former participants (founders) who resigned from membership of legal entities, etc.

In addition, a special rule is established regarding the state registration of property rights to real estate located on the territory of the AR of Crimea, Donetsk, Zaporizhzhia, Luhansk, Mykolayiv, Kharkiv, Kherson regions, the city of Sevastopol. Such registration may be carried out notwithstanding the actual location of real estate.



## Can the state or municipal land plots be transferred into private ownership or use during martial law?

Yes. The transfer of state or municipal land plots into private ownership or use is currently possible following the resumption of the State Land Cadaster operation on 9 June 2022.

On a separate note, the land auction is not carried out if the state or communal land plots are transferred into lease for:

- locating:
  - production capacities of enterprises evacuated from the war zone;
  - river ports (terminals) on the Danube River or multimodal terminals and production and transshipment complexes;
  - sea ports;
- erecting power supply, gas distribution, water, heat, sewage networks, electronic communication networks, main gas pipeline facilities;
- agricultural production (for more details please refer to the section concerning the transfer of farmland into use during martial law).



## Have there been any changes to construction permit procedures with the introduction of martial law?

On 12 July 2022, CMU's resolution No. 722 (the "**Resolution 722**") entered into force. Resolution 722 provides for renewal of the period for providing administrative services in the construction sector and facilitates certain permit procedures as described below.

The period for providing administrative services in the construction sector set forth in the Law of Ukraine "On Regulation of Urban Development Activities", which was suspended by the CMU's resolution dated 28 February 2022 No. 165 "On the Suspension of the Period for Providing Administrative Services and Issuing Permitting Documents," has been renewed.

For the duration of the martial law in Ukraine and within one year after it ends or is canceled:

- Principle of tacit consent will be applied to (1) obtaining urban planning conditions and land development restrictions, (2) obtaining approvals of design documentation from cultural heritage protection authorities.
  - In the case of failure to provide urban planning conditions and land development restrictions within the period prescribed by law, the construction design will be carried out without obtaining urban planning conditions and restrictions, subject to compliance with local urban planning documents and land use restrictions as provided in the laws.
  - Should the cultural heritage protection authority fail to approve the design documents within 30 days, they will be deemed approved by default. The customer must apply to the cultural heritage protection authority for design document approval using the electronic account in the Unified State Electronic System in the Construction Sector ("**Electronic System**").
- Permit procedures for certain construction works will be simplified. Construction of individual residential, garden and country houses up to two stories high (not including the attic floor) with an area of up to 500 square meters, as well as utility buildings and structures, garages and landscape design elements of the land plot can be carried out by the customer without obtaining a construction passport for the land plot development. In this case, the customer must indicate in the construction commencement notice the registration number of the land development intentions layout (must be uploaded to the Electronic System) to be prepared by an architect or a design engineer.



**Have there been any changes to construction permit procedures with the introduction of martial law?**  
(Continued)

For the duration of the martial law in Ukraine and within three months after it ends or is canceled certain construction works are allowed to be postponed:

- Deadlines for certain facade decoration and landscaping works (except for those relating to transport passages and vehicle-to-pedestrian communications) may be postponed. In this case, the customer must indicate in the completion declaration or certificate the facade decoration and landscaping works that will be postponed and the deadline for their completion.

**Are there any statutory provisions that allow for reimbursement of damage done to real estate due to military aggression of Russian Federation?**

In brief, there are currently two initiatives aimed at establishment of legal framework for such reimbursement.

#### **A. Collection of information on damage done to real estate**

- According to CMU's resolution No. 326 dated 20 March 2022 "On Approval of Procedure of Assessment of Damage Done to Ukraine due to Military Aggression of Russian Federation", regional and Kyiv city state administrations will assess economical losses of companies suffered due to military aggression of Russian Federation, including, but not limited to, cost of damaged or destroyed real estate. Assessment will be carried out based on methodology that is yet to be adopted by State Property Fund of Ukraine and Ministry of Economy of Ukraine. In parallel, owners of real estate (including construction investors, their heirs) are allowed to submit informational notices on damage or destruction of their real estate via "Diya" web-portal, centers for provision of administrative services, and notaries.
- According to CMU's regulations, for the purposes of assessment of damage real estate is considered damaged or destroyed if such damage or destruction is verified according to CMU's resolution No. 473 dated 19 April 2022 "On Approval of Procedure for Carrying Out of Emergency Works on Liquidation of Consequences of Military Aggression of Russian Federation, Related to Damage of Buildings and Structures". Therefore, owners of damaged or destroyed real estate may want to consider verifying damage or destruction as provided in CMU's resolution No. 473.
- Information on damage or destruction of real estate will be recorded in Register of Damaged and Destroyed Property. It is expected that the above information will be used for reimbursement of losses done to real estate, although respective legal framework is being developed.

