

NON-RESIDENT INVESTOR MANUAL

1. ENTERING THE MARKET

In Ukraine transactions on purchasing securities of Ukrainian issuers by non-resident are performed in the national currency – UAH – via the resident being a professional participant of securities market. Investment certificates of venture fund may be purchased directly via the Asset Management Company. Thus, in order to enter the market, investor not being a resident needs to do the following:

- I. To open a special securities account with the Custodian, where such securities are going to be kept. Any financial institution (for example, the bank) having respective license issued by the State Securities and Exchange Committee may be the Custodian.

In order to open the **account in securities**, the investor not being a resident needs to provide the following documents:

- application for opening the account in securities executed on the applicant's letterhead with the list of the attached documents;
- copy of the document certifying the registration of the legal entity in the country of its location (State Registration Certificate, legalized extract from the trade, judicial or bank register on the registration of the legal entity, etc.), certified by the notary in compliance with the effective laws of Ukraine;
- questionnaire of the account in securities; in sub-clauses 8 and 9 of the questionnaire the data on the administrators of the account of the legal entity; director of the legal entity or other person acting on the basis of the power of attorney issued by the director may be the administrator of the account, signatures of all administrators of the account must obligatory be present in the card with the samples of signatures;
- power of attorney issued and signed by the director of the legal entity and certified by the seal of that legal entity if the administrator of the account is not the director of the legal entity;
the card with the samples of signatures of the administrators of the account in securities and the impression of the seal (if it is available) certified by the notary. (The card must obligatory include the signatures of the administrators of the account specified in the questionnaire of the account in securities);
- copies of the legalized documents confirming the powers of the persons authorized to act in the name of the legal entity without the power of attorney;
- copy of the document or extract from the document on appointing for the position the persons authorized to act in the name of the legal entity without the power of attorney;
- original or duly authorized copy of the document that contains information related to the details of the bank where the current account is opened and the number of that account.

If the investor not being a resident is a resident of the country, which the government of Ukraine has concluded agreement on the **avoidance of double taxation** with, he needs (for his own benefit) to provide the Bank with the original of the certificate or its copy certified by the notary stating that non-resident is the resident of the country, which such agreement has been concluded with, and the taxpayer in compliance with the laws of this country and other documents if it is envisaged in the international treaty.

- ❖ The Bank provides the copies of such certificate to the issuers or their authorized persons on paying income to investment certificates of (the interest) or share (corporate) funds.

Officially¹

Certificate is issued by the competent body of respective country which is defined by the international treaty or in compliance with the laws of this country. Certificate which is issued in the form approved in compliance with the laws of respective country must be duly legalized, translated in compliance with the laws of Ukraine and must contain the following information:

- Full name of the non-resident legal entity or individual;
- Confirmation that non-resident is a person subject to the provisions of the international treaty on the avoidance of double taxation, i.e. according to the laws of respective country is a tax subject in that country on the basis of permanent location (place of abode) or on another basis;
- Name of the competent body, surname and signature of the authorized person of the competent body that certified the confirmation;
- Certificate issue date.

Certificate shall be valid within one calendar year in which it was issued.

!

Thus, each year non-resident needs to renew the certificate that states that he is a resident of the country, which the government of Ukraine has concluded the agreement on the avoidance of double taxation with.

At present the Treaty is effective in Ukraine that was made between the Government of the Union of the Soviet Social Republics and the Government of the Republic of Cyprus on the avoidance of double taxation of income and property (according to Article 7 of the Law of Ukraine "On the Legal Succession" Ukraine applies USSR agreements on the avoidance of double taxation which shall be valid till new agreements come into force).

II. To open with the Bank a current investment account in Ukrainian monetary unit (UAH) and a current investment account in foreign currency of investment.

