Baker McKenzie.

Ukrainian Laws in Wartime: Guide for International and Domestic Businesses

2024 2nd edition | 5 June 2024

Introduction

On 24 February 2022, the Russian Federation launched a full-scale military invasion of Ukraine. Martial law is in effect in Ukraine since then. As a result, special legislation has been adopted in various areas, including that directly affecting business activity.

This guide provides a brief overview of the key features of such wartime legislation. The guide is structured as a set of responses to the most common questions raised and considered by international and Ukrainian businesses these days.

Please note that Ukrainian legislation undergoes frequent changes and adjustments during this extraordinary period. We aim to update this guide accordingly at regular intervals and as soon as feasible. Please look for and use the latest version of this guide. We cannot exclude that, from time to time, the text available to you may not be up to date or may lack the latest developments. This guide should not be regarded as a substitute for specific legal advice tuned in to your particular situation and needs. Please always seek our specific and personal advice to rely upon when making decisions or planning actions for your business. Our Ukrainian legal experts are available to assist you in the most efficient and reliable manner, with quality standards usual for our global Firm.

Table of Contents

1 Martial Law and Special Legislation
   a. Martial Law
   b. Special Legislation

2 Employment and Migration
   a. Employment
   b. Migration

3 Corporate

4 Financial Arrangements and Financial Sector
   a. Lending Arrangements
   b. Security Arrangements and Encumbrances
   c. Foreign Exchange Restrictions and Anti-money Laundering
   d. Regulation of Banking Activity
   e. Regulation of Non-banking Financial Institutions
   f. Capital Markets

5 Tax and Customs

6 Real Estate

7 Work of State Courts and Arbitration Tribunals

8 Enforcement Proceedings

9 Intellectual Property

10 Antitrust and Competition

11 Pharmaceuticals and Healthcare

1

Martial Law and Special Legislation

Martial Law and Special Legislation

Martial Law

What is the general legal framework of martial law?	In accordance with the President's Decree "On the Introduction of Martial Law in Ukraine" ("**Decree**") and the Resolution of the Cabinet of Ministers of Ukraine "Issues Related to Introduction and Ensuring the Implementation of Measures of Martial Law in Ukraine" starting from 24 February 2022 the military command together with military administrations either independently or together with the Ministry of Internal Affairs of Ukraine, other executive bodies and local self-government authorities are authorized to introduce various restrictions of rights and freedoms of individuals as well as rights and legal interests of legal entities, including, *inter alia*: ■ forced alienation of private property for the needs of the state in the martial law conditions with full compensation of the value of the alienated property and the issue of relevant documentation; ■ adjustment of legal entity's activity to the conditions of the special period; introduction of mobilization facilities of enterprises; release of goods of mobilization reserve (stock) by enterprises; ■ use of enterprises' facilities and workforce for the needs of defense; change in their working schedules and other changes in business activity; ■ conduct checks of documents, property, vehicles, luggage and cargo; ■ introduction of a special regime for manufacturing and selling medicines that contain drugs, psychotropic substances and precursors, other potent substances pursuant to the list, determined by the Cabinet of Ministers of Ukraine; ■ replacement of the company's management due to improper performance of their duties under the Law of Ukraine "On the Legal Regime of Martial Law"; ■ if needed, engagement of business entities dealing with manufacturing medicines, wholesale and retail trade in medicines, import of medicines, to the extent necessary to satisfy Armed Forces needs, other military units in medicines and medical devices.

Martial Law and Special Legislation

Martial Law

How long will the martial law regime remain effective?	The period of the martial law regime has been extended until 11 August 2024, but it can be further extended unlimited times. Martial law terminates in case of expiration of its period or adoption of the President's decree on the termination of martial law.

Martial Law and Special Legislation

Special Legislation

(i) Expropriation Law	

Who is targeted under the Expropriation Law?	Effective from 7 March 2022 the Law of Ukraine "On the Basic Principles of Forced Expropriation in Ukraine of Property of the Russian Federation and Its Residents" ("Expropriation Law") authorised Ukrainian authorities to expropriate the property directly or indirectly owned by:
	■ the Russian Federation;
	■ legal entities (their branches, representative offices) operating and registered in Ukraine in which:
	  ■ the participant (shareholder) or beneficial owner (directly or indirectly) is the Russian Federation; and/or,
	  ■ the Russian Federation (directly or indirectly), or legal entities directly or beneficially owned by the Russian Federation, directly or indirectly own interest in the capital, shares, membership units, or any other form or membership or participation in a legal entity.
	On 1 April 2022, the Ukrainian Parliament adopted the law on amendments to the Expropriation Law ("Amendments to the Expropriation Law") which significantly expands the circle of persons affected by the Expropriation Law. As of now, the Amendments to the Expropriation Law have not become effective yet.

What property can be expropriated?	Any movable and immovable property, funds, bank deposits, securities, corporate rights and other property (assets) that are located (registered) in Ukraine and directly or indirectly owned by the Russian Federation or its residents specified above.

Martial Law and Special Legislation

Special Legislation

(ii) Export/Import	
Have any changes to export/import settlements been introduced during martial law?	Yes. The National Bank of Ukraine ("NBU") adopted Resolution No. 18 dated 24 February 2022 "On Operation of Banking System Under Martial Law" which reduces deadlines for settlements on export/import operations carried out starting from 5 April 2022 from 365 days to 180 days (with some exceptions). However, under transactions for the export of certain agricultural products carried out starting from 11 November 2023 the maximum settlement period is 90 days. The above deadline shall not apply to export/import operations in the amount of less than 400 000 UAH (or approximately 9 881 USD) (except for the fragmentation of such operations).
Have any trade restrictions related to the Russian Federation been introduced during martial law?	Yes. Starting from 9 April 2022, the import of goods to Ukraine from the Russian Federation is prohibited accordance with Resolution of the Cabinet of Ministers of Ukraine No. 426 dated 9 April 2022 "On Application of Ban on Import of Goods from the Russian Federation".
Have any changes to the procedure of import of humanitarian aid been introduced?	From the very beginning of the full-scale Russian military invasion of Ukraine, the import of humanitarian aid was simplified, and a declaratory principle applied. Starting from 1 December 2023, the new procedure for the import of humanitarian aid into Ukrainea providing for the implementation of the automated system of registration of humanitarian aid in Ukraine was adopted. During the transition period **until 1 April 2024**, humanitarian aid may be either still imported into Ukraine based on a declarative principle or with the use of the newly adopted procedure.

Martial Law and Special Legislation

Special Legislation

(iii) Public Procurement	
Have any changes to public and defense procurement procedures been introduced during martial law?	Yes. Special procedures apply for both public and defense procurement for the period of martial law as provided for in CMU Resolution dated 12 October 2022 No. 1178 "On Approval of Features of Public Procurement of Goods, Works and Services for Purchasers Specified in the Law of Ukraine "On Public Procurement" for the Period of the Legal regime of Martial Law in Ukraine and Within 90 Days from the Date of its Termination or Abolition“ and CMU Resolution dated 11 November 2022 No. 1275 "On Approval of Features of Defense Procurement for the Period of the Legal regime of Martial Law in Ukraine“.
What happens to the procurements initiated before the introduction of martial law?	Procurement and simplified procurement procedures started before the introduction of martial law shall be completed in accordance with provisions of the Law of Ukraine "On Public Procurements". However, if the purchaser does not have the ability to complete such procurement due to circumstances beyond its control, the purchaser may declare the tender not to have taken place in accordance with Article 32(5) of the Law of Ukraine "On Public Procurements" ("conduction of procurement has become impossible due to force majeure").

Hanna Smyrnova
Senior Associate
hanna.smyrnova
@bakermckenzie.com

2

Employment and Migration

Employment and Migration

Employment

Does the employer have an obligation to relocate/ evacuate employees in case of military attack?	Employers in Ukraine do not have an obligation to relocate/evacuate their employees to a safe place in case of military attack. At the same time, the employer can permit the voluntary relocation of its employees to other cities in Ukraine or abroad by establishing distant work arrangements.
Does the employer have an obligation to provide financial assistance to the employees during wartime?	There is no obligation for Ukrainian employers to provide any special financial assistance to their employees during wartime. The employer may support its employees financially at its own discretion.
Which work schedule is advisable during wartime?	Employees in Ukraine are entitled to a safe working environment. Therefore, in case of a military attack, the employer cannot expect the employees to come to the office for safety reasons. In such case, the employer is entitled to establish a distant work arrangement (in Ukrainian: дистанційна робота) for its employees, expressly allowing them to work from home or any other place of their choice (including abroad). The company's CEO should issue an internal order allowing employees to work distantly from their place of residence or any other place of their choice (including abroad).
Are there any guarantees provided for drafted employees?	If the employee is called up for military service during a special period (such as the one currently in place), such drafted employee has the right to retain their job, position until the end of the military service within the special period (unless the employee resigns earlier). Law No. 2352-IX of Ukraine "On Amendments to Certain Laws of Ukraine on Optimization of Labor Relations" dated 1 July 2022 which came into effect on 19 July 2022 ("Law No. 2352-IX") abolished the employer's obligation to pay the average salary to employees summoned to the army. Moreover, employees from among former servicemen of military service are granted the preferential right to remain at work in case of staff redundancy due to changes in the organization of production and labor (under equal conditions of labor productivity and qualification) within two years from the date of their dismissal from service.

Employment and Migration

Employment

How have the employment and termination terms changed due to wartime?	On 24 March 2022, Law No. 2136–IX of Ukraine "On Labor Relations During Martial Law" came into effect ("Law"). The Law defines the peculiarities of employment relations during martial law (i.e., until at least 11 August 2024). Regarding the specifics of employment and termination of employees during wartime, the Law allows the following: ■ Establish a probation period for any newly hired employee ■ Conclude fixed-term employment agreements with employees substituting employees absent due to evacuation, temporary disability, etc., ■ Terminate the employee at the employer's initiative during temporary disability or vacation (with certain exceptions) ■ Suspend the employment agreement (without actual termination) In addition, Law No. 2352-IX introduced the following new termination grounds (i) an employee's death or their recognition by a court as missing or dead; (ii) an employee's absence from work, including the absence of any information about the reasons for such absence for more than four consecutive months; (iii) the employer's inability to provide the employee with relevant work, resulting from destruction of the necessary means of production, the employer's property, etc. caused by hostilities.
Do employees need to be informed about changes in employment terms during wartime?	Yes. The employees must be informed about changes in employment terms any time before their implementation.
What has changed regarding working time and vacation due to wartime?	For the employees working at critical infrastructure facilities, the Law increased the employee's maximum working hours to 60 hours per week (and to 40 hours per week in case of reduced working hours). Regarding vacation, the employer has the right not to grant vacation to an employee (except for certain types of vacation) if the employee performs work at critical infrastructure facilities. The Law also allows granting unpaid vacation at the employee's request without taking into account the restrictions applicable to the vacation's maximum duration. In addition, the employee is entitled to 90 calendar days of unpaid vacation if they moved abroad or became an internally displaced person.

Employment and Migration

Employment

Will the employer be liable for failing to pay a salary in a timely manner?	Under the Law the employer is released from liability for failing to pay a salary in a timely manner (under certain circumstances). The Law also enables the employers to suspend salary payments to the employees where the company is unable to make such payments due to military action/inability to perform its duties normally. The suspension can remain in place until the company resumes its normal business activity.
What has been simplified regarding employer and employee relations due to wartime?	The relaxation of the employment regulation was introduced by Law No. 2434-IX of Ukraine dated 19 July 2022 ("Law No. 2434-IX"). Law No. 2434-IX applies to labor relations between employees and small and medium enterprises (i.e., employers with up to 250 employees and with an annual income of up to EUR 50 million per year) or between employers and employees with a salary of more than eight times the statutory minimum monthly salary. It is in force for the duration of martial law and will lapse afterwards. Law No. 2434-IX establishes the possibility for the parties to directly regulate the terms for employment and termination, remuneration, allowances, bonuses, rewards and other incentives, compensatory payments, work hours, vacation, rest, or other rights and guarantees in the employment agreement that are normally defined by the Labor Code of Ukraine. Also, if the above is introduced by the companies, employers will no longer need to maintain documentation (personnel, organizational and administrative, local normative acts) regarding matters regulated in the employment agreement.

Employment and Migration

Employment

Are there any developments as regards the military registration of Ukrainians and related obligations of the employer?	According to (i) the "Procedure for Organisation and Maintenance of Military Registration of Conscripts, Persons Liable for Military Service and Reservists," approved by Resolution of the Cabinet of Ministers of Ukraine No. 1487 dated 30 December 2022, as amended, and (ii) the “Procedure for Conscription of Citizens for Military Service During Mobilisation,” approved by Resolution of the Cabinet of Ministers of Ukraine No. 560 dated 16 May 2024: ■ The organisation of military registration at companies is entrusted to the managers ■ Employment is possible only if it is confirmed that the person liable for military service is on the military register ■ The employer must inform conscripts, persons liable for military service and reservists of the rules of military registration, under their personal signature, during the induction process ■ Within seven days from the date of issuance of the order on hiring or dismissal from work, the employer must send to the relevant territorial centres of recruitment and social support a notice of change to the credentials of the conscripts, persons liable for military service and reservists ■ If the company receives the relevant order from the territorial center ("TCR") and/or military administration, the company's CEO is obliged to: ○ issue an order to notify the relevant employees and appoint the responsible persons; ○ organize the notification through the company's responsible persons by delivering summonses against signatures or sending the notification order by post, as the case may be; ○ notify the TCR in writing within three days of the results of the notification and compliance with the requirements of the law by the employees; ○ ensure that the employees arrive at the TCR; ○ promptly inform the TCR of employees who: (i) refused to receive summonses; or (ii) submitter resignation letters.

