

PROTECTION OF THE RIGHTS OF INDIVIDUAL DEPOSITORS IN UKRAINIAN BANKING MARKET

Sophia Lobozyńska*

Abstract:

The complex analysis of deposit operations of individuals in Ukraine was realized. The national legal norms of protection the rights of investors – individuals were investigated. Also the proposals were developed for the further improvement of the protection system of individual depositor rights in Ukraine by improving banking regulation and supervision, the increase of the financial sustainability of the Deposit Guarantee Fund and financial literacy of citizens.

Key words: system of deposit guarantee, Deposit Guarantee Fund, the protection of investors, bankruptcy of banks, financial instability.

JEL Class: E21, G21, D18.

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INTRODUCTION

For a long time Ukraine has been in a difficult economic situation, which includes all the features of a systemic financial crisis. The structural elements of this crisis are the currency crisis, the debt crisis and the banking crisis. Particular danger arises from the banking crisis, which significantly reduces the level of public confidence in the banking system and leads to the reduction of the resource base of domestic banks, which has an obvious negative effect on the investment opportunities of financial intermediaries and deepens recession in the country's economy. The recovery of the depositors' confidence

* Professor of Bank and Insurance Business Department of Ivan Franko L'viv National University, 79008, Lviv, Svoboda boulevard, 18, Ukraine, e-mail: lobozyńska.sophia@yahoo.com.

in the banking system is possible through construction of the effective system for protection of individual investors who are the main source of forming the financial resources for domestic investments into the development of the real sector of Ukraine. For this reason, improving the mechanism of the depositor rights protection gains special importance and should be included in the strategic objectives of the current economic policy of Ukraine.

The main purpose of research is realization of complex analysis of the protection of depositors' rights in Ukraine. The objectives of the study are to analyze the deposit market in Ukraine, the legislation of protect the financial rights of individual depositors in Ukrainian banking market and financial stability of DGF. Based on the identified problems in the protection of depositors the recommendations will be proposed to solve them.

1. THE ANALYSIS OF THE UKRAINIAN DEPOSIT MARKET

The essence of the economic processes in the deposit market should be viewed through the prism of customer perception of the processes taking place in the banking sector and, taking into account the macroeconomic policy of the country. According to the data of the public survey carried out by the Democratic Initiatives Foundation named by Kucheriv and by the Center of Research named by Rozumkov as of June 2015 the 76.5% of Ukrainians completely or partially do not trust the domestic banks [Akimova and Komarov, retrieved: 11.12.2015] It is difficult to trust the banking system, if during 2014–2015 the number of banks in Ukraine has decreased from 180 to 120 banks (as of 01.01.2016), 64 banks are under liquidation, three banks are run by the interim administration [*Banking statistics...*]. The activity of the National Bank of Ukraine aimed at the withdrawal of insolvent banks from the market has been associated with the complicated economic and political situation and significant violations of the applicable laws regulating the prevention and counteraction of legalization of proceeds from crime, as well as the improper level of capitalization of those banking institutions and the low level of their financial stability.

The Ukrainian Deposit market immediately responded to the systemic crisis in the economy. During 2010–2015 the volume of deposits invested in the banking system in the national currency while transferring them into the dollar equivalent shows a significant outflow of money from deposit accounts (Fig. 1).

