



## **MARTIAL LAW:** recent legislation updates

2<sup>nd</sup> edition

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On 24 February 2022, the Verkhovna Rada of Ukraine approved a decree of the President of Ukraine on the imposition of martial law in Ukraine in connection with the large-scale military aggression of the Russian Federation against Ukraine. Martial law is a special legal regime aimed at repelling armed aggression. In addition, the Cabinet of Ministers of Ukraine and the ministries enacted a number of measures regarding the functioning of the economy in a state of war.

Please find **the first edition** related to the martial law legislative updates as of 24<sup>th</sup> of March 2022 via the [link](#).

## Note

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*This publication is not a legal advice and provides only general information about the most important legislation changes in Ukraine. In order to avoid any risks prior to making any decisions related to information contained in this publication, please seek the legal advice.*



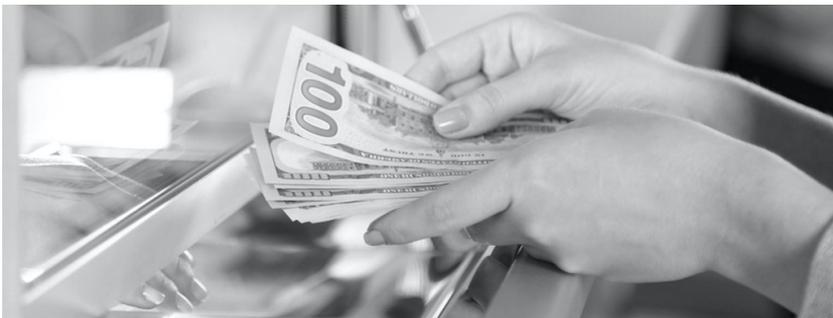
## NEW FOREIGN EXCHANGE RESTRICTIONS DUE TO THE MARTIAL LAW

On 04 April 2022 the National Bank of Ukraine (the “**NBU**”) introduced amendments to the Regulation of the NBU Board “On Operation of Banking System under Martial Law” No. 18 (the “**Regulation**”) by which the NBU has loosened and clarified foreign exchange restrictions that were introduced earlier.

The NBU temporarily reduced settlement deadlines for export-import transactions of Ukrainian residents from 365 to 90 calendar days. The new deadline shall be applicable to the transactions starting from 05 April 2022.

The amendments also entitled individuals to transfer foreign currency abroad for the purposes of purchasing certain goods, in particular helmets, military and tactical uniforms and footwear, optical tracking devices, unmanned aerial vehicles etc., within a monthly limit amounting to UAH 400,000.00 (foreign currency equivalent according to the NBU’s official exchange rate).

Moreover, the NBU extended the list of exceptions in connection to the ban to conduct expenditure transactions from bank accounts of legal entities whose ultimate beneficiary owners are residents of the Russian Federation and the Republic of Belarus. Such legal entities are allowed to transfer funds in Ukraine to conduct social, salary, utility and tax payments.



# ENERGY & NATURAL RESOURCES



On 31 March 2022 the Chernobyl nuclear power plant (**NPP**) was liberated from occupying russian troops. Currently the power plant is under control of the National Guard of Ukraine. At the same time, Zaporizhzhya NPP remains under the control of russian occupation forces.

The Ukrainian Energy Exchange continues to operate. In particular, on 11 April 2022 an electronic auction for the sale of oil products was conducted, on 12 April 2022 an electronic auction for the sale of electricity was held, and on 13 April 2022 an electronic exchange auctions for the sale of natural gas were conducted.

On 8 April 2022, for the first time since the beginning of the heating season, Ukrainian production of “blue fuel” completely covered domestic natural gas consumption.

Re-export of natural gas from Ukraine was resumed. This will apply to gas that will be imported into Ukraine from 3 April 2022 for further storage in underground gas storage facilities in the “Customs Warehouse” regime, including transportation at a special “short-haul” tariff. Gas imported into Ukraine before 3 April 2022, still cannot be re-exported, but can be sold in Ukraine.

The Energy Community decided to establish an Energy Support Fund for Ukraine to counter the effects of the russian invasion. The donors of the Fund will be mainly EU member states and international companies and corporations. Consolidated funds will be used to repair damaged energy infrastructure, and the procedure for selecting suppliers will be implemented by international procurement agencies with experience in the energy sector.