In order to open an **account** with the Bank, the investor not being a resident needs to provide the following list of documents:

- Application for opening a current account in the form set by the instruction of the National Bank of Ukraine (the NBU). In the application in the line "Additional Information" it must be obligatory specified that the account is opened for the purpose of investing into Ukraine;
- Copy of the legalized or apostilized extract from the trade, bank or court register or registration certificate issued by the local authorities of a foreign company on the registration of a legal entity certified by the notary;
- Copy of the legalized or apostilized power of attorney issued in the name of the person authorized to open and administer the account certified by the notary;
- Card with the samples of signature of the investor not being resident certified by the notary and prepared in compliance with the requirements of the instruction of the National Bank of Ukraine concerning opening the account.

According to the effective laws of Ukraine, the banks may require from their client additional documents and data necessary for identifying the person, nature of the operation and financial condition.

III. To sign the General Agreement with the Bank (securities trader) on servicing for a fee at the over-the-counter market (hereinafter – 'the Agreement');

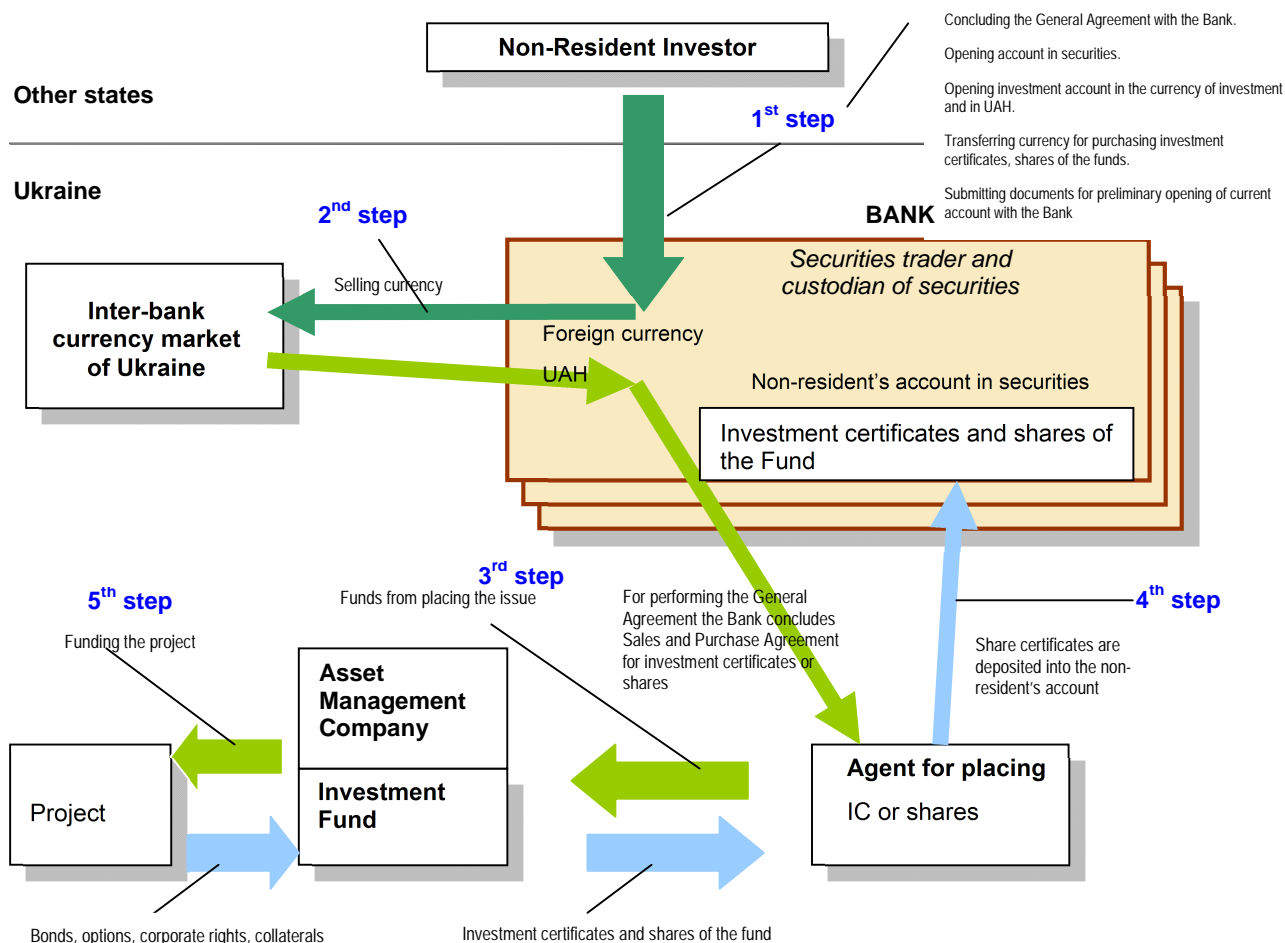
2. PURCHASING INVESTMENT CERTIFICATES OR SHARES

