CHAPTER 9: FINANCIAL SERVICES (ADDITIONAL QUESTIONS)

I. CREDIT INSTITUTIONS (BANKS) INVESTMENT FIRMS AND FINANCIAL CONGLOMERATES

A. General questions

1. Are all credit institutions and investment firms subject to prudential regulation and supervision in your jurisdiction? Do you have a separate prudential and supervisory framework for investment firms?

Yes, all credit institutions are subject to prudential regulation and supervision by the National Bank of Ukraine (hereinafter – the NBU).

All investment firms are subject to prudential regulation and supervision by the the National Securities and Stock Market Commission (hereinafter – the NSSMC).

The NSSMC has developed a regulatory framework governing prudential supervision of all professional participants in capital markets and organized commodity markets, including investment firms.

Thus, the list, method of calculation, normative values of prudential indicators, as well as the frequency of their calculation are established by the Regulations on prudential standards of professional activity in capital markets and organized commodity markets, approved by the NSSMC No. 1597 dated 01 October 2015 and registered by the Ministry of Justice of Ukraine as No. 1311/27756 on 28 October 2015 (as amended) (hereinafter – Regulation No.1597), and the procedure for prudential supervision is determined by the Regulation *On supervision of compliance with prudential standards by professional stock market participants*, approved by the NSSMC Resolution No. 2021 dated 1 December 2015 and registered by the Ministry of Justice Of Ukraine No. 1599/28044 on 21 December 2015 (hereinafter – the Regulation No. 2021).

2. Are there any bank-like institutions (i.e. deposit-taking) in your jurisdiction that do not fall under prudential regulation and supervision? If yes, how many institutions like this operate in your jurisdiction and which percentage of the total banking assets do they represent? Are these entities active internationally / have international presence or relationships?

No. All bank-like institutions fall under prudential regulation and supervision by the NBU.

3. Are there specific conditions regarding the opening of branches by foreign banks and investment firms? Are there specific conditions regarding the establishment of a foreign subsidiaries of these entities?

The Law of Ukraine No. 2121-III *On Banks and Banking*[1] dated 7 December 2000 (hereinafter – the Law *On Banks and Banking*) is the main piece of legislation defining regulatory framework for establishment, registration, operation, reorganization and liquidation of banks, including the establishment and operation of branches and representative offices of foreign banks in Ukraine.

The banking system of Ukraine consists of the NBU and other banks, as well as the branches of foreign banks, which have been established and operate on the territory of Ukraine in compliance with the Law *On Banks and Banking* provisions and those of other laws of Ukraine. Also, Ukrainian law allows to open banks with foreign capital, meaning a bank where the share of capital, owned by at least one foreign investor is not less than 10 percent.

The provisions of the Law *On Banks and Banking* and regulations of the NBU apply both to banks and foreign bank branches. The provisions of the Law *On Banks and Banking* apply to the representative offices of foreign banks operating in the territory of Ukraine, unless otherwise established by the effective international treaties (agreements) ratified by the Verkhovna Rada of Ukraine.

Article 24 of the Law *On Banks and Banking* sets forth a procedure for establishment of foreign bank branches and representative offices in the territory of Ukraine. Foreign banks have the right to open branches and representative offices in the territory of Ukraine.

Please see a table of the main authorization requirements to establish a branch of the foreign bank in Ukraine. The branch's authorization procedure is known as accreditation.

Capital requirement	UAH 120 mln (as of 01.04.2022)
Requirements for qualifying shareholders of the foreign bank and foreign bank itself (who owns more than 10% of bank's shares)	The foreign bank and its qualifying shareholders must be fit and proper (in context of their reputation and their financial position)
Management is presented by	Director and chief accountant
Other mandatory personnel	Chief compliance officer, chief risk officer and head of internal audit
AML	AML officer
Requirements for abovementioned people	Director, chief accountant, chief compliance officer, chief risk officer, head of internal audit and AML officer must be fit and proper in terms of reputation and professional suitability
Procedures for abovementioned people	Director, chief accountant, chief compliance officer, chief risk officer, head of internal audit and AML officer must be approved by the NBU
Specific requirements	Country where foreign bank is registered meets following

[1] https://bank.gov.ua/admin_uploads/law/Law_BB_eng.pdf?v=4

	conitions: 1. there are no significant reservations from the international authorities on implementation of international standards in the field of AML/CFT 2. the supervision, including consolidated one, meets Basel principles 3. there are no local law provisions that could hinder / limit interaction between the NBU and foreign regulator.

In order to obtain the accreditation in a form of the banking license the foreign bank must submit to the NBU set of documents, which are the following:

1. a request to establish the branch
2. a document confirming registration of the foreign bank
3. a decision of foreign bank to establish the branch
4. a regulation of the branch
5. foreign bank's decision on the appointment of the management and mandatory personnel
6. information proving that management and mandatory personnel are fit & proper
7. a copy of the foreign bank's chapter
8. financial statements of a foreign bank for the last three years, confirmed by an independent auditor
9. a foreign regulator's written approval to establish the Branch (confirmation if the regulator does not issue an approval)
10. foreign regulator's notification on conducting the supervision under the foreign bank
11. foreign bank's a written commitment to unconditionally fulfil its obligations arising in connection with the activities of its branch
12. documents confirming formation of the branch's capital (including copies of payment documents)
13. copy of a receipt for payment of the fee for accreditation of the branch
14. copies of internal regulations (their list) governing the provision of banking and other financial services, determine the procedure for internal control and risk management procedure
15. information on organization structure and presence of required specialists for conducting banking activities; required banking, computer equipment, software, and premises
16. business plan for current and 3 following years
17. information of impeccable business reputation of the foreign bank
18. information on qualifying shareholders of the foreign bank
19. auditor's / consultant's opinion on the amount of the foreign bank's own funds (this opinion is not provided if the foreign bank has an investment level of credit rating).

The accreditation procedure of the branch lasts up to 3 months. The NBU has a right to suspend the term of consideration, but not more than 30 days. Also, it has a right to request additional information and/or documents if needed with suspension of the term of the consideration.

Additionally, accreditation covers: (1) approval of director, chief accountant, chief compliance officer, chief risk officer and head of internal audit and AML officer, (2) assessment of the fit and proper of qualifying shareholders of the foreign bank and the foreign bank itself, (3) approval of the Branch regulation.

Please consider that in day-to-day activities the branch must comply with the same requirements as a bank.

There are no specific rules regarding the establishment of a foreign subsidiary. In that case, a foreign bank (meaning a bank where the share of capital, owned by at least one foreign investor is not less than 10 %) will follow the general procedure for establishing a bank in Ukraine.

Regarding Investment Firms

According to the Law of Ukraine *On Capital Markets and Organized Commodity Markets* (hereinafter – the Law *On Capital Markets*), a foreign legal entity has the right to obtain a license to conduct relevant activities within the professional activity of trading in financial instruments. The conditions for obtaining a license for foreign legal entities to conduct professional activities in trading in financial instruments are determined by the NSSMC. Today, the NSSMC is working to develop a legal act that will establish specific conditions for foreign legal entities that intend to carry out professional activities in trading in financial instruments in the capital markets of Ukraine. We expect to finalize drafting in 2H 2022.

B. Legal framework

4. Which authority is in charge of macroprudential oversight of the Ukraine financial system and the prevention and mitigation of systemic risk**?**

The NBU is the key policymaker of macroprudential policy. According to Article 6 of the Law of Ukraine No. 679-XIV *On the National Bank of Ukraine*[2] dated 20 May 1999 (hereinafter – the Law *On the National Bank),* the NBU is mandated to promote financial stability, including banking system stability, provided this does not conflict with the price stability target. In practice, the Law gives the NBU a mandate to design and implement macroprudential policy.

The NBU has outlined its approach to macroprudential supervision in its Macroprudential Policy Strategy. The NBU published the Strategy on its official site: https://bank.gov.ua/en/news/all/strategiya-makroprudentsiynoyi-politiki-natsionalnogo-banku-ukrayini.

In promoting financial stability, the NBU is guided by the recommendations of the Basel Committee on Banking Supervision, the ESRB, and CRR/CRD IV requirements.

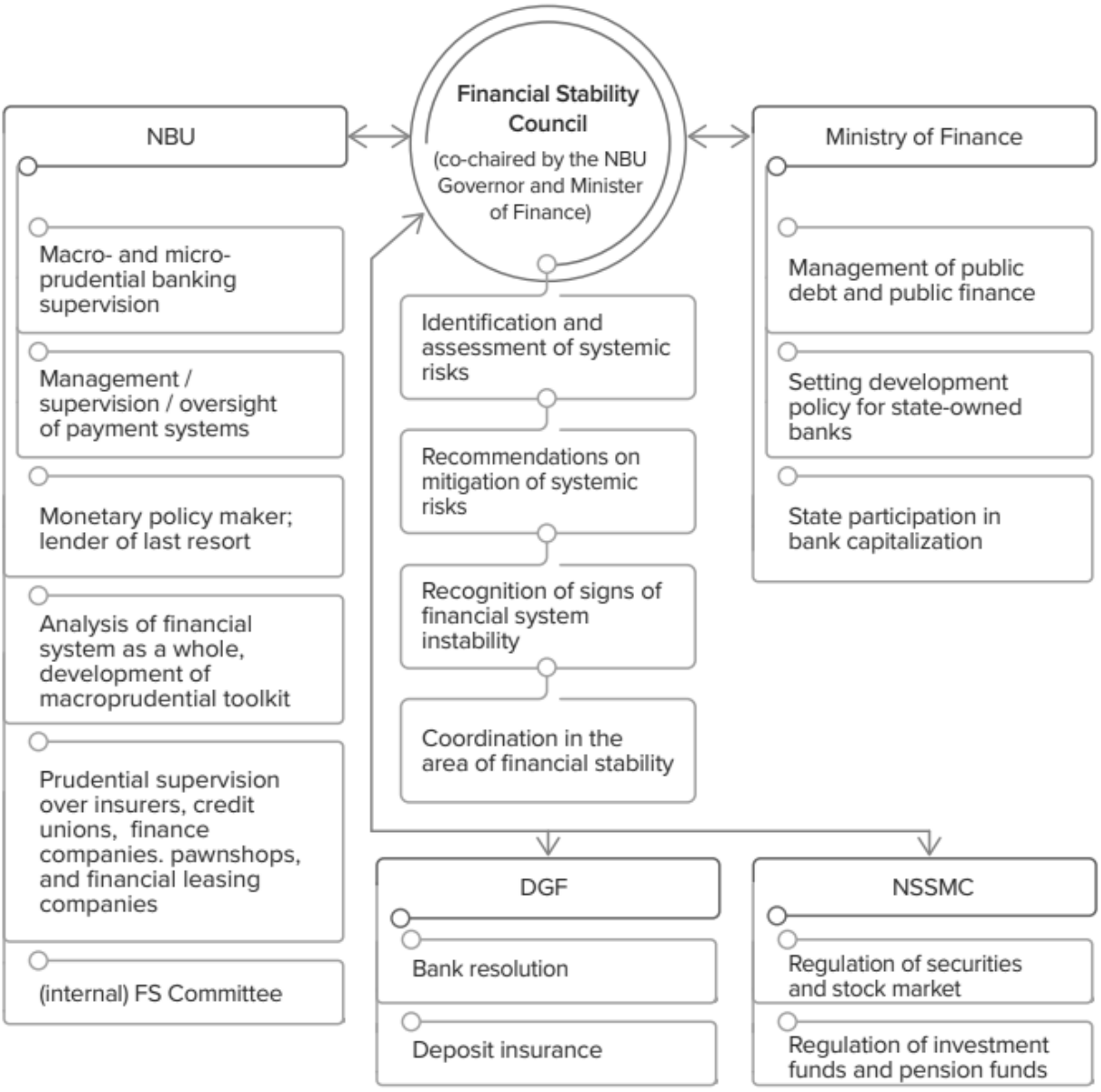
[2] https://bank.gov.ua/admin_uploads/law/Law_NBU_eng.pdf?v=4

The Financial Stability Committee (FS Committee) at the NBU coordinates macroprudential policy within the NBU's mandate. This is a strategic policy-making committee chaired by the Governor of the NBU. The FS Committee meets at least once a quarter, and more frequently if needed.

The key tasks of the FS Committee are to identify systemic risks and ways to mitigate them, make recommendations on the use of macroprudential tools, and coordinate the NBU's efforts to promote financial stability. The FS Committee makes recommendations to the NBU Board, which takes decisions on macroprudential interventions. If a risk that the FS Committee has identified is beyond the NBU's mandate, the FS Committee may recommend that the interagency Financial Stability Council step in.

The Financial Stability Council (FSC) was established by presidential decree in 2015. The FSC's mandate is to identify and mitigate in a timely manner any risks that threaten the stability of the domestic banking and financial systems. The FSC is a platform for the professional discussion of threats to financial stability between top-level officials of its member institutions. The FSC also makes recommendations on the mitigation of risks, and institutions addressed must implement these recommendations or explain their reasons for not doing so. Moreover, in line with Article 71 of the Law *On the National Bank*, the FSC identifies signs of risks to the stability of the national banking and/or financial system. This empowers the NBU to impose temporary restrictions to regulate and supervise banks. The FSC meets at least quarterly, publishes press releases after meetings, and compiles an annual report on its activities.

Figure below outlines the functions of the FSC member institutions (the NBU, the Ministry of Finance, the Deposit Guarantee Fund (DGF) and NSSMC for the financial system, and names the functions of the FSC.



The macroprudential framework of Ukraine was built with regard to recommendations of the ESRB.

Conditions of admission and level of supervision

5. What are the activities which a credit institution is authorised to carry on?

Regarding Banks

Article 47 of the Law *On Banks and Banking* contains a list of bank's activities. A bank is entitled to render the banking and other financial services (except for services in insurance) and to engage in other activities stipulated by this Article in domestic and foreign currency.

A bank has the right to engage in banking upon obtaining the banking license by means of rendering the banking services. A bank conducts professional activity in the capital markets based on the license granted by the NSSMC.

Banking services include:

(1) taking deposits in currency and investment metals from an unlimited number of legal entities and individuals

(2) opening and maintaining current (correspondent) customer accounts, including those in investment metals, and escrow accounts

(3) allocating investment metals and funds received from depositors, including funds deposited into current accounts, on the bank's own terms and at the bank's own risk (are considered as the lending operations).

According to Article 49 of the Law *On Banks and Banking,* the lending operations mean as well:

- performance of operations in the capital markets on its own behalf
- granting guarantees, warranties and other commitments on behalf of third parties that require settlement in monetary form
- acquisition of the right to claim the fulfillment of liabilities in monetary form for the delivery of goods and rendering of services, taking on the risk of satisfying these claims and receipt of payments (factoring)
- leasing.

Banks may enter into consortium crediting agreements in order to provide joint financing. Within the framework of such an agreement, the participating banks shall determine the terms of extending a loan and appoint a bank responsible for implementation of the agreement. The member banks shall bear risks on the extended loan proportionally to their contributions to the consortium.

A bank shall have a unit responsible for lending and management of credit-related operations.

The banks shall be prohibited from granting loans directly or indirectly to acquire their own securities, shares of other banks and to extend subordinated debt to banks. The use of securities of their own issue as collateral may be possible only with the NBU permission.

The banks are prohibited from indirectly carrying out lending transactions with bank's related parties.

When granting loans, the banks shall adhere to the general principles of lending, including the evaluation of creditworthiness of borrowers and the availability of collateral, and adhere to the requirements concerning risk concentration, established by the NBU.

A bank has the right to extend unsecured loans on condition that the economic ratios are met. Granting of noninterest bearing credits is prohibited except in the cases specified by the law.

In the case of late payment of principal loan amount or interest, a bank shall have the right to issue an order on the enforced payment of debt, if provided for in the agreement.

A bank shall use information from the Credit Register for credit risk assessment.

Only banks are entitled to render banking services.

A bank is entitled to render the financial services to its customers (other than banks), including through entering into agent agreements with legal entities (commercial agents). The list of the financial services a bank is entitled to render to its customers (other than banks) through entering into agent agreements shall be compiled by the NBU. A bank shall inform the NBU of the agent agreements signed. The NBU shall maintain the register of banks' commercial agents and may establish requirements thereto. Banks may enter into agent agreements with the legal entities meeting the requirements established by the NBU.

A bank renders services of currency assets trading in cash and noncash forms to individuals and legal entities with the simultaneous crediting the currency assets to their accounts pursuant to the Law of Ukraine No. 2473-VIII *On Currency and Currency Operations*[3] dated 21 June 2018 (hereinafter – the Law *On Currency)*.

In addition to providing financial services any bank may also engage in activities related to:

1) investments

2) issue of its own securities

3) custody of assets (including accounting and custody of securities and other valuables which have been confiscated (arrested) in favor of the state and/or such that have been declared ownerless), and leasing of an individual lockbox

4) cash collection and cash in transit services

5) consulting and information services with regard to the banking and other financial services.