# EVIDENCING WAR CRIMES AND DAMAGES FROM THE WAR



On 5 April 2022\* the Cabinet of Ministers of Ukraine amended the Procedure for conducting examination of the commissioned construction objects that **establish the mechanism for examination of the buildings and structures damaged by the military aggression of the russian federation.**

## Among other, these amendments:

- provide that examination of the damaged objects may be conducted based on the decision of the owner/manager as well as decision of the executive bodies of the local authorities or military administrations;
- expand the list of professionals that may inspect the damaged object during the marital law period;
- provide that results of the examination are described in the conclusion, that is a basis for deciding whether the object requires demolition or may be re-paired.

However, the Ministry of Territories and Communities Development of Ukraine should adopt a methodology for examination of the damaged objects to put these amendments into practice.



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\* Resolution of the Cabinet of Ministers of Ukraine dated 05.04.2022 «On amendments to Procedure for conducting examination of the commissioned construction objects».

# FOOD & BEVERAGE

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Within the previous month, a number of legislative changes have been introduced that affect the Food & Beverage business during the war:

- a complete ban on the import of goods from the Russian Federation into the customs territory of Ukraine has been [established](#);
- the form of the declaration on the list of goods recognized as humanitarian aid when [imported](#) into the territory of Ukraine during martial law has been improved to introduce the possibility of submitting this declaration in electronic form;
- implementation of phytosanitary measures and procedures during martial law was [simplified](#);
- planned and unscheduled measures of state supervision (control) and state market supervision were [terminated](#). State supervision (control) during martial law in Ukraine will be carried out only to constrain rising prices for socially significant products;
- a maximum level of supply and marketing surcharge (trade remuneration) and trade surcharge (margin) of no more than 10 percent, taking into account advertising, marketing services, services for preparation, processing, packaging, and other services related to the sale of certain socially significant goods to the final consumer was [established](#).



# INTELLECTUAL PROPERTY



Since the beginning of the Russian war against Ukraine, numerous questions have arisen as to whether and how the state system of intellectual property legal protection works. We provide the relevant information below:

## **STATE ENTERPRISE “UKRAINIAN INSTITUTE OF INTELLECTUAL PROPERTY” (UKRPATENT) / NATIONAL INTELLECTUAL PROPERTY OFFICE**

Ukrpatent continues its normal operation. For applicants and owners of intellectual property objects (hereinafter – **IPO**), this means that:

- Ukrpatent accepts applications for registration of IPO, conducts examinations on them, issues titles of protection;
- Ukrpatent’s registers are functioning and updated.

Despite the above, given the wartime realities, Ukrpatent has introduced special rules to simplify the procedural aspects of Ukrpatent’s interaction with applicants and IPO holders, namely:



### **Time limits**

Ukrpatent has recognized that force majeure provisions may be applicable in Ukraine to the time limits related to the proceedings on IPO applications and registered IPO. For applicants and IPO holders, this means that the time limits not observed during the period of force majeure (30 days counted from 5:30 a.m. on February 24, 2022) are not considered to be missed.

Please note that on April 13, 2022, a law came into effect, which contains a number of provisions on protecting the interests of applicants and IPO holders during martial law, most of which relate to time limits (see paragraph 3)



## Receiving and sending documents

Ukrpatent has temporarily stopped accepting and sending paper documents.

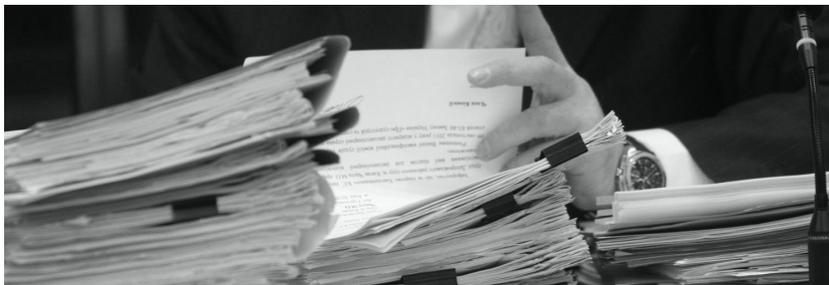
All documents must be submitted electronically. Depending on the document, the latter may be filed:

- through special electronic systems of Ukrpatent (SPEZ-1, SPEZ-2, SEV ZES);
- through special electronic systems of international agencies (Madrid eFiling, etc.);
- by being sent to the official e-mail of Ukrpatent ([office@ukrpatent.org](mailto:office@ukrpatent.org)).

