

Business during the Martial law in Ukraine

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General administrative matters

The Antimonopoly Committee of Ukraine

The Antimonopoly Committee of Ukraine (the AMC) is not accepting new applications and has suspended reviews of all ongoing applications for concentrations (merger control), concerted actions, preliminary conclusions, claims and investigations until the end or cancelation of martial law in Ukraine.

Useful links:

[Official AMC Facebook page](#) (the official AMC website is temporarily unavailable).

State registers

As of the date of this note, the operations of the Hereditary Register, the Unified Register of Powers of Attorney and the Unified Register of Special Forms of Notarial Documents have been restored in Ukraine, except in the Donetsk, Luhansk, Kharkiv, Sumy, Chernihiv, Zaporizhia, Kherson and Mykolaiv regions.

The work of other state registers is currently suspended. No registrations can be made as of the date of this note regarding real estate or establishing legal entities and private entrepreneurs.

Note: The government has already introduced a procedure to conduct registrations during martial law. These registrations can only be carried out by specific state registrars and other officers that are included on a separate list to be issued by the Ministry of Justice.

Useful links:

[Governmental Regulation on Registration actions under martial law](#) (in Ukrainian)

Notarial services

Public and private notaries continue providing certain, limited notarial services during martial law, including certifying powers of attorney, wills, the authenticity of signatures on applications to transfer children abroad, and inheritance cases, except in cities and areas where these activities are practically impossible for safety reasons due to active conflict.

Useful links:

[Governmental Regulation on notarial services under martial law](#) (in Ukrainian)

General commercial matters

Force majeure

Does military aggression by the Russian Federation against Ukraine and the subsequent adoption of martial law in Ukraine constitute force majeure?

Yes.

On 28 February 2022, the Ukraine Chamber of Commerce and Industry (the UCCI) published a standard official letter certifying force majeure circumstances in Ukraine, namely, *"military aggression by the Russian Federation against Ukraine, which led to the imposition of martial law from 05:30 on 24 February 2022 for 30 days, according to the Decree of the President of Ukraine of 24 February 2022 No. 64/2022."*

The UCCI confirmed that from the day of their occurrence (24 February 2022) until they officially end, the mentioned circumstances are extraordinary, unavoidable and objective circumstances for business entities and individuals under contract, separate tax and other obligations the fulfilment of which occurred in accordance with the terms of the contract, agreement, legislative or other regulations the fulfilment of which became impossible by the set deadline due to the occurrence of such force majeure.

The UCCI announced that parties can simply print out the mentioned standard letter as evidence of force majeure. However, as a matter of applicable regulations, the mentioned official letter is not a substitute for the UCCI's certificate that demands from each party the fulfilment of a number of requirements we discuss in our expert guide on force majeure.

Useful links:

[The standard official letter of the UCCI certifying force majeure \(in Ukrainian\)](#)

[The CMS expert guide on force majeure \(in English\)](#)

Evacuation of businesses to western Ukraine

The Government has publicly announced a programme to evacuate businesses (production capacity and personnel) from areas of active military conflict to the western part of the country. The official documents are still being drafted but businesses are already able to submit applications for evacuation.

Useful links:

[Application form for the evacuation of a business \(in Ukrainian\)](#)

Lease issues during war time

Can a company leasing premises or a building in Ukraine get some economic relief in the form of a rent reduction or full exemption during the war?

Before triggering statutory provisions entitling a lessee to a rent reduction, we advise that the parties negotiate rent and service payment reductions. We currently observe that, due to martial law, landlords are willing to reduce the rent by 100% while keeping the operational expenses and utilities payable. So, a supplemental agreement stipulating special payment provisions for the period of martial law might provide comfort to both parties.

If the landlord rejects the rent abatement, the tenant might apply the statutory provisions allowing full or partial rent release. However, this is practicable only if such leased premises or buildings are located within an area of active military conflict, and it is impossible to use such leased property in full due to active conflict or a significant risk of it.

Under Ukrainian law, the tenant is entitled to: (i) request a rent reduction if the property cannot be used in full due to circumstances outside the tenant's control; (ii) request a full exemption from rent if it is not possible to use the rented property at all due to circumstances outside the tenant's control.

Russia's military actions are certainly circumstances outside the tenant's control. Thus, if the leased property is located in an area of active military conflict, to which, among others, the cities of Kyiv, Chernihiv, Kharkiv, Mariupol, and Kherson are subject, and depending on whether the leased property is not used at all or used only partially, the tenant might request a full exemption from rent or rent reduction by sending a relevant notice.