6) services of the administrator on issue of bonds in line with the *On Capital Markets*).

A bank is entitled to engage in any deeds necessary for rendering the banking and other financial services and for the other bank's activities.

A bank is entitled to engage in a new business type or rendering a new type of the financial services (other than the banking ones) provided it complies with the requirements of the NBU regarding this type of business or service.

According to Article 10 of the Law of Ukraine No. 1591-IX *On Payment Services* dated 30 June 2021, which enters in effect on 1 August 2022 (hereinafter – the Law *On Payment Services*), banks are providers of payment services.

Banks are authorized to provide payment services according to their banking license without obtaining an additional license. Banks provide payment services in the way prescribed by the Law *On Payment Services* and the Law *On Banks and Banking.*

Banks have the right to provide payment services (except for payment services of e-money issue

[3] https://zakon.rada.gov.ua/laws/show/2473-19?lang=en#Text

and e-money transactions) without inclusion in the Payment Infrastructure Register (hereinafter – the Register).

Banks are authorized to provide payment services of e-money issue and e-money transactions, including opening and servicing e-purses, only after being registered as electronic money issuer in the Register.

Regarding Credit Unions

In the Law of Ukraine No. 2908-III *On Credit Unions* dated 20 December 2001 (hereinafter – the Law *On Credit Unions*) a credit union is defined as a not-for-profit institutions founded by individuals, trade unions and their associations on cooperative terms for the purpose of meeting the needs of the members in mutual lending and financial services provided using the joint money contributions of the members of credit unions.

An exhaustive list of permitted activities that can be conducted by credit unions is set by law and includes:

accept entrance and membership contributions, as well as other contributions from its members

issue loans in cash and cashless form to its members setting the terms for their repayment, schedule of repayment and collateral

take deposits under contracts from its members both in cash and in cashless form

act as a guarantor of their members obligations to the third parties

deposit idle funds in banks licensed to take retail deposits, joint credit union, and purchase government securities named by the NBU as authorized investments, bonds of international financial institutions placed in the territory of Ukraine, and stakes of cooperative banks

obtain on contractual terms loans from banks, joint credit union, other institutions and organizations solely for granting loans to its members unless the NBU decides otherwise

issue loans to other credit unions unless the NBU decides otherwise

be a member of payment systems

on behalf of its members pay for goods, works and services within their credit limit

engage in charity work using the funds that were specifically allocated for this purpose.

Credit unions are prohibited to engage in any activities other than those specified in the Law *On Credit Unions* and listed above.

Credit unions activities on taking deposits from their members' and issuing loans including financial credit shall be licensed.

In case of adoption the Draft Law No. 5125 *On Credit Unions* dated 22 February 2021 in addition to credit unions will be able also to engage in activities related to:

- Guarantees
- Financial payment services
- Trading for own account in foreign exchange

- Intermediary services with regard to the financial services by a credit union or other financial service provider
- Consulting and information services with regard to the financial services
- Other activities related to the main activities of the credit union for the provision of financial services, subject to restrictions imposed by regulations.

Credit unions are prohibited from operating in the field of material production and trade.

6. What are the activities which an investment firm is authorised to carry on?

Pursuant to the first part of Article 44 of the Law *On Capital Markets*, trading in financial instruments is carried out by investment firms established in the form of a joint stock company, limited liability company or additional liability company, for which transactions in financial instruments are the exclusive activity of cases provided by this Law.

Financial instruments trading activities include the following activities:

1) sub-brokerage activities

2) brokerage activities

3) dealer activity

4) financial instrument portfolio management activities

5) investment consulting

6) underwriting and / or placement activities with a guarantee

7) placement activities without a guarantee.

Parts 6-13 of Article 44 of the Law *On Capital Markets* stipulate:

1. Sub-brokerage activity is the activity of an investment firm to accept orders from clients for the conclusion of derivative contracts and make transactions in financial instruments at the expense of clients and provide relevant orders for execution to another investment firm engaged in brokerage activities.
2. Brokerage is the activity of an investment firm to enter into derivative contracts and enter into transactions in financial instruments on behalf of and on behalf of clients or on behalf of clients, but on its own behalf.
3. Dealership activity is the activity of an investment firm on concluding derivative contracts and concluding transactions on financial instruments on its own behalf and at its own expense.

Financial instrument portfolio management activities are the activities of an investment firm to manage a portfolio of financial instruments consisting of one or more financial instruments in the interests of clients.

An investment firm has the right to enter into agreements on the management of the portfolio of financial instruments with individuals and legal entities. A financial instrument portfolio management agreement may not be entered into by an investment firm with an asset management company.

The minimum amount of the agreement on portfolio management of financial instruments with one client - an individual is set by the NSSMC.

Investment consulting is the activity of an investment firm to provide individual recommendations to the client at his request or on the initiative of the investment firm to enter into derivative contracts, agreements to replace the derivative contract, transactions in financial instruments and currency values.

Underwriting is an activity carried out by an investment firm on its own behalf and / or on behalf of the issuer or offeror for remuneration in accordance with the terms of the underwriting agreement.

Under the underwriting agreement, the investment firm undertakes to arrange the placement of a predetermined amount of securities of the issuer or offeror on its own terms and within the terms specified in the securities prospectus, acting on behalf of the issuer or offeror, and to purchase securities on its own behalf and at its own expense. As of the end of the placement period provided for in the securities prospectus, they were not alienated to the first owners.

Underwriting involves the implementation of an investment firm:

a. preparation of the securities prospectus, including determination and coordination with the issuer or offeror of the main characteristics of the proposed securities to be alienated (in particular, type, type, volume, term and conditions of alienation)

b. determination of the price of securities proposed to be alienated, including by probing the capital market, in accordance with the Law *On Capital Markets*

c. registration of the securities prospectus

d. alienation of securities to the first owners within the period stipulated by the securities prospectus

e. acquisition by an investment firm of securities that were not purchased by the first owners in accordance with the Law *On Capital Markets*.

Guaranteed placement activities are activities carried out by an investment firm on its own behalf in accordance with the terms of the guaranteed placement agreement.

Under the guarantee placement agreement, the investment firm undertakes to purchase all securities of the issuer or offeror proposed to be alienated on its own behalf and at its own expense on the terms and within the terms specified in the securities prospectus.

The agreement on the organization of placement with a guarantee may provide for the investment firm to perform one or all of the actions provided for in paragraphs 1-3 of part eleven of this article, namely:

1. preparation of the securities prospectus, including determination and coordination with the issuer or offeror of the main characteristics of the proposed securities to be alienated (in particular, type, type, volume, term and conditions of alienation)

2. determination of the price of securities proposed to be alienated, including by probing the capital market, in accordance with the Law *On Capital Markets*

3. registration of the securities prospectus.

Non-guaranteed placement activity is an activity carried out by an investment firm on behalf of the issuer or offeror in accordance with the terms of the placement agreement.

Under the agreement on the organization of placement, the investment firm undertakes to organize the placement of a predetermined amount of securities of the issuer or offeror on the terms and within the time limits specified in the securities prospectus, acting on behalf of the issuer or the offeror.

The agreement on the organization of placement may provide for the investment firm to perform one or all of the actions provided for in paragraphs 1-4 of part eleven of this article, namely:

1) preparation of the securities prospectus, including determination and coordination with the issuer or offeror of the main characteristics of the proposed securities to be alienated (in particular, type, type, volume, term and conditions of alienation)

2) determination of the price of securities proposed to be alienated, including by probing the capital market, in accordance with the Law

3) registration of the securities prospectus

4) alienation of securities to the first owners within the period stipulated by the securities prospectus.

The NSSMC shall issue a separate license under Article 4 of the Law of Ukraine *On State Regulation of Capital Markets and Organized Commodity Markets (hereinafter – the Law On State Regulation of Capital Markets)* to conduct each type of activity in trading in financial instruments in accordance with the procedure established by this Law.

Also, in accordance with the second part of Article 44 of the Law, an investment firm may provide clients with such additional services, provided that they are specified in the Resolution of the NSSMC to issue a license to conduct relevant activities within the trade. financial instruments and entered in the register of professional participants in capital markets and organized commodity markets:

1) safekeeping of financial instruments and clients' funds (including accounting for rights to securities and rights to them on client's securities accounts as part of the depository institution's depository activities), as well as disposal of client's financial instruments and funds subject to collateral rights to securities in the interests of the client)

2) providing clients with loans and borrowings for concluding derivative contracts with the participation or mediation of such an investment firm and concluding transactions in financial instruments

3) providing clients with advice on financing their business activities, development strategies, other related issues, providing services and advice on reorganization or purchase of corporate rights of legal entities

4) services that involve foreign exchange transactions, in cases involving the provision of services by an investment firm to its client. The provision of such services is subject to the requirements of the Law *On Currency*

5) conducting investment research and financial analysis or providing any other general recommendations related to the conduct of transactions in financial instruments

6) services related to underwriting

7) providing guarantees for the fulfillment of obligations to third parties under contracts concluded on behalf of the client of such an investment firm.

An investment firm in the course of its activities in the capital markets has the right to provide additional services provided for in this part (except, depository activities of the depository institution provided for in paragraph 1 of this part), without obtaining additional licenses and other permits.

7. What is the level of prudential supervision (i.e. individual/consolidated/both)?

Regarding Banks

The NBU conducts banking regulation and supervision on an individual and consolidated basis.

The NBU performs the functions of banking regulation and supervision of banks' activity on an individual and consolidated basis within the scope and in a manner stipulated by the Ukrainian legislation. Relevant rules are enshrined in Articles 7 and 55 of the Law *On the National Bank*.

The NBU exercises ongoing supervision over compliance of the banks, their divisions, affiliated and congenerous parties of banks in Ukraine and abroad, banking groups, representative offices and branches of foreign banks in Ukraine, as well as other legal entities and individuals, in line with the requirements of banking laws, NBU regulations, and economic ratios.

Also, under Article 4 of the Law *On Banks and Banking*, the NBU does as follows:

- determines the types of specialized banks and the procedure for acquiring the status of a specialized bank
- regulates the activities of specialized banks through economic standards and carries out the regulatory support of transactions carried out by these banks
- identifies systemically important banks in accordance with the following criteria: the size of the bank, the degree of financial relationships, and areas of activities.

Under Article 9 of the Law *On Banks and Banking*, the NBU is entitled to exercise supervision over a banking group with the purpose of ensuring the banking system's stability and mitigating the risks a bank faces due to participation in the banking group, by means of regulation, monitoring, and control of the risks of the banking group as per the procedure established by the NBU.

The NBU is currently supervising 69 Ukrainian banks on an individual basis and 24 banking groups.

Regarding Credit Unions

The NBU conducts supervision of all nonbank financial institutions (including credit unions) on both individual and consolidated level. At the same time, due to the nature of cooperative ownership form (does not create element of formal control) credit unions are not typical members a financial group**.**

Regarding Investment Firm

Prudential supervision is carried out both on an individual and consolidated basis. Prudential supervision on an individual basis is carried out in accordance with Regulation No.1597 and Regulation No.2021, and supervision on a consolidated basis is carried out in accordance with the Regulation on consolidated supervision of nonbank financial groups, predominantly financial institutions securities and stock market, approved by the Resolution of the NSSMC No.431 dated 26 March 2013 and registered by the Ministry of Justice of Ukraine as No. 618/23150 on 16 April 2013 (as amended).

8. Is there a regulation concerning the supervision on a consolidated basis? Describe its main elements. Are there plans to change the regulation? If so, please outline main changes, desired outcomes and a tentative timeline.

Consolidated supervision was introduced by Laws of Ukraine No. 2664-III *On Financial Services and State Regulation of the Financial Services Markets* dated 12 July 2001[4] (hereinafter – the Law *On Financial Services*), *On Banks and Banking*, and No. 85/96-VR *On Insurance* dated 7 March 1996 (hereinafter – the Law *On Insurance)*.

In particular, Article 16^1 of the Law *On Financial Services* prescribes that consolidated supervision is the supervision of financial groups for ensuring the banking system stability and mitigating the risks posed to a financial institution for participating in a financial group by means of regulation, monitoring and control of the risks of the financial group.

The NBU performs consolidated supervision over banking groups according to this and other laws of Ukraine, as well as over nonbank financial groups other than financial groups where the main activity is performed by financial institutions under the supervision of the NSSMC.

Article 7 paragraph 8^1 and Article 55^1 of the Law *On the National Bank* prescribe that the NBU conducts state regulation and supervision on individual and consolidated basis on nonbank financial markets of operations of nonbank financial institutions and other entities other than financial institutions but entitled to provide certain financial services within the limits set by the Law *On Financial Services* and other laws of Ukraine.

The state regulator of financial markets for the purpose of consolidated supervision is authorized to determine within a financial group subgroup consisting of at least two financial institutions and supervise them on subconsolidated basis.

The state regulator of financial markets according to distribution of authorities set out in the Article 16^1 of the Law *On Financial Services* – for the purpose of supervision on consolidated and

[4] https://zakon.rada.gov.ua/laws/show/2664-14?lang=en#Text

subconsolidated basis can prescribe in its regulation requirements to financial groups and its subgroups in terms of:

1) availability of an efficient system of corporate governance

2) availability of an efficient system of risk management

3) availability of an efficient system of internal controls

4) availability of the accounting procedures, information systems necessary to ensure compliance with the requirements on consolidated basis

5) preparation and submission of the consolidated and sub-consolidated reports

6) capital adequacy of the regulatory capital;

7) economic ratios

8) limits and restrictions regarding certain types of activities, including with regard to the activities on the territory of other countries

9) procedure for submission of necessary reporting and data.

A financial group, its subgroups, and its participants are liable to comply with requirements set by state regulation authorities of financial markets.

A financial group is liable to assign among financial group participants an authorized person of the financial group and approve this entity with the respective state regulator of financial markets.

A legal entity or individual intending to become the controller of a financial group shall, via their authorized person, inform the state regulation authority of financial markets and submit to said authority the data on this financial group, including on the ownership structure of this group and types of operations and its participants according to the procedure established by the state regulator of financial markets.

The authorized person of the financial group is liable ensure compliance of financial group with requirements of the competent state regulator of financial markets.

Financial group participants are liable to submit to the authorized person of the financial group and to the state regulator of financial markets reports and documents necessary for preparation of consolidated reports as well as to ensure compliance with requirements to consolidated supervision.

Regarding the consolidated supervision of banking groups

The NBU set requirements to:

- identification of banking groups, criteria for recognizing subgroups of banking group (Regulation *On Procedure for Identification and Recognition of Banking Groups* approved by the NBU Board Resolution No. 134 dated 9 April 2012).
- requirements to operation of banking group (the Regulation *On Procedure for Regulation of Banking Groups Activities* approved by the NBU Board Resolution No. 254 dated 9 April 2012).

In line with Article 2 of the Law *On Banks and Banking*, a banking group shall mean a group of legal entities:

▪ having common controller comprising of a parent bank, its one or more Ukrainian and/or foreign subsidiaries and/or associated companies, that are financial institutions, or for which financial services is a predominant activity, or

▪ comprising of a parent bank that is a controller of its Ukrainian and/or foreign subsidiaries and/or associated companies, that are financial institutions, or for which financial services is a predominant activity, or

▪ having common controller comprising of two or more Ukrainian financial institutions, and/or companies for which financial services is a predominant activity, their Ukrainian and/or foreign subsidiaries and/or associated companies, that are financial institutions or for which financial services is a predominant activity, where banking prevails, or

▪ comprising of a nonbank financial institution or a company for which financial services is a predominant activity, which is a controller of its two or more Ukrainian and/or foreign subsidiaries and/or associated companies, that are financial institutions or for which financial services is a predominant activity, where banking prevails.

The bank holding company and the company that renders support services that have a common controller with the banking group participants shall be a part of the banking group.

Subgroups recognized within a banking group are subject to supervision and regulation on subconsolidated basis.

According to lines of business banking groups are divided into following subgroups:

▪ credit and investment subgroups (comprising banks and financial institutions)
▪ insurance subgroups (comprising insurance companies).

Operations of banking groups and subgroups are regulated by establishing requirements to:

• regulatory capital adequacy
• compliance with economic liquidity, credit risk, investment ratios.

Considering amendments to the Law *On Banks and Banking* adopted in 2021, the NBU at present takes measures (supported by the World Bank) on bringing provisions of the NBU regulations on capital adequacy and liquidity of banking groups in line with CRR/CRD requirements.

Regarding the consolidated supervision of nonbank financial groups

In line with aforementioned authorities, the NBU Board approved the Regulation regarding consolidated supervision over nonbank financial groups No. 128 dated 2 December 2021 that prescribes in particular:

the procedure of identification, recognition and derecognition of a nonbank financial group (initiated by the controller or according to supervision findings)

criteria for recognizing subgroups within a nonbank financial group

obligations and the NBU approval procedure of the controller, authorized person of a nonbank financial group

attributes that may indicate control relationship between financial institutions, supporting service

institutions or a joint controller as well as conditions for assigning such attributes

requirements to adequacy of the regulatory capital of nonbank financial group, insurance group/subgroup, and to intra-group transaction and transactions of related parties nonbank financial group

specifics of preparing and submitting consolidated financial statements by nonbank financial groups subject to NBU supervision.

