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## The Level of Offshorization of Bank Capital of Ukraine

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## **THE LEVEL OF OFFSHORIZATION OF BANK CAPITAL OF UKRAINE**

### **Summary:**

*This research examines the offshorization level of the bank capital of Ukraine. We consider the offshorization level of the bank capital as the weight of the share capital, formed in/through states that are considered to be offshore centers according to the Ukrainian legislation or to the data of OECD. The results indicate that 12,10% of the bank capital of Ukraine is formed not transparently, but through offshores; the most popular places to form their capital by banks are BVI and Cyprus; some typical schemes of the ownership structure are described; the indicator of the offshorization level of the bank capital calculated according to the Ukrainian legislation is much lower than according to the OECD report and reaches only 3,00% that shows that substantial changes to the Ukrainian legislation that regulates the transparency standards are needed.*

### **Key words:**

*offshorization, bank capital, banking, offshore, transparency, ownership structure*

## **Introduction**

The problem of increasing the transparency of the ownership structure of commercial banks in Ukraine is becoming increasingly important today, due to the necessity of rehabilitation of the national banking system, approximation of the rules of banking and banking law to international standards, Ukraine's commitments under the Memorandum of Economic and Financial Policies with IMF including<sup>1</sup>.

The banks are forming so complicated ownership structures that add complexity to identify the real owners (beneficiaries) of these banks. This situation has such negative consequences as the following:

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<sup>1</sup> National bank of Ukraine, *Ukraine – Memorandum On Economic and Financial Politics*, 27.02.2015, <<http://www.bank.gov.ua/doccatalog/document?id=10315035>> (10.08.2015).

- excessive amounts of crediting the persons which are affiliated with this bank and capital withdrawal from the banks as a result of such transactions;
- banks take higher risks which consist of the normal banking risks and the risks of the business of bank owner (beneficiary);
- inefficiency and instability of banking, leading to the insolvency and bankruptcy of the bank institutions;
- low level of confidence in the banking system of Ukraine<sup>2</sup>.

In our opinion, one of the challenges in improving the transparency of the banking system of Ukraine is the offshore use in the ownership structures of the commercial banks. In addition, global capital flows, increasing requirements for the minimum regulatory capital of commercial banks, the need for additional capitalization of banks according to stress tests conducted by National bank of Ukraine (NBU), requirement for a gradual increase in the bank share capital to 500 mln UAH to 2024<sup>3</sup> – all these factors increase the risk of raising capital in the banking system of Ukraine through offshore jurisdictions.

On the one hand the use of offshore schemes has negative consequences for the economy (eg, capital outflow from Ukraine, taxation "minimization", the shortfall of budget revenues and strengthening unfair competition<sup>4</sup>). On the other hand, the use of offshore companies may have sufficient reasons (eg, protection from political persecution, raiding, distrust of the local judicial system).

The problem of deoffshorization is complicated by the fact that there is no universal, single list of offshore jurisdictions. Every State, every international organization forms its own list of offshore zones, which number is increasing nowadays: 30% of countries all over the world have some offshore features<sup>5</sup>. Some countries are not considered to be offshore, nevertheless some areas (zones) with the offshore features may be under their jurisdiction.

### **Main thesis**

Organization for Economic Co-operation and Development (OECD) has made its list of offshore zones on the basis of the jurisdictions' assessment according to the international standards of transparency and exchange of information on request (EOIR). Evaluation was carried out in two stages: the first

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<sup>2</sup> National bank of Ukraine, *New Requirements For Banks' Ownership Structure And The Consequences Of Their Non-transparency*, May, 2015

<<http://www.bank.gov.ua/doccatalog/document?id=17998289>> (10.08.2015).

<sup>3</sup> National bank of Ukraine, *Resolution On Bringing The Authorized Capital Of Operating Banks In Compliance With The Requirements Of Minimum Amount*,

<<http://www.bank.gov.ua/doccatalog/document?id=10315035>> (06.08.2015).