Employment and Migration

Employment

Are there any developments as regards the military registration of Ukrainians and related obligations of the employer? **(continuation)**	Among other things, the employees must comply with the following new obligations: ▪ All male citizens (aged 18–60) must have their military registration document and passport always available for verification upon request of authorized persons ▪ Until 17 July 2024, individuals who are subject to military service duty must update their personal military registration data ▪ Ukrainians who have been deregistered from the military register due to their departure from Ukraine must register again in the military register. The same applies to female employees who are fit for services and have medical or pharmaceutical education

Employment and Migration

Employment

What is the liability for violations of military registration regulations or the wider laws on mobilization?	Directors and other corporate officers of the Ukrainian legal entity may be subject to administrative liability for breach of the military registration rules or wider miliary service legislation. The maximum fine should not exceed UAH 59,500 (approx. USD 1,470) per offense. Currently, there is no criminal liability for directors or corporate officials of the Ukrainian legal entity for this type of offense. Violation of the rules of military registration (including a failure to update the data by 17 July 2024) by conscripts, persons liable for military service or reservists could result in a fine up to UAH 25,500 (approx. USD 630). In addition, depending on the circumstances of the case (e.g., failure to appear for the summons, etc.), the following actions are possible: ■ administrative detention and delivery of the employee to the TCR ■ restriction of the right to drive a vehicle If the relevant actions of the individual qualify as evasion of military service during mobilisation, it may result in criminal liability in a form of imprisonment for up to five years.
Are there any labor audits during martial law?	Resolution of the Cabinet of Ministers of Ukraine No. 303 dated 13.03.2022 generally suspended scheduled and unscheduled audits during martial law. However, certain exceptions apply. According to the Law, unscheduled audits are possible during martial to verify compliance with the Law, documentation and/or termination of employment. Among others, such audits may be carried out: (i) at the request of an employee or a trade union, (ii) based on certain specific grounds provided by Law No. 877-V "On General Principles of State Supervision (Control)", (iii) at the request of the Kyiv City Military Administration or the Regional Military Administration; or (iv) in connection with the employer's failure to comply with the orders to eliminate violations of the law issued after 1 May 2022.

Employment and Migration

Employment

Are there any additional developments?	On 24 December 2023, Law No. 3494-IX of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on Granting and Use of Leave and Other Issues" came into effect. It amends the existing legislation on granting leave, in particular: ▪ Employees dismissed from military service due to the end of a special period or demobilization are entitled to unpaid leave of up to 60 calendar days; ▪ If called-up for military service, the employee, at their request and on the basis of an application, should be paid a monetary compensation for (i) all unused days of their annual leave; (ii) for additional leave due to certain categories of employees with children; ▪ During martial law, employers that are designated as critical infrastructure facilities, producers of defence products, or have a contract for a mobilisation order may refuse to grant any types of leave (with certain exceptions) to those employees who are directly involved in the relevant production process.

Employment and Migration

Migration

Are there any restrictions on leaving Ukraine?	Generally, Ukrainian men aged 18 to 60 are banned from leaving the country, subject to certain limited exceptions including, without limitation, the following: ■ Men taking care of three or more children under the age of 18 ■ Men occupying certain positions (employees of military governing bodies, military units, enterprises, institutions, and organizations of the Ministry of Defense of Ukraine, the armed forces of Ukraine, etc.,) ■ Individuals with a disability together with accompanying persons, etc.

Lina Nemchenko
Partner
lina.nemchenko
@bakermckenzie.com

Mariana Marchuk
Counsel
mariana.marchuk
@bakermckenzie.com

3

Corporate

Corporate

Is it possible to sell participatory interest in a limited liability company (LLC), shares in a joint stock company (JSC) or other securities?	Except for the involvement of persons associated with the aggressor state, no laws or regulations limiting the conclusion of sale and purchase contracts of the participatory interest in LLCs or shares in JSCs have been issued. On 3 March 2022, the Cabinet of Ministers of Ukraine (CMU) adopted Resolution No. 187 "On ensuring the protection of national interests in future lawsuits of Ukraine in connection with military aggression of the Russian Federation," which imposed a moratorium on, among other things, alienation, pledge, and any other action that may result in the alienation of participatory interests or securities by legal entities associated with the aggressor state unless such disposal is made to Ukraine for no consideration and some other exceptions. Such restrictions apply to the following persons: ■ The Russian Federation ■ Citizens of the Russian Federation (except for individuals residing in Ukraine on legal grounds) ■ Legal entities established and registered under the laws of the Russian Federation ■ Legal entities established and registered under the laws of Ukraine, having anybody listed above among its ultimate beneficial owners, members or participants (shareholders) for 10 or more percent. The resolution established that any contract, agreement, transaction, deed, power of attorney, or other arrangement made or issued in violation of the moratorium (including those providing for such alienation in the future) is considered null and void. On a separate note, the Ukrainian authorities have limited the ability to carry out registrations in the Ukrainian Companies Register, including the registrations of a change in the composition of participants in the LLCs. Please refer to item 2 for more details.

Corporate

Is it possible to sell participatory interest in a limited liability company (LLC), shares in a joint stock company (JSC) or other securities? **(continuation)**	Additionally, investors in Ukrainian JSCs or other securities may not sell these assets at present. On 8 March 2022, the National Securities and Stock Market Commission (NSSMC) passed Resolution No. 144 "On streamlining operations in the capital markets for the period of martial law." The NSSMC has put on hold any placement, circulation, and redemption of securities, except for sovereign debt securities, and initial placement securities. The NSSMC has also put on hold operations in the depository system. Effectively, the following transactions are now limited: ■ Sale and purchase of securities (unless the Securities Commission authorized the specific transaction) ■ Use of securities as collateral ■ Implementation of squeeze-out, sell-out, and buy-out procedures. Technically, the repayment of dividends and interest or coupon payments are not restricted. However, several currency regulation restrictions apply. Please refer to this page for more details on applicable currency regulation restrictions.

Corporate

Have changes been made to the procedure for the registration of changes with the Companies Register?	Yes. Following the imposition of martial law, the Ukrainian government significantly limited access to all Ukrainian registers, including the Companies Register. On 9 March 2022, the CMU passed Resolution No. 209 "Some issues of state registration and functioning of unified and state registers held by the Ministry of Justice under martial law," and instructed the Ministry of Justice to select a limited number of state registrars and provide them with access to the Companies Register. Additionally, the CMU started expanding the scope of allowed registration actions. Among others, the following registration actions are now allowed: ■ Establishment of LLCs ■ Change of director of a legal entity ■ Change of registered address of a legal entity and, if applicable, changes to the charter of the legal entity reflecting the change of registered address ■ Changes in the types of economic activity of a legal entity ■ Registration, deregistration, changes to information about an individual private entrepreneur. Registration of a change in the composition of participants in LLCs and charter capital increase/decrease is currently limited. Only the Ukrainian notaries included in the governmentally approved list are allowed to carry out such state registration actions. Documents serving as a ground for state registration (e.g., acceptance transfer act, resolution on charter capital increase/decrease, etc.) has to be executed before the notary who handles the registration.

Corporate

Have changes been made to the procedure for the registration of changes with the Companies Register? **(continuation)**	Notably, acts of transfer and acceptance and SPAs for state registration of participant change cannot be executed using PoA from a principal, who alienates the participatory interest if more than one month (more than two months, if it is certified by a consular institution (diplomatic representation) of Ukraine or under the legislation of a foreign country) has passed since the date of issuance of such PoA and without a duly certified statement of the principal confirming the PoA validity. An extraterritorial principle, meaning that the location of the state registrar does not have to match the registered address of the legal entity, applies to the registration of legal entities whose location is within the territory of active hostilities included in the list of the Ministry of Justice. To implement any permitted registration, a legal entity's representative may either make a personal visit to the state registrar or procure a remote registration. In case of the remote registration, the representative may use email to share scanned copies of the documents. However, the scanned copies should be signed with a qualified electronic signature using the central certification authority's portal (czo.gov.ua).

Corporate

Have any changes been made to the procedure of holding annual meetings of Ukrainian companies?	The Ukrainian government has not extended the statutory deadlines for holding annual meetings of participants of LLCs. Therefore, LLCs should have held annual meetings until 30 June. Shareholders of JSCs must have held annual meetings of participants until 30 April, unless a JSC has legitimate grounds to delay the holding of the shareholders' meeting. In the latter case, such JSC should hold the shareholders' meeting within 90 days after martial law ends. In terms of procedure, participants in LLCs enjoy a statutory right to hold an annual meeting via video conference, provided that all participants have the ability to see and hear other participants simultaneously. Shareholders of JSCs, corporate investment funds, and credit unions may hold remote meetings under a temporary procedure during martial law under Resolutions No. 176 "On amending the Temporary procedure for convening and remote holding of the general meeting of shareholders and the general meeting of participants of the corporate investment fund" and No. 177 "On the peculiarities of the functioning of the management bodies of the shareholders of the joint-stock company during the period of martial law" passed by the NSSMC on 16 March 2022. The temporary procedure applies to both annual GSMs, which should be held to approve the results of the 2021 financial year, and to any extraordinary GSMs to maintain companies' business. The remote meetings will be available with the help of a new electronic service developed by the National Depository of Ukraine and made available for public use on 13 May 2020. To use the service, companies with the National Depository of Ukraine and shareholders will be required to conclude a special services agreement with their respective depositary institutions.

Corporate

Have the deadlines for submitting financial information been extended?	Yes. On 3 March 2022, the Ukrainian Parliament passed Law No. 2115-IX "On the protection of the interests of the reporting entities and other documents during martial law or war." The Ukrainian Parliament extended the deadline for filing financial reporting documents until three months following the end of martial law. If some reporting entities are physically unable to comply with the extended term due to the immediate consequences of their participation in wartime hostilities, such reporting entities may file the financial reporting documents within one month after they are physically able to do so. The financial reporting documents include accounting, financial, settlement documents, audit reports, and any other documents that must be submitted following applicable law in documentary or electronic form. The law does not address matters related to tax reporting. Please refer to this page for more details on tax reporting.

Corporate

Have the deadlines for submitting regulated information by issuers of securities been extended?	Yes. On 13 March 2022, the NSSMC passed Resolution No. 161 "On disclosure of regulated information by issuers of securities," and exempted the issuers of securities from the obligation to disclose regulated information within the time limits established by Ukrainian legislation. Following the termination of martial law, the issuers of securities will have to disclose: ■ Regular annual information for 2021 within 90 days following the termination of martial law ■ Regular quarterly information for each relevant quarter together with regular annual information ■ Ongoing information on facts that took place during martial law within 30 days following the termination of martial law.

Viacheslav Yakymchuk
Managing Partner
viacheslav.yakymchuk@bakermckenzie.com

Alyona Furda
Senior Associate
alyona.furda@bakermckenzie.com

4

Financial Arrangements and Financial Sector

Financial Arrangements and Financial Sector

Lending Arrangements

Can a Ukrainian bank lender increase the interest rate under an existing loan agreement?	On 15 March 2022, the Verkhovna Rada of Ukraine adopted Law 2120-IX amending certain legislative acts due to martial law ("Law 2120-IX"). Law 2120-IX prohibits the increase of interest rates under consumer loans specifically for the period until 30 days after martial law ends. No general prohibition on the increase of interest rates due to martial law has so far been adopted.
Will negative consequences be applied to borrowers who have failed to make relevant payments under loan agreements during martial law?	Generally, no. On 25 February 2022, the NBU introduced Regulation No. 23 approving "Rules of Banks' Activity Due to the Introduction of Martial Law" ("Restructuring Regulation"). The Restructuring Regulation liberalized certain regulatory requirements related to credit risk assessment, with the aim of not qualifying the nonpayments under loan agreements as defaults during martial law and for 30 days after and encouraging Ukrainian banks to enter into debt restructuring arrangements ("Restructurings") with their clients suffering from the consequences of Russia's military aggression. In March, the NBU clarified that borrowers should agree on payment holidays (and possibly other restructuring measures) with banks individually. In addition, the amendments to the Civil Code of Ukraine introduced by Law of Ukraine 2120-IX established that borrowers that fail to perform their obligations under loan agreements within the martial law period or 30 days after, should not bear the negative consequences of such failure, i.e., should not pay penalties or make other payments triggered by the failure. The borrowers, however, will not be released from the obligations to perform their underlying payment obligations under the loan, such as the payment of principal and interest, upon the expiry of the aforesaid period. Creditors still have the right to debit penalties, if the borrower's failure to pay occurred before or on 24 February 2022. Similar rules were enacted with respect to consumer loans.

