

Law of Ukraine
On Amendment of the Law of Ukraine
"On Banks and Bank Activity"

The Verkhovna Rada of Ukraine hereby resolves:

I. To introduce the following changes to the Law of Ukraine "On Banks and Bank Activity" (Bulletin of the Verkhovna Rada of Ukraine, 2001, No. 5 - 6, page 30; 2003, No. 14, page 104):

1. In Article 2:

to supplement the definition of the term “bank” after the words “legal entity” with the words “or a branch of a foreign bank”;

to supplement the Articles with the following term definitions:

“foreign bank – a credit institution attracting deposits from individuals and legal entities and placing the said funds on its behalf on its own terms and at its risk, opening and maintaining bank accounts of individuals and legal entities, established and operating in accordance with laws of a foreign state ”;

“establishment capital – an amount of money in a convertible currency provided by a foreign bank to its branch for its accreditation, obtaining a bank license and carrying out bank activity.”

2. Article 3 after part one shall be supplemented by a part of the following content:

“Provisions of this Law applicable to banks shall be applied to branches of foreign banks subject to the special provisions stipulated by this Law.”

In this connection, parts two and three shall be considered parts three and four respectively.

3. Part one of Article 4 after the words “other banks” shall be supplemented by the words “including branches of foreign banks.”

4. Articles 23 and 24 shall be worded as follows:

"Article 23. The procedure for opening branches and representative offices of banks in the territory of Ukraine

A bank shall be entitled to open a branch or a representative office in the territory of Ukraine, if its activities meet the requirements to opening branches and representative offices stipulated by normative acts of the National Bank of Ukraine.

Information about bank branches and representative offices shall be included by the National Bank of Ukraine to the bank registry based on a written notification of the bank.

No later than ten days before a bank branch begins servicing clients, the authorized body of the bank shall notify the National Bank of Ukraine of opening a branch for this information to be included in the State Registry. The notification shall have the following information:

- 1) internal bank registration code of the branch;
- 2) full name of the branch;
- 3) location of the branch;
- 4) scope and types of activity (operations) to be carried out by the branch

The following documents shall be supplied together with the notification of opening the branch:

- 1) the resolution of the authorized body of the bank about opening the branch;
- 2) a by-law on the branch approved by the authorized body of the bank;
- 3) a written assurance of compliance by activities of the branch with the requirements stipulated by this Law and normative acts of the National Bank of Ukraine, in particular, as regards the premises and equipment of the bank branch as well as professional adequacy and business reputation of branch management.

The National Bank of Ukraine shall be entitled to resolve on suspending bank operations of the branch for the benefit or in the interests of clients, if the notification about the opening of the branch by the bank contains unfair information or the activities of the branch do not comply with the requirements of the law and normative acts of the National Bank of Ukraine.

The authorized body of the bank, within two weeks after its approving the decision to open up the representative office, shall give a notification to the National Bank of Ukraine of the opening of the branch for the inclusion of this information in the State Registry.

The following documents shall be supplied together with the notification of opening the representative office:

- 1) the resolution of the authorized body of the bank about opening the representative office;
- 2) a by-law on the representative office approved by the authorized body of the bank.

The authorized body of the bank shall submit a copy of the changes made to the by-law on the branch or representative office within two weeks after their approval by the authorized body of the bank to the National Bank of Ukraine for their inclusion in the State Registry.

The authorized body of the bank shall notify the closing of the branch or representative office to the National Bank of Ukraine within three days after approving the relevant decision.

Article 24. Branches and representative offices of foreign banks in the territory of Ukraine

Foreign banks shall be entitled to open branches and representative offices in the territory of Ukraine.

The procedure for accreditation, the grant of a bank license, the written permit to carry out operations, the specifics of the performance of bank transactions, the maintenance of accounting and filing financial and statistical reports, their publication, regulation of activities, supervision of the activities, applying measures and liquidation of foreign bank branches shall be stipulated by this Law and normative acts of the National Bank of Ukraine.