<sup>4</sup> M. Karlin, M. Shchhehelska, *The Problem Of Offshorization Of Banking Business In Ukraine*, "Banking" Vol.4-5 (136), pp. 21-31.

<sup>5</sup> V. Katasonov, "Black Holes" *Of The World Financial System*, <[http://www.ufin.com.ua/analit\\_mat/gkr/204.htm](http://www.ufin.com.ua/analit_mat/gkr/204.htm)> (10.08.2015).

stage - a study of the legal and regulatory framework of jurisdiction, the second phase - the practical operation of that framework. These reviews are based on the Terms of Reference, which break the international standard down into 10 essential elements<sup>6</sup>.

#### A. AVAILABILITY OF INFORMATION

A.1. Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities.

A.2. Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements.

A.3. Banking information should be available for all account-holders.

#### B. ACCESS TO INFORMATION

B.1. Competent authorities should have the power to obtain and provide information that is the subject of a request under an EOI agreement from any person within their territorial jurisdiction who is in possession or control of such information.

B.2. The rights and safeguards that apply to persons in the requested jurisdiction should be compatible with effective exchange of information.

#### C. EXCHANGING INFORMATION

C.1. EOI mechanisms should provide for effective exchange of information.

C.2. The jurisdictions' network of information exchange mechanisms should cover all relevant partners.

C.3. The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received.

C.4. The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties.

C.5. The jurisdiction should provide information under its network of agreements in a timely manner.

Jurisdictions are following-up on the Global Forum recommendations. A significant number of jurisdictions have improved their legislation to ensure the availability of accounting and ownership information, including abolishing or immobilising bearer shares. Jurisdictions have also acted on improving access powers to the information under domestic laws, for example by improving their access to bank information for EOIR purposes, and have improved EOIR procedures or strengthened EOI units for timely EOIR. Overall, out of the 968

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<sup>6</sup> Global Forum on Transparency and Exchange of Information for Tax Purposes, *Tax Transparency. 2014. Report On Progress*, <<http://www.oecd.org/tax/transparency/GFannualreport2014.pdf>>, p. 25, 54, (06.08.2015).

recommendations made, 92 jurisdictions have already introduced or proposed changes to their laws and practices to implement around 500 recommendations<sup>7</sup>.

As a result of this assessment every jurisdiction was rated and the jurisdictions were divided into groups (Table 1).

*Table 1. Rating of jurisdictions according to the OECD assessment*

1. Compliant:
Australia, Belgium, Canada, China, Denmark, Finland, France, Iceland, India, Ireland, Isle of Man, Japan, Korea, Mexico, New Zealand, Norway, Slovenia, South Africa, Spain, Sweden.
2. Largely compliant:
Argentina, The Bahamas, Bahrain, Belize, Bermuda, Brazil, Cayman Islands, Chile, Estonia, Former Yugoslav Republic of Macedonia (FYROM), Germany, Ghana, Gibraltar, Greece, Grenada, Guernsey, Hong Kong (China), Italy, Jamaica, Jersey, Macao (China), Malaysia, Malta, Mauritius, Monaco, Montserrat, Netherlands, Philippines, Qatar, Russia, San Marino, Singapore, Slovak Republic, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Turks and Caicos Islands, United Kingdom, United States.
3. Partially compliant:
Andorra, Anguilla, Antigua and Barbuda, Austria, Barbados, Indonesia, Israel, Saint Lucia, Turkey
4. Non-compliant:
British Virgin Islands, Cyprus, Luxembourg, Seychelles
5. Jurisdictions that cannot be rated because they cannot move to Phase 2:
Brunei Darussalam, Marshall Islands, Dominica, Federated States of Micronesia, Guatemala, Lebanon, Liberia, Panama, Nauru, Switzerland, Trinidad and Tobago, Vanuatu <sup>8</sup>

