



**European Bank**  
for Reconstruction and Development

# Law on Financial Restructuring: Lessons and Experience

## Session 1

### *First Year of Operation - Annual Report*

26 April 2018

Kyiv, Ukraine

**Gordon Johnson**  
President  
EMA Global

**Yulia Kostetska**  
Head, Secretariat for  
Financial Restructuring



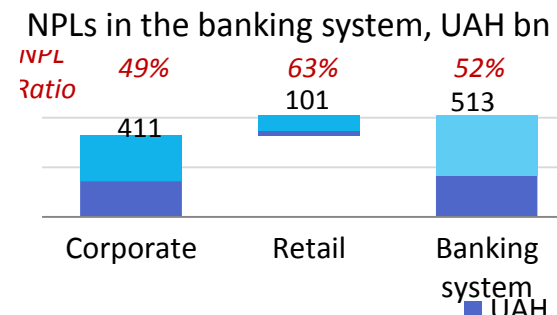
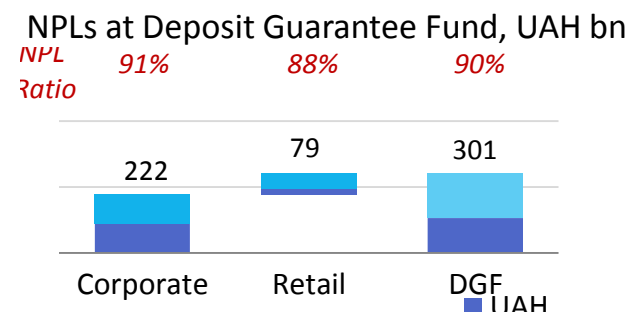
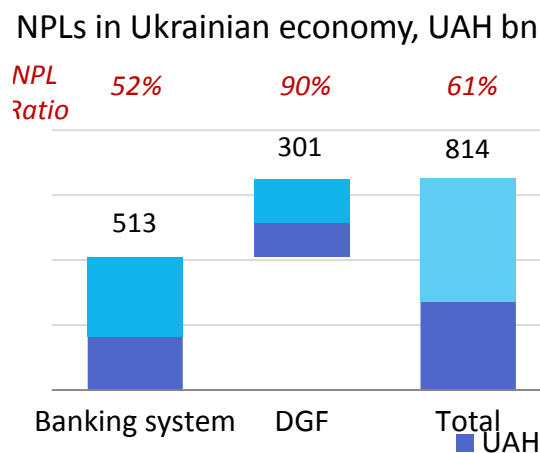
**SECRETARIAT**  
FINANCIAL RESTRUCTURING

# Financial Crisis Context for LFR

- **Perfect storm** – banking, currency, sovereign debt crises
- **Failed banks** – from 2 (2013) to 90 in about 3 years, including nationalizing Privat.
- **Escalating NPLs** – from 11.1% (2011) to current est. 58% (2017)
  - In mid-2015, only 8% of corporate NPLs were reported as performing; 41% watch. NPLs have continued to deteriorate
  - NPL stock is now approximately 34% of GDP
  - About 3/4ths of NPLs are in State hands – DGF and state banks
  - DGF NPLs account for about 37% of total NPLs (NPL ratio = 90%)
- **Legal tools for resolution were inadequate** – captive bankruptcy system, no formal process for restructuring, and unfriendly tax environment.

# Ukraine NPL stock is close to 34% of GDP

- NPLs are concentrated in corporate loans (large exposures) and in foreign currency
- Dominant part of retail NPLs is mortgages in FX, their resolution is blocked by foreclosure moratorium (introduced in June 2014 with an open date)
- About three quarters of total NPLs are “in state hands” (DGF and state banks)



Source: DGF, NBU Financial Stability Report, WB estimates  
 NPLs in the banking system are estimated based on Comprehensive Assessment results (Diagnostics)