Please note that some documents must be submitted only with a qualified electronic signature.

## APPEALS CHAMBER OF THE NATIONAL INTELLECTUAL PROPERTY AUTHORITY

During martial law, the Appeals Chamber and other collegial bodies continue to accept all applications, petitions, and objections. Such documents shall be submitted in electronic form to Ukrpatent's official e-mail, with the obligatory use of a qualified electronic signature. However, their consideration on the merits in a session with the parties' attendance has been temporarily suspended. At the request of the participants, the consideration may be conducted in written proceedings.



## LEGISLATIVE NOVELTIES

On April 13, 2022, the Law of Ukraine “On protection of persons’ interests in the field of intellectual property during martial law imposed due to the armed aggression of the Russian Federation against Ukraine” came into effect.

The Law stipulates the following:



### **Suspension of procedural time limits**

Since martial law has been imposed in Ukraine (February 24, 2022), the running of the vast majority of time limits for taking actions related to the protection of intellectual property rights as well as of time limits for procedures for acquiring these rights as defined by relevant IP laws has been suspended.



### **Extended validity of economic intellectual property rights**

Economic intellectual property rights that expire on or after the day of martial law imposition in Ukraine shall remain valid until the day following the martial law termination or abolition day.



### **Introduction of a 90-day grace period**

If the beginning of the time limit for extending the validity period of a trademark certificate, of the time limit for extending or maintaining IPO falls on the first day of martial law in Ukraine or another date during martial law, the relevant action shall be considered as timely, if taken by a person no later than 90 days after the day following the martial law termination or abolition day.

Applicants and IPO holders have the right to file documents (applications, petitions, objections, responses, etc.) to be submitted under the relevant laws and regulations no later than 90 days after the day following the martial law termination or abolition day, without paying any additional fees.



Within the previous month, a range of additional legislative initiatives have been implemented to strengthen the healthcare system of Ukraine so that it withstand the Russian military aggression:

- among other things, there has been an **expansion of access to medicinal products**, including simplification of customary clearance of unregistered medicinal products which are being imported in Ukraine, more flexible requirements as to the term of duration of medicinal products procured by SE “Medical Procurement of Ukraine”;
- continuous efforts are being taken to ensure **better access to medical treatment for the population**: medical services are being smoothly provided to temporary displaced persons, vaccination is carried out according to the regular vaccination calendar, foreign medical professionals are engaged to providing medical services via telemedicine;
- certain amendments relate to the **functioning of healthcare facilities**, including the following: requirement as to the mandatory e-prescription (which was to be applied starting from April 1, 2022) has been suspended; requirements as to issuing prescriptions for insulin are amended; it is now possible to issue sick leave lists in paper form until January 1, 2023; access to eHealth has been restricted for healthcare facilities situated in the territory of active military actions or in the territory which is temporarily not controlled by the Ukrainian authorities;
- in order **to eliminate obstacles for clinical trials and circulation of medicinal products**, the State Expert Center of the Ministry of Health of Ukraine receives the necessary documents in both paper and electronic form.

In addition, on March 31, 2022, the validity of the norm on procurement of medicinal products by international organizations expired. However, it is expected that this norm will be renewed in the near future.

# REAL ESTATE & CONSTRUCTION



## REAL ESTATE

The functioning of the State Register of the Proprietary Rights to Real Estate remains suspended. Therefore, the transactions with real estate requiring state registration of rights or encumbrances (e.g., long term leases, sale and purchase, mortgages, and so on) stay on hold.

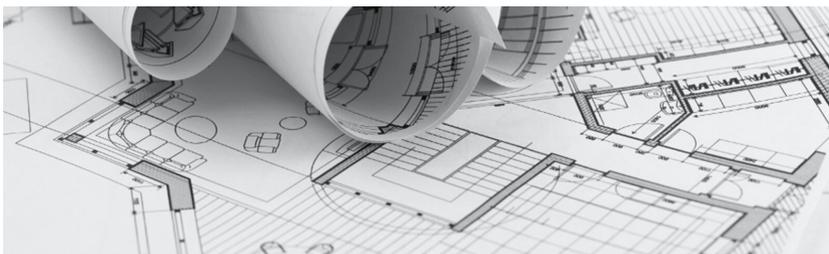
## CONSTRUCTION

The issuance of permissive construction documents was renewed in regions free of intensive hostilities.