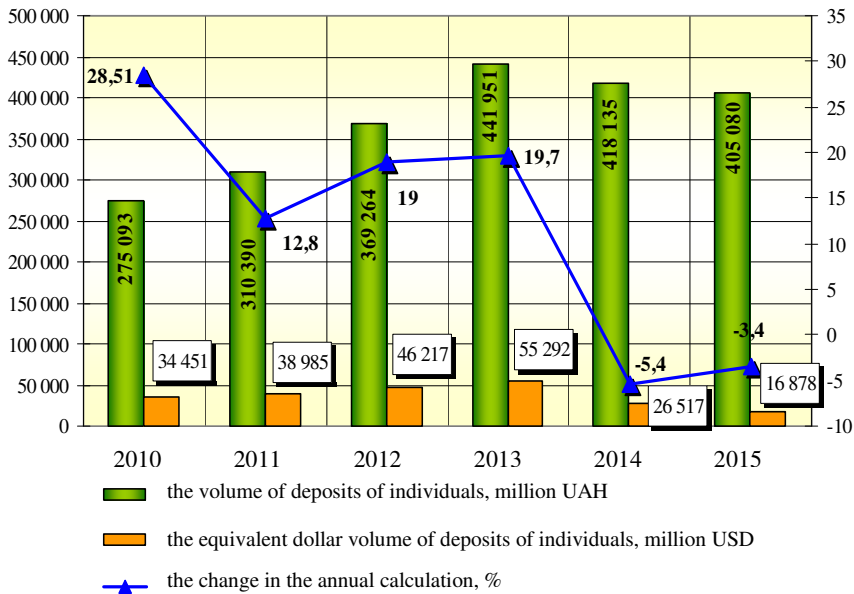


Figure 1. The volume of deposits of individuals 2010–2015y. in Ukraine

Source: own elaboration based on data from Nation Bank of Ukraine (Annual Report), (Banking statistics), www.bank.gov.ua/files/stat.pdf.

The significant decline of hryvnia deposits took place in March and April 2014 in the context of the political instability and the annexation of the Crimea. In September 2014 due to the existence of a threat of Russian troops full-scale military invasion following the events in Ilovaysk the second wave of deposit outflow was observed. In 2014 the change in the annual calculation of the volume of deposits acquired a negative value and amounted (–5.4%) [Banking statistics...]. The reason for the mass withdrawal of deposits in 2015 was the sharp devaluation of the hryvnia. Hryvnia has devaluated by more than 50%. The rate of decline in the volume of deposits in 2015 was (–3.4%) [Banking statistics...]. Translating total volume of deposits in dollar terms, we can state that during the 2014–2015y. the volume of deposits in the banking system has decreased by approximately 70%.

The outflow of deposits in the national and foreign currencies is shown in Fig. 2. In particular, deposits in the national currency decreased during the 2014–2015 by 26 billion USD (76%) and deposits in foreign currency decreased by 13.8 billion USD (60%) [Banking statistics...]. Overall the resource base of domestic banks was withdrawn by 39.8 billion USD, which

entering the money market deepened a currency crisis and increased a pressure on the money supply at the same time speeding up inflation processes.

Significantly worse situation was observed with foreign currency deposits, which during the 2014–2015 were only removed by individuals month by month. One important reason for a massive withdrawal was the implementation of currency restrictions that were introduced by the NBU to reduce pressure on the national currency.

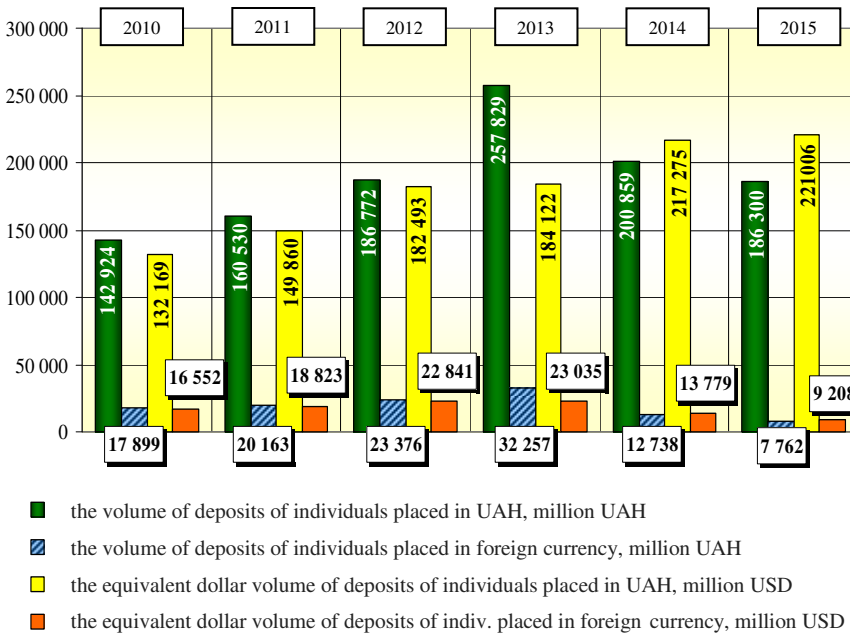


Figure 2. The distribution of individuals' deposits by currencies, investments 2010–2015 in Ukraine

Source: own elaboration based on data from Nation Bank of Ukraine (Annual Report), (Banking statistics), www.bank.gov.ua/files/stat.pdf.