Financial Arrangements and Financial Sector

Lending Arrangements

Are all the borrowers eligible for a Restructuring?	According to the Restructuring Regulation, the credit risk regulatory easement and the Restructurings should be available to debtors that were not in default as of 24 February 2022. The implementation of the Restructuring is also subject to the following conditions: ■ The need to enter into the Restructuring is caused by the borrower's financial difficulties due to Russia's military aggression against Ukraine. ■ The loan agreement is restructured within the martial law period. ■ The bank is able to justify the commencement of a Restructuring based on the debtor's evaluation in terms of the timeframes defined by the Restructuring.
What measures may be implemented pursuant to the Restructuring Regulation?	There is no exhaustive list of Restructuring measures; the set of such measures may be negotiated by a bank and its client on a case-by-case basis and may include a decrease of the interest rate, partial write-off of debt, deferral of the principal installments repayment and extension of maturity dates (payment holidays), introduction of a PIK interest option (accrued interest is capitalized and added to the principal amount), decrease of installments and other payments amounts, etc.,
Do the payment holidays under Restructurings and consumer loans mean that the payment obligations accruing during martial law will be written off?	No. Payment obligations will be postponed for the period negotiated with the bank.

Financial Arrangements and Financial Sector

Lending Arrangements

Can the introduction of martial law be treated as a force majeure event allowing to defer payments under loan agreements and to exempt borrowers from liability for the respective nonperformance of payment obligations?	Generally, no. Unless otherwise expressly provided in the loan agreement (which would customarily not be the case), force majeure events (except those directly affecting the banking or payment systems) do not entitle the borrower to defer payments under the loan agreement and, accordingly, do not enable exemption from liability for the nonperformance of such obligations. However, please note the above comments to the questions on the non-application of penalties for the nonpayment under loan agreements during martial law.

Financial Arrangements and Financial Sector

Security Arrangements and Encumbrances

Can a lender enforce a pledge during the martial law period?	Currently, there is no express prohibition on enforcement of pledges during martial law. However, the amendments introduced by Law No. 2120-IX permit the deferral of payment obligations under loans and prohibit the imposition of fines, penalties or other monetary sanctions for failure to perform payment obligations during wartime. Although there is no express indication that such prohibition should also apply to the enforcement of pledges (to the extent they secure consumer loans), it can be argued that such enforcement should not be permissible if it is triggered by a payment default occurring during the martial law period.
Is a lender allowed to enforce a mortgage during the martial law period?	Law No. 2120-IX suspended articles of the Law of Ukraine "On Mortgage," which regulated certain aspects of enforcing real estate property under mortgage agreements, for the period of martial law and for 30 days after. Importantly, the prohibition on enforcing is applicable solely to the objects mortgaged to secure the obligations under consumer loans. The prohibition concerns the transfer of mortgaged property to a mortgagee, its sale to third parties (including by way of e-auctioning) and forced eviction from residential property. The prohibition is not applicable to the mortgage agreements executed or restructured after Law No. 2120-IX became effective.
In case of urgency, are entities and individuals allowed to use their funds on the arrested bank accounts?	Yes, but subject to certain limitations. Individuals may carry out debit transactions from their arrested accounts in an amount not exceeding two minimum wages per month. Payments of taxes and duties is also permitted. At the same time, debtors who are legal entities and self-employed persons are allowed to use arrested accounts to pay taxes and make other mandatory payments (such as duties), as well as to pay salary to their employees in an amount not exceeding five minimum wages per employee.

Financial Arrangements and Financial Sector

Foreign Exchange Restrictions and Anti-money Laundering

Are UAH cashless payments within Ukraine subject to any limitations or restrictions?	No, cashless transactions in UAH made within Ukraine may be carried out without limitations.
Have any new currency and capital restrictions been introduced during martial law?	Yes. Since 24 February 2022, the NBU has introduced significant currency and capital control restrictions in Ukraine. The measures imposed by the NBU include the following: ■ Starting from 3 October 2023, the fixed UAH/USD official exchange rate has been terminated and the floating UAH/USD exchange rate has been reintroduced ■ Cash withdrawals within Ukraine are limited to an equivalent of UAH 100,000 per day for one client (with few exceptions) ■ Cash withdrawals outside Ukraine using Ukrainian bank accounts are limited to an equivalent of UAH 12,500 per seven calendar days for all UAH accounts of a customer in one bank. Cashless transactions outside Ukraine using cards issued by Ukrainian banks are limited to an equivalent of UAH 100,000 per calendar month for all UAH accounts in one bank ■ Maximum period for settlements under export and import contracts is 180 days (with some exceptions). However, under transactions for the export of certain agricultural products the maximum settlement period is 90 days ■ For cross-border transactions where purchase of foreign currency is permitted, Ukrainian companies will be required to first use the foreign currency available on their foreign currency accounts and only then purchase the remaining amount of foreign currency for UAH ■ Restrictions on offsetting export-import transactions ■ Prohibition on making debit transactions of residents of the Russian Federation and Belarus and Ukrainian entities whose ultimate beneficial owners are residents of the Russian Federation and Belarus (with some exceptions)

Financial Arrangements and Financial Sector

Foreign Exchange Restrictions and Anti-money Laundering

Have any new currency and capital restrictions been introduced during martial law?	Cross-border payments from Ukraine abroad are also restricted and may be carried out only in certain cases, which include, inter alia: ■ Ukrainian banks' own transactions (including payments under loans from non-resident creditors) ■ interest payments by Ukrainian corporate borrowers to non-resident creditors under cross-border loan agreements (subject to certain limitations) ■ payments of Ukrainian residents under transactions guaranteed by state guarantees ■ payments of international financial institutions (IFIs) and payments of residents and non-residents to IFIs ■ payments made based on separate permits of the NBU issued at the request of the Cabinet of Ministers of Ukraine ■ foreign currency payments made by individuals for import of some military categories of goods ■ payments from Ukraine abroad to repay and service certain cross-border loans from foreign lenders

Financial Arrangements and Financial Sector

Foreign Exchange Restrictions and Anti-money Laundering

Have any new currency and capital restrictions been introduced during martial law?	Since introduction of the martial law currency restrictions, corporate clients of Ukrainian banks were generally restricted from buying foreign currency for UAH (save for buying foreign currency in exceptional cases). However, in its May 2024 update of the currency regulations, the NBU has implemented measures to liberalize cross-border payments from Ukraine, which resulted in abolishment of the rule under which Ukrainian businesses were allowed to pay abroad only for those services, works and intellectual property rights that were listed in the government's list of eligible services (per CMU Resolution No. 153 of 24 February 2022). Pursuant to the latest easement of the currency restrictions, the following cross-border transactions are now also allowed effective from 4 May 2024: ■ Payments for any services, works and IP rights (provided they were rendered after 23 February 2021) ■ Repatriation of dividends (subject to certain limitations relating to amounts and timeframes) ■ Interest payments by Ukrainian corporate borrowers to non-resident creditors under "old" cross-border loan received (partially or in full) prior to 20 June 2023 (subject to compliance with certain requirements) ■ Payments (interest and principal amount) under "new" cross-border loans attracted by Ukrainian borrowers from foreign creditors after 20 June 2023 (subject to compliance with certain requirements) ■ Payments by certain Ukrainian representative offices to their foreign HQs ■ Payments of Ukrainian residents under leasing/rental contracts

Financial Arrangements and Financial Sector

Foreign Exchange Restrictions and Anti-money Laundering

Can a company purchase foreign currency and transfer it abroad to repay or service its cross-border loan?	Ukrainian corporate borrowers can repay and service their cross-border loans subject to certain limitations. In particular, Ukrainian borrowers are permitted to make only interest payments under their "old" cross-border loans, i.e., those received before 20 June 2023. Among the limitations set out by the NBU are the requirements that (1) interest payment must fall due during the period starting from 24 February 2022, (2) the borrower should not be in default as of 24 February 2022, and (3) amount of interest payment must not exceed the equivalent of EUR 1 million per calendar quarter (not applicable if the interest payments fall due after 30 April 2024). Repayment of principal amount under the "old“ cross-border loans remains prohibited as yet. Ukrainian borrowers are also permitted to repay and service their newly borrowed cross-border loans, if the following conditions are met: ▪ The loan's principal amount must be deposited into the borrower's Ukrainian bank account after 20 June 2023. ▪ The rate of the borrowing costs (i.e., all payments under the loan except the principal repayment such as interest, fees and other payments) should not exceed 12% per annum. ▪ Loans with a maturity of up to one year can be repaid and serviced using only the borrower's own foreign currency funds that were not purchased on the Ukrainian currency market for the local currency (UAH) or were not attracted as a loan from a Ukrainian creditor. Payments related to the loans mentioned above must not be made prior to the payment date stipulated in the relevant loan agreement. Amendments that shorten the payment terms of the loan agreements are currently prohibited.

Financial Arrangements and Financial Sector

Foreign Exchange Restrictions and Anti-money Laundering

Is repatriation of dividends or other investment proceeds currently allowed?	Prior to the latest relaxation of the currency restrictions, the repatriation of dividends or other investment proceeds were allowed only in several cases: (1) if payment is to be made to an IFI; or (2) if a company obtains a special NBU permit to make payment, or (3) in case of the transfer of investment proceeds to foreign investors which were received after 1 April 2023 as interest payments under domestic sovereign bonds. With effect from 13 May 2024, cross-border payments aiming to repatriate dividends are now being listed among the exceptions allowing to purchase and transfer foreign currency abroad. Ukrainian companies can pay dividends accrued for FY 2024 (i.e., calendar year 2024) to their foreign investors abroad. At the same time, investors can repatriate dividends only up to the equivalent of EUR 1 million per calendar month. Repatriation of dividends accumulated from retained profits for previous financial periods or from reserve capital remains prohibited as yet.

Financial Arrangements and Financial Sector

Foreign Exchange Restrictions and Anti-money Laundering

How has martial law affected anti-money laundering (AML) rules in Ukraine?	The financial monitoring regulations and applicable AML rules have been simplified for transactions related to purchasing military bonds of the Ministry of Finance of Ukraine and supporting the Armed Forces of Ukraine or donating for humanitarian aid via bank accounts of the Armed Forces of Ukraine and the special accounts of the NBU. As a result, private customers of Ukrainian banks (both citizens of Ukraine and foreign citizens) depositing cash into their bank accounts for amounts exceeding the equivalent of UAH 400,000 have been exempt from the obligation to provide their banks with supporting documents evidencing the source of funds, if such funds are used exclusively for the above-mentioned purposes. The use of such unverified funds for any other purposes will be prohibited until the bank is provided with all necessary supporting documents. The above exemptions and simplifications will remain effective until martial law is terminated or lifted.

Financial Arrangements and Financial Sector

Regulation of Banking Activity

Will banks be liable for violating mandatory financial ratios or limits during martial law?	The NBU will not take actions against Ukrainian banks that violated capital, liquidity, credit risk or investment ratios, or the net foreign exchange position limit, if such violations took place on or after 24 February 2022 and were caused by the negative impact of Russia's military aggression against Ukraine. At the same time, the NBU imposes some limitations on banks that breach relevant ratios and limits.
Can banks distribute dividends during martial law?	No, the NBU prohibits Ukrainian banks from paying dividends to shareholders with the exception of dividend distribution under preferred shares. Capital distribution in any form is also prohibited other than for applying profits toward increasing share capital, provisioning or covering for losses of previous years.
Are there any new restrictions or limitations for transactions of banks with their related parties?	Yes. Banks are prohibited from entering into new loan agreements or other financial commitments with their related parties. In addition, the NBU prohibits banks from amending existing agreements with their related parties that provide for the increase of the amount of loan or other commitment or extend loan tenor. Early withdrawal of related parties' deposits is also restricted.
Can banks use cloud services when servicing customers during martial law?	Yes. For the duration of martial law and for two years after its termination or lifting, Ukrainian banks may provide banking services and process transactions via electronic payment instruments, in particular, payment cards, using cloud services that are provided through the use of equipment located in the EU, the UK, the US and Canada. When processing banking transactions and the personal data of customers using cloud services, banks may use both domestic cryptographic information protection tools and foreign tools that meet the legal requirements of the state where the equipment for providing cloud services is located.

Financial Arrangements and Financial Sector

Regulation of Banking Activity

Despite the war, have any changes to the Ukrainian payment infrastructure been implemented?	Starting from 1 April 2023, a new generation of the NBU-operated national electronic payment system has been launched. The new system, called SEP 4.0, is based on the international standard ISO 20022 and operates 24/7/365. Given that currently SEP 4.0 serves more than 98% of interbank payments in the country, it is recognized as a systemically important payment system of Ukraine. In 2024-25, the NBU plans to expand the functionality of SEP 4.0 and align it with EU rules. This includes implementing an instant payment service for client settlements within Ukraine and the possibility of making cross-border transfers with EU countries based on SEPA Instant Credit Transfer.

Financial Arrangements and Financial Sector

Regulation of Non-banking Financial Institutions

Will non-banking financial institutions (NBFIs) be liable for violating mandatory financial ratios or other mandatory requirements during martial law?	The NBU committed not to take any actions against NBFIs for violating equity capital availability requirements, deadlines for submission of reporting and financial statements, and obligations for paperwork filing and provision of information to the NBU. However, certain conditions should be met depending on the type of violation.
Does the NBU impose any regulatory restrictions on the functioning of NBFIs during martial law?	Generally, a number of sectoral limitations have been introduced, including the following restrictions: ■ Paying bonuses and other additional material rewards to the management of insurers, credit unions and other NBFIs ■ Paying dividends to shareholders/participants of insurers, with the exception of dividend distribution under preferred shares ■ Changing collateral under facility agreements for credit unions ■ Conducting operations with related parties of credit unions and other NBFIs

Financial Arrangements and Financial Sector

Regulation of Non-banking Financial Institutions

What managers restrictions have been introduced in respect of NBFIs?	Citizens of the Russian Federation are prohibited from holding the following position in banks, NFBIs, other financial service providers, payment system operators and insurance (reinsurance) brokers: ■ Head and deputy head ■ Chairman and member of the supervisory body ■ Responsible employee (an individual who temporarily acts as responsible employee in his absence) ■ Another employee involved in the initial financial monitoring.