Regulation *On Organizing, Conducting, and Drawing-up Inspection Findings of Nonbank Financial Market Participants* approved by the NBU Board Resolution No. 22 dated 26 February 2021 (hereinafter – Regulation No. 22) prescribes specifics of conducting inspections as part of consolidated supervision. Considering that financial groups in line with law are not subject to inspections, Regulation No. 22 prescribes inspections of nonbank financial group participants and preparation of a separate report on inspection findings as part of consolidated supervision to be delivered to the authorized person of a financial group.

In addition, the NBU has also defined requirements to organization of the risk management system and internal control system of nonbank financial groups in other requirements that are undergoing legal expertise and being prepared for release and public discussion with nonbank financial market participants.

Regarding financial institutions supervised by the NSSMC

The normative legal act regulating supervision on a consolidated basis is the Regulation On Consolidated Supervision of NonBank Financial Groups, the predominant activity of which is carried out by financial institutions supervised by the NSSMC, approved by the NSSMC Resolution No.431 dated 26 March 2013 and registered by the Ministry of Justice of Ukraine as No.618/23150 dated 16 April 2013 (as amended).

This Regulation establishes the procedure for identification by the NSSMC of nonbank financial groups, the predominant activity of which is carried out by financial institutions supervised by the NSSMC, recognition by the NSSMC of nonbank financial groups, approval by the NSSMC of nonbank financial group nonbank financial groups, minimizing the risks of their individual members and the risks of the groups themselves, the procedure for obtaining consolidated financial statements of such groups.

There are plans to amend the Regulations, including improving the NSSMC's procedures for recognizing nonbank financial groups, approving the nonbank financial group's responsible person, ending the recognition of a nonbank financial group, improving the financial reporting requirements of nonbank financial groups, and introducing participants exclusively in electronic form through the official communication channel. These changes will help resolve the existing issues of this document and simplify the procedure for interaction between nonbank financial groups and the regulator. Work on these changes is planned in the near future.

9. Is there a deposit guarantee scheme? Describe its main elements.

The deposits guarantee scheme in Ukraine was introduced by Presidential Decree on 10 September

1998 through establishing of a non-profit legal entity of public law, namely, the Deposit Guarantee Fund (hereinafter – DGF), which assumed an obligation to guarantee to every depositor of any commercial bank that pays contributions to DGF to reimburse the deposit in the amount of such deposit, including interest, if it becomes unavailable. As a result of the reform introduced by the the Law of Ukraine No. 4452-VI *On Households Deposit Guarantee Scheme*[5] dated 23 February 2012 (hereinafter – the Law *On Households Deposit Guarantee Scheme)*, the DGF acquired the mandate of loss minimizer (according to the IADI classification of mandates of deposit insurers).

Today, the DGF is a rightful participant in the financial stability system of Ukraine, and the purpose of the Law *On Households Deposit Guarantee Scheme* is to protect the rights and legitimate interests of bank depositors, strengthen confidence in the banking system of Ukraine, encourage fundraising in the banking system of Ukraine, ensure effective procedure for removing the insolvent banks from the market and liquidating the banks.

The above purpose of the Law *On Households Deposit Guarantee Scheme* is implemented through the adoption of appropriate decisions by the governing bodies of the DGF, namely, the Administrative Board and Executive Directorate of the DGF. The composition, formation procedure, powers, and operational procedure of the DGF Administrative Board are provided for in Articles 8–10 of the Law. The DGF Administrative Board consists of 5 members: 1 representative of the CMU, 2 representatives of the NBU, 1 representative of the relevant committee of the Verkhovna Rada of Ukraine and the DGF Managing Director, whose terms of office at the Administrative Board are 4 years (except for the DGF Managing Director). The term of office of the Administrative Board member may be extended, but only for one consecutive term. The main responsibilities of the DGF Administrative Board include approving the strategic and financial development instruments of both the DGF and the guarantee system as a whole.

The composition, formation procedure and powers of the DGF Executive Directorate are provided for in Articles 11–12 of the Law *On Households Deposit Guarantee Scheme*. The DGF Executive Directorate controls the current activities of the DGF and consists of seven members. Managing Director and Deputy Managing Directors of the DGF are the members of the Executive Directorate *ex officio*. To avoid any conflicts of interest and ensure independent decision-making by the DGF Executive Directorate, the Law *On Households Deposit Guarantee Scheme* prohibits the Executive Directorate members to hold positions of the executive officer, participant or related party of the bank or any other legal entity with which the DGF, or any bank being removed from the market by the DGF, has any contractual relations.

Pursuant to Article 4 of the Law *On Households Deposit Guarantee Scheme*, the DGF performs the following key functions to ensure proper functioning of the guarantee system:

1) maintaining a register of the DGF participants;

2) accumulating funds from the sources determined by Article 19 of the Law *On Households Deposit Guarantee Scheme* and controls the completeness and timeliness of contributions paid by each DGF participant;

[5] https://www.fg.gov.ua/storage/files/dgf-law-june-2021-eng-webpage_1645110913.pdf

3) arranging the compensation for deposits within the deadlines set forth by the Law *On Households Deposit Guarantee Scheme*;

4) exercising control over the activities of the DGF participants;

5) carriying out activities to inform the general public about the functioning of the household deposits guarantee scheme, protection of the rights and legally protected interests of depositors, increasing the level of financial literacy of the population in accordance with the Law *On Households Deposit Guarantee Scheme*.

1. Maintaining a register of the DGF participants

Participation in the DGF is regulated by Articles 17–18 of the Law *On Households Deposit Guarantee Scheme* and the Regulation *On Procedure for Maintaining a Register of Participants of the Deposit Guarantee Fund*, approved by Decision of the DGF Executive Directorate No. 7 dated 12 July 2012 (hereinafter – the Regulation No. 7).

The said legislation requires a mandatory participation of banks in the DGF. Bank acquires the status of the DGF participant on the date of obtaining a banking license. Bridge bank (established to remove an insolvent bank from the market) is also the DGF participant, but is exempt from the initial and regular contributions to the DGF. After the bridge bank is sold to investor, the bank pays regular contributions to the DGF on the usual terms.

The list of DGF participants is published on the DGF's official website. The DGF is obliged to additionally publish on its official website the information about changes in the list of the DGF participants not later than 14 days after the relevant changes have been introduced into the register of the DGF participants, as well as the list of the DGF participants.

Upon entering information about the bank in the register of DGF participants, the participant obtains the unique registration number and certificate. For this purpose, the DGF must receive:

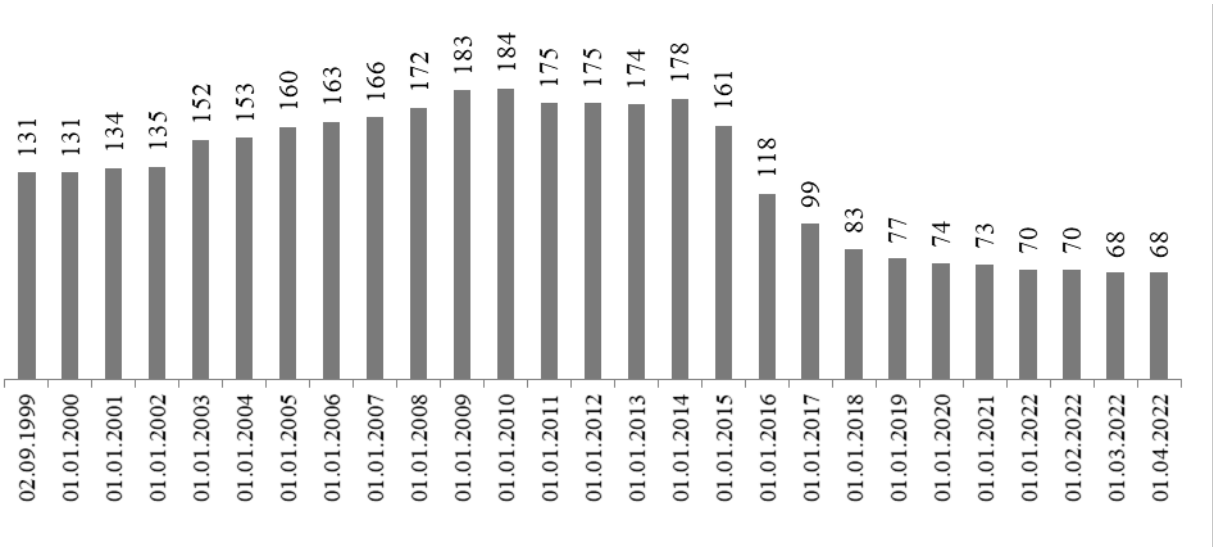
1) notification of the NBU on the issuance of a banking license

2) information from the bank as provided for by the Regulation No. 7 within 10 days from the date of receipt of the banking license.

The DGF excludes a bank from its participants if a decision to revoke its banking license and liquidate a bank is taken. Pursuant to the Law *On Households Deposit Guarantee Scheme* the branches of foreign banks cannot participate in the DGF.

As a result of 2014–2016 financial and banking crisis in Ukraine, the number of DGF participants has significantly decreased (see Table 1). Today, the number of DGF participants is 69 in total (together with Oschadbank JSC).

Table 1. Dynamics of participation in DGF in 1999–2022



2. Accumulating funds from sources determined by Article 19 of the Law *On Households Deposit Guarantee Scheme* and controlling completeness and timeliness of contributions paid by each DGF participant

The funding sources of the DGF include:

1) initial contributions of the DGF participants

2) regular contributions of the DGF participants

3) special contribution to the DGF

4) income received from investments of the DGF funds in Ukrainian government securities and bonds of international financial institutions placed in the territory of Ukraine

5) funds raised by the DGF by means of placement of bonds and/or issue of promissory notes of the DGF

6) interest income accrued by the NBU on the outstanding balance of the DGF's account with the NBU

7) loans raised from the NBU in case of urgent liquidity support for timely fulfilment of the DGF's task of ensuring the functioning of the household deposit guarantee scheme in order to avoid any threats to the stability of the banking and/or financial system of Ukraine and protecting the interests of bank depositors

8) forfeit (fines, penalties) levied in accordance with the Law *On Households Deposit Guarantee Scheme*

9) funds contributed by the NBU in the amount of UAH 20 million at the time of the DGF establishment

10) funds from the state budget of Ukraine, including domestic government bonds

11) charitable contributions, grants, technical assistance in pecuniary or non-pecuniary form, including those provided by foreign entities

12) loans raised from nonbank financial institutions and foreign creditors

13) funds obtained from implementation of measures envisaged by the resolution plan, in particular, from the sale of an insolvent bank or a bridge bank, or from liquidation of a bank

14) income received from the DGF's financial support (loan) to the assuming or bridge bank

15) income received from the DGF's credit granted to the bridge bank

16) guarantee payments transferred by the participants in an open tender in cases determined by the Law *On Households Deposit Guarantee Scheme*

17) funds obtained from managing assets of the DGF (including alienation, lease, etc.)

18) funds received from the banks being provisionally administrated or liquidated by the DGF, within the approved cost estimates, to reimburse the costs incurred by the DGF to remove them from the market.

The DGF may be funded from other sources not prohibited by the legislation of Ukraine.

The funding sources of the DGF are shown in Table 2.

Table 2. Formation of the DGF's financial resources in 2021 and 2020

UAH mln

Funding source of the DGF	2021	2020
Regular contributions	4,539.30	4,065.60
Income from investments in government securities	1,300.92	1,107.90
Interest income on the outstanding balance of the DGF's account with the NBU	69.91	192.50
Repayment of domestic government bonds	9,491.83	6,028.80
Funds obtained from implementation of measures envisaged by the resolution plan	1,030.63	2,303.10
Other income, including:	34.55	61.80
guarantee payments	30.00	55.10
refund of court fees paid	3.01	5.70
fines and penalties levied	0.31	0.40
other income	1.17	0.60

The DGF has the authority to control the completeness and timeliness of contributions provided for in Articles 21–23 of the Law *On Households Deposit Guarantee Scheme* by each DGF participant.

The procedure for calculation, accrual, and payment of contributions to the DGF is regulated by the Law *On Households Deposit Guarantee Scheme* and the DGF's Regulation No. 1 dated 2 July 2012 (hereinafter – the Regulation No. 1).

The initial contribution is 1% of the authorised capital of the bank and is paid within 30 days from the date of issuance of the banking license. The participating bank established by reorganisation is exempt from the initial contribution to the DGF if the initial contribution was paid by the reorganised banks, and acquires all rights and obligations associated with participation in the DGF. The bridge bank is also exempt from the initial contribution to the DGF.

The basic annual rate of the regular contribution is 0.5% of the accrual basis in national currency and 0.8% of the accrual basis in foreign currency, and is accrued as of the last working day of each quarter. The Executive Directorate has the right to increase the basic annual rate of the regular contribution to the DGF for certain period in case of potential or actual reduction in the DGF's target below 2.5% of the guaranteed funds of depositors of participating banks within the reimbursement amount.

The accrual basis is the arithmetic average of daily balances on the interest-bearing deposit accounts within the calculation period in question.

By issuing a separate regulation the DGF has the right to establish procedure for calculating the amount of regular contributions to the DGF in the form of differentiated fees. The differentiated fee amount is calculated by weighing the annual base fee rate against the risk level. The differentiated fee amount must be not less than the annual base rate. The methodology for assessing the level of bank risks for the calculation of differentiated fees is laid down in the DGF's Regulation No. 1 and agreed with the NBU.

The Executive Directorate has the right to introduce a special contribution to the DGF in case of potential or actual reduction in the DGF's target below 2.5% of the guaranteed funds of depositors of participating banks within the reimbursement amount, or in order to repay the loans raised.

The DGF constantly monitors the DGF's target indicator, which should not be less than 2.5% of the funds of depositors of participating banks within the reimbursement amount guaranteed by the DGF.

To determine the amount of the special-purpose fund, taking into account the possibility of future crises, the DGF calculates the value of the DGF's target indicator and time required to achieve it (including the results of stress testing of the household deposit guarantee scheme). The DGF conducts regular stress testing of the household deposit guarantee scheme at least once every three years. The results of stress testing of the household deposit guarantee scheme may be used by the DGF to review the annual basic rate of the regular contribution to the DGF greater than that established by Article 22(1) and/or to set a special contribution to the DGF or review the value of target indicator. The stress testing methodology is determined by the DGF.

If the value of target indicator calculated by the DGF exceeds the minimum value, the DGF refers the issue of the establishment of target indicator and deadline for its achievement for consideration by the Financial Stability Board, following which the Financial Stability Board provides its recommendations and the DGF Administrative Board decides on the issue in accordance with paragraph

19 of Article 9(1) of the Law *On Households Deposit Guarantee Scheme*, but not more than once a year.

The required amount of the special-purpose fund is reached by accumulating the adjusted capital. The DGF's adjusted capital should cover the projected amount of risks in the banking system in the event of future crises (except in cases of existence of certain signs of the unstable financial position of the banking system and circumstances threatening stability of the banking and/or financial system of Ukraine, confirmed by the relevant decision of the Financial Stability Council).

In the event of failure to reach the target value, the DGF has the right to take measures to accumulate capital for the period in question by:

increasing the basic rates of regular contributions paid by the DGF participants

introducing a special contribution to the DGF.

In the event of an urgent need to support the liquidity in order to timely fulfil the DGF's task on ensuring the functioning of the household deposit guarantee scheme, the DGF has the right to:

raise loans from the NBU

raise loans and/or receive contributions on a non-repayable basis.

Proceeding from calculations made in accordance with the Methodology for Assessing the Financial Stability of the DGF, the indicator of DGF's financial stability as of 31 December 2021 was 4.68%, which is considered sufficient under the Law *On Households Deposit Guarantee Scheme*.

The estimated financial stability of the DGF for the next twelve months, assessed in accordance with the Methodology for Assessing the Financial Stability of the DGF, shows the predicted possibility of reducing the DGF's financial stability indicator to 2.9%, which is higher than regulatory required values. If such risks occur, the DGF will have enough its own means for overcoming the consequences without any additional attraction of government funds.

The DGF's financial stability indicators as of 31 December 2021 and its estimated stability over the next 12 months are presented in Table 3.