In which cases is a tenant entitled to a full rent exemption?

Only in the case of a total inability to use the property, including the inability to store property in the leased property, i.e., furniture, office equipment, etc. Consequently, the presence of the tenant's staff or belongings in the leased property or the consumption of utilities could be considered (if the landlord does not agree to grant a total exemption) as grounds to deny the exemption from paying the rent.

Is the tenant entitled to an exemption from the reimbursement of utilities and operational expenses (if such payments are provided in the lease agreement)?

No statutory provision covers this issue. Thus, under the general rule, the tenant is still obliged to reimburse the cost of utilities and operational expenses as envisaged in the lease agreement, unless the agreement itself provides any other rules.

What if the landlord rejects the request for a rent reduction or exemption?

In this case, after the landlord invoices for the disputed lease period, the tenant should maintain its approach to the rent payments (to pay the reduced price or claim the exemption). If the landlord submits the dispute to a court, the tenant will have to substantiate its position and evidence it.

What if the tenant decides to terminate the lease?

The lease agreement should be checked for the grounds for unilateral termination. If there are no such contractual conditions and the landlord rejects the offer, martial law and the inability to use the leased premises for safety reasons should be regarded as a significant change of in constituting grounds to terminate the agreement. The tenant should initiate a lawsuit and obtain a relevant court decision for this to happen. The litigation might take up to six months.



General commercial matters (continued)

Cross-border trade with Ukraine during martial law

While the war and martial law in Ukraine has put operations on hold for numerous businesses, cross-border trade with Ukrainian counterparties has not stopped entirely. In fact, cross-border trading in various critical goods and services continues. This permits Ukraine to continue successfully defending its territory and ensures the smooth functioning of logistical and other processes in the country.

In the aftermath of the 24 February 2022 Russian invasion of Ukraine, which significantly shook the country's economy, the government implemented immediate and decisive actions to protect various businesses vital to Ukraine's economic defence.

In these circumstances, on 24 February 2022 the National Bank of Ukraine (the NBU) issued a regulation on the conditions for the operation of the banking system and functioning of the foreign exchange market under martial law (the Regulation). This Regulation implemented a number of temporary restrictions to ensure the stability and continued functioning of the country's financial system.

Among the most notable restrictions that the NBU introduced is a temporary moratorium on cross-border currency payments. However, acknowledging market demands, the NBU clarified this restriction by allowing residents of Ukraine to make cross-border currency payments to purchase critical import goods set out in the list approved by the Cabinet of Ministers of Ukraine.

The key critical import goods on this list include:

- agricultural products (wheat, grain);
- certain foods (eggs, corn, poultry, fats and oils, margarine, sugar and cocoa confectionery, foods for infants and young children);
- nitrogen, phosphorus and potassium fertilisers;
- paper and cardboard;
- paints and lacquers;
- oil and oil products (including crude oil and oil products);
- petroleum gases;
- medicines;
- medical products;
- electric generator sets;
- hygiene products;
- provitamins, vitamins and their derivatives.

If a cross-border currency payment is intended to be used to purchase any of the critical import goods on the above list, payment can be made despite the temporary moratorium.

Banking and payment implications

On 24 February 2022, in response to the unprecedented military aggression by the Russian Federation against Ukraine, the NBU issued guidance on the conditions of the banking system's operation and foreign exchange market's functioning under martial law (the **Resolution**). This Resolution implemented several temporary restrictions to ensure the unfailing and steady functioning of the country's financial system during martial law.

However, from the beginning of March the NBU has been gradually liberalising and clarifying these temporary restrictions. The latest amendments to the Resolution were adopted on 8 March 2022. The newly introduced changes/clarifications include the following:



- cash withdrawals from individual client accounts are still limited to UAH 100,000 per day. However, now there is an exception to this limitation for cash withdrawals (including foreign cash) from bank branches which are in areas that are under a threat of occupation by Russia;
- the withdrawal of precious metals from bank accounts can be made without restrictions (subject to availability in a particular bank branch); and
- Ukrainian residents are now allowed to contribute to charitable foundations in foreign currencies as well.