The last three groups, shown in Table 1, will be considered as offshores in the further analysis, with the exception of Austria, which falls now into the group of jurisdictions that are partially compliant. This is because the evaluation of the country was carried out in the first half of 2011, and now the OECD notes in its report that Austria has made some changes in its legislation and this country is undergoing a Supplementary review to improve its ratings. British Virgin Islands and Switzerland are undergoing this additional assessment too, but since these countries are much lower in the rankings - in the group of jurisdictions that are non-compliant and jurisdictions that cannot be classified because their analysis cannot move to the second stage - we consider them as offshore.

<sup>7</sup> *Ibidem*, p. 29

<sup>8</sup> *Ibidem*, p. 28.

We can conclude that the OECD has a clear and defined system of evaluation according to which certain countries are considered to be offshore jurisdictions. In addition, if the country improves its legislation on transparency and exchange of financial information, evaluation can be carried out again. In our opinion, it provides the high relevance and objectivity of the offshore list, formed by OECD.

The current Resolution of Cabinet of Ministers of Ukraine "On the list of offshore zones"<sup>9</sup> from 23.02.2011 includes the following jurisdictions: Guernsey, Isle of Jersey, Isle of Man, Isle of Alderney, Bahrain, Belize, Andorra, Gibraltar, Monaco, Anguilla, Antigua and Barbuda, Aruba, Bahamas Islands, Barbados, Bermuda, British Virgin Islands, Virgin Islands (US), Grenada, Cayman Islands, Montserrat, Netherlands Antilles, Puerto Rico, Saint Vincent and the Grenadines, Saint Kitts and Nevis, Saint Lucia, the Commonwealth of Dominica, Turks and Caicos Islands, Liberia, Seychelles, Vanuatu, Marshall Islands, Nauru, Niue, the Cook Islands, Samoa, Maldives.

When comparing this offshore list and the one of OECD we see that only a small amount of jurisdictions are on both lists (table 2). However, the selection criteria of the jurisdictions that are considered to be offshores remain unclear and need the periodical revision of the list.

*Table 2. List of offshore according to Ukrainian list and list of OECD*

Jurisdictions that are considered to be offshores only according to the list of Ukraine	Jurisdictions that are considered to be offshores according to the Ukrainian list and the list of OECD	Jurisdictions that are considered to be offshores only according to the list of OECD
Guernsey, Jersey, Men Alderney, Bahrain, Belize, Gibraltar, Monaco, Aruba, Bahamas, Montserrat, Bermuda, Puerto Rico, Netherlands Antilles, St. Vincent, Niue, Grenadines, Saint Kitts and Nevis, Samoa, Dominica, Turks and Caicos, Maldives	Andorra, Anguilla, Antigua and Barbuda, Barbados, British Virgin Islands, Liberia, Saint Lucia, Seychelles, Vanuatu, Marshall Islands	Indonesia, Israel, Turkey, Cyprus, Luxembourg, Brunei Darussalam, Dominica, Micronesia, Guatemala, Lebanon, Panama, Trinidad and Tobago, Switzerland

We consider the offshorization level of the bank capital as the weight of the share capital, formed in/through states that are considered to be offshore centers. As there is no universal, single list of offshore zones, we are using two of such lists: 1) list of Ukraine; 2) list of OECD.

<sup>9</sup> Cabinet of Ministers of Ukraine, *Resolution On The List Of Offshore Zones*, 23.02.2011 <<http://zakon4.rada.gov.ua/laws/show/143-2011-%D1%80>> (10.08.2015).

The study was conducted by analyzing data concerning ownership structure of commercial banks in Ukraine, posted on the official websites of relevant banks and the NBU<sup>10</sup>. The analysis was conducted in the context of groups (according to the classification of NBU according to the assets of banks) (table 3).