### **It is possible to obtain permissive documents regarding:**

- CC1 objects and objects constructed based on the construction passport via the centers for provision of the administrative services (CNAP);
- CC2 and CC3 objects via the user's cabinet of the Integral state construction system, which functioning was renewed on 16 March (according to State Inspection for Architecture and Construction).

Meanwhile, it is not possible to obtain permissive construction documents in the regions with active hostilities\*.



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\* Resolution of the Cabinet of Ministers of Ukraine dated 28.02.2022 No. 165 "Certain matters of realisation of rights, freedoms and lawful interests of individuals and legal entities"

# TAX AND CUSTOMS LITIGATION



## TAX CONTROL AND TAX AUDITS

### 1. Tax audits:

- cameral (desk) audits of tax returns of unified taxpayers of the 4th group are allowed;
- tax authorities are authorized to conduct state supervision (oversight) in the area of pricing:
  - supervision shall be conducted through factual audits;
  - the ground for the audit is obtaining information, including a written complaint from the consumer about the existing violations;
  - a decision on the imposition of penalties shall be made by the State Service of Ukraine on Food Safety and Consumer Protection.

### 2. **Special rules have been introduced for documentary confirmation of tax accounting data in case of loss and/or impossibility of transportation of primary documents from territories in which hostilities are taking place or which are temporarily occupied:**

- the taxpayer shall notify the tax authority on the occurrence of these events;
- if primary documents cannot be transported a moratorium on tax audits shall be imposed; if primary documents are lost, the tax audit of the relevant tax periods shall not be conducted;
- the tax reporting data cannot be questioned on this basis.

### 3. Liability:

- in case of the untimely fulfillment of tax obligations, the taxpayers are released from liability if such obligations are fulfilled within six months after the termination of the martial law.

## CUSTOMS LAW

- Relief from import duty on most goods (except for ethyl alcohol, alcoholic beverages, tobacco products), as well as vehicles.
- Relief from VAT on goods imported by taxpayers of a unified tax (turnover tax) of 2%.
- Unified taxpayers of the 1st – 3rd groups (except for unified taxpayers of the 3rd group-VAT taxpayers) are allowed to import goods upon a preliminary customs declaration. The period of customs clearance shall not exceed one working hour from the moment of the presentation of goods or filing a customs declaration.
- Release of goods for which permits are required may be carried out without the provision of such documents (except for narcotic drugs, military goods, radioactive materials, hazardous waste).
- Registration of non-residents with customs authorities is not required.
- The documentary audits shall not be commenced, and already initiated audits shall be suspended. Acts of audits and reconciliations, objections to acts, tax notifications-decisions shall not be sent.
- Some deadlines specified by the Customs Code of Ukraine are suspended (there is an exhaustive list). Deadlines that are not suspended may be prolonged upon a decision of the customs authority.



# TRANSPORT INFRASTRUCTURE



According to the preliminary calculations of the KSE Institute (analytical center at the Kyiv School of Economics) **the total amount of direct documented infrastructure damages** caused by the Russian invasion has reached **USD 84,8 bln, as of April 18.**

During 54 days of Russian aggression at least **23,000 km of roads, 32,000 sq.m. of real estate, 408 kindergartens, 206 medical institutions, 623 educational institutions, 154 factories and enterprises** were damaged, destroyed or seized. In addition, 68 administrative buildings, 277 bridges and bridge crossings, 11 military airfields, 8 airports, 2 ports were damaged.



The Government has developed a draft Decree of the President of Ukraine on the establishment of **the Ukraine Recovery Fund.**

The Fund will function as an advisory body to the President and will coordinate the accumulation of financial resources for the postwar rehabilitation. It envisages **setting up of 5 working groups** responsible for various areas – from communication with international financial organizations, communication with partner countries to fundraising from individuals and large global corporations and companies. Now the concepts and legal framework are being developed. They will determine the regulatory environment of the Ukraine Recovery Fund, as well as international and private funds that will be involved in the recovery of Ukraine's economy.

However, the process of the infrastructure rehabilitation has already been launched. According to the data of the Cabinet of Ministers of Ukraine as of April 12, additional UAH 490 million were allocated for the basic rehabilitation of road infrastructure.