Such situation has significantly complicated the process of obtaining foreign currency by investors and significantly reduced the level of confidence in the stability of banks. The National Bank of Ukraine set foreign currency limits on cash withdrawals from foreign currency deposits for no more than 20 000 UAH (equivalent to 840 dollars USA) per day [On regulation of the situation on monetary and exchange market of Ukraine..., confirmed by resolution of the NBU on 03.09.2015 №5813].

This situation has led to a considerable fall in the competitiveness index of the banking system of Ukraine, as evidenced by published rating indicators which were determined on the base of monitoring results of the banking systems of the world in the Global Competitive Reporting (Tab. 1).

Table 1. Competitiveness Index of the country 2015–2016,
Category 8 „Financial market development” Section B „Trustworthiness and confidence”
(1 – „Soundness of bank”, 2 – „Regulation of securities exchanges”, 3 – „Legal rights index”)

Indicators/countries	Indices of reliability and trust in the banking system		
	Ranking position among 140 countries following the index 1. „Soundness of bank” (the highest score for this indicator – 7)	Ranking position among 140 countries following the index 2. „Regulation of securities exchanges” (the highest score for this indicator – 7)	Ranking position among 140 countries following the index 3. „Legal rights index” (the highest score for this indicator – 12)
Poland	47 (5,4)	97 (4,6)	24 (7,0)
Russia	115 (4,0)	48 (3,7)	80 (4,0)
Ukraine	140 (2,6)	135 (2,5)	17 (8,0)

Source: *World Economic Forum: Global Competitiveness Report, Competitiveness Ranking 2015*, <http://reports.weforum.org/globalcompetitiveness-report-2015-2016/competitivenessrankings/#indicatorId=GCI.B.08>.

The most problematic situation is observed with the banking system stability, Ukraine took the lowest ranking positions – 140 of 140 countries. Such situation was directly influenced by the unfavorable environment of banks activity, including a significant drop in GDP, high inflation, the lack of solvent borrowers, the outflow of foreign investment, currency devaluation, unresolved political and military conflicts. Banks also have own significant problems, including insufficient level of equity, toxic assets, excessive amounts of risky operations with low allocations to the insurance reserves for active operations, corruption actions of banks top management, the limited diversification of assets and liquidation of structural units in annexed Crimea and in the East of the country, where military operations are conducted. Undoubtedly, it shook the stability of the banking institutions. Banks are already declaring significant losses during last two years.

Ukraine has the low rating position with the index 2 „Regulation of securities exchanges” Ukraine ranked 135 out of 140. This indicates that there are significant problems with the regulation and supervision from the NBU side. This can also include issues not regulated by law, namely the inadequacy of early response to the problematic banks, opaque mechanisms of distribution of refinancing resources, significant gaps in the procedure of removing the bank

from the market, lack of the regulator's transparency before the society, inadequate control over bank transactions with insiders, the possibility of avoiding liability for the actions that lead to the insolvency of the bank by the owners of substantial share, bank managers and other persons connected with the bank.

The high evaluation given by the international experts towards system of investors and creditors protection in Ukraine adds optimism – 17 place out of 140 possible. This position is associated with hard work on improving the existing legislation on the individual investors protection due to the numerous bank failures and the low level of confidence in the domestic banking system.

2. THE ESTIMATION OF INDIVIDUAL DEPOSITORS RIGHTS PROTECTION SYSTEM IN UKRAINIAN BANKING MARKET

Establishment of the system of customers – bank depositors rights defense has started in 1998 with signing of the Decree of President of Ukraine „On Measures to Protect the Rights of Physical Persons as Depositors of Commercial Banks in Ukraine”. This document regulated the order of creating the Deposit Guarantee Fund, forming and usage of its costs, and also it prescribed that in case of inaccessibility of deposit in a commercial bank an individual is guaranteed the deposit compensation including interest in amount of deposit but not more than 500 UAH.