Financial Arrangements and Financial Sector

Capital Markets

What capital market restrictions have been introduced?	The National Securities and Stock Market Commission prohibited professional capital market participants (such as Ukrainian securities traders (investment firms), clearing institutions, securities custodians etc.) from establishing business relations and/or carrying any transactions with, or for the benefit of, and/or making any distributions to, among others, persons related the Russian Federation and the Republic of Belarus such as: ■ Citizens of the Russian Federation or the Republic of Belarus other than those who live in Ukraine on legitimate grounds ■ Legal entities registered under the laws of the Russian Federation or the Republic of Belarus ■ Legal entities at least 10% of shares of which are directly or indirectly owned by Russian or Belarussian individuals or entities (with some exceptions) ■ Legal entities directly or indirectly owned by the Russian Federation or the Republic of Belarus ■ Persons included in the list of persons connected with the conduct of terrorist activities or in respect of whom international sanctions have been applied ■ Persons sanctioned under Ukrainian laws. In addition, it is prohibited to carry out any transactions with accounts of the aforementioned individuals and entities in the Depository System at the instruction of such individuals and entities.

Serhiy Chorny
Managing Partner
serhiy.chorny@bakermckenzie.com

Bohdan Diakovych
Senior Associate
bohdan.diakovych@bakermckenzie.com

Hanna Smyrnova
Senior Associate
hanna.smyrnova@bakermckenzie.com

Stepanyda Badovska
Associate
stepanyda.badovska@bakermckenzie.com

5

Tax and Customs

Tax and Customs

Which tax reliefs are available in Ukraine?	Since 24 February 2022, the Ukrainian Parliament has introduced a range of corporate income tax (CIT), value-added tax (VAT), personal income tax (PIT), single tax and other tax/customs-related reliefs aimed at ensuring the support of taxpayers during wartime. However, the majority of such measures has been abolished. For instance, the application of the reduced 2% Unified Tax rate was abolished with effect from 1 August 2023.
Are there any CIT reliefs?	For CIT purposes, funds (value of goods) transferred to selected organizations (e.g., designated bank account opened by the National Bank of Ukraine) would not be subject to the tax adjustment calling for the increase of financial results by an amount exceeding 4% of the profits of the previous reporting year.

Tax and Customs

Are there any reliefs available for private entrepreneurs?	From 1 March 2022 until the termination of martial law in Ukraine and twelve months after the termination, the private entrepreneurs have the right to not pay the Unified Social Contribution for themselves.
What changes did Law No. 3219-IX introduce?	The law was aimed at cancellation of tax benefits introduced after 24 February 2022. Starting from 1 August 2023, it introduces: • renewal of scheduled and unscheduled tax audits of taxpayers operating in the areas of production and/or sale of excisable goods, gambling business, financial and payment services; • restoration of all deadlines specified by the tax legislation that was previously suspended until the termination of martial law in Ukraine (including the deadline for responding to requests from regulatory authorities); • suspension of the statute of limitations for scheduled and unscheduled audits that remain under the moratorium after 1 August 2023, and the storage periods for documents and information related to the accrual and payment of taxes and fees are extended for the period of suspension of such a statute of limitations. • exemption from the accrual and payment of the penalties for self-correction of the errors that led to the understatement of the tax liability in the period from 1 August 2023 until the termination of martial law.

Tax and Customs

What are the VAT reliefs?	The VAT-related changes pertain to the operation of the VAT electronic system and certain VAT exemptions, particularly: ■ The taxpayers were allowed not to register the VAT invoices. Input VAT may be recognized in the absence of such invoices based on the available primary supporting documents. The taxpayers will be obliged to register VAT invoices within six months following the cancellation or termination of martial law in Ukraine. Starting from 27 May 2022, the Law No. 2260-IX has changed the VAT invoices registration procedure. Please see section "Filing tax returns and tax payments" for more details. ■ The list of VAT-exempt operations is extended to include the import and supply of: (i) special personal protective equipment designated for law enforcement agencies, armed forces and other military formations, including territorial defense units; (ii) certain pharmaceutical and medical devices; and (iii) defense goods supplied under the applicable procurement procedure. Until 30 June 2022, no VAT was due on the supply or import of goods by single tax payers, including those opting for the special single tax regime. Starting from 1 July 2022, the VAT import exemption has been abolished. Please see section "Are there any import relaxation measures adopted during martial law?" for more details.

Tax and Customs

What are the tax reliefs available with respect to rent and land tax?	From 1 March 2022 until 31 December 2022, land tax and/or rent (for state and municipal land) were not levied on land plots or shares located in the territories of active hostilities or the territories of Ukraine temporarily occupied by the Russian Federation. Starting from 1 January 2023, land tax and/or rent exemption covers the territory in which such land is located, if it is included in the list adopted by the Ministry of Reintegration of the Temporarily Occupied Territories of Ukraine. The land tax and/or rent is not accrued and paid for the period from the first day of the beginning of active hostilities or temporary occupation to the last day of the month in which active hostilities or temporary occupation in the relevant territory ended.
How does the Diia City regime apply?	The Diia City virtual economic zone (VEZ) is up and running, with over 900 taxpayers having already joined the VEZ. Martial law did not affect the tax benefits offered by the VEZ, thus, allowing the Diia City residents to fully enjoy its status, including the option of a 9% distributed profit tax (instead of 18% CIT). On 13 February 2024, the Cabinet of Ministers of Ukraine allowed Diia City residents who acquired such status before 17 February 2024 not to submit an initial compliance report and/or independent opinion.
Are any other tax-related changes expected?	As of 16 October 2023, a draft bill proposing to broaden grounds for initiation of tax audits has been registered in Parliament. Effective 8 December 2023, the moratorium on tax audits was lifted. Moreover, effective 8 December 2023, Law No. 3474-IX changed the CIT rate for banks. Therefore, the Law establishes an increased tax rate of 50% on the profits of the 2023 year, and starting from the reporting periods of 2024 and subsequent years, a basic rate of 25% is provided.

Tax and Customs

Filing tax returns and tax payments	Initially, the statutory deadlines for filing tax returns and tax payments were suspended for the duration of martial law for all taxpayers. The taxpayers were obliged to perform their tax obligations within six months after the expiration of the martial law regime. Starting from 27 May 2022, the said rule applies to taxpayers that are *'unable to perform their tax obligations'* only. Law No. 2260-IX has established new rules for tax reporting and payments. The tax reporting and payment obligations now depend on whether the taxpayer 'has an ability to perform its tax obligations'. The taxpayers which are able to submit tax reports/ pay taxes will not be fined for the late submissions/ payments as long as: • for VAT purposes: the VAT invoices/ adjustments are registered until 15 July 2022, • for other taxes: the tax reports are submitted until 20 July 2022, and • the taxes are paid until 31 July 2022. The taxpayers who were able to restore their ability to submit tax reports/ pay taxes will have 60 calendar days to fulfil their tax obligations starting from the month of such restoration. Effective 1 August 2023, the Parliament has resumed the previously suspended tax-related deadlines.

Tax and Customs

Tax audits and penalties	Starting from 27 May 2022, Law No. 2260-IX has introduced new rules on tax audits and penalties during the martial law. ■ Law No. 2260-IX introduced a number of exceptions to the freeze on new tax audits and suspension of those that are ongoing. The moratorium does not apply to chamber audits, certain documentary unscheduled and instant (factual) audits. The suspended audits may be renewed and the new ones may be started. For chamber tax audits, the new rules will apply from 2 June 2022. ■ Law No. 2260-IX has also changed the rules on the suspension of tax-related deadlines and statutory terms. The suspension does not apply with respect to the (i) VAT invoices/ adjustments registration, submission of tax returns, (ii) statutory terms for conducting chamber audits and relevant administrative appeal procedure, calculation of late payment interest, as well as (iii) statutory terms for conducting instant (factual) and documentary unscheduled tax audits and relevant administrative appeal procedure. Law No. 2173-IX introduces special rules on primary supporting documents storage for taxpayers that have lost or that were unable to transport such documents due to the military actions or other administrative obstacles. The affected taxpayers will be allowed to submit a list of missing documents to the tax authorities and recognize their transactions for tax purposes without the underlying supporting documentation. On 6 September 2022, Order No. 225 dated 29.07.2022 on the procedure for confirming the possibility to fulfil taxpayer's duties during the martial law became effective. The taxpayers that are not able to submit tax returns and perform other tax-related obligations shall file relevant application until 30 September 2022. Effective 1 August 2023, the Parliament has partially lifted the moratorium on tax audits. A COVID-related suspension of statute of limitations, which was in effect from 18 March 2020, was abolished after 30 June 2023. Accordingly, the period from 18 March 2020 through 30 June 2023, would not be included in the computation of the three-year statute of limitations.

Tax and Customs

Tax audits and penalties	Effective 8 December 2023, Law No. 3453-IX amended grounds for including - from 1 December 2023 to 31 December 2024 – the taxpayers into the list of scheduled documentary tax audits: ▪ taxpayers, who carry out or have carried out activities in the field of production and/or sale of excisable goods; ▪ taxpayers, who carry out or have carried out activities in the field of gambling business; ▪ taxpayers, that provide or have provided financial and payment services; ▪ residents of another country who currently carry out or have carried out activities in Ukraine through branches, including permanent establishments; ▪ taxpayers who, based on the indicators measured at the end of the 2021 calendar year, meet at least one of the risk-oriented criteria, established by Law No. 3453-IX.

Tax and Customs

Are there any import relaxation measures adopted during martial law?	In March 2022, Ukraine introduced a number of import relaxations to ensure efficient operation of customs formalities. The key relaxations were established in Law No. 2142 – IX and applied until 30 June 2022. Starting from 1 July 2022, the following relaxations have ceased to apply: ■ No import duty for goods imported by legal entities for free circulation (except for certain excise goods, e.g., ethyl alcohol and other alcohols distillates, alcoholic beverages, tobacco products) ■ No VAT, import duty and excise tax on cars and other vehicles imported by individuals ■ No VAT on goods imported by taxpayers under single tax groups I to III. The earlier introduced simplified customs formalities procedure also ceased to apply. At the same time, VAT exemption continues to apply to import of the listed goods, including: ■ Special personal protective equipment (helmets, tactical vests, etc.) supplied for the purposes of law enforcement agencies, armed forces and other military formations, including territorial defense units ■ Listed goods imported for the purposes of the use by law enforcement agencies, armed forces, Ministry of Defence and other military formations.
Customs audits	Law No. 2142 – IX introduced a suspension of the current documentary customs audits and suspension of new ones. Certain customs-related statutory deadlines are suspended. Bill No. 10411 – if adopted – is expected to renew the documentary customs audits.

Hennadiy Voytsitskyi
Partner
hennadiy.voytsitskyi@bakermckenzie.com

Roman Koren
Senior Associate
roman.koren@bakermckenzie.com

Tetyana Zhuravska
Senior Associate
tetyana.zhuravska@bakermckenzie.com

6
Real Estate

Real Estate

If the tenant cannot use its leased premises due to Russia's military aggression against Ukraine, does it have to continue paying rent?	A tenant may not have to continue to pay, but this depends on the terms of the lease and the discussions with the landlord. Some leases may contain a rent suspension clause, entitling the tenant to cease the payment of rent if the premises are damaged, destroyed or inaccessible due to various reasons. Statutory remedies are also available. Under Article 762 (6) of the Civil Code of Ukraine, a tenant is relieved of its obligation to pay rent for the period during which the tenant could not use the leased property, where this is due to circumstances for which the tenant is not responsible. A tenant is also allowed to request a rent reduction if the leased property cannot be used in full due to circumstances for which the tenant is not responsible.
If the tenant cannot use its leased premises due to Russia's military aggression against Ukraine, does it have to continue paying utilities and operational expenses?	Statutory provisions do not address these types of payments. As such, tenants may have to continue to pay for the utilities and operational expenses, unless otherwise agreed with the landlord.
Can lease amendments or lease termination agreements be executed during martial law?	Under Ukrainian law, all leases signed for a term equaling or exceeding three years are subject to notarial certification. The registration of the relevant lease right in the Ukrainian Property Rights Register ("Register") is also required. The operation of the Register and the certification of lease amendment / termination agreements have been resumed. Previously, only the notaries included into the list approved by the Ministry of Justice of Ukraine ("List") were allowed to certify certain real estate related agreements (including amendments to leases signed for a term equaling or exceeding three years). This limitation was lifted starting from 1 January 2024.