A foreign bank shall be entitled to open up a branch in Ukraine subject to the following conditions:

- 1) the state in which the foreign bank is registered is not one of the states that do not participate in international cooperation in the field of preventing money laundering and financing of terrorism; such state shall cooperate with the Financial Action Task Force on Money Laundering (FATF);

2) bank supervision in the state in which the foreign bank is registered complies with the Core principles for effective banking supervision of the Basle Committee on Banking Supervision;

3) the statutory capital of the foreign bank shall be at least EUR 150 million;

4) the minimum amount of the branch establishment capital as of the moment of its accreditation shall be at least EUR 5 million;

5) a written commitment of the foreign bank shall be provided on the unconditional performance by it of obligations arising in connection with activities of its branch in the territory of Ukraine;

6) Ukrainian banks shall be provided the right to open their branches in the territory of the foreign state where the foreign bank is established and operates.

The National Bank of Ukraine shall grant accreditations of foreign bank branches in Ukraine.

An accreditation of a foreign bank branch shall be effected by making the relevant entry on the State Registry of Banks, issuing a bank license and granting a written permit to carry out operations.

An accreditation of a foreign bank branch shall be the basis for its carrying out of banking activity.

To accredit a foreign bank branch the following documents shall be submitted:

1) an application of the foreign bank to open a branch indicating its location in the territory of Ukraine;

2) a document confirming the state registration of the foreign bank in its home country;

3) a resolution of the authorized body of the foreign bank on opening a branch;

4) a by-law on the branch approved by the authorized body of the foreign bank;

5) information about professional adequacy and business reputation of the foreign bank branch manager and chief accountant;

6) a copy of the charter of the foreign bank;

7) financial statements of the foreign bank for the past three years audited by an independent auditor;

8) a written permit to open a foreign bank branch in Ukraine issued by the state or other authorized regulatory agency in the state where the foreign bank is registered or a written assurance of the foreign bank to the effect that the laws of the relevant state do not stipulate that such a permit must be obtained;

9) a notification to the authorized supervisory agency of the foreign state to carry out supervision over activities of the foreign bank;

10) a written commitment of the foreign bank on the unconditional performance by it of obligations arising in connection with activities of its branch in the territory of Ukraine;

11) documents confirming payment of the establishment capital of the branch;

12) a copy of the money transfer order confirming payment for the accreditation of the foreign bank branch.

Activities of the foreign bank branch shall meet the requirements stipulated by this Law and normative acts of the National Bank of Ukraine, including those to the premises and equipment of the bank branch as well as professional adequacy and business reputation of branch management.

The National Bank of Ukraine shall be entitled to refuse to accredit foreign bank branch on the following grounds:

1) the submitted documents do not meet the established requirements;

2) the premises and equipment of the bank branch do not meet the requirements of the National Bank of Ukraine;

3) the candidacies of the manager and chief accountant do not meet the requirements of this Law and normative acts of the National Bank of Ukraine regarding professional adequacy and business reputation;

4) it has been identified that the foreign bank has financial and legal problems that may have adverse effects on clients or potential clients of the bank as a result of opening the branch.

The National Bank of Ukraine shall resolve on granting or refusing accreditation of the foreign bank branch within three months after the submission of all required documents.

A refusal shall be in writing and shall list the relevant grounds for refusal.

The amount of payment to be levied for accreditation of a foreign bank branch shall be established by the National Bank of Ukraine.

On liquidation of a foreign bank branch, its assets shall be used to satisfy claims of creditors – the clients of this branch

The National Bank of Ukraine shall accredit representative offices of foreign banks in the territory of Ukraine in accordance with the procedure and subject to the conditions stipulated by this Law and normative acts of the National Bank of Ukraine.

A representative office of a foreign bank shall be accredited by making a relevant entry onto the State Registry of Banks. For accreditation of representative offices of foreign banks payment shall be levied in the amount to be established by the National Bank of Ukraine.

The accreditation of a representative office of a foreign bank shall require the submission of the following documents:

- 1) an application of the foreign bank to accredit the representative office signed by an authorized person;
- 2) a document confirming the state registration of the foreign bank;
- 3) a by-law on the representative office approved by the authorized body of the foreign bank;
- 4) a power of attorney issued to the manager of the representative office of the foreign bank to perform representation functions;
- 5) a copy of the money transfer order confirming payment for the accreditation of the representative office.