In order to purchase investment certificates or shares, the issuers of which are share or corporate funds, the investor not being a resident must:

¹ Decree of the Cabinet of Ministers of Ukraine No. 470 dated 06.05.01 "On Approving the Order of Exempting from (Decreasing) Taxes Charged on the Income Originating from Ukraine in Compliance with the International Treaties of Ukraine on the Avoidance of Double Taxation".

- provide the Bank as securities trader with the application for purchasing investment certificates or shares of the issuer(s) of Ukraine in compliance with the Agreement; in case of purchasing investment certificates the application may be submitted to the asset management company of respective fund;
 - transfer foreign currency for purchasing investment certificates or shares according to the details specified in the Agreement;
 - provide the Bank as custodian of securities with the DEPO-order for the transfer of investment certificates or shares into his account in securities.
- ❖ The Bank as a participant of the inter-bank currency market shall, upon the order of the investor not being a resident, sell foreign currency of the investor not being a resident at the rate specified in the application for the sale of currency and shall credit the earned funds in UAH into the non-resident's current account with the Bank.
 - ❖ The Bank as securities trader shall, upon non-resident's application and for the performance of the Agreement, conclude Sales and Purchase Agreement for purchasing investment certificates or shares and shall make settlements.
 - ❖ The Bank as custodian of securities, having received the counter DEPO-order from the seller of investment certificates or shares, shall credit them into the account in securities of the investor not being a resident.
 - ❖ The Bank as custodian of securities shall provide the investor with the statement from the investor's account in securities confirming the crediting of investment certificates or shares into the investor's account. The statement confirms the right of title to the purchased investment certificates of the Fund.

Picture 1. The Mechanism of Cooperation of the Non-Resident Investor with the Bank in the Process of Investing into CII Securities



3. SELLING INVESTMENT CERTIFICATES, SHARES OF THE FUND

In case of making decision on selling investment certificates or shares at the market of Ukraine, the investor not being a resident must provide the Bank with:

- the application given to the Bank as securities trader for the sale of investment certificates or shares of the investment funds;

...IF THE SALE IS PERFORMED FOR FOREIGN CURRENCY

- ❖ If investment certificates or shares are sold to the resident (non-issuer of such securities) for foreign currency and the Bank as securities trader acts on the basis of the Trust Deed, the resident-purchaser shall obtain individual license of the National Bank of Ukraine for paying for currency valuables beyond the territory of Ukraine. (In order to obtain the license, the resident needs to prepare a set of documents in compliance with the NBU requirements).

... IF THE SALE IS PERFORMED FOR UAH

- ❖ If investment certificates are sold to the resident (non-issuer) for UAH, the investor not being a resident may direct the funds onto reinvestment or may convert UAH into foreign currency for getting the investment back (see clause “Repatriation of the Income and Investment”).

In both cases above the investor not being a resident must:

- Provide the Bank as custodian of securities with the DEPO-order for the transfer of securities from his account in securities into the purchaser’s account;
- ❖ the Bank as custodian of securities, having received the counter DEPO-order from the purchaser of securities, shall write them off from the account in securities of the investor not being a resident.