Real Estate

Are any specific reliefs or allowances available in respect of the state or municipal leases during martial law?	Effective as of 13 April 2022, Law of Ukraine No. 2181-IX "On amendments to the Law of Ukraine on the lease of state and municipal property" authorized the Cabinet of Ministers of Ukraine (CMU) to determine wartime-specific rules of the lease of state and municipal property regarding rent discounts, lease term, automatic lease term extensions, etc. Relevant CMU's Resolution No. 634 ("Resolution 634") effective as of 1 June 2022 provides for certain reliefs for tenants of state and municipal property. Resolution 634 relieves from rent payment the tenants called up or accepted for military services (for duration of such service and three months after release from service) or who lease the property located in the territory with active hostilities or temporarily occupied territory included in the list approved by the Ministry of Reintegration of the Temporarily Occupied Territories of Ukraine (until three months after the end of active hostilities or temporary occupation). Other reliefs described below are only available to tenants that are parties to (i) leases that have already been effective as of 24 February 2022, or (ii) leases that have been executed after 24 February 2022 as a result of auctions that were held on 24 February 2022 or earlier. **A.** The following tenants are released from rent for the period of martial law, but not longer than until 30 September 2022: ▪ tenants leasing property located in Kyiv and Kyiv, Chernihiv, Sumy, Kharkiv, Zaporizhzhia, Mykolaiv regions (save for the aforementioned areas where access to the state registers administered by the Ministry of Justice of Ukraine was terminated); ▪ tenants leasing property located in cultural and educational institutions on an hourly basis. Starting from 30 September 2022 and until three months after the end of martial law, such tenants will only be required to pay 50% of contractual rent amount.

Real Estate

Are any specific reliefs or allowances available in respect of the state or municipal leases during martial law? (Continued)	**B.** The following tenants, who are parties to agreements on lease of state property, are released from rent starting from 24 February 2022 and until merchant shipping is fully resumed or until CMU's resolution on achievement of certain level of safety in each of the seaports: ▪ Tenants who are port operators in Odesa, Chornomorsk, Pivdennyi, Mykolaiv, Olvia, and Bilhorod-Dnistrovskyi seaports. Note that such rent relief is individually granted by the landlord to such tenant based on tenant's application and does not apply automatically by virtue of statutory provision. **C.** The following tenants, who are parties to agreements on lease of state property, are released from rent starting from 24 February 2022 and until aviation activities are resumed in respective airport: ▪ Tenants who lease property in state-owned airports. **D.** The following tenants are released from rent for the period of martial law, but not longer than until 30 May 2022: ▪ tenants leasing state or municipal property located in Kirovohrad, Dnipro, Zhytomyr, and Odesa regions. Starting from 30 May 2022 and until three months after the martial law ends, such tenants will only be required to pay 50% of contractual rent amount. **E.** The following tenants (save for those mentioned above) are granted rent reduction for the period of martial law and during three months after the martial law ends: ▪ tenants leasing integral property complexes (its structural branches) will be required to pay 75% of contractual rent amount; ▪ all other tenants that were not mentioned above will be required to pay 50% of contractual rent amount. The abovementioned reliefs are also applicable to rent payments made for the period from 24 February 2022 until 1 June 2022. Such rent payments, if made in excess of the amounts calculated taken the above reliefs into account, are to be set-off by the landlords against future rent payments.

Real Estate

What if a term of a farmland lease expires during martial law?	Law of Ukraine No. 2145-IX "On amendments to certain legislative acts of Ukraine regarding the establishment of conditions for ensuring food security under martial law“ (effective from 7 April 2022) ("Farmland Law") allowed automatic extension for a one-year period of those farmland lease (sublease, emphyteusis) agreements that expire during martial law. Such automatic extension applied to the use of (i) state or municipal farmland, (ii) privately owned farmland, (iii) unclaimed or unallocated farmland, which was intended to be privatized, and (iv) farmland in collective ownership (i.e., former post-soviet collective enterprises), which were managed and leased out by local authorities. Neither expression of will for such automatic extension, nor the introduction of changes to the Register were required. However, Law No. 2698-IX “On the introduction of amendments to some legislative acts of Ukraine regarding the resuming of the system of registration of lease rights to agricultural land plots and improvement of the legislation on land protection” (effective from 19 November 2022) ("Law 2698") imposed the obligation on all tenants to ensure the introduction of changes to the Register within two months following the entering of Law 2698 into effect, i.e., by 19 January 2023. Failure to ensure such registration within three months following the entering of Law 2698 into effect, i.e., by 19 February 2023, will result in the lease agreement being deemed terminated.
Will the lifting of martial law impact farmland leases entered into or extended under the Farmland Law?	No, lifting of martial law will not trigger termination of or any amendments to land use agreements entered into or extended under the Law. Such agreements will terminate upon the expiry of one year following their execution or extension, as applicable.
What about the transferability of farmland leases (subleases)?	Under the Farmland Law, lessees (sublessees) of farmland have the right to assign their lease (sublease) rights to any third party for a period of up to one year without the land owner's consent. Relevant assignment agreement will be made in e-form and signed by e-signature. The land owner will simply need to be notified of such assignment within 5 days following the registration of an assignment agreement in the Book of Land Ownership and Use.

Real Estate

Are there any reliefs in respect of transferring state or municipal land into lease during the martial law?	Yes. Farmland Law simplifies the procedure for transferring state and municipal farmland into the lease. In particular, during the martial law and provided that the State Land Cadaster does not operate: ▪ farmland will be transferred into the lease by a relevant district military administration without land auction; ▪ lease agreement will be executed in e-form and signed by e-signature; ▪ lease right will not need to be recorded in the Register; ▪ district military administration will need to record the lease agreement in the Book of Land Ownership and Use. ▪ At the same time, some restrictions will apply to the new leases signed under the Farmland Law: ▪ lease term cannot exceed one year and cannot be extended; ▪ rent rate must not exceed 8% of the land's normative monetary value; ▪ lessee will not have the right to (i) transfer such land into a further sublease or create an easement; (ii) extend the lease term or sign a new lease agreement using the lessee's statutory preemptive right, (iv) buy out such land using the lessee's statutory preemptive buyout right, (v) split such land or attach such land to another land plot; (vi) change such land's designated use, etc.
Are any simplifications available for the formation of new farmland plots?	Yes. No land allocation project will be required. Instead, a land plot will be formed based on the so-called "technical documentation on land management regarding land inventory". Such technical documentation will only require the approval of a relevant military district administration. No registration of a newly formed land plot in the State Land Cadaster will be performed. Note that starting from 19 November 2022 these simplifications apply only during the period when the operation of the Land Cadaster is suspended on the whole territory of Ukraine.

Real Estate

Can real estate alienation transactions be executed during martial law?	The Government's Resolution No. 469 dated 9 May 2023 further lifted most of the restrictions previously introduced by Resolution 480, namely: ▪ the buyers of real estate may now further alienate acquired real estate at any time after its acquisition (previously, the buyers were prohibited from alienating the acquired real estate earlier than within one month following the acquisition); ▪ the individuals are now able to alienate real estate via proxy without the need to confirm the effectiveness of such proxy (previously, the individuals had to confirm the effectiveness of the proxy issued more than 1 month ago at least 7 days prior to a contemplated transaction). Moreover, previously, only the notaries included in the List were allowed to certify certain real estate transactions (such as sale and purchase, mortgage, long-term leases, etc.). This limitation was lifted starting from 1 January 2024 by the Government's Resolution No. 1309 dated 12 December 2023. In addition, a special rule is established regarding the state registration of property rights to real estate located on the territory of the AR of Crimea, Donetsk, Zaporizhzhia, Luhansk, Mykolayiv, Kharkiv, Kherson regions, the city of Sevastopol. Such registration may be carried out notwithstanding the actual location of real estate.
Can the state or municipal land plots be transferred into private ownership or use during martial law?	Yes. The transfer of state or municipal land plots into private ownership or use is currently possible. The land auction is not required if the state or communal land plots are transferred into lease for: ▪ locating (a) production capacities of enterprises evacuated from the war zone; (b) river ports (terminals) on the Danube River or multimodal terminals and production and transshipment complexes; (c) sea ports; ▪ erecting power supply, gas distribution, water, heat, sewage networks, electronic communication networks, main gas pipeline facilities; ▪ agricultural production (for more details please refer to the section concerning the transfer of farmland into use during martial law).

Real Estate

Have there been any changes to construction permit procedures with the introduction of martial law?	On 12 July 2022, CMU's resolution No. 722 ("Resolution 722") entered into force. Resolution 722 provides for renewal of the period for providing administrative services in the construction sector and facilitates certain permit procedures as described below.
	The period for providing administrative services in the construction sector set forth in the Law of Ukraine "On Regulation of Urban Development Activities", which was suspended by the CMU's resolution dated 28 February 2022 No. 165 "On the Suspension of the Period for Providing Administrative Services and Issuing Permitting Documents," has been renewed.
	For the duration of the martial law in Ukraine and within one year after it ends or is canceled:
	▪ Principle of tacit consent will be applied to (1) obtaining urban planning conditions and land development restrictions, (2) obtaining approvals of design documentation from cultural heritage protection authorities.
	  • In the case of failure to provide urban planning conditions and land development restrictions within the period prescribed by law, the construction design will be carried out without obtaining urban planning conditions and restrictions, subject to compliance with local urban planning documents and land use restrictions as provided in the laws.
	  • Should the cultural heritage protection authority fail to approve the design documents within 30 days, they will be deemed approved by default. The customer must apply to the cultural heritage protection authority for design document approval using the electronic account in the Unified State Electronic System in the Construction Sector ("Electronic System").
	▪ Permit procedures for certain construction works will be simplified. Construction of individual residential, garden and country houses up to two stories high (not including the attic floor) with an area of up to 500 square meters, as well as utility buildings and structures, garages and landscape design elements of the land plot can be carried out by the customer without obtaining a construction passport for the land plot development. In this case, the customer must indicate in the construction commencement notice the registration number of the land development intentions layout (must be uploaded to the Electronic System) to be prepared by an architect or a design engineer.

Real Estate

Have there been any changes to construction permit procedures with the introduction of martial law? (Continued)	For the duration of the martial law in Ukraine and within three months after it ends or is canceled certain construction works are allowed to be postponed: ▪ Deadlines for certain facade decoration and landscaping works (except for those relating to transport passages and vehicle-to-pedestrian communications) may be postponed. In this case, the customer must indicate in the completion declaration or certificate the facade decoration and landscaping works that will be postponed and the deadline for their completion.
Are there any statutory provisions that allow for reimbursement of damage done to real estate due to military aggression of Russian Federation?	In brief, there are currently two initiatives aimed at establishment of legal framework for such reimbursement. **A. Collection of information on damage done to real estate** ▪ According to CMU's resolution No. 326 dated 20 March 2022 "On Approval of Procedure of Assessment of Damage Done to Ukraine due to Military Aggression of Russian Federation", regional and Kyiv city state administrations will assess economical losses of companies suffered due to military aggression of Russian Federation, including, but not limited to, cost of damaged or destroyed real estate. Assessment will be carried out based on methodology that is yet to be adopted by State Property Fund of Ukraine and Ministry of Economy of Ukraine. In parallel, owners of real estate (including construction investors, their heirs) are allowed to submit informational notices on damage or destruction of their real estate via "Diia" web-portal, centers for provision of administrative services, and notaries. ▪ According to CMU's regulations, for the purposes of assessment of damage real estate is considered damaged or destroyed if such damage or destruction is verified according to CMU's resolution No. 473 dated 19 April 2022 "On Approval of Procedure for Carrying Out of Emergency Works on Liquidation of Consequences of Military Aggression of Russian Federation, Related to Damage of Buildings and Structures". Therefore, owners of damaged or destroyed real estate may want to consider verifying damage or destruction as provided in CMU's resolution No. 473. ▪ Information on damage or destruction of real estate will be recorded in Register of Damaged and Destroyed Property. It is expected that the above information will be used for reimbursement of losses done to real estate, although respective legal framework is being developed.

Real Estate

Are there any statutory provisions that allow for reimbursement of damage done to real estate due to military aggression of Russian Federation? (Continued)	**B. Reimbursement of damage done to residential real estate** The Law of Ukraine No. 2923-IX "On Reimbursement of Damage to or Loss of Certain Categories of Real Estate Objects Due to Military Actions, Acts of Terrorism, Sabotage Caused by Military Aggression of Russian Federation Against Ukraine, and State Register of Property Damaged or Destroyed Due to Military Actions, Acts of Terrorism, Sabotage Caused by Military Aggression of Russian Federation Against Ukraine" ("Law on Reimbursement") became effective on 22 May 2023. Law on Reimbursement governs reimbursement of damage done to residential real estate that is owned or prepaid by Ukrainian citizens (including, but not limited to, Ukrainian citizens who made investments into real estate or, following 10 October 2022, acquired special property right to future real estate) and associations of co-owners of multi-apartment buildings. Key take-aways of the Law on Reimbursement are: ▪ creation of the State Register of Property Damaged and Destroyed due to Military Actions, Acts of Terror, Sabotage due to Military Aggression of Russian Federation; ▪ compensation will be made as per decisions of relevant compensation commissions, which will be created by executive bodies of local councils or military (military-civilian) administrations of settlements; ▪ the following forms of reimbursement of damage may be granted: (i) carrying out works on restoration of damaged real estate and/or provision of construction materials for such works (for damaged real estate only); (ii) provision of funds for the construction of a manor-type house, country house (for destroyed real estate only); (iii) financing of the purchase of existing (or to be built in the future) apartment, a manor-type house, a country house with the use of a housing certificate; ▪ reimbursement application can be submitted during martial law period and within one year after termination of martial law on a territory where damaged or destroyed real estate was located.

