

# **LAW OF UKRAINE**

**No. 358-V of 16 November 2006**

## **On Amending the Law of Ukraine "On Banks and Bank Activity"**

The Verkhovna Rada of Ukraine hereby decrees to:

I. Make the following amendments to the Law of Ukraine "On Banks and Bank Activity" (Vidomosti Verkhovnoyi Rady Ukrainy, 2001, No. 5 - 6, p. 30; 2003, No. 14, p. 104; as amended by the Law of Ukraine No. 133-V of 14 September, 2006):

1. In Article 2:

in the definition of the term "bank with foreign capital" substitute the words "foreign investor, amounts to no less than" for the words "non-resident, exceeds";

supplement the definition of the term "bank license" after the words "on the grounds of which the banks", with the words "and foreign bank branches";

supplement the Article after the definition of the term "subscription capital", with the definition as follows:

"establishment capital: an amount of money in a convertible currency provided by a foreign bank to its branch for its accreditation";

supplement the definition of the term "bank representative office" after the words "a bank subunit that", with the words "performs the functions of representing the bank and protecting the interests thereof and".

2. Article 3 after part one shall be supplemented by a new part reading as follows:

"Provisions of this Law and normative-legal acts of the National Bank of Ukraine shall be applied both to banks and to foreign bank branches."

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

3. Part one of Article 4 after the words "other banks" shall be supplemented with the words "as well as foreign bank branches."

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 branches and representative offices in the territory of Ukraine, if it meets the requirements as to opening branches and representative offices stipulated by normative-legal acts of the National Bank of Ukraine.

Information about bank branches and representative offices shall be entered by the National Bank of Ukraine in the State Register of Banks based on a written notification of the bank.

No later than ten days before a bank branch begins servicing clients, the bank shall be required to notify the National Bank of Ukraine of opening the branch providing 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) the by-law on the branch approved by the authorized body of the bank;
- 3) a written assurance of compliance by the branch with the requirements stipulated by this Law and by normative-legal acts of the National Bank of Ukraine, in particular, as regards the premises and equipment of the bank branch as well as the professional adequacy and business reputation of the branch management.

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

A bank, within two weeks after its approving the decision to open up a representative office, shall be required to give a notification to the National Bank of Ukraine of the opening of the representative office.

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

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

A bank shall be required to submit to the National Bank of Ukraine a copy of the decision to introduce changes to the by-law on a branch or a representative office, within two weeks after approval thereof by the authorized body of the bank.

A bank shall be required to notify the National Bank of Ukraine of the closing of a branch or a representative office within three days after approving the relevant decision.

Article 24. The procedure for opening 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.

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 one of the states that participate in international cooperation in the field of preventing legalization (laundering) of money gained by criminal means, and financing of terrorism, as well as cooperates with the Financial Action Task Force on Money Laundering (FATF);

2) banking 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 National Bank of Ukraine and the body of bank supervision in the state in which the foreign bank concerned is registered, have concluded an agreement providing for cooperation in the field of banking supervision and for harmonization of principles and conditions thereof;

4) the minimum amount of the branch establishment capital as of the moment of its accreditation shall be at least EUR 10 million;

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

The accreditation of foreign bank branches in Ukraine shall be performed by the National Bank of Ukraine.

The 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 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) the 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 on carrying 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 of the fee for the accreditation of the foreign bank branch as established by the National Bank of Ukraine.

Activities of a foreign bank branch shall meet the requirements stipulated by this Law and by the normative-legal acts of the National Bank of Ukraine. The National Bank of Ukraine shall regulate the activities of foreign bank branches and shall establish economic standards for them in accordance with the requirements of Ukrainian law.

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

- 1) the submitted documents do not meet the requirements of this Law and of the normative-legal acts of the National Bank of Ukraine;
- 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 of the bank branch do not meet the requirements of this Law and of the normative-legal acts of the National Bank of Ukraine regarding professional adequacy and business reputation;
- 4) it has been identified that the foreign bank has financial or legal problems that point to possible adverse effects on clients or potential clients of the bank as a result of opening the branch.

The National Bank of Ukraine shall take a decision to grant or refuse accreditation of a 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 activities and taxation of a foreign bank branch shall be performed in compliance with such Ukrainian legislation as is applied to Ukrainian banks.

The National Bank of Ukraine shall be entitled to introduce temporary administration and to initiate liquidation process in respect of a foreign bank branch, in accordance with the procedure established by Ukrainian law.

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 by normative-legal 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 Register of Banks.

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 state registration of the foreign bank;
- 3) the 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 by the foreign bank to perform representation functions;
- 5) a copy of the money transfer order confirming payment of fee for the accreditation of the representative office as established by the National Bank of Ukraine.

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

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

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

The foreign bank concerned shall be required to notify the National Bank of Ukraine of any changes in the documents or information listed in paragraphs 4 thorough 6 of part six and in paragraphs 3 and 4 of part fourteen of this Article. Introduction of changes must be supported by relevant documents.

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.”

5. Part one of Article 57 shall be worded as follows:

“Deposits of individuals in banks and foreign bank branches shall be guaranteed in accordance with the procedure and in amounts stipulated by Ukrainian law.”

