

WHAT INTRODUCTION OF MARTIAL LAW IN UKRAINE MEANS FOR BUSINESS?

Duration

Till 14h00 on 26 December 2018 if not extended: initially both, the President and the National Security and Defense Council, intended that the martial law would last until late January 2019.

Territorial scope

Internal waters of the Sea of Azov and Kerch Strait, as well as 10 regions of Ukraine

Ukraine is now going through the period of martial law, which is the first time in its modern history. It is the new experience (and definitely not the most pleasant one) for the state, for its nationals and for the businesses operating in Ukraine. The process (this far) has been relatively smooth although many businesses remain alert not without a reason. In this newsletter, we have decided not only to touch upon the well-known and equally well-understood basic elements of the current martial law but also to take a step further and consider the implications, which are under the surface.



Note Notwithstanding the fact that the events triggering the martial law occurred off the coast of Crimea, its territorial scope does not extend to the Crimean Peninsula itself, which de jure continues to be a part of Ukraine. This means that the formal legal regime of Crimea under the Ukrainian legislation remains unaffected.

RESTRICTIONS IMPOSED

The scope of rights of individuals and legal entities, which may be subject to limitations, includes, inter alia, the right of free movement, the right to entrepreneurial activity, as well as property rights.

Note As of now, the restrictions have not been enacted. However, they may be put in effect if the events escalate and even if they do not: e.g. restrictions on travel of the Russian nationals to Ukraine, including to its regions where martial law has not been introduced.

Until the martial law remains in force, **the following actions that may affect your business can be enacted:**

- Use of your company's resources (in particular, human resources) for the needs of defense.
- Removal of officers of enterprises for failure to comply with the martial law followed by appointment of other persons instead.
- Expropriation of private property. Very complex legal situations may arise when the property is expropriated not from its owner (e.g. from a grain terminal) and, thus, cannot be returned to the owner in due course. Similar problems may arise when expropriation extends to the goods, which the owner has undertaken to supply to its counterparties but will, thus, not be able to do so.
- Establishment of special procedure for the movement of cars, trains, buses, airplanes and other transport, as well as Ukrainian and foreign nationals.



RECOMMENDATIONS TO THE BUSINESS

- If assets of your company are being expropriated, make sure that the entire process is duly documented and performed by authorized officials. Please note that looting is possible including by individuals in the military uniform.
- When the expropriation begins, first of all, try to obtain prior compensation for your property. It is allowed by law (although not guaranteed).
- In the course of expropriation, make sure your property is duly evaluated and obtain all the documents envisaged by the expropriation procedure. When the martial law ceases to exist, you will be able to substantiate your right for compensation or restitution.

- Review force majeure clauses in your contracts for incorporation of martial law and, importantly, the causal link. Your counterparty may abuse such clauses in order not to fulfill its obligations. Proper assessment of such clauses is necessary irrespective of whether you are considering to invoke the force majeure or your counterparty has done so.
- Similarly, careful review of the insurance policies may be necessary to assess whether they remain effective during the martial law.
- Use SMS notification service to be alert of potential expropriation of your real estate. With its help, you will immediately receive a message notifying you of changes in the immovable property registry.
- Mind that your employees may be engaged in labour duties for the defense purposes. Such persons cannot be dismissed. Mobilization, call for military training and drills are also possible. However, they are possible also beyond the martial law.
- When facing any issues arising out of the martial law, do know your rights well including how they are limited. It is important to understand where the line is in order not to cross it: during the martial law, sanctions for certain types of crimes are more serious (sometimes considerably more serious). Moreover, some procedural guarantees may be unavailable in the course of the criminal investigations. In particular, certain investigative actions (e.g. searches or detentions) may be authorized directly by the prosecutor, rather than by a court.



OUR CONTACTS

This newsletter should not be used as an instruction for taking legal advice in any particular case. If you have any questions, you are welcome to contact:

Dmytro Marchukov

PARTNER

Dmytro.Marchukov@integrites.com