Table 3. Calculation of estimated financial stability

	Information as of	DGF's financial stability (FS=OF/GDR), %	Deposits reimbursements guaranteed by the DGF (GDR), UAH mln	DGF's OWN FUNDS (OF), UAH mln	Surplus/deficit of funds (+/-), UAH mln
	01.01.2022	4.68	388,675	18,209.2	8,492.3
estimated values	01.02.2022	5.0	371,000	18,459.5	9,184.5
	01.03.2022	5.0	371,200	18,472.7	9,192.7

	01.04.2022	4.9	371,800	18,176.5	8,881.5
	01.05.2022	4.4	374,400	16,580.0	7,220.0
	01.06.2022	4.0	374,600	15,085.1	5,720.1
	01.07.2022	4.0	375,400	14,976.9	5,591.9
	01.08.2022	3.7	373,200	13,685.0	4,355.0
	01.09.2022	3.3	375,900	12,484.5	3,087.0
	01.10.2022	3.4	375,900	12,793.5	3,396.0
	01.11.2022	3.1	375,300	11,812.2	2,429.7
	01.12.2022	2.9	375,000	10,828.8	1,453.8
	01.01.2023	3.1	382,200	11,880.8	2,325.8

The estimation also includes the DGF's potential risks regarding the costs of DGF to pay compensation to depositors of those banks that may become insolvent in 2022 in the amount of about UAH 11,459.8 million.

3. Arranging compensation for deposits within the deadlines set forth by the Law *On Households Deposit Guarantee Scheme*

The DGF guarantees compensation for funds obtained by banks in cash or cashless forms, in the national or foreign currencies. A deposit is the funds in cash or non-cash form in the currency of Ukraine or foreign currency that are attracted by the bank from the depositor (or received in favour of the depositor) under the terms and conditions of the bank account or bank deposit agreement (except for funds attracted by issuing the savings certificates), including interest on such funds. Funds raised by the bank by issuing the bank savings certificates or certificates of deposit are not a deposit.

Since 24 February 2022, the number of depositors increased by 121 thousand people and as of 1 April 2022 the number of depositors totalled 50.8 million people.

The DGF compensates funds to every depositor (being natural person and individual entrepreneur) of every bank in the amount of the deposit, including the interests accrued as at the end of the day preceding the start date of the procedure of removal of the bank from the market by the DGF, not exceeding, however, the maximum amount of compensation.

For the period of martial law and within 3 months upon its end, the amount of compensation is 100% of the deposit itself and interest accrued thereon. Three months after the end of martial law, the maximum amount of compensation will be UAH 600,000.

The DGF pays no compensation for funds:

1) put into trust management of the bank

2) of less than UAH 10

3) deposited with the bank by a person which is a related party of the bank or has been such party within one year prior to the date of the decision of the NBU to recognise such bank as insolvent (in the event the NBU decides to revoke the banking license and liquidate the bank on the grounds set forth in Article 77(2) of the Law *On Banks and Banking* – within one year prior to the date of the said decision)

4) deposited with the bank by a person which has provided the bank with professional services as an auditor or an appraiser, where less than one year has passed since the date of the termination of the provision of such services till the date of the decision of the NBU to recognise such bank as insolvent (in the event the NBU decides to revoke the banking license and liquidate the bank on the grounds set forth in Article 77(2) of the Law *On Banks and Banking* – within one year prior to the date of the said decision)

5) held by the bank's substantial shareholder

6) on which the depositors receive interest from the bank under individual contracts concluded on non-market terms and conditions within the meaning of Article 52 of the Law *On Banks and Banking,* or enjoy other financial benefits from the bank

7) deposited in the bank, if the said deposit is used by the depositor to secure the fulfilment of other liabilities to that bank, in full amount of the deposit until the date of fulfilment of such liabilities

8) deposited in branches of any foreign banks

9) deposited in banking metals

10) placed on accounts arrested by a court decision

11) deposit, the satisfaction of claims in respect of which is suspended in accordance with the Law of Ukraine No. 361-IX *On Prevention and Counteraction to Legalization (Laundering) of Criminal Proceeds, Terrorist Financing and Financing of Proliferation of Weapons of Mass Destruction*[6] dated 12 December 2019.

One bank is temporarily exempted from general regulation due to its special status and its acquisition of status of the DGF participant in April 2022. For instance, from the date when Oschadbank JSC became a member of the DGF:

- if a deposit accepted by Oschadbank JSC before it became the DGF participant exceeds the deposit compensation limit, a portion of the deposit that exceeds such limit is guaranteed by the State

- if a deposit accepted by Oschadbank JSC before it became the DGF participant is not eligible for compensation by the DGF on legal grounds, such deposit is guaranteed by the State.

The State guarantees referred to in this paragraph apply within six months of the date when Oschadbank JSC becomes the DGF participant.

The accrual of interest on deposits terminates on the day the DGF launches the procedure of bank removal from the market. And if the NBU resolves to revoke the banking license and liquidate the bank on the grounds specified in Article 77(2) of the Law *On Banks and Banking*, the accrual of interest on

[6] https://zakon.rada.gov.ua/laws/show/361-20?lang=en#Text

deposits terminates on the date of issue of such resolution.

The deposits accepted by the bank in foreign currencies are compensated in hryvnia according to the official exchange rate of the NBU as at the end of the day preceding the start date of the procedure of bank removal from the market.

The DGF guarantees compensation for funds deposited by the depositor with the bank that has been further reorganised through transformation, on the same terms and conditions that applied before such reorganisation.

Deposits transferred to the bridge bank are guaranteed by the DGF on the same terms and conditions that applied before the transfer.

Pursuant to the Law and the Regulation *On Procedure for Compensation by the Deposit Guarantee Fund of Deposits* approved by Decision of the DGF Executive Directorate No. 14 dated 9 August 2012, the compensation is made through the DGF's automated payment system. The creation of an automated system for compensation payments and direct monitoring of the proper formation of the depositors database facilitated the payment of compensation within significantly shorter periods than those 20 working days provided for by the legislation. For instance, in 2021, the period for starting payments to the depositors of banks recognised as insolvent has been reduced to 15 working days on average. In pursuance of the requirements of the Law *On Households Deposit Guarantee Scheme*, in 2021, the DGF paid the guaranteed amounts of compensation to depositors of 37 banks. During 2021, 11 agent banks connected to the DGF's automated payment system were involved in compensation payment to depositors. Agent banks were selected in accordance with the requirements of Regulation *On Procedure for Selection of the DGF's Agent Banks* approved by Decision of the Executive Directorate No. 6 dated 12 July 2012. The use of the automated payment system by 4.7 thousand branches of 11 agent banks results in the depositors' opportunity to receive compensation in any branch of any agent bank in the territory controlled by the Government Ukraine. At present, there is no need to file individual applications to the DGF, except for the heirs of depositors, in order to update the personal data kept by the DGF or before paying funds to depositors of banks, the liquidation of which lasts more than 5 years.

The total guaranteed amount of compensation paid in 2021 at the expense of the DGF is UAH 848.2 million. Proceeding from the indicators of 2021, there is a quite even distribution of compensation among certain categories of deposits. The biggest share of payments is observed in categories of deposits from UAH 10,000 to UAH 100,000 (25%) and from UAH 100,000 to UAH 200,000 (33%).

As of 1 March 2022, the deposits of natural persons and individual entrepreneurs in the DGF participants amount to UAH 645,944,730,882.26; in Oschadbank JSC (separately) — UAH 118,007,988,424.46. Since 24 February 2022, the amount of possible compensation for deposits increased by UAH 46.2 billion or by 12.6% to UAH 413.3 billion, which is 58.7% of the total amount of deposits in the banking system.

Since 2012, the DGF paid UAH 95.7 billion to approximately 2 million depositors of 102 Ukrainian banks.

4. Exercising control over the activities of the DGF participants

As part of ensuring the functioning of the deposit guarantee scheme, protecting the depositors'

rights and interests and exercising control over the activities of the DGF participants, the DGF monitors the fulfilment of the banks' obligations associated with their participation in the deposit guarantee scheme by conducting audits and remote checks of the DGF participants. In 2021, within the scope of the DGF's control functions with respect of the activities of its participants, the DGF audited its participants to evaluate the proper fulfilment of their obligations, assigned by the Law *On Households Deposit Guarantee Scheme* and regulations of the DGF, in accordance with the approved annual audit plan.

The DGF annually audits at least 40% of Ukrainian banks, with each bank being audited at least once every two years. Banks with high risk profile (as determined by a special set of criteria) are audited more often, namely, once a year.

The DGF is constantly improving its audit approaches and procedures. For instance, since 2020, most audits have been carried out remotely by obtaining remote secure access to the operating systems of the banks, which significantly increased the efficiency of audits both for the DGF and banks.

Due to the regular audits carried out by the DGF, the number of violations committed by the banks has decreased and the quality of banks' depositors database has significantly improved in recent years. For instance, in 2021, the DGF detected 54 violations of its regulations compared to 107 violations in 2019.

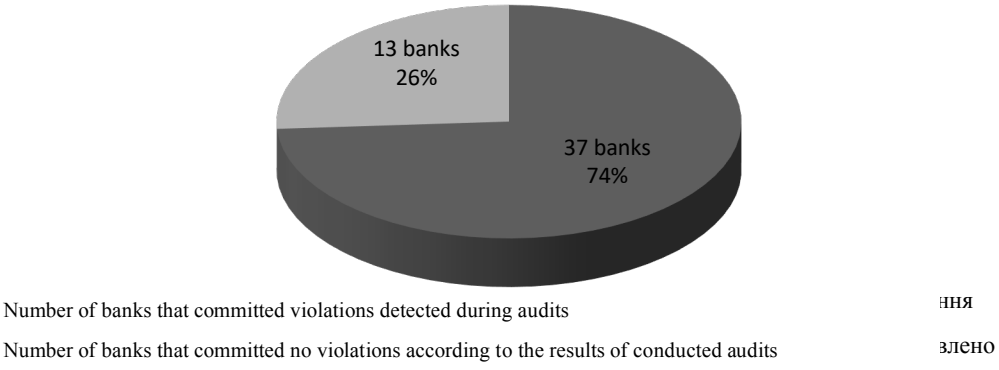


Figure 1. Number of audits carried out in 2021

The regular remote audits were carried out to check:

1. reliability of reports provided to the DGF

2. completeness and timeliness of the contributions and accrued penalties payment to the DGF

3. completeness and reliability of the maintained database of depositors

4. compliance with the requirements for informing depositors about bank's participation in the DGF.

Based on the results of 50 audits of banks conducted by the DGF in 2021, the DGF discovered 54 violations of the requirements of the Law *On Households Deposit Guarantee Scheme* and DGF's regulations.

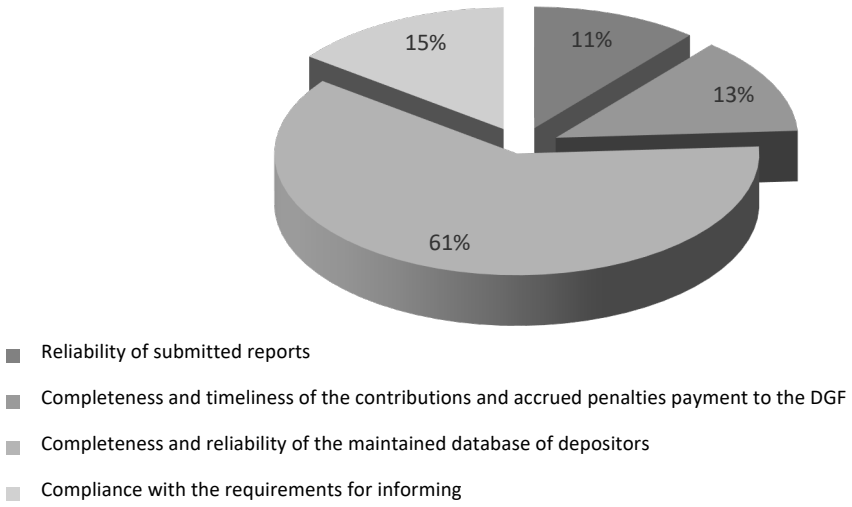


Figure 2. Share of violations associated with specific audited fields in the total number of discovered violations

5. Activities to inform the general public about the functioning of the household deposits guarantee scheme, protection of the rights and legally protected interests of depositors, increasing the level of financial literacy of the population in accordance with the Law *On Households Deposit Guarantee Scheme*

Improving the financial literacy of the population is one of the DGF's priority tasks. The DGF implements this strategic goal using various methods, in particular, by promoting dissemination of knowledge about deposit guarantee scheme among the educational environment in all regions of Ukraine.

To disseminate complete and reliable knowledge about the functioning of the deposit guarantee scheme in Ukraine and the activities of the DGF, the DGF experts developed a specialised training course "Deposit Guarantee Scheme: Fundamentals and Practice", designed to improve the skills of trainers conducting financial trainings and lecturers organising financial literacy clubs in schools, etc.

To attract a wide audience, a number of projects have been launched, in particular, the online channels of the National Financial Literacy Project on Facebook and profiles of the DGF's educational project "Fincult" on Facebook and Instagram, as well as YouTube and Telegram.

The DGF actively participates in the international financial literacy initiatives.

In addition, the DGF became a title partner of the Nationwide Communication Campaign for Protection of Consumers of Financial Services "Know Your Rights", launched by the NBU with the support of the Verkhovna Rada Commissioner for Human Rights and international partners, namely, the International Finance Corporation (IFC) in partnership with the Swiss State Secretariat for Economic Affairs (SECO) and the UK Good Governance Fund in Ukraine, as well as the EU technical assistance project "Strengthening the Regulation and Supervision of the Non-Bank Financial Market" (EU-FINREG).

The DGF advisory body – the Financial Literacy Expert Council – has also been set up, composed

of 10 representatives from academia, finance and public sectors.

In 2021, the work to develop core competencies frameworks on financial literacy for adults, children and youth was started. The aforementioned measures are included in the Strategy of Ukrainian Financial Sector Development until 2025 and the FinTech 2025 Development Strategy. The core competencies frameworks are being developed by the interagency working group, which, in addition to the DGF's representatives, includes representatives of the NBU, the NSSMC and the Ministry of Education and Science of Ukraine. Furthermore, within the framework of interagency Memorandum, the DGF's experts participate in the work on the draft Financial Literacy Development Strategy.

Pursuant to the DGF Strategic Development Directions, the Strategy of Ukrainian Financial Sector Development until 2025 and measures to bring Ukrainian legislation in line with European legislation, one of the priority activities of the DGF being actively developed is the strengthening of trust and protection of investors' rights. To this end, in 2021, the DGF has:

– introduced a permanent training system for the bank employees on the deposit guarantee scheme

– prepared proposals for standardisation of publicly available parts of the accession agreements

– introduced amendments to the Instruction on Procedure for Protection by the DGF of Depositors' Rights and Interests Protected by Law, approved by Decision of the DGF Executive Directorate No. 825 dated 26 May 2016 (hereinafter – the Instruction) to improve the procedure for disclosure by the DGF participants of information about the household deposit guarantee scheme

– ensured constant methodological and consulting support to the banks.

In the reporting year, the DGF remotely monitored the activities of 72 participating banks in H1 and H2 2021 for compliance with the requirements set forth in the Instruction. The most recent monitoring showed that the number of violations has significantly decreased from 97% of the total number of audited banks in 2016 to 35% in 2021. In 2021, no violations were detected in 45 banks (over 64% of the total number of banks) (Figure 3). In particular, there are no comments or observations as to the availability of a copy of certificate of the DGF participant, availability of information on the guaranteed amount or availability of the list of bank tariffs.

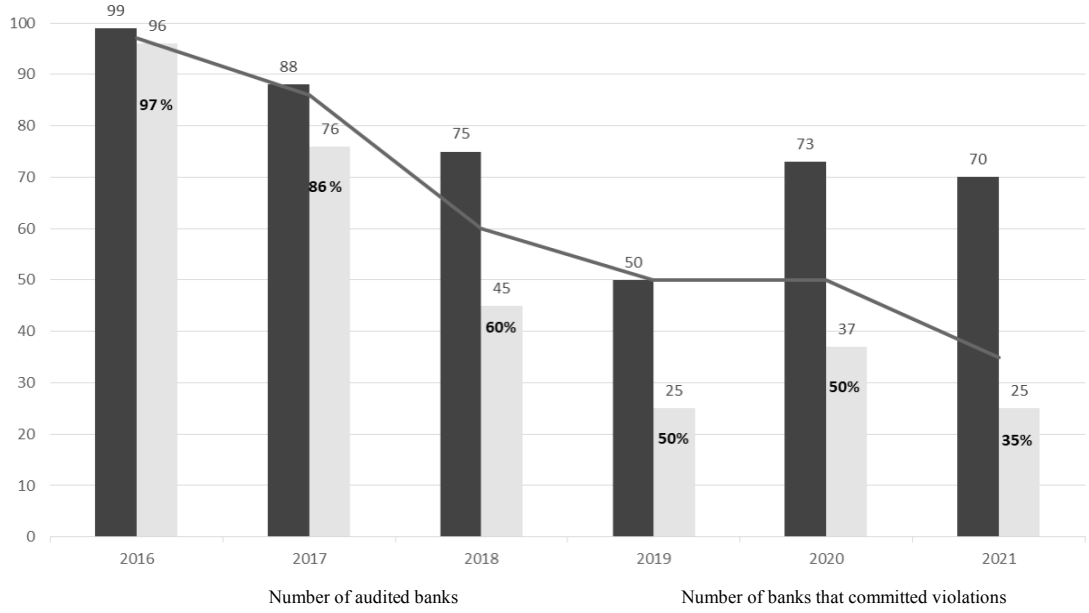


Figure 3. Level of compliance by the banks with the DGF's requirements for disclosure of information about the guarantee scheme

Constant monitoring by the DGF translated into a positive trend in the level of compliance with the requirements for disclosure of information about the guarantee scheme by the DGF participants in 2016–2021.

