



Legal Digest

A new portion of legislative novelties were submitted by the Ukrainian Parliament and Cabinet of Ministers last month, which leave many questions to consider. We asked a handful of experts to share their views on the Draft Law *On the Regime of Common Transit*; the idea of mid-term or multi-annual budgetary planning; prolonging of the moratorium on the sale of agricultural land; Agreement *On the General Terms and Conditions of Supply of Goods between Organizations of the CIS Member States* as well as Draft Law No. 6746 providing for more certainty in a number of procedural rules of the Law of Ukraine *On Protection of Economic Competition* and lots of other issues.

Discussions continued recently about Draft Law No. 2413a *On Amending Particular Legislation of Ukraine to Consolidate the Functions of State Regulation of a Financial Services Market*, known as the "Split Law". How well is the Draft version within the scope? What might be the main problems that arise during the implementation process?



Sergiy Kazmirchuk,

Counsel,

Sayenko Kharenko

Apart from redistribution of the regulatory and supervisory functions, the Draft Law on "split" (the "Split Law") does not provide for any immediate significant changes to the current activities of financial institutions in Ukraine. All effective regulatory acts of the National Commission for State Regulation of Financial Services Markets (NFP) will remain effective until replaced. Therefore, regarding the availability and sufficiency of the relevant regulatory framework, there should be no global problems with the implementation of the Split Law. On the other hand, the practical implications of its implementation for market participants raise significantly more questions. At first glance, the transfer of functions from one regulator to another appears to be a mere formality. However, to be more accurate, any assessment of the practical consequences of the Split Law should be made based on analysis of already well-established approaches by the National Bank of Ukraine, which is supposed to become the key regulator for the greater part of the financial services market.

Starting in 2015, the NBU implemented a number of measures aimed at clearing the banking services market. Initially this involved tightening control over the transparency of bank ownership structures followed by tightening the requirements to bank equity and confirmation of sufficiency and quality of the funds of the actual beneficial owners of banks. The effectiveness of these measures is evidenced by simple statistics: the number of banks has halved. It is safe to assume that after adoption of the Split Law, a similar transformation will also begin on the non-banking financial services market and the NBU's approach in all key areas of supervision will differ little from the previously adopted principles of working with banks.

The transparency of the ownership structure, business reputation of beneficiaries and origin of their funds will be among the top priorities. Moreover, in practice, the NBU tends not to limit itself to a formal review of provided information but prefers thorough independent investigation.

The NBU has announced particular emphasis on prudential supervision, which should now be based on a risk-oriented approach as opposed to the more formal approach of the NFP. In practice this means that the NBU will focus not on formal implementation by financial institutions of the established procedures but on the essence and effectiveness of these procedure. Accordingly, mere formal compliance by a financial institution with legislative requirements will not guarantee protection against possible claims or influence measures from the new regulator.

The same risk-based approach has been promised by the NBU with respect to corporate governance in financial institutions though, evidently, the business reputation of officers of an institution and their compliance with professional requirements will be carefully verified.

Thus, despite the declared intention of the NBU to perform a "painless" transfer of functions, most likely market participants will face significant changes in the approaches taken by former and new regulators to supervision and risk assessment. Accordingly, financial institutions and their owners should immediately seek to critically evaluate their business in terms of compliance with the declared principles, thereby preventing problems in the future.