*Table 3. Amount of Ukrainian bank share capital formed in offshores (list of Ukraine and list of OECD) as of 01.01.2015.*

	Bank	Share capital, *1000 UAH	Share capital, formed in off- shore zones (Ukrainian list), *1000 UAH	Share capital, formed in offshore zones (list of OECD), *1000 UAH
	Group I			
1.	Privatbank	18100740,00	2938347,43	2938347,43
2.	Oschadbank	18302480,00	0,00	0,00
...	...	...	...	...
	Group I Total	108058351,90	3288347,44	11327849,98
	Group II			
17.	Credit Agricole Bank	1222928,76	0,00	0,00
18.	Bank "Financial Initiative"	2000000,00	0,00	2000000,00
...	...	...	...	...
	Group II Total	31265264,41	585000,00	6077915,93
	Group III	...	...	...
36.	Ukrainian Deve- lopment Bank	722000,00	0,00	0,00
37.	Bank "Clearing House"	439692,50	0,00	219835,70
...	...	...	...	...
68.	City Commercial Bank	400000,00	0,00	0,00
	Group III Total	17525774,64	1167584,40	2561598,23
	Group IV	...	...	...
69.	Bank My- khailivskyi	500000,00	0,00	0,00
70.	Ekspres-bank	248767,76	0,00	196128,50

<sup>10</sup> National bank of Ukraine, *Information On The Owners Of Substantial Participation In The Banks Of Ukraine*, 2015  
<[http://www.bank.gov.ua/control/uk/publish/article?art\\_id=6738234&cat\\_id=51342](http://www.bank.gov.ua/control/uk/publish/article?art_id=6738234&cat_id=51342)>  
(10.08.2015).

...	...	...	...	...
158.	Melior bank	190000,00	0,00	0,00
	Group IV Total	22358121,09	340716,38	1709549,71
	Group I-IV Total	179207512,04	5381648,23	21676913,84

The level of offshorization of banking capital of Ukraine was calculated as of 01.01.2015 according to both offshore lists: list of Ukraine and list of the OECD (table 4).

*Table 4. The offshorization level of the bank capital of Ukraine as on 01.01.2015*

Bank group	The offshorization level (Ukrainian list), %	The offshorization level (OECD list), %
Group 1	3,04	10,48
Group 2	1,87	19,44
Group 3	6,66	14,62
Group 4	1,52	7,65
Total	3,00	12,10

The results show the following: 12,10% of the banking capital of Ukraine are formed through offshores according to the OECD report, and 3.00% - according to the list of Ukrainian offshore centers; the most popular offshores to form the capital by banks are Cyprus, Luxembourg and the British Virgin Islands; beneficiaries of some banks with offshore capital are politically exposed persons (PEP).

Indicators of offshore banking capital of Ukraine, calculated in accordance with Ukrainian and international standards, differ significantly. Obviously, this is caused by the fact that the Ukrainian list of offshore zones has not been updated since 2011 and the criteria of this list remain unclear, while offshore list of OECD is regularly updating on the basis of the assessment of jurisdictions. Therefore it is necessary to make the changes to the Ukrainian procedure of defining offshore zones and to provide the periodic updates of this list.

The analysis of the ownership structure of commercial banks in Ukraine showed that the typical scheme of ownership structure with the use of offshores is registration of Ukrainian bank for the company in Cyprus or other unusual offshore (in the Netherlands, Luxembourg), which, in turn, are registered for the companies in the classic offshore like Belize, British Virgin Islands, Panama, Seychelles, where information about owners of companies is secret.

The final nominal owner is often a citizen of an offshore jurisdiction, which is connected to the Ukrainian real owner by the Trust Agreement.



The analysis of the ownership structure of some commercial banks was complicated because lawmakers demanded to disclose only the owners of significant participation (individuals who own more than 10% of the capital of the institution). Therefore, the scheme was built as follows: the bank's capital was divided into 11-12 shares, each with less than 10%, and owned by an offshore company, and the final beneficiary of all these companies was one person. As there were no owners of substantial participation, the commercial bank was not obligated to make its ownership structure public.