# Real Estate



## **Are there any statutory provisions that allow for reimbursement of damage done to real estate due to military aggression of Russian Federation?**

(Continued)

### **B. Reimbursement of damage done to real estate**

There are currently no explicit provisions in Ukrainian law that would stipulate step-by-step procedure for reimbursement of damage done to real estate. There are several bills registered with the Ukrainian Parliament that aim to provide respective regulation. Bill No. 7198 has been adopted in the first reading on 1 April 2022 and still awaits second reading in the Parliament. From available version of the bill we understand that it is focused on reimbursement of damage done to residential real estate, and misses similar regulation on commercial property. It is also aimed at reimbursement of damage done to real estate that is owned by Ukrainian citizens and misses explicit provisions on foreigners and legal entities



# Real Estate



## Are there any statutory provisions related to martial law that may affect the title to real estate in Ukraine?

During martial law, privately owned real estate may be potentially expropriated according to the decision of the military command, subject to further compensation for the value of the expropriated real estate, as determined by an appraiser in accordance with the applicable Ukrainian laws. The owner may claim the return of expropriated real estate instead of compensation in court after martial law is lifted.

Please note that we are not yet aware of any cases of real estate expropriation during martial law in Ukraine.

On a separate note, the Law of Ukraine "On the Basic Principles of Forced Expropriation in Ukraine of Property of the Russian Federation and Its Residents" came into force on 7 March 2022. It is aimed at enabling Ukrainian authorities to expropriate the property (including real estate) owned by the Russian Federation and its residents for reasons of public necessity, without any compensation paid for such expropriated property.

## Are statutory reliefs envisaged with respect to land rent payment?

Yes, please refer to this [Section on Tax and Customs Regime](#) for more detail.



**Serhiy Piontkovsky**

Managing Partner  
[serhiy.piontkovsky@bakermckenzie.com](mailto:serhiy.piontkovsky@bakermckenzie.com)



**Lina Nemchenko**

Partner  
[lina.nemchenko@bakermckenzie.com](mailto:lina.nemchenko@bakermckenzie.com)



**Nataliya Tyschenko**

Senior Associate  
[nataliya.tyschenko@bakermckenzie.com](mailto:nataliya.tyschenko@bakermckenzie.com)



**Elmaz Abkhairova**

Associate  
[elmaz.abkhairova@bakermckenzie.com](mailto:elmaz.abkhairova@bakermckenzie.com)



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# Work of State Courts and Arbitration Tribunals

# Work of State Courts and Arbitration Tribunals



## To what extent does martial law affect Ukrainian jurisdiction?

Martial law affects Ukrainian jurisdiction in the following ways:

### 1. Changes to the legislation regarding territorial jurisdiction

On 7 March 2022, the changes to the Law of Ukraine "On the Judiciary and the Status of Judges" became effective. These provide that if a court is unable to administer justice due to objective reasons during the state of martial law or emergency (natural disasters, hostilities, measures to combat terrorism or other emergencies), the territorial jurisdiction of the courts may be changed. The respective decision should be made by the High Council of Justice at the request of the chair of the Supreme Court or, if the High Council of Justice is unable to exercise its powers, by the order of the chair of the Supreme Court. The respective decision will also be considered as a ground for transferring all the cases considered by the court whose territorial jurisdiction is changed.

Since 24 February 2022, the day the full-scale invasion of Ukraine was launched, the Supreme Court has rendered 17 orders changing the territorial jurisdiction of the courts under the state of martial law. The full list of the courts whose territorial jurisdiction has been changed because they are unable to administer justice during the state of martial law can be found [here](#).

When the court becomes able to administer justice, its territorial jurisdiction renews by order of the chair of the Supreme Court. The full list of the courts whose territorial jurisdiction has been renewed can be found [here](#).