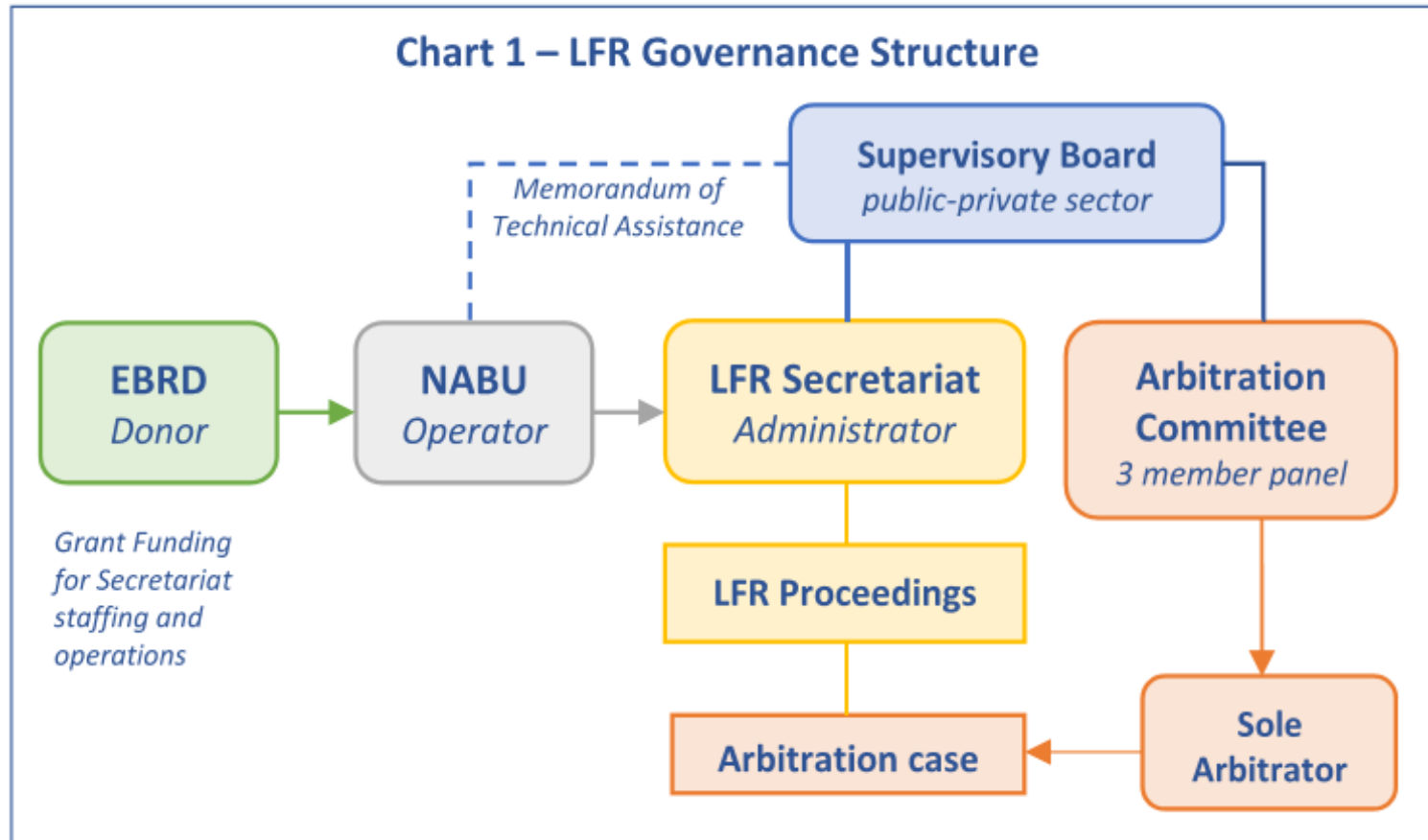
# LFR Framework and Goals

- **Law on Financial Restructuring** No. 1414-VIII (dated 14 June 2016) entered into force 19 October 2016 (effective until 19 October 2019)
- Supported by **Amendments to the Tax Code** to introduce tax incentives and draft amendments to the **Bankruptcy Law** (Law 8060)
- **Regulatory Framework**
  - Supervisory Board Regulation
  - Secretariat Regulation
  - Arbitration Rules
  - Independent Expert Criteria and Business Review Report
- Key **objectives** of the Law:
  - stimulate recovery of business of financially distressed debtors
  - preserve financial system stability
  - enable debtors to access new financing

# Key Features & Benefits

- **Eligible Participants** – any viable Ukrainian commercial undertaking (group)
- **Access to the Process** – financial institution with 50% of FI debts
- **Fully Consensual process** – parties must consent to the process/arbitration
- **Administrative procedure (non-court)** - with arbitration resolution mechanism
- **Cooperative**
  - Cooperation among creditors is required
  - Debtor cooperation and disclosure is mandatory
- **Efficient** – 90 days and can be extended by maximum 90 days = 180 days
- **Moratorium** on enforcement actions (with opt out for Standstill)
- **Flexible restructuring** - accommodates widest range of options
- **Majority rule voting mechanism** – over 66<sup>2/3</sup><sup>rd</sup> approval (less than 100%)
- **Tax exemptions** – applicable only under the LFR procedure
- **Transaction safeguards** to protect decisions and restructuring

# Governance Structure of LFR Process



# Secretariat Role and Functions

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- Handle all administrative and procedural issues
- Technical and administrative support to Arbitration Committee
- Report progress to Supervisory Board
- Maintain file storage (SB documents), LFR main and arbitration cases
- File and distribute information to participants of the LFR proceedings
- Elaborate recommendations to carry out LFR procedures, including recommending documents for use in the process
- Develop and manage the official website of the Secretariat to maintain information required by Law, including a list of arbitrators;
- Process all applications and other documents required by the process;
- Maintain strict confidentiality of documents under its control.