Previously, the DGF has frequently discovered the facts of introduction of risky products for depositors by the banks. At the same time, the banks did not provide full and transparent information to their clients on the content and price of such products, as well as the associated risks and legal consequences. In 2021, the DGF carried out appropriate work with the banks and provided its conclusions and proposals as to the banking products that did not take into account the terms and conditions of the deposit guarantee scheme and created a risk for depositors to lose their right to the guaranteed amount of compensation.

To prevent such situations in the future, the DGF monitors trends in the banking market that may pose risks to the interests of depositors, actively cooperates with the regulator, in particular, on DGF's participation in the nationwide outreach campaigns aimed at disseminating knowledge about financial services, consumer rights and guarantee scheme.

In the effort to instil a legal culture, promote legal ways to solve the depositors' problems, inform investors about their rights and responsibilities, as well as the rights and responsibilities of financial service providers, in 2021, the DGF launched a regular column "Legal Alphabet".

Regarding Credit Unions

At present, the NBU together with the DGF prepares legislative initiatives required for committing credit unions to participate in deposit guarantee schemes.

Respective international commitments of Ukraine as part of the European integration set out in Articles 133 and 135 and Appendices XVII-2 to XVII-5 of the EU-Ukraine Association Agreement. The

draft law on establishing the deposit guarantee scheme for credit unions is drafted as part of implementing Directive 2014/49/EU.

The draft law was expected to be submitted for consideration of the Verkhovna Rada of Ukraine in 2022 after the Verkhovna Rada of Ukraine adopts the Law of Ukraine *On Credit Unions* (draft law No. 5125 dated 22 February 2021). However, due to hostilities in Ukraine, the adoption of the draft law on credit unions is postponed.

The guarantee scheme is expected to be based on the DGF and introduced after the Law *On Credit Unions* is adopted.

Conditions of operation

10. What are the minimum requirements regarding regulatory capital ratios (CET 1, Tier 1, Total capital ratio) at individual and consolidated level?

Regarding banks

I. Instruction *On the Procedure for the Regulation of Bank Activities in Ukraine* approved by the NBU Board Resolution No. 368 dated 28 August 2001 sets the following capital ratios for banks:

1.1 regulatory capital adequacy ratio – no less than 10%
1.2 common equity adequacy ratio – no less than 7%

II. Regulation *On Procedure for Regulation of Banking Groups Activities* approved by the NBU Board Resolution No. 254 dated 20 June 2012 (as amended) sets out the following minimum requirements for the regulatory capital adequacy to the banking groups:

The adequacy of the regulatory capital is determined by comparing the amount of the regulatory capital of the banking group/subgroup of the banking group with the required amount of the regulatory capital of the banking group/subgroup of the banking group calculated in line with the requirement hereof.

Requirements for the regulatory capital adequacy of the banking group/subgroup of the banking group are met if the amount of the regulatory capital of the banking group/subgroup of the banking group equals to or exceeds the required amount of the regulatory capital of the banking group/subgroup of the banking group.

The required amount of the regulatory capital for a credit and investment subgroup is 10% of the risk-weighted assets of the subgroup, taking into account the minimum amount of operational risk and currency risk.

The required amount of the regulatory capital of insurance subgroup shall be determined as the total amount of required regulatory capital of insurance companies being members of this subgroup that is determined as the larger amount of the following:

- UAH 30 million for an insurer who provides or plans to provide nonlife insurance
- UAH 45 million for an insurer who provides or plans to provide life insurance

- a required solvency margin calculated under the laws of Ukraine

The required amount of capital is determined as a sum of regulatory capital of credit and investment subgroup and insurance subgroup.

Regarding Credit Unions

Credit unions are subject to a bespoke prudential regime under national law.

Regulation *On Mandatory Financial Ratios and Requirements that Limit Risks Under Transactions with Financial Assets of Credit Unions* approved by the Ordinance of the National Commission for State Regulation of Financial Services Markets No. 1840 dated 19 September 2019 and registered by the Ministry of Justice of Ukraine as No. 1186/34157 on 27 November 2021 establishes the following financial ratios that shall be mandatory for all credit unions.

Leverage ratios:

- financial stability ratio (K1) that is defined as the ratio of the credit union capital to the total amount of all liabilities should be no less than 10%
- capital adequacy ratio (K2, defined as the ratio of the credit union's Tier 1 capital to its total liabilities) – minimum 7%.

Regarding Investment Firms

The following coefficients of regulatory capital adequacy have been established for investment firms: regulatory capital adequacy ratio and tier 1 capital adequacy ratio. The minimum requirements for the regulatory capital adequacy ratio are at least 8 percent, for the tier 1 capital adequacy ratio – at least 4.5 percent. At the consolidated level, there is a requirement for the minimum amount of regulatory capital of the group, which must be not less than the standard amount of regulatory capital of the nonbank financial group, which is calculated by the responsible person of the group.

11. Are there requirements (or are planning to be introduced) in terms of additional loss absorption capacity (e.g. TLAC/MREL)? Describe its main elements.

1. There have been no indicator like MREL in Ukraine yet. However, it should be noted that within the existing resolution tool ‘100% sale of a failed bank shares to a new owner’ (Article 41 and Article 41^1 (in part of the tool indicated) of the Law *On Households Deposit Guarantee Scheme*) there are the following MREL elements:

1) There is an exhaustive list of liabilities and equity tools that can be converted: subordinated debt, funds to related parties (including, but not limited to, former owners), claims of bank creditors who are related to such bank, claims of other creditors in the reverse order of the priority established by Article 52 of the Law *On Households Deposit Guarantee Scheme* (Article 52 defines the priority of creditors' claims), BUT except for funds placed on current and/or deposit accounts in the bank by individuals and legal entities not related to the bank.

2) There is no standard for such liabilities is absent; the amount of such liabilities on the date of resolution is to be taken into conversion, but while implementing this tool, the "bank owners are the first

to bear losses" principle is to be maintained.

2. Thus, changes to the MREL are planned to be made under the Directive 2014/59/EU. The DGF's internal working group established to implement the EU Directives 2014/59/EU and 2014/49/EU has worked out the main MREL elements to be introduced by the DGF, in particular:

1) introducing a mandatory minimum MREL level for banks in Ukraine (as a minimum fixed %).

2) the DGF to determine amounts to be written off and converted, the priority of DGF's liabilities eligible for conversion. To calibrate MREL, the DGF requests information from the NBU regarding the write-off and conversion tool, the bank's capital structure, and its changes.

3) at the first stage of implementation, when calculating the minimum MREL level, the amount of non-guaranteed deposits is taken into account. Most banks in Ukraine rely heavily on deposits for funding, while the volume of interbank lending and market debt tools (bonds) is very limited. In the future, when improving the MREL ratio, it is necessary to focus on increasing the amount of liabilities suitable for writing off or conversion, in accordance with the level of domestic debt obligations market.

Calculation base for MREL - TLOF/RWA. Later on, the introduction of the leverage ratio (LR) in Ukraine is a prerequisite for calibrating MREL according to LRE in compliance with the BRRD-II Directive.

4) when determining the order and procedure for satisfying clams to the bank, the DGF's claims to be kept according to the order specified in the current version of the Law of Ukraine On Households Deposit Guarantee System.

5) covered deposits shall not be a part of the calculation. When designing a deposit identification system for MREL, make a suggestion to assign private entrepreneurs into a separate category (they are covered by the DGF, so are not suitable for the MREL tool), as they are not allocated from the pool of legal entities in the NBU reporting.

6) the minimum MREL % project is calculated on the basis of insolvent banks data (100 banks, 54% of the banking system) - 11%

Regarding the minimum MREL % calculated for Ukraine. According to WB consultations, 8% MREL at the first stage of Directive 59 in Europe is to be introduced. European experts were guided by the fact that such MREL % is the average amount of losses of banks failed during the systemic crisis. That is, this is the amount required for capitalization (this amount includes loss absorption and recapitalization) at the time of insolvency, expressed as a TLOF or RWA %.

The DGF studied insolvent banks' data from 2014-2016 systemic crisis in Ukraine (54% of the banking system), and determined the minimum level of MREL, based on losses and amount of necessary recapitalization of banks.

Taking into account the WB comments, the DGF has carried out its calculations according to the following algorithm:

1) determine the minimum required level of regulatory capital, on the date of PA (date of beginning resolution), including for the sake of complying with the standard (H2) 10% of risk-weighted assets.

2) determine the lack of RC (regulatory capital) comparing the actual RC with the minimum RC on the date of beginning resolution (date of PA).

3) determine % lack between RC and TLOF.

Given the DGF's calculations, as stated in paragraph 6, the minimum mandatory level MREL eligible for the write-off, to be kept by a bank, is 11%.

Potential MREL % level calculated for Ukraine (11%) has been forwarded to the World Bank. Positive feedback was received on these calculations and the MREL % level for Ukraine at the first stages of MREL implementation. The issue is to be discussed further with WB specialists on drafting the Law *On Households Deposit Guarantee Scheme* to comply with the EU Directive 2014/59/EU.

Regarding Investment Firms

No such requirements have been established for investment firms.

12. Are the requirements for capital buffers implemented in your jurisdiction to address financial stability risks (Y/N)? If yes, what kind of buffers do you require?

Regarding Banks

Yes. Requirements for the formation of capital buffers by banks are set out in Article 35^1 of the Law *On Banks and Banking*. The Law defines the NBU's right to set requirements for the formation of four capital buffers, including their size, specifically:

- capital conservation buffer
- countercyclical buffer
- systemic importance buffer, for systemically important banks
- systemic risk buffer.

In accordance with amendments to the Law *On Banks and Banking*, the NBU on 3 December 2021 made changes to the *Instruction On the Procedure for the Regulation of Bank Activities in Ukraine* approved by NBU Board Resolution No. 368 dated 28 August 2001 regarding capital buffers. These changes determine:

(1) the limits of the size of the capital buffers, specifically:

The capital conservation buffer is 2.5% of the total risk.

The countercyclical buffer is between 0% and 2.5% of the total risk of the bank.

The systemic importance buffer is between 1% and 2% of the total risk of the bank (the amount is determined depending on the value of the systemic importance indicator of the bank).

The systemic risk buffer is between 0% and 3% of the bank's total risk.

(2) the size of capital buffers, the term of their formation, and the schedule of the gradual achievement of the established size by a separate decision of the NBU Board

(3) the source of formation of capital buffers – the bank's fixed capital (except for a capital instrument that involves write-off/conversion)

(4) the combined capital buffer as a combination of sizes of individual capital buffers. If the bank fails to comply with the combined capital buffer, the NBU will apply corrective actions to the bank,

including in the form of concluding a written agreement containing a capitalization program**.**

Regarding Credit Unions

Yes, credit union builds a capital buffer (B) on top of the capital adequacy ratio (K2) as the sum of two following buffers:

1. Capital buffer B1 in the amount the following percentage of total assets:

prior to 30th of December, 2020	0.1% of total assets for each territorial unit (oblast) where credit union is active
starting form 31st of December 2020	0.2% of total assets for each territorial unit (oblast) where credit union is active
starting form 31st of December 2021	0.3% of total assets for each territorial unit (oblast) where credit union is active
starting form 31st of December 2022	0.4% of total assets for each territorial unit (oblast) where credit union is active
starting form 31st of December 2023	0.5% of total assets for each territorial unit (oblast) where credit union is active

2. Capital buffer B2 for systemic credit unions (with deposits exceeding UAH 30 mln.) in the amount of 1% of the sum of deposits if it exceeds UAH 30 mln. or 1,5% of the sum of deposits if it exceeds UAH 50 mln.

Regarding Investment Firms

No such requirements have been established for investment firms.

13. Is there a regulation concerning the capital adequacy relating to risks other than credit risk (e.g. market, operational, settlement and CVA risk)? If yes, please provide a high-level description of the framework.

Regarding Banks

Yes. Requirements for:

▪ operational risk in line with *On the Procedure for Determining the Minimum Operational Risk by Ukrainian Banks* approved by the NBU Board Resolution No. 156 dated 24 December 2019 (as amended). This regulation was drafted by the NBU supported by the World Bank based on Basel III 2017 (standardized approach)

▪ market risk in line with the Regulation *On the Procedure for Determining the Minimum Market Risk by Ukrainian Banks* approved by NBU Board Resolution No. 162 dated 30 December 2021(as amended). This regulation was drafted by the NBU supported by the World Bank based on Basel III 2019

(simplified standardized approach) and prescribes a trial period. At present, for calculating capital adequacy ratios, market risk is calculated only for gross currency position (currency risk).

For reference:

Minimum operational risk of the bank is estimated with consideration of the bank's main operating income and expenses. Bank income and expenses are distributed into three components:

- the component of net interest income/costs and dividend
- the servicing component
- the financial component.

An average of the past three years is used for estimating each of the three components.

For estimating minimum operational risk the sum of three components is weighted by ratio of 0.15 and the derived value is the value of operational risk of the bank to be covered by capital.

Banks will estimate minimum operational risk once a year based on audit-approved annual financial statements.

The requirement to cover 50% of estimated operational risk capital was introduced in 2022, with a subsequent increase to 100% as of 1 January 2023.

Minimum market risk is estimated as the sum of trading book interest rate risk, equity risk, currency risk, and commodity risk that includes option risk sensitive to the respective type of risk.

At the same time, trading book interest rate risk and equity risk are estimated only for instruments in the trading book, while currency and commodity risks are estimated for instruments both in the trading book and in banking books.

Introduction of market risk was postponed due to martial law in Ukraine.

NBU regulations that will set the requirements for settlement and CVA risk, as well as their inclusion in the calculation of capital adequacy ratios, are currently under development.

Regarding Investment Firms

For investment firms, in addition to credit risk, regulation of capital adequacy related to operational risk, liquidity risk as well as requirements for credit risk concentration have been established by NSSMC Regulation No. 1597.

The amount of capital requirement of the institution for operational risk is used in calculating the regulatory capital adequacy ratio and tier 1 capital adequacy ratio. The operational risk coverage ratio is also calculated, it reflects the investment firm's ability to cover its operational risks with its own funds at 15% of its average annual positive net income for the previous 3 financial years.

The absolute liquidity ratio reflects the part of current liabilities that the investment firm will be able to repay immediately and characterizes the sufficiency of highly liquid assets to urgently eliminate its current debt.

The credit risk concentration ratio sets limits on the credit risk of an investment firm, which may arise as a result of non-performance of its obligations by its individual counterparty, and is determined

separately for each counterparty of an investment firm as the ratio of the sum of all its assets that make claims against such counterparty to the amount of its regulatory capital.

14. Are securitisation transactions allowed in your jurisdiction (Y/N)? If yes, how are they treated from a prudential point of view?

*Regarding Ban*ks

No. Legislation is currently being drafted to regulate securitization operations with the EBRD's technical assistance.

Regarding Investment Firms

The provisions of the Regulation (EU) 2017/2402 have not yet been implemented in the legislation of Ukraine. Measures are currently being taken to implement the European Union legislation on securitization.

15. Does your jurisdiction have reporting and disclosure requirements in place? Describe its main elements.

Regarding Banks

Regarding the disclosure of information by banks at the request of the NBU

According to the Article 69 of the Law *On Banks and banking* NBU is entitled to determine the list of other indicators and other information about bank's activities that are subject to disclosure.