The Government has developed a draft Decree of the President of Ukraine on the establishment of **the National Council for the Reconstruction of Ukraine,** which will be focused on elaborating

a Plan for the postwar reconstruction and development of Ukraine. The plan will comprise not only specific steps to rehabilitate and rebuild infrastructure and housing, but also to ensure structural modernization and restarting the economy in line with the European standards and regulations.



**The amendments to the Law of Ukraine “On the lease of state-owned and municipal property”** were adopted

(entered into force on April 13, 2022). It is proposed to establish specific rules for the lease of state-owned and municipal property during martial law. In particular, the Cabinet of Ministers is assigned to review the terms of auctions, allow the sublease of the property, provide the possibility of automatic prolongation of lease agreements the term of which expires during martial law, application of preferential rent, etc. The adoption of the Resolution of the Cabinet of Ministers of Ukraine is expected.



# WHITE COLLAR CRIME



The Parliament of Ukraine keeps adapting specific rules of criminal proceedings to the requirements of martial law. In particular, the Law of Ukraine No. 2125-IX dated 15 March 2022 clarifies the specific regime of pre-trial investigation and the judicial procedure of criminal proceedings under this legal regime. At the same time, some rules become law after prior approval by judicial practice.



**The authority to impose and prolong a pre-trial restriction has been given to the prosecutor.**

The authority of applying and prolongation a measure of restraint of a pre-trial restriction such as detention for up to 30 days was delegated to the heads of prosecutor's offices. They can also extend the pre-trial restriction up to one month repeatedly during the pre-trial investigation. In addition, the list of criminal offences in which they are entitled to do so has been expanded.



**Automatic prolongation of detention expires at the criminal proceedings' trial stage.**

Suppose the court ruling about custody passed, and it is no longer possible for the judge to extend such a period. In that case, the order shall be considered prolonged until the court can review the abovementioned ruling, but not for more than two months.



**Cancellation or change a pre-trial restriction during a particular period.**

The suspect or the accused has the right to ask for the cancellation of his pre-trial restriction to military service during the mobilisation (however, not in all criminal proceedings). In addition, the new regulations allow a person to request a personal commitment instead of:

**(a) house arrest** – in areas of active hostilities (for security reasons);

**(b) bail** – if the person wishes to use bail money for the defence of Ukraine.



**The deadlines for notification of suspicion of an arrested person have been increased by three times under conditions of martial law or state of emergency.**

When a person is arrested, written notification of suspicion shall be given to him within up to 72 hours (not up to 24 hours as before). Otherwise, the arrested person shall be freed.



**The lawmaker suspends the legal deadlines for conducting pre-trial investigations during the war.**

In those criminal proceedings where there are no suspects, the deadlines for pre-trial investigation are suspended from February 24, 2022. Deadlines will begin to run from the day the martial law is cancelled.



**The unauthorised sharing of protected military information has become a crime.**

The jurisdiction to investigate this type of crime has been given to the Security Service of Ukraine. Criminal liability (up to 12 years of imprisonment) is established for spreading information about receiving international military aid to Ukraine and the movement, relocation or deployment of the Armed Forces and other military structures of Ukraine. A person is not liable if such information was posted by the General Staff of the Armed Forces of Ukraine or there is written permission from the General Staff for its release.



**Criminal liability has been established for the illegal use of humanitarian aid.**

The sale of humanitarian aid, charity donations, gratuitous assistance, or other use of such property aiming to make a profit is now a crime. However, for these actions to be criminally punishable, the lower limit of the value of objects should be pretty high – more than 430 thousand UAH. At the same time, the severity of the sanction (imprisonment from 5 to 7 years) is increased if these actions are committed during a state of emergency or under martial law.



**Causing harm aiming to defend and suppress armed aggression is not a punishable act.**

A person shall not be subject to criminal liability for the use of weapons and explosives, causing harm to the life or health of aggressors, or causing other damages, if it is aimed at defending and suppressing the armed aggression of the Russian Federation or the attack of another country.



**Exemption from liability for illegal handling of weapons, ammunition, or explosives.**

A person is no longer subject to criminal liability (previously, a person was exempt from such liability only after launching and conducting the investigation) for the illegal carrying, storage, purchase, transfer or sale of weapons, ammunition, and explosives in case of their voluntary return to the authorities. This means that criminal proceedings based on such facts will not even be launched.

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