The Resolution also specified that settlements on documentary and reserve letters of credit, guarantees, and counter-guarantees that have been opened (confirmed and provided) since 24 February 2022 are prohibited. An exception to this prohibition is for in where such settlements are made to pay for imports of critical goods, settlements with IFIs and other specific bank operations, e.g. transfers in favour of diplomatic missions, and Ukrainian consulates abroad.

Other initial **temporary restrictions** introduced by the Resolution remain unchanged, including:

- individuals and companies are allowed to withdraw foreign currencies from their bank accounts up to UAH 30,000 (approximately USD 1,000);
- the issuance of e-money, replenishment of electronic purses with e-money, and the dissemination of e-money is suspended;
- debit operations on the accounts of residents of the Russian Federation by its servicing banks are terminated;
- a moratorium on cross-border currency payments remains in force; and
- the prohibition on transferring to Ukrainian individuals any funds initiated with the use of electronic payment instruments which are operating in Russia or the Republic of Belarus.

These restrictions do not apply to enterprises and institutions providing mobilisation plans (tasks) or the government, or to transactions under individual approvals by the NBU.

The Resolution also sets out the following measures:

- banks must ensure uninterrupted operation, taking into account the restrictions defined in this Regulation, and provide uninterrupted access to safe deposit boxes;
- there are no limitations on non-cash payments;
- ATMs are backed by cash without restrictions;
- the NBU performs cash backing without limitations;
- the NBU performs blank refinancing for banks to maintain liquidity without limitations on amounts for up to one year, with an extension possibility for one more year;
- payments by the Government of Ukraine will be made without limitation.

General migration matters

What are the restrictions on leaving Ukraine during war?

Since 24 February 2022, a general ban on leaving Ukraine has been imposed on men aged 18-60, except for those who:

- have a certificate of conscription deferment;
- have a military medical certificate on unfitness for military service;
- have three or more children under the age of 18;
- are raising a child (children) under the age of 18 on their own;
- have a child with a disability under the age of 18 or a child with a I or II group disability under the age of 23;
- are engaged in constant care for persons in need, in the absence of other persons who can provide such care; or
- on, daughter, father, mother, grandfather, grandmother or brother or sister) that died or went missing during an anti-terrorist operation.

Note:

The above list of exceptions is based on the letter of the State Border Service of Ukraine that was not yet officially published and the Law of Ukraine On Mobilization Preparation and Mobilisation.

Other matters

Emergency financial assistance in Diia

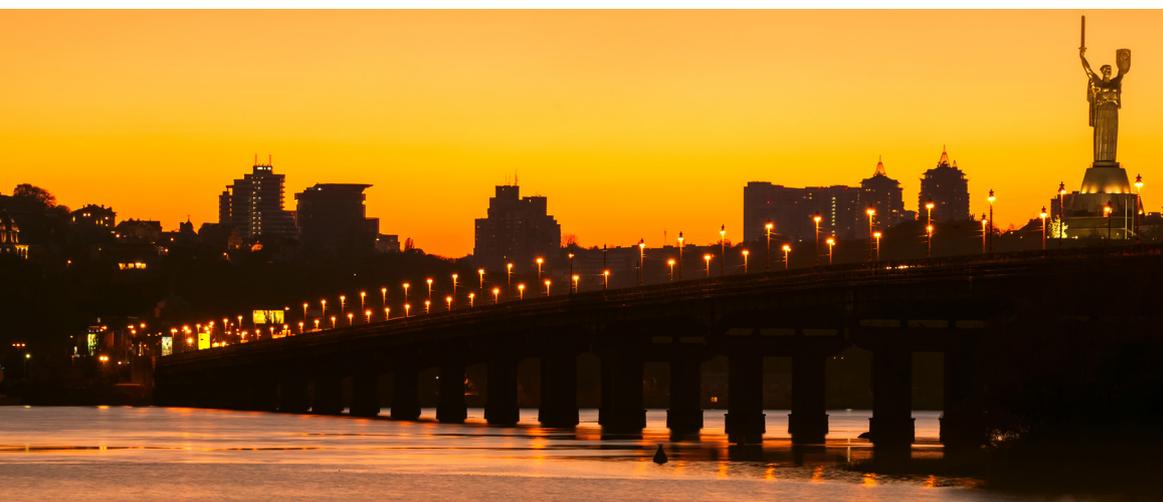
Employees and private entrepreneurs from the regions where active military conflict is taking place are entitled to a one-time financial assistance payment of UAH 6,500 to receive on their 'Є-Підтримка' card in the Diia state service.