### 2. Functioning of the courts

On 2 March 2022, the Council of Judges of Ukraine published recommendations regarding the functioning of the courts during the state of martial law ("Recommendations," which may be accessed by following the [link](#)). The key points of the Recommendations are as follows:

# Work of State Courts and Arbitration Tribunals



## To what extent does martial law affect Ukrainian jurisdiction?

- The courts should determine the specifics of their functioning during the state of martial law, given the current situation in a particular region of Ukraine. A meeting of judges will make the relevant decision on the mode of operation of a particular court. If it is impossible to convene and hold such a meeting, the relevant decision will be made by the head of the court or by a person who temporarily performs the duties of the head of the court.
- If possible, courts are recommended to postpone the court hearings (except for urgent court proceedings) and not to consider such cases, given that many of the case participants will not always have the possibility to submit an application on postponement of the court hearing.
- Courts are strongly advised to only focus on urgent court proceedings (e.g., matters related to criminal proceedings such as detention, extending the term of detention, etc.). Cases that are not urgent should be considered only based on the written consent of all participants to the respective court proceedings. Courts are recommended to bring to the attention of the parties that they have the right to postpone court hearings in view of hostilities and the right to participate in court hearings via videoconference. Courts are required to restrict access to court hearings of persons who are not participants to the relevant court cases.
- Courts should carefully consider matters related to the return of various procedural documents, leaving them without movement, establishing different procedural deadlines — if it is possible to extend such deadlines at least until the end of martial law.
- The courts' management should stop the personal reception of citizens.

In light of the above Recommendations, during March-April 2022, courts exercising justice on the territories where no active hostilities took place were, in most cases, only considering urgent court proceedings (e.g., matters related to criminal proceedings such as detention, extending the term of detention, etc.). Since May 2022, most of the courts have renewed consideration of not urgent categories of proceedings, therefore, we recommend to closely monitor the pending cases via available sources (e.g., telephone, email).

# Work of State Courts and Arbitration Tribunals



## To what extent does martial law affect arbitration proceedings?

Arbitration proceedings are also affected by martial law.

The International Commercial Arbitration Court (ICAC) at the Ukrainian Chamber of Commerce and Industry, following the notification on the temporarily suspension of its operations, has announced that it has resumed accepting claims and other procedural documents relating to the competences of the arbitration institutions.

In addition, the ICAC has published the following information regarding the functioning of the ICAC and the Ukrainian Maritime Arbitration Commission (UMAC) during the state of martial law (the original text may be accessed by following the [link](#)):

- All incoming documents and other materials should be submitted in electronic form. The basic procedural documents (e.g., statement of claim, statement of defense, etc.) should also be delivered in hard copy, unless the parties agree otherwise.
- The payment of registration and arbitration fees should be made without invoicing, using the banking details available on the websites of the ICAC and the UMAC.
- The ICAC and UMAC arbitrators are requested to organize communication with the representatives of the parties and to take other measures to proceed with and complete the consideration of cases promptly.
- Until the end of the military aggression against Ukraine, oral hearings would be conducted via videoconference.
- The duration of the state of martial law would not be taken into account when defining the time limits of the arbitral proceedings.



**Ihor Siusel**

Partner

[Ihor.siusel](mailto:ihor.siusel@bakermckenzie.com)

[@bakermckenzie.com](https://www.bakermckenzie.com)



**Kseniia Prokhor**

Senior Associate

[kseniia.prokhor](mailto:kseniia.prokhor@bakermckenzie.com)

[@bakermckenzie.com](https://www.bakermckenzie.com)



**Nataliya Lipska**

Associate

[nataliya.lipska](mailto:nataliya.lipska@bakermckenzie.com)

[@bakermckenzie.com](https://www.bakermckenzie.com)

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# Enforcement Proceedings

# Enforcement Proceedings



## To what extent does martial law affect enforcement proceedings?

On 26 March 2022, the changes to the Law of Ukraine "On enforcement proceedings" became effective, which provide for: (1) certain restrictions with regard to enforcement actions in favor of Russia; (2) certain relieves during the state of martial law. The list of such relieves was expanded by the amendments to the Law, which came into force on 25 August 2022.

### 1. Restrictions with regards to enforcement actions in favor of Russia

Until the entry into force of the law regulating the relations involving persons associated with the aggressor state: (1) the commission of enforcement actions in favor of the Russian Federation is suspended; (2) the replacement of creditor in enforcement actions in favor of Russian Federation is prohibited. These also apply to the following persons:

- citizens of the Russian Federation;
- legal entities established and registered under the laws of the Russian Federation;
- legal entities established and registered under the laws other than Ukrainian, having among its ultimate beneficial owners, members or participants (shareholders) the Russian Federation, citizen of the Russian Federation, or legal entity established and registered under the laws of the Russian Federation.

The above restrictions do not apply to citizens of the Russian Federation residing in Ukraine on legal grounds, and legal entities established and registered under the laws of Ukraine, having ultimate beneficial owner, member, or participant (shareholder) citizens of the Russian Federation residing in Ukraine on legal grounds.