## II. Final provisions

1. This Law shall take effect as of the day of Ukraine’s accession to the World Trade Organization, apart from the amendments to Article 5 of the Law of Ukraine "On Foreign Economic Activity"; to Articles 2, 4 and 23, and to parts twelve through nineteen of Article 24 (in the wording of this Law) of the Law of Ukraine "On Banks and Bank Activity" which shall take effect as of the day of publication of this Law.

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

1) in part one of Article 334 of the Economic Code of Ukraine (Vidomosti Verkhovnoyi Rady Ukrainy, 2003, No. 18, 19 - 20, 21 - 22, p. 144), the words “(state and non-state)” shall be substituted with the words “as well as foreign bank branches”;

2) in passage one of part eighteen of Article 5 of the Law of Ukraine "On Foreign Economic Activity" (Vidomosti Verkhovnoyi Rady of the Ukrainian SSR, 1991, No. 29, p. 377; as amended by the Law of Ukraine No. 139-V of 14 September, 2006), the second sentence shall be substituted with the following two sentences: "The accreditation of foreign bank branches and representative offices shall be effected by the National Bank of Ukraine in accordance with the Law of Ukraine “On Banks and Banking Activity”. Registration of representative offices of other foreign business entities shall be effected by the central executive authority on matters of economic policy within sixty working days after the foreign business entity submitted the documents for registration”;

3) In the Law of Ukraine "On the Individuals' Deposits Guarantee Fund" (Vidomosti Verkhovnoyi Rady of Ukraine, 2002, No. 5, p. 30):

in preamble and the text of the Law, the words "a bank that is the participant (temporary participant) in the Fund", "banks that are the participants (temporary participants) in the Fund" shall be substituted, respectively, with the words "participant (temporary participant) in the Fund";

in passage two of Article 1, the word "bank" shall be substituted with the word "participant";

in Article 2:

part one shall read as follows:

"Participants in the Individuals' Deposits Guarantee Fund (hereinafter the "Fund") shall be banks and foreign bank branches registered in the State Register of Banks kept by the National Bank of Ukraine and having a bank license to carry out banking activity. Participation in the Fund by banks and foreign bank branches shall be obligatory";

in part four the words "Banks that are the participants in the Fund" and "banks" shall be substituted, respectively, by the words "Participants in the Fund" and "banks and foreign bank branches";

part five shall read as follows:

"After having been relegated to the category of temporary participants in the Fund, a bank or a foreign bank branch whose deposits of individuals were attracted prior to the date of their relegation to that category, shall be required to pay contributions to the Fund until acquitting in full of their obligations to depositors in respect to repayment of their deposits and accrued interest";

in part six the words "this bank" shall be substituted with the words "bank or foreign bank branch";

in part seven the words "bank" and "it" shall be substituted with the words, respectively, "bank or foreign bank branch" and "bank or branch";

in the first sentence of part one of article 3 the word "banks" shall be substituted with the word "participants";

paragraph 1 of Article 4 shall read as follows:

"1) by members of a bank's or foreign bank's supervisory board, board of directors, and auditing committee whose deposits in the bank or foreign bank are inaccessible";

in part two of Article 5 the words "Banks that are participants (temporary participants)" shall be substituted with the words "Participants (temporary participants)";

in paragraphs 1 and 2 of Article 6 the word "bank" shall be substituted with the words "bank or foreign bank branch";

in Article 10 the word "banks" shall be substituted with the word "participants";

in paragraph 19 of part two of Article 14, paragraph 17 of Article 19, paragraph 1 of part one of Article 21, first passage in part four of Article 27, and part one of Article 28 the words “bank that is a participant in the Fund” and “banks that are participants in the Fund” shall be substituted with the words “the Fund participant” and “the Fund participants”;

in paragraph 9 of Article 19 the words “participant bank” shall be substituted with the word “participant”;

in paragraph 20 of part two of Article 14 and paragraph 18 of Article 19 the word “bank” shall be substituted with the words “bank or foreign bank branch”;

part one of Article 22 after the words “bank’s authorized capital” shall be supplemented with the words “(ascribed capital of a foreign bank branch)”, and the words “participant banks” shall be substituted with the word “participants”;

in part two of Article 26 the words “banks that are participants (temporary participants)” shall be substituted with the words “participants (temporary participants)”;

in Article 27:

in part three the word “bank” shall be substituted with the words “bank or foreign bank branch”;

in part four:

in paragraph 1 the word “bank” shall be substituted with the word “participant”;

in paragraph 2 the word “banks” shall be substituted with the words “banks or foreign bank branches”;

in paragraph 3 the word “bank” shall be substituted with the word “participant”;

in Article 28:

part two shall read as follows:

“The Fund shall not reimburse the guarantee amount on deposits of individuals attracted by a bank or foreign bank branch relegated to the category of temporary participant in the Fund, such as are attracted starting from the date of receipt by the bank or foreign bank branch of the notice of having been relegated to the category of temporary participant in the Fund”;

in the title and the body of text, the words “bank” and “banks” shall be substituted, respectively, with the words “participant in the Fund” and “participants in the Fund”;

in Article 29:

in the title and the body of text, the word “bank” shall be substituted with the words “bank or foreign bank branch”;

in part two the word “it” shall be substituted with the words “bank or foreign bank branch”.

### 3. The Cabinet of Ministers of Ukraine shall:

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

Within six months after coming into effect of this Law, bring its normative acts into line with this Law.

4. Within one year after coming into effect of this Law, the National Bank of Ukraine shall bring its normative-legal acts into line with this Law.