Real Estate

Are there any statutory provisions related to martial law that may affect the title to real estate in Ukraine?	During martial law, privately owned real estate may be potentially expropriated according to the decision of the military command, subject to further compensation for the value of the expropriated real estate, as determined by an appraiser in accordance with the applicable Ukrainian laws. The owner may claim the return of expropriated real estate instead of compensation in court after martial law is lifted. Please note that we are not yet aware of any cases of real estate expropriation during martial law in Ukraine. On a separate note, the Law of Ukraine "On the Basic Principles of Forced Expropriation in Ukraine of Property of the Russian Federation and Its Residents" came into force on 7 March 2022. It is aimed at enabling Ukrainian authorities to expropriate the property (including real estate) owned by the Russian Federation and its residents for reasons of public necessity, without any compensation paid for such expropriated property.
Are statutory reliefs envisaged with respect to land rent payment?	Yes, please refer to this Section on Tax and Customs Regime for more detail.

Serhiy Piontkovsky
Partner
serhiy.piontkovsky@bakermckenzie.com

Lina Nemchenko
Partner
lina.nemchenko@bakermckenzie.com

Nataliya Tyschenko
Senior Associate
nataliya.tyschenko@bakermckenzie.com

Elmaz Abkhairova
Senior Associate
elmaz.abkhairova@bakermckenzie.com

7

Work of State Courts and Arbitration Tribunals

Work of State Courts and Arbitration Tribunals

To what extent does martial law affect Ukrainian jurisdiction?	Martial law affects Ukrainian jurisdiction in the following ways: **1. Changes to the legislation regarding territorial jurisdiction** On 7 March 2022, the changes to the Law of Ukraine "On the Judiciary and the Status of Judges" became effective. These provide that if a court is unable to administer justice due to objective reasons during the state of martial law or emergency (natural disasters, hostilities, measures to combat terrorism or other emergencies), the territorial jurisdiction of the courts may be changed. The respective decision should be made by the High Council of Justice at the request of the chair of the Supreme Court or, if the High Council of Justice is unable to exercise its powers, by the order of the chair of the Supreme Court. The respective decision will also be considered as a ground for transferring all the cases considered by the court whose territorial jurisdiction is changed. Since 24 February 2022, the day the full-scale invasion of Ukraine was launched, the Supreme Court / High Council of Justice has rendered 27 orders changing the territorial jurisdiction of the courts under the state of martial law. The full list of the courts whose territorial jurisdiction has been changed because they are unable to administer justice during the state of martial law can be found here. When the court becomes able to administer justice, its territorial jurisdiction renews by order of the Supreme Court / High Council of Justice. The full list of the courts whose territorial jurisdiction has been renewed can be found here. **2. Functioning of the courts** On 2 March 2022, the Council of Judges of Ukraine published recommendations regarding the functioning of the courts during the state of martial law ("Recommendations," which may be accessed by following the link). The key points of the Recommendations are as follows:

Work of State Courts and Arbitration Tribunals

To what extent does martial law affect Ukrainian jurisdiction?	■ The courts should determine the specifics of their functioning during the state of martial law, given the current situation in a particular region of Ukraine. A meeting of judges will make the relevant decision on the mode of operation of a particular court. If it is impossible to convene and hold such a meeting, the relevant decision will be made by the head of the court or by a person who temporarily performs the duties of the head of the court. ■ If possible, courts are recommended to postpone the court hearings (except for urgent court proceedings) and not to consider such cases, given that many of the case participants will not always have the possibility to submit an application on postponement of the court hearing. ■ Courts are strongly advised to only focus on urgent court proceedings (e.g., matters related to criminal proceedings such as detention, extending the term of detention, etc.). Cases that are not urgent should be considered only based on the written consent of all participants to the respective court proceedings. Courts are recommended to bring to the attention of the parties that they have the right to postpone court hearings in view of hostilities and the right to participate in court hearings via videoconference. Courts are required to restrict access to court hearings of persons who are not participants to the relevant court cases. ■ Courts should carefully consider matters related to the return of various procedural documents, leaving them without movement, establishing different procedural deadlines — if it is possible to extend such deadlines at least until the end of martial law. ■ The courts' management should stop the personal reception of citizens. In light of the above Recommendations, during March-April 2022, courts exercising justice on the territories where no active hostilities took place were, in most cases, only considering urgent court proceedings (e.g., matters related to criminal proceedings such as detention, extending the term of detention, etc.). Since May 2022, most of the courts have renewed consideration of not urgent categories of proceedings, therefore, we recommend to closely monitor the pending cases via available sources (e.g., telephone, email).

Work of State Courts and Arbitration Tribunals

To what extent does martial law affect arbitration proceedings?	Arbitration proceedings are also affected by martial law. The International Commercial Arbitration Court (ICAC) at the Ukrainian Chamber of Commerce and Industry, following the notification on the temporarily suspension of its operations, has announced that it has resumed accepting claims and other procedural documents relating to the competences of the arbitration institutions. In addition, the ICAC has published the following information regarding the functioning of the ICAC and the Ukrainian Maritime Arbitration Commission (UMAC) during the state of martial law (the original text may be accessed by following the link): ■ All incoming documents and other materials should be submitted in electronic form. The basic procedural documents (e.g., statement of claim, statement of defense, etc.) should also be delivered in hard copy, unless the parties agree otherwise. ■ The payment of registration and arbitration fees should be made without invoicing, using the banking details available on the websites of the ICAC and the UMAC. ■ The ICAC and UMAC arbitrators are requested to organize communication with the representatives of the parties and to take other measures to proceed with and complete the consideration of cases promptly. ■ Until the end of the military aggression against Ukraine, oral hearings would be conducted via videoconference. ■ The duration of the state of martial law would not be taken into account when defining the time limits of the arbitral proceedings.

Ihor Siusel
Partner
Ihor.siusel
@bakermckenzie.com

Kseniia Prokhur
Counsel
kseniia.prokhur
@bakermckenzie.com

Nataliya Lipska
Associate
nataliya.lipska
@bakermckenzie.com

8

Enforcement Proceedings

Enforcement Proceedings

To what extent does martial law affect enforcement proceedings?	On 26 March 2022, the changes to the Law of Ukraine "On enforcement proceedings" became effective, which provide for: (1) certain restrictions with regard to enforcement actions in favor of Russia; (2) certain relieves during the state of martial law. The list of such relieves was expanded by the Law, which came into force on 25 August 2022, and was amended by the Law, which came into force on 06 May 2023. **1. Restrictions with regards to enforcement actions in favor of Russia** Until the entry into force of the law regulating the relations involving persons associated with the aggressor state: (1) the commission of enforcement actions in favor of the Russian Federation is suspended; (2) the replacement of creditor in enforcement actions in favor of Russian Federation is prohibited. These also apply to the following persons: ■ citizens of the Russian Federation; ■ legal entities established and registered under the laws of the Russian Federation; ■ legal entities established and registered under the laws other than Ukrainian, having among its ultimate beneficial owners, members or participants (shareholders) the Russian Federation, citizen of the Russian Federation, or legal entity established and registered under the laws of the Russian Federation. The above restrictions do not apply to citizens of the Russian Federation residing in Ukraine on legal grounds, and legal entities established and registered under the laws of Ukraine, having ultimate beneficial owner, member, or participant (shareholder) citizens of the Russian Federation residing in Ukraine on legal grounds.

Enforcement Proceedings

To what extent does martial law affect enforcement proceedings?	**2. Relieves in enforcement proceedings during the state of martial law** Temporarily, for the period until the termination or cancellation of martial law on the territory of Ukraine: ■ persons whose funds have been arrested may carry out expenditure operations in the amount not exceeding 2 minimum wages during one calendar month, as well as pay taxes/fees; ■ legal entities and self-employed persons (that have employees) whose funds have been arrested may carry out expenditure operations only for the payment of wages (not exceeding 5 minimum wages per month per employee), and taxes/fees; ■ the terms prescribed under the Law of Ukraine "On enforcement proceedings" shall be interrupted and established from the date of termination or cancellation of martial law; ■ commission of enforcement actions is suspended in enforcement proceedings against enterprises of the defense-industrial complex, military authorities and units, institutions and organizations being a part of the Armed Forces of Ukraine (except for recovery of wage/military pay), and JSC “Ukrainian Railways”; ■ commencement of enforcement proceedings under notary writs executed on loan agreements that are not notarized is prohibited; ■ commencement of enforcement proceedings and commission of enforcement actions on the temporarily occupied territories/territories where hostilities take place is prohibited.

Ihor Siusel
Partner
Ihor.siusel
@bakermckenzie.com

Kseniia Prokhur
Counsel
kseniia.prokhur
@bakermckenzie.com

Nataliya Lipska
Associate
nataliya.lipska
@bakermckenzie.com

9

Intellectual Property

Intellectual Property

Are there any implications for new/pending patent, trademark and design registry proceedings by the National Intellectual Property Office (NIPO)?	The NIPO continues performing its functions, including examination and registration of pending applications and the acceptance of new ones. To address the martial law implications, the Parliament of Ukraine has adopted the law that suspends various statutory deadlines for the applicants' and right holder's actions related to the protection and acquisition of IP rights, including the deadlines for: ■ submission of documents (requests, responses, oppositions, etc.) ■ renewal of IP ■ challenging the NIPO's decisions ■ reinstatement of missed deadlines Such deadlines are suspended until the expiration or termination of martial law. Furthermore, the law allows to submit the documents (requests, responses, oppositions, etc.) required by the applicable IP laws within 90 days of the end of martial law without paying any fees for renewal, extension or reinstatement of the respective deadlines. Similarly, in case the deadline for renewal of trademark or other IP rights falls on the date during martial law, the right holders will have 90 days following the day martial law is lifted to file the renewal requests and pay applicable fees. The validity of IP that expires during martial law is extended until the day following the cessation of martial law. However, these leniencies are considered to be abolished in the nearest months given the unpredictable duration of martial law and growing operational complexities for the NIPO caused by such suspensions. It is also important to note that the institutional reform of the NIPO is now at the final stage and its finalization should have a positive impact on the NIPO’s operations and the whole Ukrainian IP sector.

Intellectual Property

Are there any implications for the functioning of the Appeals Chamber of the National Intellectual Property Office (NIPO)?	Notwithstanding the challenges associated with the war, the Appeals Chamber of the NIPO has resumed its work. According to the Order of the Ministry of Economy of Ukraine dated November 23, 2023, No. 17768, "On Approval of the Regulations of the Appeals Chamber of the National Intellectual Property Authority" ("Regulations") dated February 9, 2024, the competence of the Appeals Chamber includes: ▪ consideration of oppositions to decisions of the NIPO regarding the IP registration; ▪ consideration of statements on recognition of rights to IP objects as invalid in whole or in part ("post grant opposition"); ▪ consideration of application for recognition of a trademark as well-known in Ukraine. In addition, the Regulations have also been modernized with the following provisions: ▪ a simplified procedure for the appeals on the decisions of the NIPO; ▪ the possibility of conducting mediation at any stage of considering an opposition or appeal; ▪ E-filing of documents; ▪ simplified requirements for a survey on to support that the trademark is a well-known in Ukraine.

Intellectual Property

Are there any implications for new/pending patent, trademark and design registry proceedings by the National Intellectual Property Office (NIPO)?	The NIPO continues performing its functions, including examination and registration of pending applications and the acceptance of new ones. To address the martial law implications, the Parliament of Ukraine has adopted the law that suspends various statutory deadlines for the applicants' and right holder's actions related to the protection and acquisition of IP rights, including the deadlines for: ■ submission of documents (requests, responses, oppositions, etc.) ■ renewal of IP ■ challenging the NIPO's decisions ■ reinstatement of missed deadlines Such deadlines are suspended until the expiration or termination of martial law. Furthermore, the law allows to submit the documents (requests, responses, oppositions, etc.) required by the applicable IP laws within 90 days of the end of martial law without paying any fees for renewal, extension or reinstatement of the respective deadlines. Similarly, in case the deadline for renewal of trademark or other IP rights falls on the date during martial law, the right holders will have 90 days following the day martial law is lifted to file the renewal requests and pay applicable fees. The validity of IP that expires during martial law is extended until the day following the cessation of martial law. However, these leniencies are considered to be abolished in the nearest months given the unpredictable duration of martial law and growing operational complexities for the NIPO caused by such suspensions. It is also important to note that the institutional reform of the NIPO is now at the final stage and its finalization should have a positive impact on the NIPO’s operations and the whole Ukrainian IP sector.