According to the Resolution Board No11 dated 15 February 2018 banks have to post on their Websites following information:

(1) Balance sheets and P&L data on a monthly basis. This includes detailed information by accounts (according to the Plan of accounts – local standard of presentation) and aggregated amounts in line with main reporting lines

(2) Distribution of loans to individuals and corporations in national and foreign currencies and the amount of prudential provisions (so called "credit risk") by class of debtor according to Regulation No.351– includes information about amounts of loans and prudential provisions to individuals and different categories of entities (banks, SPE, public sector entities, others) by each class of debtor. Different classes present different level of credit risk and worst classes represent NPLs

(3) Distribution of loans to corporations in national and foreign currencies by types of economic activity (industry) including information on NPLs by industries. – contain the information about the amount of loans and fraction of NPL among them differentiated by activity type using national classifier of economic activities

(4) Prudential ratios and limits on open foreign exchange positions – information includes values of all prudential ratios (capital adequacy ratios, credit risk limits, LCR (all currencies and foreign currencies), NSFR) and FX position to capital ratio

(5) Capital adequacy ratios and components of regulatory capital – provides information about all prudential ratios of capital (N1 – amount of regulatory capital, N2 - regulatory capital adequacy ratio, N3 – Tier1 capital adequacy ratio) and all components required to their calculation (capital subcomponents, RWA components, operational risk and currency position)

(6) Distribution of deposits of individuals by the deposit amount and the sum of possible reimbursement by Deposit Guarantee Fund

(7) Stress-test results – express results of stress testing including estimated capital adequacy ratios under baseline and adverse scenarios and required level of capital adequacy ratios for each bank

(8) Distribution of loans to individuals and corporates in national and foreign currencies and the amount of provisions formed by stages of impairment according to the International Financial Reporting Standard – shows amount of loans and provisions by stages of impairment according to IFRS 9

(9) Distribution of loans to corporates in national and foreign currencies by types of economic activity, and the amount of provisions formed by stages of impairment according to the International Financial Reporting Standard – express the amount of loans and provisions by stages according to IFRS 9, differentiated by activity type using national classifier of economic activities

(10) LCR components – contain the information about elements needed to calculate LCR in all currencies and in foreign currencies as of each of the 30 days before the reporting date (including subcomponents of HQLA, inflows and outflows).

Regarding the disclosure of information on risk management

Pursuant to the Instruction *On the Procedure of Preparing and Publishing Financial Reporting of Banks of Ukraine* approved by NBU Board Resolution No. 373 dated 24 October 2011 (based on Article 1[7] of the Law of Ukraine No. 996-XIV *On Accounting and Financial Reporting in Ukraine* dated 16 July 1999, hereinafter – the Law *On Accounting*), banks are required to submit to the NBU and publish on their own websites, together with the annual financial statements, the Management Report, which should include, inter alia, an analysis of environmental, social, and governance aspects of the bank's activities, their changes during the reporting period and future impact on the bank's activities or risks and, in particular, the risk management system, risk management strategy and policy, significant types of risks, their changes, and plans to mitigate them. The description of significant types of risks should cover both negative consequences and potential opportunities.

Regarding NBU's requirements for statistical reporting

The general requirements for the preparation, authorization, and submission of statistical reporting to the NBU are provided for by the Rules of Statistical Reporting submitted to the NBU, approved by

[7] Article 1 of the Law *On Accounting* sets up the Management Report is a document containing financial and nonfinancial information that characterizes the standing and prospects of the company and reveals the main risks and elements of uncertainty of its activities

the NBU Board Resolution No. 120 dated 13 November 2018. Data are submitted to the NBU at different intervals: daily, every tenth day, monthly, quarterly, semi-annually, annually, and upon request.

Improving the NBU's requirements for information disclosure by banks

In order to ensure full compliance by the NBU with EU legislation on bank disclosure, work is currently underway to implement the requirements CRR/CRR 2 (Part VIII) and relevant EBA GLs. The NBU is working to draw up regulations on this issue within the framework of the World Bank's technical assistance in 2022–2024.

Please see more details about reporting requirements in answers to question 8 CHAPTER 9: FINANCIAL SERVICES.

Regarding Credit Unions

Reporting and disclosure requirements by nonbank financial institutions (including credit unions) are regulated by:

The Law *On financial services*

The Law *On Accounting*

Resolution of the CMU *On Approval of the Procedure for Submitting Financial Statements* No. 419 dated 28 December 2000

NBU Board Resolution *On Approval of the Rules for the Compilation and Filing of Reports with the National Bank of Ukraine by Nonbank Financial Services Market Participants* No. 123 dated 25 November 2021.

Regulation *On Disclosure of Information by Nonbank Financial Institutions* approved by NBU Board Resolution No. 114 dated 5 November 2021.

Credit unions are required to disclose their audited financial reports and information regarding their activities on their web-sites.

Credit unions provide quarterly regulatory reports to the NBU. The NBU publishes consolidated regulatory information on its web-site. Regulatory reports of credit unions include:

- general information about the credit union
- reporting data on the financial activities of the credit union
- reporting data on the composition of assets and liabilities of the credit union
- reporting data on income and expenses of the credit union
- reporting data on the calculation of the required amount of the reserve to cover losses from non-performing loans of the credit union
- reporting data on credit activity of the credit union
- reporting data on funds borrowed from legal entities
- reporting data on the activities of separate divisions of the credit union

- reporting data on credit unions' operations with deposits
- reporting data on the loans of ten the credit union members with highest exposure
- reporting data on the exposure to the related persons
- reporting data on the credit union's compliance with financial requirements (ratios) and risk limits for transactions with financial assets.

Regarding Investment Firms

Pursuant to Article 47 of the Law of Ukraine *On Capital Markets*, an investment firm is obliged to submit reporting data to the NSSMC and place it in the database of a person who carries out activities for the disclosure of regulated information on behalf of capital markets participants and organized commodity markets professional participants. The reporting data include information on all transactions in securities issued outside the organized capital markets to the following extent:

the name of the issuer of securities and its identification code according to the United State Register of Legal Entities, Individual Entrepreneurs and Public Organizations of Ukraine, the LEI code (if available)

the kind, type, class, form of existence and form of issue of securities

the ISIN code

the number of securities for each transaction

the price of securities

the date of the transaction

other information included in the reporting data of the investment firm, determined by the NSSMC.

The information placed in the database of a person who carries out activities for the disclosure of regulated information on behalf of capital markets participants and organized commodity markets professional participants does not include information about the parties to the transactions.

The investment firm is obliged to submit information on the conclusion of its agency agreement to the NSSMC.

The investment firm is obliged to submit notification of each case of violation by the related agent of internal rules and procedures established by the investment firm in conducting professional activities in capital markets through the official communication channel to the NSSMC.

The following regulations of the NSSMC regulating the disclosure of information and submission of reporting data by investment firms are currently in force:

Licensing Conditions for Professional Activities in the Stock Market (Securities Market) – Securities Trading Activities approved by the NSSMC Resolution No.819 dated 14 May 2013 and registered by the Ministry of Justice of Ukraine as No. 857/23389 on 01 June 2013 that apply in the part that does not contradict the Law.

Regulations *On the Procedure for Compiling and Submitting Administrative Data on the Activities of Securities Traders to the NSSMC* approved by the NSSMC's Resolution No. 1283 dated 25 September 2012 and registered by the Ministry of Justice of Ukraine as No. 1737/22049 on 16 October 2012.

According to the specified regulations the investment firm:

- shall publish annual financial statements and annual consolidated financial statements certified by the applicant (except for companies in which the reporting period (year) from the date of establishment has not occurred), together with the auditor's report on its own web page or website (in full) with publication in periodicals or non-periodicals (for banks – on their own website and/or by publication in periodicals or non-periodicals (in full)) by April 30 of the year following the reporting period;

- shall submit the reporting data on professional activities in trading in financial instruments to the NSSMC, that shall include:

monthly

irregular

quarterly.

16. Is there a specific regulation concerning the annual accounts and consolidated accounts of credit institutions and investment firms?

Regarding Banks

In line with Article 14 of the Law *On Accounting*, public interest entities (save for big non issuers), public joint-stock companies, natural monopoly entities on the state-wide market, and business entities of mining industries, shall – before 30 April of the year following the reporting period – disclose annual financial statements and annual consolidated financial statements together with an auditor's opinion on its web-site (in full) and by other means as prescribed by law.

Pursuant to Article 12^1 part 5 of the Law *On Accounting*, public interest entities, including banks prepare and provide financial statements and consolidated financial statements to state authorities and other users upon request as prescribed by this Law based on financial statements taxonomy pursuant to international standards in the single electronic format established by central executive body assigned to develop and implement state accounting policy.

In accordance with Article 69 of the Law *On Banks and Banking*, any bank must submit to the NBU its financial statements and statistical reporting on its activity, operations, liquidity, solvency, profitability, as well as the information of its affiliates with the aim to assess the bank's financial standing.

The NBU sets for the banks and banking groups: list, format of reports or requirements to the formats, regularity and terms of reporting submission, procedure for submission and publication of financial statements (annual financial statements, annual consolidated financial statements, interim

financial statements, consolidated interim financial statements), consolidated and subconsolidated financial statements.

The contents, regularity, and deadlines for submitting annual financial statements and consolidated financial statements for banks are prescribed by Instructions *On the Procedure of Preparing and Publishing Financial Reporting of Banks of Ukraine* approved by NBU Board Resolution No. 373 dated 24 October 2011.

The procedure for banks on preparing financial statements is set out by the NBU in line with the Law *on Accounting* and International Standards of Financial Reporting.

The bank shall, on its own initiative or upon request of the NBU, during one month since the date of publication and/or detection of inaccurate financial statement, refute the published inaccurate financial reporting, annual consolidated financial statements, interim financial statements, consolidated interim financial statements, in the same way as it was distributed.

The banking group responsible person is obliged to disclose the auditor's report and the annual consolidated reports of the banking group audited by an audit firm not later than on 1 June of the year following the reporting one, in the composition of the reporting and procedure determined by the NBU, through publishing them on its website and in any other manner as prescribed by the Ukrainian legislation.

Regarding Credit Unions

Credit Unions are required to provide annual financial reports according to IFRS. Annual financial reports are submitted by credit unions *inter alia* to the NBU according to the NBU Board Resolution *On Approval of the Rules for the Compilation and Filing of Reports with the National Bank of Ukraine by Nonbank Financial Services Market Participants* No. 123 dated 25 November 2021.

Regarding Investment Firms

For investment firms, the requirements for individual reporting data and information, including annual ones, submitted to the NSSMC, are established by the Regulation on the Procedure for Compiling and Submitting Administrative Data on Securities Traders to the NSSMC, approved by the Resolution of the NSSMC No.1283 dated 25 September 2012 and registered by the Ministry of Justice of Ukraine as No.1737/22049 on 16 October 2015.

Submission of consolidated financial statements by non-bank financial groups is regulated by Regulation No.431.

Supervisory authorities

17. Which authorities are responsible of prudential regulation and/or supervision of credit institutions and investment firm in Ukraine? Please name these bodies and the scope of regulation or supervision.

Under Articles 7, 55, and 55-1 of the Law *On the National Bank*, as well as Article 21 of the Law *On Financial Services*, the NBU carries out:

- banking regulation and supervision on an individual and consolidated basis

- state regulation and supervision on an individual and consolidated basis in the nonbank financial services markets (**including credit unions,** excluding activities in the securities and derivatives markets, professional activities in the stock market, and activities in the defined contribution pension system) over activities of nonbank financial institutions and entities other than financial institutions but that are entitled to provide certain financial services within the limits set by the Law *On Financial Services* and other laws of Ukraine.

Under Article 67 of the Law *On Banks and Banking*, the purpose of banking supervision is stability of the banking system and protection of interests of depositors and creditors of the bank as to the safekeeping of client's funds on banking accounts. The NBU's supervisory activities cover all banks, their standalone units, affiliates, and congenerous parties of the banks, key participants in the ownership structure of the banks, banking groups, participants therein in Ukraine and abroad, foreign banks in Ukraine, as well as other legal entities and individuals in their compliance with the requirements of this Law.

The NBU may carry out banking supervision in the form of on-site inspections and off-site supervision.

Under Article 16^1 of the Law *On Financial Services*, the NBU performs consolidated supervision of banking groups in line with this Law, other Ukrainian laws, as well as nonbank financial groups, except for financial groups where main transactions are performed by financial institutions supervised by the NSSMC.

Under Article 19 of the Law *On Financial Services*, the purpose of the state regulation of financial services markets is to:

conduct a unified and effective state policy in the field of financial services

enhance the protection of consumer rights and interests in financial services

ensure that the right conditions are in place for financial services markets to develop and operate

create conditions for the effective mobilization and allocation of financial resources by participants in financial services markets, while taking into account the interests of society

ensure equal opportunities for access to financial services markets and protection of the rights of their participants

ensure that participants in the financial services markets comply with the requirements of legislation

prevent a monopolization of the financial services markets and create conditions for the development of fair competition in financial services markets

ensure the transparency and openness of financial services markets

promote integration into European and global financial services markets.

Under Article 29 of the Law *On Financial Services*, the main areas of NBU supervision in the field of state regulation of nonbank financial services markets are regular assessment of the overall financial standing of the nonbank financial institution, its performance and quality of corporate governance, system of internal control (audit) and risk management, compliance with mandatory standards and other indicators and requirements limiting risks on transactions with financial assets.

The NBU, within its powers, shall supervise activities in nonbank financial services markets in the form of off-site supervision and inspections pursuant to this Law and NBU regulations.

In addition, the new Law *On Financial Services and Finance Companies* (to take effect on 1 January 2024 in place of the Law *On Financial Services*) has recently been passed. Under Article 22 of this Law, the NBU shall regulate and supervise the provision of financial services, in particular the granting of loans.

In addition, it is stipulated that the Regulator supervises financial and/or support services such as prudential supervision and supervision of market conduct. By assessing, monitoring, and controlling financial group risks, the regulator conducts supervision on a consolidated basis, meaning that supervision is carried out over financial groups in order to control and limit the risks to which a financial institution is exposed as a result of participation in a financial group.

As defined in Article 24 of the Law *On Financial Services* prudential supervision is carried out by the regulator (including the NBU) in order to ensure financial stability (fulfillment of obligations) of individual financial services providers, and the stability of the financial system of Ukraine in general, as well as the protection of the legitimate interests of clients of financial service providers in accordance with this Law, other applicable laws, and regulations of the regulator.

Please see more details about the NBU's powers in answers to question 15 CHAPTER 9: FINANCIAL SERVICES.

Prudential regulation and supervision of investment firms in Ukraine falls within the competence of the NSSMC. The NSSMC establishes prudential standards, which are mandatory for investment firms and the procedure for monitoring their compliance.

18. Are the authorities responsible for regulation and/or supervision also in charge of granting and withdrawing the authorisations?

Under Article 7 of the Law *On the National Bank of Ukraine*, the NBU approves banks' articles of association and amendments thereto, issues licenses to perform banking business and transactions, as permitted by applicable law, and keeps the State Register of Banks.

Articles 20, 28, and 34 of the Law *On Financial Services* stipulate that state regulation of financial services is carried out, in particular, by maintaining state registers of financial institutions and registers of entities that are not financial institutions but that have the right to provide certain financial services, and licensing of financial services. The NBU, within its purview and as part of regulating nonbank financial services markets, grants to nonbank financial institutions (including credit unions) and entities

that are not financial institutions but that have the right to provide certain financial services, licenses to provide financial services and determines the procedure for their issuing, suspension, renewal, and revocation (cancellation).

Article 38[1] of the Law *On Financial Services* defines the grounds on which the NBU has the right to revoke a license issued to a nonbank financial institution (including credit unions) or an entity that is not a financial institution but that is entitled to render some financial services.

Under Articles 19 and 66 of the Law *On Banks and Banking*, state regulation of banks is carried out by the NBU, in particular in the form of registration of banks and licensing of their activities. On the grounds specified in Article 77 of the Law *On Banks and Banking*, the NBU has the right to revoke a banking license.

Please see more details about credits institutions in answers to questions 4, 15, 22 CHAPTER 9: FINANCIAL SERVICES.

For investment firms, such a body is the NSSMC. Please see more details in answers to questions 63, 65 CHAPTER 9: FINANCIAL SERVICES.

19. What is the current level of non-performing loans?

Regarding Banks

NPL ratio decreased from 41% as of 1 January 2021 to 27% by the end of March of 2022 due to:

- Fast growth in the loan portfolio in 2021
- A number of write-offs and restructurings by state-owned banks. State-owned banks are mostly on track with implementation of NPL reduction plans.

As of 1 March, NPL ratio for retail loan portfolio is 15.9%, for corporate ones – at 31.5%. NPL ratio in hryvnia stood at 28.5%, in foreign currencies – at 21.9%

Coverage of NPLs by provisions against all loans reached a new high of 108% as of the end of March.

Regarding Credit Unions

As of 01.01.2022, the share of non-performing loans is 16% of total Credit Unions' loan portfolio.

II. INSURANCE AND OCCUPATIONAL PENSIONS

A. General questions

20. Briefly describe the main features of the occupational pensions market in terms of its relative importance and recent developments (with data including the most recent trends and by

share in the financial sector), types of occupational pensions funds, and ownership structure of operations.

The non-state pension provision system constitutes the third level of the pension system. Its development has been carried out since 2004 after the entry into force of the Law of Ukraine No. 1057-IV *On Non-State Pension Provision* dated 9 July 2003 (hereinafter – Law *On Non-State Pension Provision*).

The essence of this system is the formation of additional pension savings through voluntary contributions of individuals and employers. The basis of such system is formed by non-state pension funds (hereinafter – NPF) - legal entities established in accordance with the Law *On Non-State Pension Provision*, which have the status of non-profit organization (non-profit company), operate and conduct activities solely to accumulate pension contributions benefit of pension fund participants. NPF participants are individuals in whose favor pension contributions to NPFs are paid, and depositors are persons who make such contributions (participants themselves, their employers, professional association or family members).