# Enforcement Proceedings



**To what extent does martial law affect enforcement proceedings?**

## **2. Relieves in enforcement proceedings during the state of martial law**

Temporarily, for the period until the termination or cancellation of martial law on the territory of Ukraine:

- persons may carry out expenditure operations from the accounts arrested by the state/private enforcement officers provided that the amount of the debt under the enforcement writ does not exceed UAH 100,000;
- legal entities may carry out expenditure transactions from the accounts arrested by the state/private enforcement officers only for the payment of wages (not exceeding 5 minimum wages per month per employee), and taxes/fees;
- recovery of wages, pensions, and other debtor's income is terminated (except for recovery of alimony and recovery from the debtor-citizen of the Russian Federation);
- commencement of enforcement proceedings and commission of enforcement actions on the temporarily occupied territories/territories where hostilities take place is prohibited;
- enforcement of notary writs is prohibited;
- commission of enforcement actions is suspended in enforcement proceedings against enterprises of the defense-industrial complex, military authorities and units, institutions and organizations being a part of the Armed Forces of Ukraine, and JSC "Ukrainian Railways".
- the terms prescribed under the Law of Ukraine "On enforcement proceedings" shall be interrupted and established from the date of termination or cancellation of martial law.



**Ihor Siusel**

Partner

[Ihor.siusel](mailto:ihor.siusel@bakermckenzie.com)

[@bakermckenzie.com](https://www.bakermckenzie.com)



**Kseniia Prokhor**

Senior Associate

[kseniia.prokhor](mailto:kseniia.prokhor@bakermckenzie.com)

[@bakermckenzie.com](https://www.bakermckenzie.com)



**Nataliya Lipska**

Associate

[nataliya.lipska](mailto:nataliya.lipska@bakermckenzie.com)

[@bakermckenzie.com](https://www.bakermckenzie.com)



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# Intellectual Property

# Intellectual Property



## **Are there any implications for new/pending patent, trademark and design registry proceedings by the National Intellectual Property Office (NIPO)?**

The NIPO continues performing its functions, including examination and registration of pending applications and the acceptance of new ones. To address the martial law implications, the Parliament of Ukraine has adopted the law that suspends various statutory deadlines for the applicants' and right holder's actions related to the protection and acquisition of IP rights, including the deadlines for:

- submission of documents (requests, responses, oppositions, etc.)
- renewal of IP
- challenging the NIPO's decisions
- reinstatement of missed deadlines

Such deadlines are suspended until the expiration or termination of martial law.

Furthermore, the law allows to submit the documents (requests, responses, oppositions, etc.) required by the applicable IP laws within 90 days of the end of martial law without paying any fees for renewal, extension or reinstatement of the respective deadlines.

Similarly, in case the deadline for renewal of trademark or other IP rights falls on the date during martial law, the right holders will have 90 days following the day martial law is lifted to file the renewal requests and pay applicable fees. The validity of IP that expires during martial law is extended until the day following the cessation of martial law.

# Intellectual Property



## Is there any specific impact on IP enforcement?

Under the current circumstances, the possibility of reaching out to, and establishing a meaningful dialogue with, the infringers might be impeded. Therefore, the effectiveness of non-jurisdictional methods of IP protection (i.e., performance of independent actions by right holders) might be lower, especially in the regions affected by active hostilities.

As for the courts, they continue operating and their work cannot be suspended under martial law. The priority for Ukraine's courts is to ensure the handling of urgent cases, including those related to defense issues. Thus, all non-urgent cases might be postponed. However, the number of court hearings in IP-related cases has gradually increased for the last few months.

Additionally, it is still highly recommended to monitor newly filed trademark applications and file oppositions with the NIPO if potentially threatening designations are detected.

## How is the customs protection of IP rights affected?

The Parliament adopted the law that authorizes the Cabinet of Ministers to determine the categories of goods in respect of which the customs authorities will not control the observance of IP rights during the clearance process. The list has not been published yet, but it is expected to cover mostly the goods of humanitarian or military importance.

## Have any content restrictions been imposed?

Yes. On 3 March 2022, the Commander-in-chief of the Armed Forces of Ukraine approved the List of information, the disclosure of which may lead to awareness by the enemy about the actions of the Armed Forces of Ukraine and other components of the defense forces, and negatively affect the course of performing tasks for their intended purpose during the legal regime of martial law ("List"). This List outlines the information/data that must not be disclosed during martial law, including, among others, the following:

- Name of military units and other military facilities in the areas where combat (special) operations are performed, their geographical coordinates, number of personnel, weapons and military equipment, material and technical means, their condition and storage locations

# Intellectual Property



## Have any content restrictions been imposed?

- Information on combat operations that are being conducted or planned, the movement and deployment of troops (name, number, places, districts, routes), deferred or canceled operations
- Information on missing or downed aircraft, missing ships and search and rescue operations that are planned or being carried out
- Information intended to promote or justify large-scale armed aggression of the Russian Federation against Ukraine, etc.