# Secretariat – First Year Achievements

- **Launch on 3 April 2017**
- Finalized internal procedures and documents
  - **Operational Plan** for NABU, Secretariat & Arbitration Cmte
  - **Model forms** for main and arbitration proceedings
  - **Guidelines** for Financial Restructuring

## By the numbers:

- **12 cases** filed (9 concluded) to date
- **8 Seminars/events** - sponsors NABU, EY, Law Firms, other
- **190 letters** – written to potential customers
- **11 recommendations** - made to Supervisory Board for improvements
- **5 Articles** written



# LFR proceedings - statistics (1)

1. Economic sector	Restructured Debt (in USD)	% by cat.	# of Cases
Agriculture	577,627	0.09%	1
<b>Metallurgical production</b>	197,242,862	<b>30.95%</b>	1
Mining industry	13,936,102	2.19%	1
<b>Real estate operations</b>	237,029,634	<b>37.19%</b>	5
<b>Retail trade</b>	135,112,503	<b>21.20%</b>	2
Sale of cars	53,427,935	8.38%	2
<b>Total</b>	<b>637,326,667</b>	<b>100.0%</b>	<b>12</b>

2. Procedures	Debt (in USD)	% by cat.	# of Cases
Active procedures	332,355,367	52.15%	3
Concluded procedures	304,971,300	47.85%	9
<b>Total</b>	<b>637,326,667</b>	<b>100%</b>	<b>12</b>

Source: Secretariat

# LFR proceedings - statistics (2)

3. Size	Debt (in USD)	% by cat.	# of Cases
small	577,627	0.09%	1
medium	75,870,000	11.90%	4
large	560.890,000	88.01%	7
<b>Total</b>	<b>637,326,667</b>	<b>100.0%</b>	<b>12</b>

4. Financial institution	Debt (in USD)	% by cat.	# of Cases
Financial companies	577,627	0.09%	1
Commercial Banks	136,339,889	21.39%	3
State Banks	500,409,151	78.52%	8
<b>Total</b>	<b>637,326,667</b>	<b>100%</b>	<b>12</b>

5. Restructuring Approaches (concluded cases)	Debt (in USD)	% by cat.	# of Cases
A. Partial repayment (asset sale/leaseback) with debt rescheduling	154,704,219	50.73%	4
B. Debt rescheduling	150,267,081	49.27%	5
<b>Total</b>	<b>637,326,667</b>	<b>100%</b>	<b>9</b>

Source: Secretariat

# Observations about the LFR Procedure

- **Terms of the procedure are acceptable and executable.**
  - Preparatory actions should be taken before filing documents
  - Main conditions should be generally agreed before
- **Process is efficient and flexible based on needs of the case** – 3 cases were completed in less than 30 days, 1 under 7 weeks. 2-3 extended past 90 days.
- **Inter-bank cooperation culture remains weak.** (no multi-creditor cases)
- **Public and private sector banks require higher use.** (1 state, 3 commercial)
- **Creditors mainly rescheduling with some assets sales; no debt forgiveness.**
- **Total debt rescheduling to date is UAH 16.7 billion** - about 2.7% corp. NPLs
  - However, 30% NPLs are in Crimea; 40% are considered unscrupulous borrowers;
  - Of remaining UAH 150 billion, 11% has been restructured.
- **Accommodates complex debtor group restructurings** (e.g., ViDi Group)
  - can be jointly administered
- **Good alternative to sanitation** under Bankruptcy Law

# Available resources

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- **Secretariat website:** <https://fr.org.ua/>
- **List of the ongoing cases** – notification of commencement
- **Law, Regulations, Arbitration Rules**
- **List of Arbitrators**
- **Guide on Financial Restructuring**
- **Model Forms** - main and arbitration proceedings
- **Additional materials** - about events and cases

# ***Case Study: ViDi Group Restructuring***

*(panel discussion)*

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**Moderator: Gordon W. Johnson**, President, EMA Global

**Panel:**

- **Dimitry Oliynyk**, CRO, JSC Oschadbank – Bank
- **Tim Kogan**, CEO, BPU – Financial Advisors
- **Dmitro Anufriev**, Partner, Deloitte – Independent Expert
- **Iryna Pokanay**, Partner, Asters Law Firm – Legal Advisors