Pension savings of a NPF participant are formed at the expense of pension contributions paid by the participant, his employer or family members, and investment income received as a result of investing funds. All monetary funds accounted for in the individual pension account of the fund participant (pension contributions and investment income) are the property of the NPF participant. In order to obtain investment income and increase the amount of pension benefits, pension funds are invested in profitable financial instruments in compliance with the principle of asset diversification.

According to the Law *On Non-State Pension Provision*, by type, pension funds can be formed as open pension funds, corporate pension funds and occupational pension funds.

Thus, *an open pension fund* is a non-state pension fund, the participants of which can be any individuals, regardless of the place and nature of their work;

corporate pension fund - a non-state pension fund, the founder of which is a legal entity-employer or several legal entities-employers and to which employers-payers can join;

occupational pension fund - a pension fund, the founder (founders) of which may be employers' organizations, their associations, associations of citizens, trade unions, their associations or individuals related to the kind of their professional activities (occupations), defined in the charter of the fund. Participants in such a fund may be only individuals related to the kind of their professional activities (occupations), defined in the charter of the fund, as well as individuals who are employees of employers' organizations, their associations, members or employees of trade unions, their associations that created such a fund.

There are 58 non-state pension funds in Ukraine, of which 5 are occupational NPFs and 5 are corporate NPFs.

The total value of NPF assets as of December 31, 2021 is 3.87 billion UAH, 43% of which (1.68 billion UAH) belongs to the corporate non-state pension fund of the NBU.

The total value of assets of corporate and occupational l NPFs is 2.17 billion UAH.

As of December 31, 2021, NPF assets account is for 0.06% of GDP.

The structure of the assets of these funds is dominated by government securities and cash on bank deposit accounts - 87% (1.9 billion UAH).

The structure of assets of corporate and professional NPFs as of 31.12.2021 is shown below:

Asset name	Corporate NPFs		Professional NPFs	
	Total cost, UAH million	% of total assets	Total cost, UAH million	% of total assets
Government securities	959,26	47,76	73,04	45,74
Cash	835,59	41,60	17,54	10,98
Company bond	94,07	4,68	51,46	32,23
Real estate	73,16	3,64	7,01	4,39
Domestic local bonds	35,49	1,77	2,35	1,47
Receivables	2,98	0,15	0,67	0,42
The simple share	8,11	0,40	3,95	2,48
Other assets	0,00		3,66	2,30
TOTAL	2 008,66	100,00	159,68	100,00

The number of open NPFs is the largest, which is due to their greater accessibility to the general population, while participants in occupational or corporate NPFs can only be individuals who are related to their professional activities or being in labor relations with founding employers or employers-payers.

The analysis of the non-state pension provision market activity was conducted on the basis of the submitted reporting data as of 30.09.2021.

The main indicators of NPF activity, according to the reported data, and their growth rates are given in the table.

Dynamics of the main indicators of non-state pension funds

Indexes	As of 30.09.2019	As of 30.09.2020	As of 30.09.2021	Growth rates,%	
				As of 30.09.2020/ as of 30.09.2019	As of 30.09.2021/ as of 30.09.2020
Number of concluded	74,7	84,7	93,4	13,4	10,3

pension contracts, thousand units					
The total number of NPF participants, thousand people	868,7	880,4	889,7	1,3	1,1
Total value of NPF assets, UAH million	2 977,9	3 488,6	3 788,6	17,1	8,6
Pension contributions, total, UAH million	2 112,6	2 319,4	2 555,0	9,8	10,2
including:					
- from individuals	208,7	275,4	390,6	32,0	41,8
- from natural persons-entrepreneurs	0,2	0,3	0,3	50,0	0,0
- from legal entities	1 903,1	2 043,3	2 162,6	7,4	5,8
Pension payments, UAH million	912,9	1 069,5	1 240,8	17,2	16,0
Number of participants who received/are receiving pension payments, thousand people	83,3	86,3	89,0	3,6	3,1
Amount of investment income, UAH million	2 038,7	2 558,8	2 870,2	25,5	12,2
Income from investing the assets of a non-state pension	1 665,7	2 119,7	2 360,3	27,3	11,4

fund, UAH million					
Amount of expenses reimbursed from pension assets, UAH million	373,0	439,1	509,9	17,7	16,1

B. Legal framework

21. How is the distribution of competences defined between different levels of governance and which authorities are responsible on occupational pensions in Ukraine?

The Ministry of Social Policy and the NSSMC are responsible for pensions in Ukraine (the first, second and third levels of pensions). The division of competence is determined by the current legislation of Ukraine.

Thus, in particular, the NSSMC regulates the non-state pension provision in accordance with the Law *On Non-State Pension Provision* and by-laws developed in accordance with this Law, namely the Resolutions of the NSSMC, which establishes the powers of the NSSMC.

According to Article 2 of the Law *On Non-State Pension Provision,* the pension system in Ukraine consists of three levels (three-pillar pension system).

The first level (Pillar 1) is the **compulsory state solidarity pension system** (hereinafter – the solidarity system), based on the principles of solidarity and subsidies, as well as payment of pensions and provision of social services at the expense of the Pension Fund on the terms and in the manner prescribed by this Law.

The second level (Pillar 2) is the **mandatory accumulation pension system** (hereinafter – the accumulative system), based on the principles of accumulation of funds of insured persons in the Accumulative Fund or in relevant NPFs - subjects of the second level of the system of pension provision and financing of expenses for payment of contracts of insurance of lifelong pensions and one-time payments on the conditions and in the order provided by the Law.

The third level (*Pillar 3*) is the **voluntary non-state pension system**, which is based on the principles of voluntary participation of citizens, employers and their associations in the formation of pension savings in order to receive pension benefits on the terms and in the manner prescribed by legislation on private pension provision.

The first and the second levels of the pension system in Ukraine is the system of compulsory state pension insurance.

The second and the third levels of the pension system in Ukraine is the system of accumulation pension provision.

The Article 103 of the Law *On Non-State Pension Provision* stipulates that state regulation and supervision in the field of compulsory state pension insurance is carried out by:

in compliance with the provisions of this Law on the appointment (recalculation) and payment of pensions in solidarity system and on interaction of the Pension Fund with the funds of compulsory state social insurance - the central executive body that implements the state policy in the field of labor relations, social protection and its structural subdivisions on issues of social protection of the population of district, district in the cities of Kyiv and Sevastopol state administrations, executive bodies of city, district in the cities (in case of their creation) councils

concerning the targeted use of the Pension Fund, the legality and timeliness of the movement of funds of the accumulative pension insurance system - the central executive body that implements public financial policy, and the Accounting Chamber

on compliance with the norms of this Law by the subjects of the accumulative pension insurance system - the NSSMC

according to the activities of asset management companies, investment adviser - the NSSMC

according to the activities of the custodian and the authorized bank - the NBU and the NSSMC

in compliance with the legislation on protection of economic competition in the field of accumulative pension provision - the Antimonopoly Committee of Ukraine.

Regulation on the private pension provision market is carried out by the NSSMC in accordance with the Law *On Non-State Pension Provision* and by-laws developed in accordance with this Law, namely Resolutions of the NSSMC, which establish the powers of the NSSMC.

Article 67 of the Law *On Non-State Pension Provision* defines the bodies exercising state supervision and control in the sphere of non-state pension provision.

State supervision and control over the activities of non-state pension funds, pension fund administrators, persons managing the assets of pension funds, custodians, insurance companies and banking institutions shall be exercised by the NSSMC within the powers and in accordance with the Law *On Non-State Pension Provision* and the Law *On State Regulation of Capital Markets* and other acts of legislation of Ukraine.

The Antimonopoly Committee of Ukraine monitors compliance with the legislation on the protection of economic competition in the funded pension system within the powers provided by law.

Conditions of admission and licensing

22. Which conditions are required of new companies by law before taking up the business of reinsurance?

Current regulation (in line with Law On Insurance):

Pursuant to Article 2 of the Law *On Insurance* insurers can only engage in insurance, reinsurance,

and financial activities related to formation, placement, and management of insurance reserves.

Receiving of a separate license for reinsurance is not required by the Law *On Insurance*. Risks are accepted and transferred by a resident insurer on the basis of a license for a certain type of insurance (voluntary or compulsory).

The main requirements for licensing of insurers for providing certain types of insurance and their activities under a certain license are specified in the *Regulation On Licensing and Registration of Financial Services Providers and Requirements for Providing Financial Services* approved by NBU Board Resolution No. 153 dated 24 December 2021.

Future regulation (in accordance with Law of Ukraine No. 1909-IX On Insurance dated 18 November 2021, hereinafter - the (new) Law On Insurance):

Pursuant to Article 3 of the (new) Law *On Insurance*, which will take effect on 1 January 2024, insurance activities may be conducted in Ukraine only by:

1) resident insurers that have obtained a license as required by the (new) Law *On Insurance*

2) subsidiaries of nonresident insurers that have obtained a license as required by the (new) Law *On Insurance*

3) nonresident insurers, taking into account provisions of Article 6 of the (new) Law *On Insurance*.

The (new) Law *On Insurance* regulating the operation of insurers (direct insurance) also applies to the branches of nonresident insurers and reinsurers (reinsurance), except for cases explicitly specified in this Law.

Article 11 of the (new) Law On Insurance stipulates that a license may be issued to perform the following activities:

1) direct life insurance for selected classes of insurance (risks within the relevant class), defined by Article 4 part two of the (new) Law *On Insurance*, taking into account the features provided for in Article 4 part three of the (new) Law *On Insurance*

2) direct nonlife insurance for selected classes of insurance (risks within the relevant class), defined by Article 4 part one of the (new) Law *On Insurance*, taking into account the features provided for in Article 4 part three of the (new) Law *On Insurance*

3) incoming reinsurance by selected insurance classes (risks within the relevant class).

The license for direct insurance activities for selected classes of insurance (risks within the relevant class) gives the right to enter into insurance and/or co-insurance contracts, to provide outgoing reinsurance for the insurance classes specified in the license (risks within the relevant class), and to provide incoming reinsurance for such classes of insurance (risks within the relevant class), provided that during the calendar year the amount of gross premiums under incoming reinsurance contracts does not exceed 10 percent of the total amount of gross insurance premiums, but in any case not more than UAH 7 million.

The right to provide incoming reinsurance without such restrictions, according to the selected classes of insurance (risks within the relevant class) is granted to the insurer in case of receiving a license

to provide incoming reinsurance activities in accordance with the (new) Law *On Insurance*. An insurer that intends to provide incoming reinsurance activities, in case of exceeding the gross premiums under incoming reinsurance contracts provided by Law, must receive a license to provide incoming reinsurance activities in the order prescribed by this Law.

The license for incoming reinsurance for selected insurance classes (risks within the relevant class) gives the right to accept risks in reinsurance by insurance classes (risks within the relevant class) specified in such license and transfer risks to reinsurance by insurance classes (risks within the relevant class), which are specified in the license (outgoing retrocession).

An insurer cannot simultaneously be licensed to provide both nonlife insurance and life insurance. At the same time, an insurer, who was licensed to provide life insurance, can be licensed to provide insurance under insurance classes 1 (Accident) and/or (Sickness).

In addition, the requirements for the activities of insurers (reinsurers) of non-residents are mentioned in question 27 CHAPTER 9: FINANCIAL SERVICES.

Conditions of operation (for insurance and reinsurance companies)

23. What is the definition of solvency margin for insurance and reinsurance companies? How is it calibrated?

What solvency margin means was answered in question 42 CHAPTER 9: FINANCIAL SERVICES.

Current regulation (in accordance with the Law On Insurance):

As for insurance and reinsurance companies, the current laws do not differentiate between licensing requirements and solvency requirements, including solvency margin.

According to Article 30 of the Law *On Insurance*, insurers are required to comply with the following conditions of solvency:

the availability of a paid-in authorized capital for resident insurers or a security deposit for subsidiaries of nonresident insurers, and the availability of a guarantee fund for the insurer

establishment of insurance reserves sufficient for future insurance payouts and insurance compensation

excess of the available solvency margin of the insurer over the estimated required solvency margin.

The minimum authorized capital (security deposit) of a nonlife insurer is set at the equivalent of EUR 1 million, and for a life insurer, at the equivalent of EUR 10 million based on the hryvnia exchange rate.

Insurers are required to maintain an adequate level of the available solvency margin (net assets) in line with the volume of their insurance activities.

The **available solvency margin** (net assets) of the insurer is determined by deducting from the

value of the insurer's property (total assets) the amount of intangible assets and the total amount of liabilities, including insurance. Insurance liabilities are set equal to amounts of insurance reserves that the insurer is obliged to form in the manner prescribed by this Law. At any date, the insurer's available solvency margin must exceed the estimated regulatory solvency margin.

The **required solvency margin** of an insurer that provides types of insurance other than life insurance at any date is equal to the greater of said values, specifically:

the first value is calculated by multiplying the amount of insurance premiums for the previous 12 months by 0.18 (the last month will consist of the number of days that passed between the start of that month and the calculation date). At the same time, the amount of insurance premiums is reduced by 50% of insurance premiums due to reinsurers.

the second value is calculated by multiplying the amount of insurance payments for the previous 12 months by 0.26 (the last month will consist of the number of days that passed between the start of that month and the calculation date). At the same time, the amount of insurance payments is reduced by 50% of payments reimbursed by reinsurers in accordance with concluded reinsurance agreements.

The required solvency margin of the life insurer at any date is equal to the value determined by multiplying the total amount of the long-term liability provisions (mathematical provisions) by 0.05.

Additionally, the Regulation *On Mandatory Criteria and Standards of Capital Adequacy and Solvency, Liquidity, Profitability, Asset Quality, and Risk of Insurer's Transactions,* approved by Order No. 850 of the National Commission for the State Regulation of Financial Services Markets dated 7 June 2018, stipulates the **requirements for the solvency ratio and the capital adequacy ratio of the insurer**:

The solvency ratio and capital adequacy ratio are the amount of eligible assets that at any date must be no less than the required volume of assets, which is defined as the greater than the following values:

L + C

L + RSM

where	L (Liabilities)	-	is the amount of long-term and current liabilities and collateral, calculated in accordance with the law and determined as the total value of sections II-IV of the liabilities on the balance sheet (Statement of Financial Position), the form and composition of which are determined by National Accounting Regulation (Standard) 1 *General Requirements for Financial Reporting*, approved by Order No. 73 of the Ministry of Finance of Ukraine, dated 7 February 2013, and registered as No. 336/22868 with the Ministry of Justice of Ukraine on 28 February 2013.
	C	-	a value that equals: UAH 30 million for an insurer who provides or plans to provide nonlife insurance UAH 45 million for an insurer who provides or plans to provide life

			insurance
	RSM	-	a required solvency margin calculated under Ukrainian laws

Future regulation (in accordance with the (new) Law On Insurance, which will take effect on 1 January 2024):

The insurer (reinsurer) will be subject to solvency requirements, in particular the calculation of SCR, MCR, based on the requirements of Directive 2009/138/EU (Solvency II), provided that at least one of the following criteria is met for three consecutive calendar years:

1) the amount of gross insurance premiums of the insurer during the calendar year exceeds UAH 200 million

2) the amount of technical reserves of the insurer, including incoming reinsurance and excluding outgoing reinsurance at the end of the calendar year exceeds UAH 700 million

3) the amount of gross premiums of the insurer under incoming reinsurance contracts during the calendar year exceeds 10 percent of the total amount of gross insurance premiums of the insurer and/or UAH 20 million

4) the amount of technical reserves under the insurer's incoming reinsurance agreements at the end of the calendar year exceeds 10 percent of the total amount of the insurer's technical reserves, including incoming reinsurance and excluding outgoing reinsurance and/or UAH 70 million.

If the restrictions specified in paragraph 1 subparagraphs 1) to 4) are not met, the definition of SCR, MCR, solvency margin will be based on the requirements of the Directives “Solvency I”.

The calculation of the amount of SCR and MCR will be carried out by the insurers in the manner prescribed by regulations of the Regulator, which must be developed before the entry into force of the new Law *On Insurance* - until 1 January 2024.

At that, regardless of the calculations, the minimum capital of the insurer may not be less than the following absolute values:

1) UAH 32 million for an insurer that was granted a direct business license for one or more nonlife insurance classes, save for insurance classes set out in paragraph 2

2) UAH 48 million for an insurer that was granted a direct business license for one or more insurance classes, such as 10 (Motor vehicle liability), 11 (Aircraft liability), 12 (Liability for ships (sea, lake and river and canal vessels), 13 (General liability), 14 (Credit), 15 (Suretyship). This condition does not apply to direct business for insurance class 13 (General liability), provided the insurance license prescribes restrictions and/or specifics for this class set out by the NBU’s regulations that authorize application of a simplified approach to estimating capital, solvency, and minimum capital

3) UAH 48 million for an insurer that was granted a direct business license for one or more life insurance classes

4) UAH 48 million for an insurer with a license on assumed reinsurance, provided that during a calendar year the gross premium on assumed reinsurance agreement exceeds 10 percent of the gross insurance premium or exceeds UAH 7 million.