The Parliament of Ukraine has also increased criminal liability for production and dissemination of materials containing justification, recognition of lawfulness and denial of armed aggression of the Russian Federation against Ukraine, started in 2014. As of 16 March 2022, such crime is punishable by a restriction of liberty for up to five years or imprisonment for the same term, with or without confiscation of property. In addition, the blocking of access to the respective content or prohibition of media outlets distributing such content in Ukraine through the imposition of sanctions cannot be excluded.

Furthermore, on 22 May 2022 the Parliament adopted the law aimed at prohibiting the propaganda of Russian Nazi totalitarian regime, armed aggression of the Russian Federation against Ukraine, and symbols of the Russian armed and other military forces used in the war against Ukraine. Among other things, this law equates the public use of symbols of the military invasion of the Russian Nazi totalitarian regime in Ukraine to the propaganda and, therefore, bans such actions, including the use, creation, and distribution of products containing such symbols in Ukraine and /or abroad.

# Intellectual Property



## Have any content restrictions been imposed?

The list of such symbols includes:

- Latin letters "Z", "V" used as symbols of the military invasion of Ukraine (without legitimate context or in the context of justifying the armed aggression against Ukraine or other hostilities), including in the individual words with a visual emphasis on such letters
- formal or informal symbols (emblems) of the armed forces of the Russian Federation, including other armed formations and (or) bodies of the Russian Federation

The law also sets out in more detail the prohibited ways of using such symbols and some acceptable exemptions. This prohibition came into force on 12 June 2022.

Additionally, on 19 June 2022, the Parliament voted for the draft law prohibiting communication of phonograms, videograms and music videos of artists who are or were Russian citizens as of 1991 or onward to the public (including over the Internet). Same prohibition applies to the content produced by an individual or legal entity that were citizens or legal residents of Russia at the time of the publication of the recording. There are still a few legitimate exceptions to the use of such content and an exclusion for the Russian performers (singers) who condemn Russia's aggression against Ukraine. The list of such performers (singers) will be maintained and updated by the Office of the National Security and Defense Council. The law will come into force on 7 October 2022.



**Ruslan Drobyazko**

Partner

[ruslan.drobyazko@bakermckenzie.com](mailto:ruslan.drobyazko@bakermckenzie.com)



**Oleksiy Stolyarenko**

Counsel

[oleksiy.stolyarenko@bakermckenzie.com](mailto:oleksiy.stolyarenko@bakermckenzie.com)



**Dmytro Skydan**

Associate

[dmytro.skydan@bakermckenzie.com](mailto:dmytro.skydan@bakermckenzie.com)

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**10**

# Antitrust and Competition

# Antitrust and Competition



## How has martial law affected the activities of the Antimonopoly Committee of Ukraine?

On 9 June 2022 the Antimonopoly Committee of Ukraine (the "AMC") **resumed consideration of merger control and concerted actions filings**, as well as the applications for preliminary conclusions regarding same.

On 7 and 19 July, the AMC adopted a series of Decrees **resuming the review** of (i) notifications on infringements of the Ukrainian legislation on the protection of economic competition, (ii) notifications on unfair competition, (iii) notifications for review of the AMC decisions, as well as (iv) the letters of clarification on application of the state aid legislation. The above means that, as of now, **only the consideration of state aid notifications and cases remains suspended** based on the AMC's Decree No.1-rp as of 3 March 2022.

In addition, for the period of martial law, deadlines for the provision of information on the AMC's requests, the deadline for which fell on 25 February 2022 or later, as well as posting decisions on complaints about infringements of public procurement legislation in the electronic procurement system, remains suspended.

### **Consideration of merger control and concerted actions applications**

The review of merger control and concerted actions applications has undergone several temporary amendments and different regimes since 24 February 2022: firstly, it was completely suspended until 30 March, and then existed in a simplified format. On 9 June 2022, the AMC decided to resume the consideration of these categories of applications. Although the detailed clarifications relating to this resumption has not been published yet by the authority, the AMC in its [press release](#) has generally clarified what legal regimes should apply to merger control and concerted actions applications submitted within different time periods.

# Antitrust and Competition



## How has martial law affected the activities of the Antimonopoly Committee of Ukraine?

### Applications submitted and where the final decision was not made on or before 25 February 2022:

The review of such applications is **automatically resumed as of 9 June 2022**. There is no need for the parties to submit any separate requests on renewal of filings review, while the AMC is not obliged to formally inform the parties on review renewal of such applications.