The next stage of the Fund development was adoption by the Ukrainian Parliament of The Law of Ukraine „On the individual deposit guarantee Fund” on 20th of September 2001 year (DGF) which increased the size of the ensured amount of compensation to 150 000 UAH.

In current conditions the activity of the Deposit Guarantee Fund is determined by The Law of Ukraine „On Deposit Guarantee”, which was implemented on the 22nd of September 2012 year. The rate of the ensured amount of compensation was raised to 200 000 UAH. The indicated sum includes costs in amount of deposit and interests on the date which goes before recognition of a bank as bankrupt. The rate of ensured amount of compensation considerably exceeds the rate of average deposit – 7708 UAH as of 01.10.2015 and protects interests of 98,8% of investors [*Statistics of DGF...*]. It is reasonable to notice that the rate of the ensured amount of compensation of deposits exceeds the primary rate of ensured amount (500 UAH) by 400 times and was increased by 11 times from the beginning of existence of the system of ensuring individuals deposits.

According to Paragraph 3 of The Law the legal status of The Fund is determined as organization which carries out the special functions in the sphere of ensuring the individuals deposits and pulling out bankrupted banks from the market. According to the valid legal basis The Fund executes following

functions: regulating banks participation in a system of ensuring; accumulating costs for deposits compensation payments; investing in the governmental securities; pulling out of the market the bankrupted banks in the way of establishment a temporary administration and liquidation of banks; informing community about the operation of the system of individual deposits guarantee.

The insurance of individual deposits is the most important function of DGF. Forming of financial resources according to Paragraph 19 of the Law is made out of following sources: primary and periodical meetings of participants of DGF; income from DGF's investing of costs into governmental securities; income from interest accrued on balances in the accounts of DGF, opened at the National Bank; penalty (fine, interest fine) charged to participants of DGF; other sources not prohibited by law.

Financial resources of DGF as of 01.01.2016 amounted to 14084.4 million UAH, which is 2788,6 million UAH less than in 2015. The largest items filling DGF's financial resources are the revenues from the payment of a regular fee of DGF members and income from investments in government securities. As of 01.01.2015 such gains were respectively 3268.2 billion UAH and 871.8 billion UAH [*Annual report of DGF on 2014 year...*].

The innovative approach in the accumulation of financial resources to DGF contains improved calculation order, calculation and payment of the regular fee by the members of the Fund. In particular, it is expected that there will be the differentiation between the quarterly payments and the accrual basis by deposit currency at an annual rate, which is set at 0.5 percent of the base charges for the deposits in national currency and 0.8 percent of the base charges for deposits in foreign currency.

During the calculation of the regular charge the risk degree of deposit policy of each particular bank was taken into consideration owing to the introduction of the diversification coefficients in the calculation. According to Regulations on order of the calculation, charging and payment of fees to the Deposit Guarantee Fund approved by the Executive Directorate of the DGF 02.07.2012., №1, the following diversification coefficients of the Fund members are established:

- size of the weighted average interest rate on deposits of individuals involved;
- correlation of the arithmetic average of deposit balances of individuals to the arithmetic average of balances of liabilities (thrift of bank);
- correlation of deposits of individuals in foreign currency to individual deposits in national currency.

The base for the calculation of the regular fee is determined as the arithmetic average for the calculated period sum of daily balances on accounts of deposits accounting and of interest on them.

Table 2. The calculation of the regular fee in the form of differentiated fee

At excess of weighted average interest rate over the weighted average interest rate on the banking system (K1)	Proportion of individuals' deposits to liabilities (K2)	Proportion of deposits in national and foreign currencies (K3)
until 1 point – 1,0	less than 35% – 1,0	less than 100% – 1,0
from 1–2 points – 1,1	35%–40% – 1, 1	100%–150% – 1,1
from 2–3 points – 1,2	40%–45 % – 1,2	150%–200% – 1,2
from 3–4 points – 1,3	45%–50% – 1.3	200%–250% – 1,3
more than 4 points – 1,4	more than 50% – 1,4	more than 250% 1,4

Source: Regulations on the calculation, charging and payment of fees to the Deposit Guarantee Fund, www.fg.gov.ua.htm.