Law "On Amendments to Certain Legislative Acts of Ukraine Concerning Responsibility Of The Persons Associated with the bank" of 02.03.2015<sup>11</sup> and the Procedure of the National Bank concerning presenting the information of the ownership structure of the bank of 21.05.2015<sup>12</sup> were aimed to increase the transparency of the banking system of Ukraine, which aims to prevent such ownership structures.

In particular, the concept of "a key member of the legal entity" was introduced as the person owning 2% or more of corporate rights. Banks were required to submit to the National Bank their renewed ownership structures according to the new requirements within two months from the effective date of these changes, which makes it possible to get a more accurate indicator of offshorization of bank capital of Ukraine<sup>13</sup>.

Furthermore, the National Bank published the main types of non-transparent structures of banks in 2015:

1. Structure of shareholders who own less than 10%. NBU considers such a scheme as a method of avoiding approval of acquiring significant participation in the bank;
2. Structure with complicated ownership relations, cross-shareholdings or cyclical shareholdings;
3. Using trust declarations to avoid responsibility in the case of insolvency of the bank;
4. Disclosure of non-resident individuals in the ownership structure (not necessarily, but often from Cyprus or other offshores), who are considered to be nominal holders of shares of the bank<sup>14</sup>;

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<sup>11</sup> Verkhovna Rada of Ukraine, *On Amendments To Some Legislative Acts Of Ukraine Concerning Responsibility Of The Persons Associated with the bank*, 02.03.2015 <<http://zakon4.rada.gov.ua/laws/show/218-19>> (10.08.2015).

<sup>12</sup> National bank of Ukraine, *On Amendments To Some Legislative Acts Of The National Bank Of Ukraine*, 21.05.2015 <<http://www.bank.gov.ua/doccatalog/document?id=17632829>> (10.08.2015).

<sup>13</sup> Verkhovna Rada of Ukraine, *On Amendments To Some Legislative Acts Of Ukraine Concerning Responsibility Of The Persons Associated with the bank*, 02.03.2015 <<http://zakon4.rada.gov.ua/laws/show/218-19>> (10.08.2015).

<sup>14</sup> National bank of Ukraine, *New Requirements For Banks' Ownership Structure And The Consequences Of Their Non-transparency*, May, 2015 <<http://www.bank.gov.ua/doccatalog/document?id=17998289>> (10.08.2015).

5. Structure with "dead souls" - shareholders, who still own share, but these people have already died<sup>15</sup>.

If ownership structure of the bank doesn't meet the requirements for transparency, NBU offers the bank to bring its structure into compliance. If it is not done in time, set by NBU, the ownership structure of the bank recognizes to be non-transparent<sup>16</sup> and NBU has the right to prohibit the person to acquire or increase a significant participation in the bank<sup>17</sup>.

According to the amendments to banking law and regulations, aimed to increase the transparency of ownership structures of commercial banks in Ukraine, we consider the calculation of the level of offshorization of bank capital of Ukraine as of 01.07.2015 is necessary (tab. 5).

*Table 5. Comparison of the offshorization level of the bank capital of Ukraine (Ukrainian list and list of OECD as on 01.01.2015 and as on 01.07.2015).*

Bank group	The offshorization level (Ukrainian list), %		The offshorization level (OECD list), %	
	01.01.2015	01.07.2015	01.01.2015	01.07.2015
Group 1	3.04	2.92	10.48	6.61
Group 2	1.87	2.84	19.44	12.33
Group 3	6.66	6.29	14.62	17.76
Group 4	1.52	1.74	7.65	18.46
Total (solvent banks)	3.00	3.05	12.10	8.88
Total (insolvent banks)	-	0.00	-	39.77
Total (bank system)	-	2.91	-	10.31

The dynamics analysis of offshorization of bank capital of Ukraine in the accordance with the Ukrainian offshore list has shown only a slight change of direction in increase or decrease primarily due to decrease or increase of the total capital of banks of the each group. At the same analysis in the accordance with the offshore list of OECD has shown the following:

<sup>15</sup> Forbes, *The List of 48 Banks With Non-transparent Ownership Structure*, 2015 <<http://forbes.net.ua/ua/news/1403447-spisok-48-bankiv-iz-neprozoroyu-strukturoyu-vlasnosti>> (10.08.2015).