### Applications submitted between 30 March and 17 June 2022 (inclusive)\*:

On 30 March 2022, the AMC issued recommendatory clarifications No. 1-pp (the "**Recommendations**") relating to the consideration of the new merger control (concentration) and concerted actions applications during the martial law period, which are still to be effective with regard to the applications submitted between 30 March and 17 June 2022 irrespectively of the resumption of review of merger control and concerted actions applications.

According to these Recommendations:

- i. The applications submitted to the AMC between 30 March and 17 June 2022 are to be reviewed by the AMC after the expiration or termination of the martial law period.
- ii. Given that between 30 March and 17 June 2022 the parties were eligible to submit applications accompanied by a limited list of information/documents, specified in the Recommendations, to enable the AMC to consider the application after the expiration or termination of the martial law period, the parties should submit to the AMC a full set of information and documents required under the law no later than three months after the expiration or termination of martial law. At the same time, under the recently introduced changes, the parties may submit all the outstanding data and request the AMC to renew the review of the respective applications before the martial law is revoked.



# Antitrust and Competition



## How has martial law affected the activities of the Antimonopoly Committee of Ukraine?

- iii. The parties can be fined for completing concentrations/concerted actions without obtaining the respective approval of the AMC during martial law. However, in case the parties meet certain criteria envisaged by the Recommendations, the fine may be lower.

Note that the Recommendations do not have legally binding effect, meaning that the norms envisaged by the law can still prevail.

### Applications submitted after 20 June 2022:

Such applications will no longer benefit from the simplified rules established by the Recommendations. They should be submitted under the regular procedures applicable before the martial law was imposed.

# Antitrust and Competition



How has martial law affected the activities of the Antimonopoly Committee of Ukraine?

## State Aid

On 13 April 2022 amendments to the Law of Ukraine "On State Aid to Business Entities" No. 1555-VII dated 01 July 2014 (the "State Aid Law") entered into force (the "Amendments"), simplifying the mechanism of state aid provision during the martial law and within a year after the expiration or termination of the martial law period.

In accordance with the Amendments:

- Certain provisions of the State Aid Law shall not apply during the martial law, including:
  - criteria when state aid may be deemed compatible;
  - requirements regarding notifications on the state aid;
  - procedure of the review by the AMC of notifications and cases on the state aid;
  - verification of the information on the illegal state aid and on inappropriate use of the state aid;
  - procedure for recovery of the incompatible state aid and for review of the existing state aid.
- The state aid provided during the martial law is automatically considered as compatible. Nevertheless, such state aid still shall comply with certain state aid objectives enshrined in the State Aid Law.

# Antitrust and Competition



## How has martial law affected the activities of the Antimonopoly Committee of Ukraine?

- Providers of state aid are exempted from the obligations:
  - to notify on a new state aid and on proposals on amendment of the terms of the existing state aid, if such state aid is provided during the martial law and within one year after the expiration or termination of the martial law period;
  - to submit information on the existing state aid provided during the martial law and within one year after the expiration or termination of the martial law period.

In addition, on 15 April 2022 the AMC issued recommendatory clarifications No.1-pp/DD in respect of the Amendments by which the authority clarified how these Amendments would impact procedures relating to provision of the state aid during the marital law period and the relevant AMC's activities.

### Review of public procurement complaints by the AMC

In [her interview](#), Olha Nechytailo, the State Commissioner of the AMC, has clarified that the AMC reviews all public procurement complaints under the same procedure regardless of whether the complainant/purchaser is located on temporarily occupied territories/military actions zone. The procedure has not been changed due to the war. The State Commissioner has also recommended that the participants of the public procurement complaint case should consider the possibility of submission of written explanations and minimize personal participation in the hearings.



**Oksana Simonova**

Partner

[oksana.simonova@bakermckenzie.com](mailto:oksana.simonova@bakermckenzie.com)



**Olga Mikheieva**

Counsel

[olga.mikheieva@bakermckenzie.com](mailto:olga.mikheieva@bakermckenzie.com)

# Antitrust and Competition



**How has martial law affected the activities of the Antimonopoly Committee of Ukraine?**

**Notes:**

\* Although the AMC's press release refers to the filings submitted between 30 March and 17 June 2022 only, we assume that the same regime will apply to all other applications submitted after the consideration of merger control and concerted actions filings was suspended due to martial law.