Calculation of the regular fee considering the risk level:

$$RF \equiv \frac{Bz \times C_1 \times K1 \times K2 + B\theta \times C2 \times K1 \times K2 \times K3}{Kn} \times n$$

where:

- RF – regular fee
- Bz – hryvnia calculation base;
- $B\theta$ – foreign currency calculation base;
- $C1$ – annual interest rate charges on deposits in national currency;
- $C2$ – annual interest rate charges on deposits in foreign currency;
- Kn – number of calendar days in the current year;
- n – number of calendar days in the reporting quarter.

Due to the deterioration of the financial market conditions in 2014 and liquidity crisis the financial stability of the DGF was significantly reduced. In order to perform its functions the DGF needed additional financial content. According to those conditions the Parliament of Ukraine decreed the Law of Ukraine No 1586-VII of July 04, 2014 On the Amendment of Certain Legislative Acts of Ukraine Regarding Prevention of Adverse Impact on Stability of the Banking System, which among others brought amendments to the Law of Ukraine On Households Deposit Guarantee System. In particular, it was determined by law that in case of risk of shortage of costs in the Fund, on condition that in the Law on State Budget of Ukraine for the current year there are no budget allocations of necessary funds amount, the Fund submits to the Ministry of Finance of Ukraine application for credit (contribution to non-repayable basis) on the cost of the state budget with an indication of its size.

Thus, the Fund substantially simplified the mechanism for obtaining financial assistance from the state budget to reimburse funds to depositors of insolvent banks.

During 2014 the Fund's total expenses amounted to 15 121.3 million UAH including payment of guaranteed amount to depositors of banks which amounted to 8459.5 million UAH. An increase was caused by the taking out 33 banks from the market during 2014. This led to attraction of additional resources for adequate compensation to depositors of insolvent banks which comprised 20315.1 million UAH, of which loans of the NBU – 10197.5 million UAH, loans in exchange for government bonds in promissory note of the DGF – 10117.6 million UAH [*Annual report of DGF on 2014 year...*].

The situation became more critical in 2015, when the funds paid to depositors of insolvent banks as of 01.01.2016 increased 7.8 times and amounted to 65929.8 million UAH [*Statistics of DGF...*]. The financial support of the DGF by the Ministry of Finance of Ukraine in 2015 made up about 21.5 billion USD for compensation to depositors of bankrupt banks [Ochimovska, retrieved: 30.11.2015].

However, the situation with financial stability of the DGF remains difficult as to finance its expenditure fund received short-term loans from the NBU, some of which will have to be paid off already in 2016. Instead, the amount of regular income from banks to the Fund is about 3.2–3.5 million annually. The forming of resources for the payment of obligations to the NBU remains an unsolved problem for the Fund. The obligation for paying off borrowings to the Ministry of Finance is coming in 2025–2029, for this period interest payments are also due, so there is time to develop an action plan to attract alternative sources of accumulation of financial resources of the Fund, but work in this area is lagging behind.

Additional filling to financial resources of the DFG could become the financial assistance of the World Bank. The World Bank's Board of Executive Directors in September approved the project „Ukraine – Second Programmatic Financial Sector Development Policy Loan”. According to this project Ukraine received the IBRD loan in the amount of US \$500.0 million for 17 years with grace 6 years [*Ukraine – Second Programmatic Financial...*].

The main objective of the project is to support the authorities in: strengthening the operational, financial and regulatory capacity of the Deposit Guarantee Fund for the resolution of insolvent banks; improving the solvency of the banking system through implementation of bank recapitalization and restructuring plans and timely enforcement action; and strengthening the legal and institutional framework to improve the resilience and efficiency of the banking system.

Under these conditions, when the DGF will be unable to fulfill their obligation of paying guaranteed amount of customers deposits of failed banks,

the DGF has opportunity to apply for financial assistance from the Ukrainian Government and receive funds in the respective amount of the project WB. Thus, the main credit conditions for DGF (amount and term lending) DGF will determine by Ministry of Finance of Ukraine.