Intellectual Property

Are there any implications for new/pending patent, trademark and design registry proceedings by the National Intellectual Property Office (NIPO)?	Additionally, the NIPO has formed its position regarding certain controversial issues: ■ **IP owned by Russian entities in Ukraine**. Currently and till further notice, all actions related to such IP are suspended, i.e., they will not be renewed, voluntary terminated, prosecuted, etc. This restriction applies to all Russian entities, including subsidiaries of foreign companies. It is expected that this position will be also reflected at a statutory level in the future. Furthermore, based on our observations, the NIPO is also reluctant to enforce the IP rights of such entities, e.g., in opposition procedures. The foreign companies holding IP in Ukraine through Russian affiliates should consider re-structuring IP portfolios to ensure enforceability of their IP in Ukraine. ■ **"Patriotic" trademarks**. In response to the growing number of applications for trademarks embodying war-related and patriotic symbols, the NIPO has expressly condemned such practice and noted that they will not be registered. To give the NIPO statutory grounds for such refusals, the respective draft law No. 9128 has been recently submitted to the parliament for consideration. This draft law aims to prohibit both the registration as trademarks and use in advertising of the designations which: ▪ wholly or partially reproduce the names of events related to national security and defense measures, repelling and deterring Russian armed aggression ▪ reproduce the names of settlements and localities affected by Russian armed aggression or that are generally recognized as symbols of the resilience and heroism of the Ukrainian people ▪ refer to combat and military operations related to the national security and defense measures, repelling and deterring Russian armed aggression ▪ reproduce the names of manufacturers, types and kinds of weapons, military and special equipment ▪ reproduce the names of military branches and units of the Armed Forces of Ukraine, other military formations ▪ reproduce official greetings of the Armed Forces of Ukraine, other military formations

Intellectual Property

Is there any specific impact on IP enforcement?	Under the current circumstances, the possibility of reaching out to, and establishing a meaningful dialogue with, the infringers might be impeded. Therefore, the effectiveness of non-jurisdictional methods of IP protection (i.e., performance of independent actions by right holders) might be lower in some cases, especially in the regions affected by active hostilities. As for the courts, they continue operating and their work cannot be suspended under martial law. The number of court hearings in IP-related cases has gradually increased over the last few months. Additionally, it is still highly recommended to monitor newly filed trademark applications and file oppositions with the NIPO if potentially threatening designations are detected.
How is the customs protection of IP rights affected?	The Parliament authorized the Cabinet of Ministers to determine the categories of goods in respect of which the customs authorities will not control the observance of IP rights during the clearance process. The list has not been published yet, but it is expected to cover mostly the goods of humanitarian or military importance. Moreover, as of 13 October 2022, the registration of IP owned by Russian citizens and companies, including Russian subsidiaries of foreign companies, is officially suspended by the government. This novelty also extends to all goods produced, imported or exported by Russian entities and individuals. No customs actions will be taken with respect to such IP at least until martial law is lifted.
Are there any implications for copyright protection?	The Order of the Ministry of Economy of Ukraine No. 11319 "On Approval of the Procedure for State Registration of Copyright and Contracts Relating to the Author's Copyright" dated August 16, 2023, extends the grounds for refusal of copyright protection. Effective from 24 November 2023, individuals who are Russian citizen or associated with the Russian Federation, or subject to sanctions in accordance with the Law of Ukraine "On Sanctions", are refused copyright protection in Ukraine if they are the author (co-author) or compiler, heir, employer, customer etc.

Intellectual Property

Have any content restrictions been imposed?	Yes. On 3 March 2022, the Commander-in-chief of the Armed Forces of Ukraine approved the List of information, the disclosure of which may lead to awareness by the enemy about the actions of the Armed Forces of Ukraine and other components of the defense forces, and negatively affect the course of performing tasks for their intended purpose during the legal regime of martial law ("List"). This List outlines the information/data that must not be disclosed during martial law, including, among others, the following: ■ Name of military units and other military facilities in the areas where combat (special) operations are performed, their geographical coordinates, number of personnel, weapons and military equipment, material and technical means, their condition and storage locations ■ Information on combat operations that are being conducted or planned, the movement and deployment of troops (name, number, places, districts, routes), deferred or canceled operations ■ Information on missing or downed aircraft, missing ships and search and rescue operations that are planned or being carried out ■ Information intended to promote or justify large-scale armed aggression of the Russian Federation against Ukraine, etc. The Parliament of Ukraine has also increased criminal liability for production and dissemination of materials containing justification, recognition of lawfulness and denial of armed aggression of the Russian Federation against Ukraine, started in 2014. As of 16 March 2022, such crime is punishable by a restriction of liberty for up to five years or imprisonment for the same term, with or without confiscation of property. In addition, the blocking of access to the respective content or prohibition of media outlets distributing such content in Ukraine through the imposition of sanctions cannot be excluded.

Intellectual Property

Have any content restrictions been imposed?	Furthermore, on 22 May 2022 the Parliament adopted the law aimed at prohibiting the propaganda of Russian Nazi totalitarian regime, armed aggression of the Russian Federation against Ukraine, and symbols of the Russian armed and other military forces used in the war against Ukraine. Among other things, this law equates the public use of symbols of the military invasion of the Russian Nazi totalitarian regime in Ukraine to the propaganda and, therefore, bans such actions, including the use, creation, and distribution of products containing such symbols in Ukraine and /or abroad. The list of such symbols includes: ■ Latin letters "Z", "V" used as symbols of the military invasion of Ukraine (without legitimate context or in the context of justifying the armed aggression against Ukraine or other hostilities), including in the individual words with a visual emphasis on such letters ■ formal or informal symbols (emblems) of the armed forces of the Russian Federation, including other armed formations and (or) bodies of the Russian Federation The law also sets out in more detail the prohibited ways of using such symbols and some acceptable exemptions. This prohibition came into force on 12 June 2022. Additionally, on 19 June 2022, the Parliament voted for the draft law prohibiting communication of phonograms, videograms and music videos of artists who are or were Russian citizens as of 1991 or onward to the public (including over the Internet). Same prohibition applies to the content produced by an individual or legal entity that were citizens or legal residents of Russia at the time of the publication of the recording. There are still a few legitimate exceptions to the use of such content and an exclusion for the Russian performers (singers) who condemn Russia’s aggression against Ukraine. The list of such performers (singers) will be maintained and updated by the Office of the National Security and Defense Council. The law came into force on 7 October 2022.

Intellectual Property

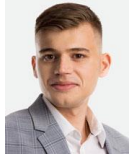
Have any content restrictions been imposed?	On 13 December 2022, the Parliament voted for the Law of Ukraine "On Media" that came into force on 31 March 2023. Apart from introducing a completely new legislative landscape for the media industry, the Law also contains a separate section on the regulation of media in the context of armed aggression. Among other things, it restricts the distribution of the following information: ■ information that presents the armed aggression against Ukraine as internal conflict, civil conflict, civil war if this entails the incitement of enmity or hatred or violent change or overthrow of the constitutional order or violation of territorial integrity ■ misleading materials regarding the armed aggression and actions of the aggressor state, its officials, persons and organizations controlled by the aggressor state if this entails the incitement of enmity or hatred or violent change or overthrow of the constitutional order or violation of territorial integrity ■ programs and materials, one of the participants of which is a person included in the List of persons who pose a threat to national security In addition, the Law sets out certain restrictions on ownership structure and financing of media, the activities of foreign linear media, and prohibits the distribution of on-demand audiovisual media services and services of audiovisual media service providers of the aggressor state.

Intellectual Property

Have any content restrictions been imposed?	Considering the adverse impact of online casinos on Ukrainian society during martial law, the Cabinet of Ministers, by its Resolution No. 566 "Some issues of countering the negative consequences caused by gambling games operation on the Internet" ("Resolution") dated 17 May 2024, prohibited all types of advertising for the gambling and betting business and introduced new rules for its operators. In particular, the following procedure for restricting gambling advertising is envisaged: 1. Prohibition of advertising of trademarks and other objects protected by intellectual property rights under which gambling is organized and conducted. 2. Prohibition of using symbols of the Armed Forces of Ukraine and other military formations in gambling advertising. 3. Prohibition of the distribution of relevant contextual material. Inter alia, the Resolution prohibits multiple accounts for one player, obligates players to take breaks, and requires players to set limits on the amount of money as well as the amount of time they can spend gambling. The Resolution was adopted prior to the enactment of the Law of Ukraine "On Combating Gambling Addiction (Ludomania)", which is currently being considered by the Parliament of Ukraine. The ban will remain in effect until the Law becomes operative.

Ruslan Drobyazko
Partner
ruslan.drobyazko@bakermckenzie.com

Oleksiy Stolyarenko
Counsel
oleksiy.stolyarenko@bakermckenzie.com



Dmytro Skydan
Associate
dmytro.skydan@bakermckenzie.com

10

Antitrust and Competition

Antitrust and Competition

How has martial law affected the activities of the Antimonopoly Committee of Ukraine?	On 9 June 2022, the Antimonopoly Committee of Ukraine (the "AMC") resumed consideration of merger control and concerted actions filings, as well as applications for preliminary conclusions regarding the same. On 7 and 19 July 2022, the AMC adopted a series of Decrees resuming the review of (i) notifications of infringements of the Ukrainian legislation on the protection of economic competition, (ii) notifications of unfair competition, (iii) notifications for the review of AMC decisions, and (iv) the letters of clarification on the application of the state aid legislation. As of now, only the consideration of state aid notifications and cases remains suspended based on AMC Decree No.1-rp of 3 March 2022. In addition, for the period of martial law, deadlines for the provision of information that the AMC requests, which fell on 25 February 2022 or later remain suspended. **Consideration of merger control and concerted actions applications** The review of merger control and concerted actions applications has undergone several temporary amendments and different regimes since 24 February 2022: firstly, it was completely suspended until 30 March, and then was resumed in a simplified format. On 9 June 2022, the AMC decided to resume the consideration of these categories of applications. Starting from 20 June 2022, all merger control and concerted actions applications are to be submitted to the AMC and considered by the authority under the regular procedures that were applicable before martial law was imposed.

Antitrust and Competition

How has martial law affected the activities of the Antimonopoly Committee of Ukraine?

Priorities of the AMC in 2024

On 28 December 2023, the AMC adopted a list of priority areas of its activity in 2024. According to this list it is expected that the following areas will be more closely examined by the authority this year, namely:

- light petroleum products (fuel) markets;
- markets for the main elements of railway vehicles;
- markets for socially important food products;
- pharmaceuticals markets;
- markets for consumer goods that do not qualify as medicinal products, but were subject to false advertisement of their medicinal properties; and
- area of public procurements of construction works (reconstruction, repair, etc.) and procurements of goods, works and services by entities active in energy markets.

The AMC also committed to integrating into the EU and strengthening its cooperation with the Organization for Economic Co-operation and Development (OECD), enhancing state aid regulation, enhancing legislation relating to its activities as an appeal body and ensuring protection of economic competition in the area of media markets.

Performance of the AMC in 2023

On 19 March 2024, the AMC issued its Annual Report for 2023 (the "**Report**"). Despite the full-scale war, the AMC managed to preserve its efficiency in reviewing merger notifications and scrutinizing anti-competitive conduct. The main highlights of the Report are as follows:

- **Merger approvals**: In **312 cases** (**52.3%**), the AMC granted approval (19.2% less than the 2022 rate, which is mainly due to the higher numbers of application rejections by the authority).

Antitrust and Competition

How has martial law affected the activities of the Antimonopoly Committee of Ukraine?

- **Phase I merger consideration rate**: **88.2%** of applications were considered in Phase I (similar to the 2022 rate, which was 93.7%).
- **Merger fast-track review rate**: **6.4%** of the applications were considered under the fast-track review procedure (almost identical to the 2022 rate, which was 6.3%).
- **Phase II remedies rate**: Out of fourteen concentrations, reviewed by the AMC under the Phase II procedure in 2023, six (**42.9%**) were approved subject to commitments. The review of one application was closed without a decision on merits.
- **Concerted actions approval rate**: In **21 cases** (**36.8%**), the AMC approved proposed concerted actions (41.2% less than the 2022 rate, which was 78%).
- **Fines**: The majority of fines imposed by the AMC in 2023 were for anticompetitive concerted actions (**65.3%**). The other most fined infringements were anticompetitive actions of state authorities (**11.3%**), information infringements (**9.5%**), abuse of dominant position (**8.3%**), unfair competition (**2.8%**) and concentration and concerted actions without obtaining prior approval of the AMC (**2.6%**).

State aid

On 13 April 2022 amendments to the Law of Ukraine "On State Aid to Business Entities" No. 1555-VII dated 1 July 2014 (the "State Aid Law") entered into force (the "Amendments"), simplifying the mechanism of state aid provision during martial law and within a year after the expiration or termination of the martial law period.

In accordance with the Amendments:

- Certain provisions of the State Aid Law shall not apply during martial law, including:
  - criteria when state aid may be deemed compatible;
  - requirements regarding notifications on state aid;
  - procedure of the review by the AMC of notifications and cases related to state aid;

Antitrust and Competition

How has martial law affected the activities of the Antimonopoly Committee of Ukraine?

- verification of information on illegal state aid and on inappropriate use of state aid;
- procedure for the recovery of the incompatible state aid and for the review of the existing state aid.

- The state aid provided during martial law is automatically considered compatible. Nevertheless, such state aid must still comply with certain state aid objectives enshrined in the State Aid Law.
- Providers of state aid are exempted from the obligations:
  - to notify of new state aid and of proposals for the amendment of the terms of the existing state aid, if such state aid is provided during martial law or within one year after the expiration or termination of the martial law period;
  - to submit information on the existing state aid provided during martial law or within one year after the expiration or termination of the martial law period.

In addition, on 15 April 2022 the AMC issued recommendatory clarifications No.1-pp/DD in relation to the Amendments by which the authority clarified how these Amendments would affect procedures relating to the provision of state aid during the marital law period and the relevant AMC activities.