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# Pharmaceuticals and Healthcare

# Pharmaceuticals and Healthcare



**How is the government addressing the needs regarding pharmaceuticals/medical devices? Have any regulatory procedures been relaxed?**

The government and the Ministry of Health of Ukraine ("MOH") have temporarily relaxed certain regulatory rules, including the following:

- As regards import of pharmaceuticals
  - Lifted minimum shelf life requirement for imported pharmaceuticals for in-patient care, provided that the importer presents a letter confirming that the product will be used before shelf life expiry
  - Permitted import of non-registered pharmaceuticals for the army or healthcare facilities (excluding pharmacies) without the right of resale, on the basis of the manufacturer's batch release certificate and with instructions for use translated into Ukrainian
  - Permitted import of pharmaceuticals in the non-localized packaging that differs from the registered packaging on the basis of manufacturer's / marketing authorization holder's letter confirming that the imported pharmaceutical is identical to the one registered in Ukraine and with instructions for use translated into Ukrainian
  - Lifted laboratory testing of biological products that are subject to state quality control upon importation
  - Lifted state quality control upon importation for pharmaceuticals procured by specialized procurement agencies
- As regards distribution of pharmaceuticals
  - Permitted transportation by non-dedicated vehicles (including public transport) and via post, subject to compliance with the storage conditions established by the manufacturer
  - Permitted storage of pharmaceuticals at warehouses not covered by the existing import/wholesale licenses subject to compliance with the storage conditions established by the manufacturer
  - Permitted sale by licensed manufacturers, importers, retailers and wholesalers to certain non-licensed entities such as military administrations, armed forces units and entities engaging volunteer organizations that provide humanitarian aid

# Pharmaceuticals and Healthcare



**How is the government addressing the needs regarding pharmaceuticals/medical devices? Have any regulatory procedures been relaxed?**

- As regards medical devices
  - Permitted placing medical devices on the market in derogation of applicable technical regulations subject to recognition of the conformity assessment procedure carried out by the accredited foreign conformity assessment body
  - Suspended market surveillance for medical devices (except price control inspections for certain anti-COVID products, such as masks and disinfectants, if there is a severe threat to rights, legitimate interest, life and health of individuals, the environment or state security or to comply with obligations of Ukraine under international treaties)
- Permitted electronic submission of documents for state registration of pharmaceuticals and for import state quality control
- Delayed for one year, until 1 January 2024, mandatory health technology assessment for pharmaceuticals procured or reimbursed using state budget funds

In addition, the government approved the procedure for temporary emergency state registration of pharmaceuticals for in-patient care. The packaging and instructions for use of such pharmaceuticals do not need to be localized, and the documents may be submitted in the English language and in electronic form.

# Pharmaceuticals and Healthcare



**How does martial law impact the validity of marketing authorizations?**

The government has stopped the clock for submitting the renewal applications for the state registration certificates expiring during martial law and prolonged state registration certificates for pharmaceuticals procured by specialized procurement agencies or state enterprise "Medical Procurement of Ukraine".

**Have any restrictions been introduced with respect to products imported from/manufactured in Russia or Belarus?**

Yes. The MOH has cancelled state registration of certain pharmaceuticals whose manufacturers/marketing authorization holders are registered or carry out business in Russia or Belarus.

In addition, on 22 May 2022, the Parliament of Ukraine adopted law No. [2271-IX](#) ("Law") authorizing the MOH to carry out the following:

1. Cancel or refuse a marketing authorization if at least one stage of the manufacturing process is carried out by an entity with manufacturing facilities in Russia or Belarus
2. Cancel or suspend a marketing authorization if its holder or holder's representative in Ukraine is directly or indirectly affiliated to an entity that:
  - i. "Directly or indirectly" carries out manufacturing of pharmaceuticals in Russia or Belarus
  - ii. Is a representative, a representative office, a branch, licensee, marketing authorization holder, manufacturer or supplier of an entity listed in (i) above
  - iii. After 23 February 2022:
    - Concluded transactions on taking part in at least one stage of manufacturing a pharmaceutical or an active pharmaceutical ingredient (API) by an entity located in Russia or Belarus
    - Provided for the use by an entity located in Russia or Belarus "pharmaceutical tangible or intangible assets" or related patents, authorizations, licenses, marketing authorizations, rights and other documents required for the manufacturing of pharmaceuticals or APIs, or lent, rented out, licensed out or sold such assets, rights or documents directly or indirectly to a Russian or Belarusian resident for manufacturing pharmaceutical products



# Pharmaceuticals and Healthcare



**Have any restrictions been introduced with respect to products imported from/manufactured in Russia or Belarus?**

The MOH would be able to cancel a marketing authorization only after suspending it for three months and if the marketing authorization holder continues to carry out the activities set forth in item 2 above after the expiry of the three-month period. The government must agree upon such cancellation of the marketing authorization.