During the period under review deposits amounting to 200 000 UAH were paid off by the Fund in full, but paying off of deposits to individuals over 200 000 thousands is realized problematically because it is connected to the process of the assets sale of problematic banks, and it's implementation is extremely difficult and requires significant improvement. The most valuable assets of problematic banks are ensured by the NBU. The possibility of selling them requires permission of the NBU, as well as initial sales price, which under the law must be established by the NBU. The interaction of the National Bank and the DGF is not yet established, there is no mechanism for cooperation. Among those, about 70% of assets – are loans, which are difficult to sell and to evaluate. The problem of assessing the collateral for loans which were provided to the liquidated banks to the real sector of the economy remains unsolved. Therefore, the accumulation of sale of assets of problematic banks is scarce, and returning of deposits to big depositors is an uncertain prospect in conditions of insufficiency of financial resources of the DGF.

Responding to the challenges of potential threats to the depositor rights protection of bankrupt banks The Parliament of Ukraine on 16.07.2015 adopted The Law No. 629-19 On Amendments to Certain Legal Acts of Ukraine in Respect of the Improvement of the Individual Deposit Guarantee System and the Resolution of Insolvent Banks [*On the Amendment of Certain Legislative Acts of Ukraine... Regarding Prevention of Adverse Impact on Stability of the Banking System: The Law of Ukraine from 16.07.2015 № 629-19*]. This law contains provisions on improvement of the system of protection of individual deposits and increases the institutional capacity of the Deposit Guarantee Fund. It was the result of joint work of the Ministry of Finance of Ukraine, the National Bank, the DGF, the International Monetary Fund, European Bank for Reconstruction and Development and World Bank.

The Law is aimed at increasing the of protection of individual deposits and providing a quick access to them in the event that the bank became insolvent and is being taken out from the market. The Law estimates the following standards [*On the Amendment of Certain Legislative Acts of Ukraine Regarding Prevention of Adverse Impact on Stability of the Banking System: The Law of Ukraine from 16.07.2015 № 629-19*]:

1. reduction of the period of time required for the taking out of the insolvent bank from the market from three months to one;
2. gaining access by depositors to their deposits within 20 days from the moment of the taking out of the bank from the market, despite the end of the contract term of the deposit agreement, and for the banks with a client base

that exceeds 500 000 accounts – not later than 30th working day since the introduction of the interim administration;

3. increasing the transparency of the procedure of bank liquidation and allowing competent DGF employee to monitor database of investors and banking operations at the early stages of problem arising in the bank;

4. implementation of the system of qualification for investors in insolvent banks to eliminate the possibility of selling the bank to financial fraudsters;

5. introduction of centralized auctions for selling assets of banks to improve the transparency of the auctions;

6. specification of the conditions under which the bank must be classified as insolvent and improvement of procedure of the taking out of insolvent banks from the market;

7. limitation of possibilities for big depositors to abuse the deposit guarantee system by splitting their deposits;

8. change the order of creditor satisfaction by including the related parties by the bank in last turn.

These rules should be implemented full-scale in 2016. Compliance to the regulations of this legislative act will allow to promote level of supervision over problem banks, to minimize losses from the taking out insolvent bank of the banking market and will significantly help to increase the level of protection of investors – individuals, including individuals – entrepreneurs, compensation to which will be made in accordance with applicable legislation from 01.07.2017.

CONCLUSIONS

Thus, after examining the state of affairs in the consumer deposit market, we can conclude that Ukraine has proper legal framework for protection of the rights of investors – individuals. In particular, it has been substantially further developed in recent years in order to combat the growing threats that have emerged in the banking sector. However, confidence of individuals in the banking system is extremely low, considering the significant negative performance of the banks.

Despite the large number of bankrupt banks during 2014–2015 (65 banks), the state represented by the Individual Deposit Guarantee Fund has properly carried out payments to depositors of problematic banks within the established limit – 200 000 UAH. However, savings of depositors in foreign currency deposits and deposits over 200 000 UAH were not protected primarily for two reasons: a significant depreciation of the national currency against foreign currencies, which was due to significant deficiencies of the exchange rate policy and the lack of the DGF revenues from the sale of assets of the liquidated banks. These revenues are scarce, so the payments of compensation to depositors

(recognized by the current legislation as fourth stage of the creditors) more than the guaranteed amount were not realized. The anxiety is caused by the financial instability of the DGF which puts under question the possibility of fulfillment of obligations by the Fund to investors even within the amount guaranteed by law in the future.