The National Bank of Ukraine may refuse to accredit a representative office of the foreign bank in the event of violating the accreditation procedure, the submitted documents not complying with the requirements of this Law or normative acts of the National Bank of Ukraine, the submitted documents being unfair or the scope of authority regarding the operation of the representative office being trespassed.

The decision to grant or refuse accreditation of the representative office of the foreign bank shall be approved by the National Bank of Ukraine within one month after submitting all the required documents.

A refusal shall be in writing and shall list the relevant grounds for refusal.

The National Bank of Ukraine shall be provided information supported by the relevant documents about changes in the documents or details specified in paragraphs 4 – 6 of part seven and paragraphs 3, 4 of part sixteen of this Article.

Official documents submitted to the National Bank of Ukraine shall be legalized in accordance with the established procedure unless otherwise stipulated by international treaties whose obligatory nature has been consented to by the Verkhovna Rada of Ukraine and shall have a notarized Ukrainian translation attached."

II. Final provisions

1. This Law shall take effect as of the day of its publication.

2. Changes shall be introduced to the following legislative acts of Ukraine:

1) in Article 334 of the Economic Code of Ukraine (Bulletin of the Verkhovna Rada of Ukraine, 2003, No. 18, 19 - 20, 21 - 22, page 144):

in part one the words “(state and non-state)” shall be replaced by the words “including branches of foreign banks”;

part two shall be supplemented by the following passage:

"The legal status of a branch of a foreign bank shall be equal to the legal status of a bank subject to special conditions stipulated by the law on banks and banking activity”;

2) in Article 5 of the Law of Ukraine "On Foreign Economic Activity" (Bulletin of the Verkhovna Rada of the Ukrainian SSR, 1991, No. 29, page 377):

in part eighteen:

in passage one the second sentence shall be replaced by the following two sentences: "The accreditation of the said representative offices shall be effected by the central executive authority on economic policy within sixty working days after the foreign business entity submitted the relevant documents. The accreditation of branches and representative office of foreign banks shall be effected by the National Bank of Ukraine in accordance with the Law of Ukraine “On Banks and Banking Activity” and the word “registration” shall be replaced by the word “accreditation”;

in passage two the word “registration” shall be replaced by the word “accreditation”;

in part nineteen the words “registration” and “by registration” shall be replaced by the words “accreditation” and “by accreditation” respectively;

in part twenty the word “to register” shall be replaced by the word “to accredit”;

in part twenty one the words “registration (re-registration)” shall be replaced with the word “accreditation,” the word “registered” shall be replaced with the word “accredited”;

3) paragraph 22.20 of Article 22 of the Law of Ukraine “On Corporate Profit Tax” (Bulletin of the Verkhovna Rada of Ukraine 1997, No. 27, page 181; 1998, No. 10, page 35) shall be supplemented by the following sentence: “The accreditation of branches and representative office of foreign banks shall be effected by the National Bank of Ukraine in accordance with the Law of Ukraine “On Banks and Banking Activity”;

4) part one of Article 2 of the Law of Ukraine “On Individuals’ Deposits Guarantee Fund” (Bulletin of the Verkhovna Rada of Ukraine, 2002, No. 5, page 30) shall be worded as follows:

“Participants in the Individuals’ Deposits Guarantee Fund (the “Fund”) shall be banks and foreign bank branches registered in the State Registry of Banks maintained by the National Bank of Ukraine and having a bank license to carry out banking activity. The participation in the Fund by banks and foreign bank branches shall be obligatory.”

3. The Cabinet of Ministers of Ukraine shall:

within three months after the publication of this Law, submit for consideration by the Verkhovna Rada, proposals to bring laws of Ukraine into line with this Law;

within six months after the publication of this Law, bring its normative acts into line with this Law.

4. Within six months after the publication of this Law, the National Bank of Ukraine shall bring its normative acts into line with this Law.