The adoption of the Law does not immediately trigger a refusal, cancellation or suspension of any of the impacted marketing authorizations. Instead, the Law provides the MOH with the authority to decide on the refusal, cancellation or suspension of marketing authorizations on a case-by-case basis.

To enable the implementation of the Law, the MOH should approve an order detailing the procedures for refusal, cancellation or suspension of marketing authorizations.

**Have the procurement rules in healthcare been simplified?**

Yes. Temporarily, the government and the MOH have permitted the following:

- Procurement of medical products based on the simplified procedures, electronic catalogue or direct contracting procedures (on 29 June 2022, the list of cases when direct contracting may be used was significantly narrowed)
- Procurement of medical products by military administrations
- Signing and delivering invoices, transfer and acceptance acts, delivery orders and acceptance notices and other supporting documents by state enterprise "Medical Procurement of Ukraine" in electronic form

**Have any additional price controls or price-cutting measures been implemented?**

No additional price-cutting measures have been implemented. The government has lifted retail price declaration for anti-COVID products (masks, disinfectants, paracetamol and certain antibiotics). At the same time, the government has also introduced price monitoring for domestically-manufactured non-steroid anti-inflammatory and antibacterial pharmaceuticals.

# Pharmaceuticals and Healthcare



**Has any guidance been issued with respect to clinical trials?**

Yes. The State Expert Center of the Ministry of Health of Ukraine ("**Center**") has issued recommendations, as follows:

- The sponsors should critically assess whether it is appropriate to initiate new trials or suspend initiation of new trials/sites or inclusion of new subjects.
- If continuation of the trial in the approved site is not possible, sponsors should consider either of the following:
  - Withdrawal of subject from a clinical trial
  - Transfer subject to another approved site, if possible
  - If a study subject has left Ukraine, sponsors should consider temporary transfer to the approved sites in the country where the subject is located, provided that the Center and local ethics committees are informed of such transfer as soon as possible.
- Sponsors are recommended to take all possible measures to ensure uninterrupted supply of the investigational product at site and compliance with protocol to ensure patient safety.
- Inform Center of all protocol violations related to patient safety and other aspects required by law (notices may be sent by email with original documents to follow when possible and appropriate).
- Notifications on significant amendments will be processed by the Center subject to its availability.

# Pharmaceuticals and Healthcare



## Has any guidance been issued with respect to clinical trials?

- In case of travel restrictions, sponsors should consider the following:
  - Replacing physical site visits by telephone or video calls, rescheduling or cancelling visits
  - If it is not possible to obtain (updated) informed consent due to travel restrictions, study subject may provide consent in the presence of an impartial witness; alternatively, study subject and investigator may sign separate informed consent forms, provided that a normal consent is obtained afterwards as soon as possible.
  - Alternative ways of delivering investigational product subject to compliance with storage conditions determined by the manufacturer (e.g., through engaging distributor for the deliveries, provided this is compliant with the protocol and sponsor's instructions for study subjects)
  - Using labs in or outside of the healthcare facilities subject to lab capacity and agreement with the sponsor
- In certain cases such as in COVID-related trials or at interim or final data processing stages before database lock, it is possible to use remote source data verification.
- It is recommended to use International Ethical Guidelines for Health-related Research Involving Humans Prepared by the Council for International Organizations of Medical Sciences in collaboration with the World Health Organization, specifically Guideline 20 Research in disasters and disease outbreaks.
- Local ethics committees should, among other things, consider revising their standard operating procedures to allow the review of documents submitted electronically, use of audio and video conferencing, and issuing the consensus opinion in cooperation with other ethics committees.



**Olha Demianiuk**

Partner

[olha.demianiuk@bakermckenzie.com](mailto:olha.demianiuk@bakermckenzie.com)



**Olha Sviatenka**

Associate

[olha.sviatenka@bakermckenzie.com](mailto:olha.sviatenka@bakermckenzie.com)



**Serhiy Chorny**

Managing Partner

[serhiy.chorny@bakermckenzie.com](mailto:serhiy.chorny@bakermckenzie.com)



**Serhiy Piontkovsky**

Managing Partner

[serhiy.piontkovsky@bakermckenzie.com](mailto:serhiy.piontkovsky@bakermckenzie.com)

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Renaissance Business Center

24 Bulvarno-Kudriavska St.

Kyiv 01601, Ukraine

Tel: +48 22 445 34 60

[kyiv.info@bakermckenzie.com](mailto:kyiv.info@bakermckenzie.com)

The image features the Baker McKenzie logo in the top left corner. The background is a dark blue gradient with intricate, flowing patterns of light blue and orange-gold lines that create a sense of movement and depth. The lines are thin and translucent, overlapping to form complex, organic shapes.

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