To increase the level of protection of individuals – depositors of banks and restore confidence in the banking system it is necessary to make a number of improvements in the banking system:

1) to increase the quality of banking regulation and supervision; to update the methodology for determining the bank systemic risk and operational risk assessment methodology; to improve the system of early response of identification of weaknesses in the banking activity; strengthen criminal and administrative liability of banking supervision inspectors, temporary administrators and liquidators of banks for improper fulfillment of their duties;

2) to establish cooperation between the NBU, the DGF and independent auditors who certify financial statements of a bank. In particular, auditors should promptly detect fraud in the system of financial accounting and inform controlling and security forces. Instead, the NBU and the DGF should immediately respond to messages and decide on punishment for the unfair banks. The NBU and the DGF must especially carefully interact on the introduction of an interim administration in the bank, on the conclusion and checking of a base of individual deposits, on description of available liquid assets, on operation research of owners and insiders; and in assessing the liquidation property of the bank;

3) it is advisable to establish in the structure of the DGF the financial investigations department, whose activities would be geared towards a thorough examination of the bank transactions with owners and insiders, as well as establishing a degree of responsibility of the top management responsible for financial stability of the bank. Furthermore it is necessary to launch anti-corruption program inside the Deposit Guarantee Fund of individuals in order to timely expose illegal actions of employees of the Fund;

4) to increase financial stability of the DGF in the way of organizing an effective operations with assets of liquidated banks. The sale of such assets was performed not transparently, under the closed door, there was a significant number of abuses. From 2015 the electronic platforms were approved, but there are the facts of refusal of accreditation of a number of retail outlets and the facts of implementing shadow schemes by them. The Security Service of Ukraine initiated four investigations [Ochimovska, retrieved: 30.11.2015]. It is advisable to immediately launch the activities of the consolidated office for sale of the assets of liquidated banks. This system will allow promoting transparency and reduce the cost of managing such assets. Within the structure of the consolidated office the departments should be set up according to asset

categories, including departments that will work with consumer loans, mortgages, corporate lending, collateral for loans, unserviceable assets. This greatly reduces the risk of corruption by the authorized person, as the powers and responsibilities will be distributed among many experts;

5) it is necessary to raise the level of financial literacy of citizens. The results of the research „The survey aimed at the assessment of the level of knowledge of Ukrainian consumers of the system of the individual deposits guarantee”, commissioned by the DGF and with the support of the Program of financial sector development (USAID/FINREP-II), the level of awareness of the respondents can be described as incomplete and superficial: only 19% of respondents were able to correctly answer 10 questions of the test out of 17. The audience generally feels the lack of information about the system of guaranteeing deposits – over 70% of respondents state the lack of knowledge and desire to learn more about the system of guarantee [The report on the results of the research „The survey aimed at the assessment of the level of knowledge of Ukrainian consumers of the system of the individual deposits guarantee”]. Considering the mentioned above it is appropriate to introduce the training courses on the basics of financial security, on the legal framework to protect consumers of financial services, on the methods of risk diversification of investments, online consultations of investors. It is necessary to expand the content of Internet pages of the DGF concerning the procedure of the sale of liquidation assets of problematic banks, the results of corruption investigations, the opportunities for qualified advice for the wide range of citizens.

The offered ways of improving the system of rights protection of investors – individuals are able to restore a consumer confidence in the banking service market and create a critical mass of domestic investors, which would stimulate economic recovery in Ukraine.

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OCHRONA PRAW DEPONENTÓW – OSÓB FIZYCZNYCH NA UKRAIŃSKIM RYNKU BANKOWYM

Przeprowadzono kompleksową analizę operacji depozytowych dla osób fizycznych na Ukrainie. Zbadano prawo krajowe ochrony praw deponentów – osób fizycznych. Opracowano sugestie dalszego udoskonalenia systemu ochrony praw deponentów – osób fizycznych na Ukrainie poprzez poprawę regulacji i nadzoru bankowego, stabilności finansowej Funduszu gwarantowania depozytów osób fizycznych i wiedzy finansowej ludności.

Słowa kluczowe: system gwarancji depozytów, Fundusz gwarantowania depozytów, ochrona praw deponentów, upadłość banków, niestabilność finansowa.