4. TAXATION AND EARNING INCOME, REPAYMENT OF INVESTMENT CERTIFICATES, SHARES OF THE FUND

Earning Income (Paying Dividends)

The issuer of securities or the Payment Agent authorized by the issuer when paying such income **withholds and pays to the budget the tax** in compliance with the effective laws of Ukraine and the regulations of the international treaties with the countries, which the government of Ukraine has concluded agreements on the avoidance of double taxation with,

- ❖ The dividends on the investment certificates or shares of the investment funds of non-residents from the countries, which Ukraine **has not** concluded agreements on the avoidance of double taxation with, or in cases envisaged by the aforementioned agreements (the regulatory basis is provided in the appendix) are withheld at the rate of **15%**.
- ❖ In cases envisaged by the Decree of the Cabinet of Ministers No. 470 dated 6.05.2005 – at the rate in compliance with the agreement on the avoidance of double taxation (at the rate of 0% for the residents of Cyprus).
- ❖ Taxes are charged the same way on the income earned by non-resident during the sale of investment certificate or shares of the investment funds.
- ❖ The Payment agent transfers the balance of the income of the investor not being a resident into the account opened with the Bank for accounting funds in UAH of the investor not being a resident.

The investor not being a resident may direct the funds onto reinvestment or may convert UAH in foreign currency to get the investment back (see the clause “Repatriation of the Income and Investment”).

5. REPATRIATION OF THE INCOME AND INVESTMENT

In order to buy foreign currency and to transfer it beyond the territory of Ukraine, the investor not being a resident must provide the Bank with the following documents:

- Application for the purchase of foreign currency;
- Payment order for the transfer of the amount in UAH into the Bank account for purchasing foreign currency in the amount specified in the application;
- Application for the transfer with specifying the amount in foreign currency to be repatriated, details of the non-resident, to whom the repatriated income earned from owning investment certificates or shares of the funds is returned, including details of the account in the foreign bank, onto which the funds must be transferred; (in detail – in the Decree of the Management Board of the National Bank of Ukraine No. 280 dated 10.08.2005, is attached hereto).

Important: today all buyers of foreign currency, being legal entities, transfer 0.2% of UAH equivalent of the purchased currency to the Pension Fund of Ukraine (PFU) when buying foreign currency².

With the UAH amount available with the non-resident and with the known market rate of foreign currency, the amount of funds to be acquired taking account of the deduction of obligatory payment is defined according to the following formula:

$$\text{Amount in foreign currency} = \text{Amount in UAH} / (1.002 * \text{Purchase rate})$$

- ❖ The Bank has already got other documents necessary for purchasing currency – (1) fee agreement with the Bank certified by the notary, sales and purchase agreement(s) for securities certified by the notary concluded by the Bank for performing the fee agreement and the custodian’s statement from the account in securities of the investor not being a resident; (2) statements (certificates) of the Bank on the actual incoming of funds in Ukraine certified by the seal affixed by the Bank and signature put by the head (deputy head) of currency division of the Bank.
- If the investor not being resident registered a foreign investment in compliance with the effective laws of Ukraine, the Bank must also be provided with the copy of investment notice on making foreign investment certified by the notary, if there is no registration, the investor’s written confirmation of the absence of such registration is provided (NBU letter No. 13-124/4696-9871 dated 05.10.2005);
- ❖ Based on the aforementioned documents the Bank as a participant of the inter-bank currency market shall (1) buy foreign currency in the amount specified in the application of the investor not being a resident, (2) transfer 0.2% of the amount spent for buying currency to the PFU and (3) transfer funds in the currency to the investor not being a resident according to the details also specified in the application.

Picture 2. The Mechanism of Cooperation of the Non-Resident Investor with the Bank in the Process of Repatriation of Income and/or Invested Capital in UAH when Investing into Debt Instruments of Ukraine