<sup>16</sup> National bank of Ukraine, *The Procedure For Submission Of Information On The Ownership Structure Of The Bank*, 21.05.2015 <<http://www.bank.gov.ua/doccatalog/document?id=17632797>> (10.08.2015).

<sup>17</sup> Verkhovna Rada of Ukraine, *On Banks And Banking*, 07.12.2000 <<http://zakon5.rada.gov.ua/laws/show/2121-14>> (10.08.2015).

1. the share of offshore capital of the Group 1 and Group 2 has decreased by the assignment of some banks as insolvent and their liquidation;
2. the level of offshorization of the Group 3 and Group 4 has grown because of the detailed disclosure of the ownership structure of commercial banks.

The most popular offshore for Ukrainian banks remain Cyprus, British Virgin Islands, Luxembourg.

It should be noted that some banks have quite low level of offshore capital, but the majority of those banks which are using offshore ownership structures, form 60-100% of their capital through offshores (Table 6). To minimize the risks of commercial banks and Ukrainian banking system in general it is necessary to introduce an allowable threshold value of offshorization of bank capital.

*Table 6. Distribution of commercial banks in Ukraine by the level of offshorization*

Share capital, formed in offshore zones	Ukrainian list			OECD list		
	Amount of banks	Capital amount, *1000 UAH	The proportion in relation to all banks with offshore capital, %	Amount of banks	Capital amount, *1000 UAH	The proportion in relation to all banks with offshore capital, %
80-100%	4	1,088,417.62	19.80	20	11,839,211.33	61.79
60-80%	2	319,085.97	5.80	5	2,466,110.32	12.87
40-60%	0	0.00	0.00	0	0	0.00
20-40%	0	0.00	0.00	4	503,213.49	2.63
0-20%	9	4,089,808.05	74.40	18	4,352,842.06	22.72

## Conclusions

Ukraine has a quite high level of offshorization of bank capital – 12,10% as of 01.01.2015 according to the OECD offshore list. The most popular offshores to form the capital by banks are Cyprus, Luxembourg (both are not included to the Ukrainian offshore list) and the British Virgin Isles.

We can conclude that the OECD has a clear and defined system of evaluation according to which certain countries are considered to be offshore jurisdictions. In addition, if the country improves its legislation on transparency and exchange of financial information, evaluation can be carried out again. In our opinion, it provides the high relevance and objectivity of the offshore list,

formed by OECD. When comparing this offshore list and the one of OECD we see that only a small amount of jurisdictions are on both lists. However, the selection criteria of the jurisdictions that are considered to be offshores remain unclear and need the periodical revision of the list.

The dynamics analysis of offshorization of bank capital of Ukraine in the accordance with the Ukrainian offshore list has shown only a slight change of direction in increase or decrease primarily due to decrease or increase of the total capital of banks of the each group. At the same analysis in the accordance with the offshore list of OECD has shown the following:

1. the share of offshore capital of the Group 1 and Group 2 has decreased by the assignment of some banks as insolvent and their liquidation;
2. the level of offshorization of the Group 3 and Group 4 has grown because of the detailed disclosure of the ownership structure of commercial banks.

It is caused by the relevant regulatory acts of NBU that are aimed to increase the transparency of bank system in Ukraine. To minimize the risks of commercial banks and Ukrainian banking system in general it is necessary to introduce an allowable threshold value of offshorization of bank capital.

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