These regions currently include Chernihiv, Sumy, Kharkiv, Kherson, Mykolaiv, Zaporizhia, Donetsk, Luhansk, Kyiv, Zhytomyr, Odesa, Volyn, and the city of Kyiv.

- To be entitled to this financial assistance, employers and private entrepreneurs must:
- be registered as payers of a single tax contribution in the specific listed regions;
- have duly submitted tax reports for the fourth quarter of 2021 or annual reports for 2021; and
- are not budgetary institutions.

Useful links:

[Diia Portal](#)



Courts

Do the Ukrainian courts continue resolving disputes under martial law?

Yes.

The Ukrainian courts adjudicate disputes under martial law subject to the limitations provided in the subsections below.

What are the unique features of administering justice in Ukraine under martial law?

Generally, Ukrainian law prohibits curtailing or accelerating adjudication under martial law. However, given the practical difficulties of administering justice in Ukraine, on 2 March 2022, the Council of Judges of Ukraine issued recommendations for the operation of courts under martial law, which among other things prescribed that:

- operation of Ukrainian courts depends on the situation in the region where the court is located and is determined by the assembly of judges or, if it is impossibility to convene an assembly meeting, by the court chairman (or the person fulfilling his/her functions);
- the procedural terms will be extended, if possible, at least until the end of martial law;
- the consideration of cases will be postponed, if possible, (except in urgent cases);
- the courts will focus exclusively on conducting urgent proceedings (e.g. extending detention); cases that are not urgent will be considered only at the written consent of all participants in the proceedings; and
- admission to court hearings of persons who are not participants in them will be limited.

In addition, on 3 March 2022 the Ukrainian parliament adopted Law No. 2112-IX that entitled the High Council of Justice and the Chairman of the Supreme Court to change the territorial jurisdiction of the courts that cannot objectively administer justice under martial law or due to other circumstances. So far, the Chairman of the Supreme Court has ordered a change in the territorial jurisdiction of courts in the Kharkiv, Poltava, Zhytomyr, Zaporizhia, and Chernihiv regions.

Finally, on 7 March 2022 the Supreme Court announced that the cassation court suspended its consideration of cases in open proceedings until the end of circumstances that endanger the lives and health of the court's visitors and its staff.

Useful link:

The [official website](#) of the Supreme Court.

Arbitration

Are the international commercial arbitration institutions located in Ukraine operating under martial law?

No.

The International Commercial Arbitration Court at the Ukraine Chamber of Commerce and Industry and the Ukrainian Maritime Arbitration Commission at the Ukraine Chamber of Commerce and Industry have temporarily suspended their operations in Ukraine. Further changes to the operations of these institutions will be published on the institutions' websites.

Useful link:

The [official website](#) of the International Commercial Arbitration Court at the Ukraine Chamber of Commerce and Industry.

Key contacts in Ukraine

For more information on how the above recommendations can be implemented in your company, please contact your CMS partner or local CMS experts.

**Graham Conlon**

Managing Partner | CEE/CIS Head of Private Equity

T +380 44 391 3377

E graham.conlon@cms-cmno.com

**Olga Belyakova**

Partner | Commercial/Competition, Employment, TMT

T +380 44 391 3377

E olga.belyakova@cms-cmno.com

**Tetyana Dovgan**

Partner | Corporate/M&A

T +380 44 391 3377

E tetyana.dovgan@cms-cmno.com

**Vitaliy Radchenko**

Partner | Energy and Projects

T +380 44 391 3377

E vitaliy.radchenko@cms-cmno.com

**Ihor Olekhov**

Partner | Banking & Finance

T +380 44 391 3377

E ihor.olekhov@cms-cmno.com

**Natalia Kushniruk**

Partner | Real Estate and Construction

T +380 44 391 3377

E natalia.kushniruk@cms-cmno.com

**Borys Danevych**

Partner | Life Sciences & Healthcare

T +380 44 391 3377

E borys.danevych@cms-cmno.com

**Olga Shenk**

Counsel | Dispute Resolution

T +380 44 391 3377

E olga.shenk@cms-cmno.com

**Kateryna Chechulina**

Counsel | Banking & Finance

T +380 44 391 3377

E kateryna.chechulina@cms-cmno.com

**Maryna Ilchuk**

Counsel | Energy & Projects

T +380 44 391 3377

E maryna.ilchuk@cms-cmno.com



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