Review of public procurement complaints by the AMC

In her interview, Olha Nechytailo, the State Commissioner of the AMC, clarified that the AMC reviews all public procurement complaints under the same procedure regardless of whether the complainant/purchaser is located in temporarily occupied territories/military action zones. The procedure has not changed as a result of the war.

The State Commissioner has also recommended that the participants in the public procurement complaint case should consider the possibility of submitting written explanations and minimizing personal participation in the hearings.

Antitrust and Competition

What are the latest updates in the activity of the AMC?

Launch of competition law reform

On 9 August 2023, the Ukrainian Parliament adopted Law No. 5431 (the "Law") launching a competition law reform in Ukraine. The Law was developed together with European competition law experts and in line with the requirements of the EU-Ukraine Association Agreement. The Law introduces a significant number of enhancements to the competition legislation of Ukraine, including:

- new rules in the merger filing and review process;
- introduction of a detailed procedure of inspections (dawn raids);
- introduction of settlement and leniency procedures;
- introduction of joint and subsidiary liability for the payment of fines imposed by the AMC;
- strengthening of the institutional powers of the AMC;
- establishment of the maximum term for review of competition law infringement cases.

On 12 September 2023, the President has signed the Law, which subsequently entered into force on 1 January 2024.

New management of the AMC

On 7 September 2023, the Prime Minister of Ukraine Denys Shmyhal presented to the staff of AMC the new Head of the AMC - Pavlo Kyrylenko who was appointed by the Ukrainian Parliament on 06 September 2023. A day before, on 05 September 2023, the Ukrainian Parliament approved the resigning of the previous Head of the AMC Olga Pishchanska who had held this position since 16 July 2020. There were also some further changes in the top management of the authority, including resining of one State Commissioner, namely, Anzhelika Konoplianko, followed by an appointment of two new State Commissioners – Maksym Sandyga and Denys Klyushnykov.

Antitrust and Competition

What are the latest updates in the activity of the AMC?	*Legislative initiatives of the AMC* To proceed with the implementation of the competition law reform, at the end of 2023 the AMC adopted a number of normative acts: ▪ Resolution, amending Temporary rules for consideration of competition law violation cases; ▪ Resolution on amendments to *Regulation On Filing with the Antimonopoly Committee of Ukraine Applications Seeking Prior Approval of the Concentration of Business Entities*, as approved by the Resolution of the AMC No. 33-p, dated 19 February 2002; ▪ Resolution on settlement procedure and Resolution on leniency procedure; ▪ the Resolution on the procedure for the calculation of fines for competition law infringements; ▪ the Resolution on the inspections procedure, which came into effect at the beginning of 2024. *Merger control exemption of certain defense related transactions* On 16 May 2024 the Law of Ukraine "On Amendments to the Customs Code of Ukraine and Other Laws of Ukraine Concerning Special Aspects of Customs Control and Customs Clearance of Certain Categories of Goods" No. 3613-IX dated 20 March 2024 entered into force, releasing certain defense related transactions from the Ukrainian merger control clearance requirements during martial law and within 90 days after its expiration or termination, subject to satisfaction of all the following conditions: ▪ the transaction is implemented outside Ukraine; ▪ the transaction is aimed at development and implementation of military technologies and production of military and dual-use goods in Ukraine;

Antitrust and Competition

What are the latest updates in the activity of the AMC?	▪ the ultimate recipients and/or acquirers of such goods (technologies) are exclusively the Armed Forces of Ukraine, other law enforcement/military bodies of Ukraine; ▪ such technologies are not developed and implemented, or such goods are not produced in Ukraine, or their production is insufficient as of the date of the transaction; ▪ the acquirer of control is a business entity that is active in production, sale or purchase of military products, military services or development and implementation of military technologies, dual-use goods.

Oksana Simonova
Partner
oksana.simonova
@bakermckenzie.com

Olga Mikheieva
Counsel
olga.mikheieva
@bakermckenzie.com

11

Pharmaceuticals and Healthcare

Pharmaceuticals and Healthcare

How is the government addressing the needs regarding pharmaceuticals/medical devices? Have any regulatory procedures been relaxed?	The government and the Ministry of Health of Ukraine ("MOH") have temporarily relaxed certain regulatory rules. Measures in place include the following:
	- As regards import of pharmaceuticals
	  - Lifted minimum shelf life requirement for imported pharmaceuticals for in-patient care, provided that the importer presents a letter confirming that the product will be used before shelf life expiry
	  - Permitted import of non-registered pharmaceuticals for the army or healthcare facilities (excluding pharmacies) without the right of resale, on the basis of the manufacturer's batch release certificate and with instructions for use translated into Ukrainian
	  - Permitted import of pharmaceuticals in the non-localized packaging that differs from the registered packaging on the basis of manufacturer's / marketing authorization holder's letter confirming that the imported pharmaceutical is identical to the one registered in Ukraine and with instructions for use translated into Ukrainian
	  - Lifted state quality control upon importation for pharmaceuticals procured by specialized procurement agencies
	- As regards distribution of pharmaceuticals
	  - Permitted transportation by non-dedicated vehicles (including public transport) and via post, subject to compliance with the storage conditions established by the manufacturer
	  - Permitted storage of pharmaceuticals at warehouses not covered by the existing import/wholesale licenses subject to compliance with the storage conditions established by the manufacturer
	  - Permitted sale by licensed manufacturers, importers, retailers and wholesalers to certain non-licensed entities such as military administrations, armed forces units and entities engaging volunteer organizations that provide humanitarian aid

Pharmaceuticals and Healthcare

How is the government addressing the needs regarding pharmaceuticals/medical devices? Have any regulatory procedures been relaxed?	▪ Suspended market surveillance for medical devices (however, in March 2024, unscheduled market surveillance measures were reinstated) ▪ Permitted electronic submission of documents for state registration of pharmaceuticals and for import state quality control In addition, the government approved the procedure for temporary emergency state registration of pharmaceuticals for in-patient care. The packaging and instructions for use of such pharmaceuticals do not need to be localized, and the documents may be submitted in the English language and in electronic form. The government abolished this procedure on 4 July 2023, however, the marketing authorizations issued under this procedure will be extended as of their expiration date for one year, and/or for the period of martial law, and/or for six months upon termination of the martial law.

Pharmaceuticals and Healthcare

How does martial law impact the validity of marketing authorizations?	The government has stopped the clock for submitting the renewal applications for the state registration certificates expiring during martial law and prolonged state registration certificates for pharmaceuticals procured by specialized procurement agencies or state enterprise "Medical Procurement of Ukraine".
Have any restrictions been introduced with respect to products imported from/manufactured in Russia or Belarus?	Yes. The MOH has cancelled state registration of certain pharmaceuticals whose manufacturers/marketing authorization holders are registered or carry out business in Russia or Belarus. In addition, on 22 May 2022, the Parliament of Ukraine adopted law No. 2271-IX ("Law") authorizing the MOH to carry out the following: 1. Cancel or refuse a marketing authorization if at least one stage of the manufacturing process is carried out by an entity with manufacturing facilities in Russia or Belarus 2. Cancel or suspend a marketing authorization if its holder or holder's representative in Ukraine is directly or indirectly affiliated to an entity that: i. "Directly or indirectly" carries out manufacturing of pharmaceuticals in Russia or Belarus ii. Is a representative, a representative office, a branch, licensee, marketing authorization holder, manufacturer or supplier of an entity listed in (i) above iii. After 23 February 2022: ■ Concluded transactions on taking part in at least one stage of manufacturing a pharmaceutical or an active pharmaceutical ingredient (API) by an entity located in Russia or Belarus ■ Provided for the use by an entity located in Russia or Belarus "pharmaceutical tangible or intangible assets" or related patents, authorizations, licenses, marketing authorizations, rights and other documents required for the manufacturing of pharmaceuticals or APIs, or lent, rented out, licensed out or sold such assets, rights or documents directly or indirectly to a Russian or Belarusian resident for manufacturing pharmaceutical products

Pharmaceuticals and Healthcare

Have any restrictions been introduced with respect to products imported from/manufactured in Russia or Belarus?	The MOH would be able to cancel a marketing authorization only after suspending it for six months and if the marketing authorization holder continues to carry out the activities set forth in item 2 above after the expiry of the three-month period. The government must agree upon such cancellation of the marketing authorization. The adoption of the Law does not immediately trigger a refusal, cancellation or suspension of any of the impacted marketing authorizations. Instead, the Law provides the MOH with the authority to decide on the refusal, cancellation or suspension of marketing authorizations on a case-by-case basis. To enable the implementation of the Law, the MOH approved order No. 1251 of 19 July 2022 (as amended on 8 April 2022) detailing the procedures for refusal, cancellation or suspension of marketing authorizations.
Have the procurement rules in healthcare been simplified?	Yes. Temporarily, the government and the MOH have permitted the following: ■ Procurement of medical products based on the simplified procedures, electronic catalogue or direct contracting procedures ■ Procurement of medical products by military administrations ■ Signing and delivering invoices, transfer and acceptance acts, delivery orders and acceptance notices and other supporting documents by state enterprise "Medical Procurement of Ukraine" in electronic form
Have any additional price controls or price-cutting measures been implemented?	The Government has introduced reference pricing for pharmaceuticals included into the National Essential Medicines List and pharmaceuticals that have undergone health technology assessment. Previously, reference pricing only applied to certain listed INNs. Reference prices will be calculated on the basis of prices in Poland, Slovakia, Czech Republic, Latvia, Hungary and in the absence of prices in four of these countries – on the basis of internal prices obtained from market research systems. The government has lifted retail price declaration for anti-COVID products (masks, disinfectants, paracetamol and certain antibiotics). At the same time, as of 1 October 2023, the government has introduced reimbursement of medical devices together with maximum wholesale (10%) and retail (15%) mark-ups for such devices.

Pharmaceuticals and Healthcare

Has any guidance been issued with respect to clinical trials?	Yes. The State Expert Center of the Ministry of Health of Ukraine ("Center") has issued recommendations, as follows:
	■ The sponsors should critically assess whether it is appropriate to initiate new trials or suspend initiation of new trials/sites or inclusion of new subjects.
	■ If continuation of the trial in the approved site is not possible, sponsors should consider either of the following:
	  ■ Withdrawal of subject from a clinical trial
	  ■ Transferring subject to another approved site (including sites outside Ukraine) – subject to consent of the patient and communication between the investigators. The Center and local ethics committees should be informed of such transfer as soon as possible.
	■ Take all possible measures to ensure:
	  ■ uninterrupted access to the investigational product at sites
	  ■ compliance with protocol by all involved participants
	  ■ proper storage of investigational product and bio samples at sites (considering blackouts).
	■ Inform Center of all protocol violations related to patient safety and other aspects required by law (notices may be sent by email with original documents to follow when possible and appropriate).
	■ Notifications on significant amendments will be processed by the Center subject to its availability.
	■ Carrying out monitoring should be considered taking into account safety requirements.

Pharmaceuticals and Healthcare

Has any guidance been issued with respect to clinical trials?	■ In case of travel restrictions, sponsors should consider the following:
	  ■ Replacing physical site visits by telephone or video calls, rescheduling or cancelling visits
	  ■ If it is not possible to obtain (updated) informed consent due to travel restrictions, study subject may provide consent using telephone/video (the updated informed consent and information notice may be provided by email, post or by a member of the investigator team in person).
	  ■ Alternatively, study subject and investigator may sign separate informed consent forms, provided that a normal consent is obtained afterwards as soon as possible.
	  ■ Alternative ways of delivering investigational product subject to compliance with storage conditions determined by the manufacturer (e.g., through engaging distributor for the deliveries, provided this is compliant with the protocol and sponsor's instructions for study subjects).
	  ■ Using labs in or outside of the healthcare facilities subject to lab capacity and agreement with the sponsor.
	  ■ Remote source data verification, if compliant with informed consent and the protocol (otherwise should be submitted as substantial amendment).
	■ It is recommended to use International Ethical Guidelines for Health-related Research Involving Humans Prepared by the Council for International Organizations of Medical Sciences in collaboration with the World Health Organization, specifically Guideline 20 Research in disasters and disease outbreaks.
	■ Follow the advice developed by the European Commission, the European Medicines Agency and the Heads of Medicines Agencies.

Olha Demianiuk
Partner
olha.demianiuk
@bakermckenzie.com

Olha Sviatenka
Associate
olha.sviatenka
@bakermckenzie.com

Serhiy Chorny
Managing Partner
serhiy.chorny@bakermckenzie.com

Viacheslav Yakymchuk
Managing Partner
viacheslav.yakymchuk@bakermckenzie.com

Renaissance Business Center
24 Bulvarno-Kudriavska St.
Kyiv 01601, Ukraine
Tel: +380 44 590 0101
kyiv.info@bakermckenzie.com

Baker McKenzie Ukraine B. V. is a member firm of Baker & McKenzie International, a global law firm with member law firms around the world. In accordance with the common terminology used in professional service organizations, reference to a "partner" means a person who is a partner, or equivalent, in such a law firm. Similarly, reference to an "office" means an office of any such law firm. This may qualify as "Attorney Advertising" requiring notice in some jurisdictions. Prior results do not guarantee a similar outcome.

© 2023 Baker McKenzie Ukraine B. V.

bakermckenzie.com/ukraine