In addition, the Draft Resolution of the NBU Board *On Approval of the Regulation on Mandatory Criteria and Standards of Capital Adequacy and Solvency, Liquidity, Profitability, Asset Quality, and Risk of Insurer's Transactions*[8] has been published for public discussion. This document makes amendments to the procedure for the determination of the required and available solvency margins, and makes changes to the requirements for the minimum value of the solvency ratio and the capital adequacy ratio of the insurer, while taking into account the EU Directives on Solvency I.

III. FINANCIAL MARKET INFRASTRUCTURE

24. To which extent is the Financial Market Infrastructure legislation aligned to the following legislative acts (as amended) and acts adopted to implement them (such as delegated acts, implementing acts, regulatory technical standards and implementing technical standards) European legislation?

a) the Settlement Finality Directive (98/26/EC)?

The Law of Ukraine No. 738-IX On Amendments to Certain Legislative Acts of Ukraine to Facilitate Investment Attraction and Introduce New Financial Instruments dated 19 June 2020 has implemented the provisions of EU Directive № 98/26/EU (Settlement Finality Directive) into the national legislation with regard to implementing the provisions on the finality of settlements.

b) The Financial Collateral Directive (2002/47/EC)?

The Ukrainian legislation in general complies with the provisions of Directive 2002/47/EC (Financial Collateral Directive). In particular, the Law of Ukraine No. 738-IX *On Amendments to Certain Legislative Acts of Ukraine to Facilitate Investment Attraction and Introduce New Financial Instruments* dated 19 June 2020 has implemented the provisions of EU Directive № 2002/47/EU (Financial Collateral Directive) into the national legislation with regard to the implementation of the liquidation netting provisions.

c) The Regulation on OTC derivatives, central counterparties and trade repositories (EMIR) (Regulation 648/2012)?

The Law of Ukraine *On Capital Markets* in general complies with the provisions of Regulation (EC) № 648/2012 (EMIR) with regard to regulation of the activities of the Central Counterparty and trade repository.

d) The Regulation (EU) No 2021/23 on a framework for the recovery and resolution of central counterparties (CCP recovery and resolution)?

[8] https://bank.gov.ua/admin_uploads/article/proekt_2022-02-04.pdf?v=4

The provisions of Regulation (EU) № 2021/23 dated 16 December 2020 have not yet been implemented in the legislation of Ukraine.

e) The Central Securities Depositories Regulation (CSDR) (Regulation 909/2014)?

The Law of Ukraine No. 5178-VI *On Depository System of Ukraine* dated 6 July 2012 in general complies with the provisions of Regulation (EC) № 909/2014 (CSDR).

f) The Regulation on Transparency of Securities Financing Transactions (SFTR) (Regulation 2015/2365)?

The provisions of Regulation (EU) № 2015/2365 (SFTR) have not yet been implemented in the legislation of Ukraine.

The NSSMC is working on the new draft Law *On Depository System of Ukraine* which will repeal the current one from 2012. This draft law will be based on Regulation (EC) № 909/2014 (CSDR) and also will cover other EU acquis related to financial market infrastructure in particular Regulation (EU) № 2015/2365 (SFTR) also will be covered by this draft law.

IV. SECURITIES MARKETS AND INVESTMENT SERVICES

A. General questions

25. Is there an authority in charge of supervising regulated markets, 'multilateral trading facilities' or 'MTFs' or 'organised trading facilities' or 'OTFs' as defined in Article 4(1) points 22 and 23 of MiFID II? If yes, please indicate name and address.

Supervision of regulated markets, MTFs or OTFs is carried out by the state in the person of the National Securities and Stock Market Commission (NSSMC). Address: 8 Moskovska str., building 30, Kyiv, 01010.

26. Is there a regime in place to avoid market abuse and maintain the integrity of the market? Please provide details.

Legal regulation, which regulates issues on fight against insider trading and manipulation on capital markets, as well as other violations on capital markets and organized commodity markets, is contained, in particular, in the Laws of Ukraine *On State Regulation of Capital Markets, On Capital Markets*, *the Criminal Code of Ukraine* and the *Code of Ukraine on Administrative Offenses*. However, the legislation in this area needs to be improved and brought into line, in particular, with the provisions of EU Regulation No. 596/201 dated 16 April 2014 (MAR), Directive No. 2014/57/EU dated 16 April 2014 (MAD), Directive No. 2014/65/EU dated 15 May 2014 (MIFID II) and the IOSCO Principles.

According to Article 2 of the Law *On State Regulation of Capital Markets,* state regulation of capital markets and organized commodity markets is carried out, in order to protect the rights of

participants in capital markets (including consumers of financial services) in relation to financial services provided to persons engaged in professional activities in the capital market, compliance by participants in capital markets and organized commodity markets with the requirements of legislation.

According to Article 3 of the Law *On State Regulation of Capital Markets* forms of state regulation of capital markets and organized commodity markets are, including the adoption of legislation on capital markets and organized commodity markets, supervision, implementation, regulation and control over the implementation of rights and obligations of participants in capital markets and organized commodity markets, establishing rules and standards for operations in capital markets and organized commodity markets, as well as monitoring compliance with such rules and standards, prudential supervision of professional market participants capital and organized commodity markets within the activities carried out by such participants on the basis of a license issued by the NSSMC.

Thus, ensuring compliance by participants of capital markets and organized commodity markets, subjects of the funded pension system with the requirements of the legislation on capital markets and organized commodity markets, is carried out by, inter alia, the adoption of NSSMC regulations governing their activities and sanctions or other measures of influence for offenses in the capital markets and organized commodity markets.

Thus, in particular using the powers of control over the conduct of inspections, the NSSMC as a regulator aims to:

- to promote compliance with legal requirements;
- to prevent offenses (abuses) in capital markets and organized commodity markets;
- to ensure respect for the rights and interests of investors and promote their confidence, reduce, minimize and manage systemic risks, create and ensure the functioning of fair, efficient and transparent financial markets.

B. Legal framework

Investment firms and funds

27. Are there rules to ensure that a national competent authority can establish and apply position limits on the size of a net position which a person can hold at all times in commodity derivatives traded on national trading venues and economically equivalent OTC contracts? Are there rules on position management controls in commodity derivatives?

Part 9 of Article 34 of the Law *On Capital Markets* provides that the NSSMC sets requirements and indicators that limit the risks of participants in the organized market of derivative contracts, in particular establishes methods for calculating position limits. A participant in an organized market of derivative contracts may have commodity derivative contracts, and the procedure for their observance.

To date, the current legislation of Ukraine has not established any restrictions and rules of control over the conclusion by investment firms of commodity derivatives traded on national trading platforms

and economically equivalent OTC contracts. At the same time, the NSSMC is currently working on the development of a relevant legal act.

Collective Investment Undertakings

28. Are collective investment undertakings subject to authorisation requirements? What are the prudential and organisation requirements? Is there a requirement to periodically report data on a collective investment undertaking's trades to a supervisor? Is it possible for a manager of a collective investment vehicle to delegate investment management functions to third parties? Can the managers of collective investment vehicles provide other services (auxiliary services) than managing collective investment vehicles (for example, individual investment portfolio management)?

The main legal basis governing the activities of UCITS is the Law of Ukraine No. 5080-VI *On Collective Investment Institutions* dated 5 July 2012 (hereinafter – the Law *On UCITS*[9]).

UCITS is registered in accordance with clearly established procedures and in accordance with the requirements set by special regulations governing the activities of UCITS.

According to the Law *On UCITS*, the following joint investment entities are provided in Ukraine.

The UCITS is a corporate or mutual fund.

Corporate fund - a legal entity that is formed in the form of a joint stock company and conducts only joint investment activities.

Mutual fund - a set of assets owned by the participants of such a fund on the right of joint partial ownership, managed by the asset management company and accounted for separately from the results of its business activities.

The registration of UCITS is carried out by the NSSMC by entering information on the UCITS into the Unified State Register of Joint Investment Institutions (hereinafter - the Register) with the assignment of a registration code to such institution.

The basis for entering information about the UCITS in the Register is the regulations registered in accordance with the procedure established by the NSSMC.

The investment fund acquires the status of the UCITS from the date of entering information about it in the Register. A corporate investment fund, in contrast to a mutual investment fund, also has the status of a financial institution, which it acquires immediately with the status of the UCITS.

The corporate fund is obliged to register the regulations within six months from the date of state registration of the corporate fund as a legal entity.

Joint investment activities are carried out after entering information about the institution of joint investment in the Register and obtaining a certificate of entry in the Register.

[9] https://zakon.rada.gov.ua/laws/show/5080-17?lang=en#Text

Within one year from the date of entering the information on the investment fund into the Register, the asset management company shall register with the NSSMC the issue of securities carried out for the purpose of joint investment and the prospectus of their issue.

A mutual fund is created by an asset management company. A mutual fund is considered to be created from the date of entering information about it in the Register.

In accordance with paragraph 37^5 of the second part of Article 7 of the Law *On State Regulation of Capital Markets* the NSSMC in accordance with its tasks and within the limits established by law, **establishes prudential standards** and other indicators and requirements that limit the risks of transactions related to the direct conduct of professional activities **for each type of professional activity in the capital markets and organized commodity markets, as well as the subjects of the accumulative pension systems.**

Accordingly, since UCITS are not professional participants in capital markets and organized commodity markets, the requirements for prudential standards do not apply to them.

Regarding organizational requirements, the following is noted.

The officials of the corporate fund are the Chairman and members of the corporate fund's Supervisory Board.

People's deputies of Ukraine, members of the Cabinet of Ministers of Ukraine, heads of central and local executive authorities, heads of local authorities, military personnel, officials of the Prosecutor's office, the Court, the Security Service of Ukraine, Police entities, civil servants may not be the officials of the corporate fund or asset management company.

A person, who has criminal record for crimes against property, or crimes in official or business spheres, which has not been removed or extinguished, or has committed more than three administrative violations on the stock market, may not be official of the corporate fund or the asset management company of the collective investment institution.

The composition of the Supervisory Board of the corporate fund may not contain representatives or affiliated persons of the:

1) asset management company of the corporate fund (other than venture capital fund)

2) securities traders, who provide services for that corporate fund

3) custodian of the corporate fund's assets

4) depositary, which provides services for that corporate fund

5) auditor (auditing firm) of the corporate fund

6) appraiser of the corporate fund's property.

Creation of the corporate fund's Supervisory Board is mandatory.

The quantitative composition of the Supervisory Board is established by the Statute, is an odd number of persons, and may not be less than three persons.

The Supervisory Board is a body of the corporate fund that protects the rights of the corporate

fund's participants, and in accordance with this Law and the Statute of the corporate fund supervises the activities of the corporate fund and fulfillment of the Regulations, investment declaration and agreement on management of the corporate fund's assets.

The competence of the Supervisory Board includes:

1) decision on holding of ordinary and extraordinary General Meeting, other than Extraordinary General Meeting convened at the request of the corporate fund's participants

2) approval of the agenda of the General Meeting, the decision on the date of its holding and inclusion of proposals on the agenda, except for cases of convening of the Extraordinary General Meeting at the request of the corporate fund's participants

3) election of the Chairman of the Supervisory Board

4) approval of the Regulations and changes thereto

5) approval of changes to the prospectus of issue of the corporate fund's shares

6) election of the Registration Commission except the case of convening the Extraordinary General Meeting at the request of the participants of the corporate fund

7) determining the date of compiling the list of persons entitled to receive dividends, procedure and terms of dividend payment (for the corporate fund of closed-end type)

8) determining the date of compiling the list of participants of the corporate fund, which shall be notified on holding of the General Meeting in accordance with the part one of Article 19 of this Law, and date of compiling the list of participants of the corporate fund which are eligible to participate in the General Meeting in accordance with Article 18 of this Law

9) approval of the agreements on corporate fund's assets concluded by the asset management company, an amount of which exceeds the minimum sum prescribed by the Statute or the Regulations

10) other issues within the competence of the Supervisory Board in accordance with legislation or the Statute of the corporate fund.

The powers of the Supervisory Board, prescribed by the Article 34 of this Law, and internal documents of the corporate fund, are exercised by the participant of the corporate fund single-handedly.

Decisions of the participant of the corporate fund on matters within the competence of the Supervisory Board, should be done by him/her in writing (in the form of a decision, order, etc.) and certified by the corporate fund's seal or notarially.

The requirement to submit to the NSSMC daily reporting data, including detailed information on the assets of the UCITS applies to open-end UCITS, so UCITS, which undertake to carry out at any time at the request of members of this institution redemption securities.

For other types of UCITS, in particular venture capital, which account for the majority of UCITS (over 90% of the total), the requirement to provide information on securities transactions of such an institution is set on an irregular basis - on the day of such transaction.

Part five of the Article 69 of the Law stipulates that the activity of managing the assets of institutional investors may be combined with the activity of administering private pension funds in accordance with the requirements established by the Law *On Non-State Pension Provision*.

Therefore, the AMC may not provide additional services other than asset management (UCITS), other than the administration of private pension funds, on the basis of an appropriate license.

Part six of the Article 70 of the Law *On Capital Markets* stipulates that professional participants in capital markets and organized commodity markets may use outsourcing during their professional activities. A professional participant in capital markets and organized commodity markets who uses outsourcing is fully and unconditionally responsible for the actions of the service provider performed by such service provider in pursuance of the outsourcing agreement. Requirements for the use of outsourcing are set by the NSSMC.

Clause 6 of the second part of the Article 2 of the Law stipulates that outsourcing is the involvement of a professional participant on the basis of a relevant contract of another person (service provider) to carry out processes, provide services, perform work that is part of such professional participant's professional activities in capital markets and organized commodity markets.

Given the above, the AMC may use outsourcing subject to compliance with part six of Article 70 of the Law.

29. Is there a legal framework, which sets out specific parameters of a collective investment vehicle, i.e. rules that pre-calibrate the investment product (e.g. ELTIF, EUVECA, EUSEF in the EU)?

At present, there is no such legislation in Ukraine.

Markets

30. Do you have a prospectus regime in place? Who is responsible for the approval of a prospectus?

In accordance with the first part of the Article 1 of the Law of Ukraine *On Capital Markets* securities prospectus (hereinafter – the prospectus) - a document drawn up in the public offering of securities and contains information in accordance with law.

First part of the Article 98 of the Law *On Capital Markets* draws up a prospectus by a person who makes a public offer (hereinafter – the person who draws up the prospectus).

According to second and third parts of the Article 97 of the Law *On Capital Markets*, a public offer may be made:

1) the issuer in the process of issuing securities;

2) the issuer in respect of redeemed securities;

3) the offeror for the sale of securities belonging to him.

The public offer shall be made in accordance with the procedure established by the NSSMC, only subject to the publication of the prospectus approved by the NSSMC except as provided in part four of this article.

Article 98 of the Law *On Capital Markets* stipulates that the requirements for information, which must include the prospectus and its separate parts, are established by the NSSMC.

If the prospectus is issued by a legal entity, it is signed by a person who performs managerial functions in such legal entity. If the prospectus consists of several documents, such documents may be signed by different persons who perform managerial functions in the person issuing the prospectus.

The persons who signed the prospectus thereby confirm the authenticity of the information contained therein.

The person who draws up the prospectus shall be liable for the inclusion of inaccurate and / or misleading information in the prospectus.

The person who provides security for the relevant issue of securities, for the inclusion in the prospectus of inaccurate information relating to the security provided, is liable under the law.

Persons who provide security for the relevant issue of securities shall sign the prospectus of such securities.

The financial statements included in the prospectus must be audited by the auditor.

The person who draws up the prospectus shall be liable for failure to comply with the terms of the prospectus approved by the NSSMC.

In accordance with the requirements of Article 99 of the Law *On Capital Markets*, the person issuing the prospectus shall submit to the NSSMC the prospectus and all necessary documents for its approval.

After receiving the prospectus and all the necessary documents for its approval, the NSSMC approves the prospectus or refuses to approve the prospectus.

The Prospectus is considered approved only if the relevant decision is made by the NSSMC (order of the authorized person of the NSSMC).

Approval of the prospectus by the NSSMC cannot be considered a guarantee of the value of such securities. The NSSMC is responsible only for the completeness of the information contained in the documents submitted for approval of the prospectus and for its compliance with legal requirements.

The person who issued the prospectus is responsible for the accuracy of the information specified in the documents submitted for approval of the prospectus.

The list of documents required for approval of the prospectus and the procedure for approval of the prospectus shall be established by the NSSMC.

The Resolution of the NSSMC or its authorized person to approve the prospectus shall be published on the official website of the NSSMC within one working day after its adoption.