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Legal status of entities providing consumer financial services: reforming the institutional structure of the market

Правовий статус суб'єктів надання споживчих фінансових послуг: реформування інституційної структури ринку

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Abstract

The article analyzes the peculiarities of the legal status of banks, credit unions, pawnshops, financial companies, leasing companies, insurers, non-state pension funds, payment service providers. It also offers a description of credit organizations under national and foreign legislation.
Attention is focused on legislative changes to the principles of activity of financial intermediaries associated with the adoption of the Law of Ukraine «On Financial Services and Financial Companies». At the same time, the classification of certain participants in the financial services market to the list of financial intermediaries is criticized. The activity of financial organizations in attracting financial resources and placing them on their own behalf is called financial intermediation, taking into account its economic essence. Based on a generalized analysis of the specifics of the legal status of these subjects, it is proposed under providers of consumer financial services to understand financial organizations, and in cases specified by law, other legal entities that, on the basis of a license, provide for fee services regarding the use of financial means for the purpose of obtaining profit or other property benefit by consumers or third parties to meet their personal, family needs, not related to related to entrepreneurial or independent professional activity.

Key words: bank, financial company, credit union, insurance company, pawnshop.

Анотація

В статті аналізуються особливості правового статусу банків, кредитних спілок, ломбардів, фінансових компаній, лізингових компаній, страховиків, недержавних пенсійних фондів, надавачів платіжних послуг. Також пропонується характеристика кредитних організацій за національним та зарубіжним законодавством.
Увага акцентується на законодавчих змінах засад діяльності фінансових посередників, пов'язаних із прийняттям Закону України «Про фінансові послуги та фінансові компанії». Водночас критикується віднесення до переліку фінансових посередників окремих учасників ринку фінансових послуг. Діяльність фінансових організацій щодо залучення фінансових ресурсів та розміщення їх від власного імені названа фінансовим посередництвом, зважаючи саме на її економічну сутність. На основі узагальненого аналізу особливостей правового статусу цих суб'єктів пропонується під надавачами споживчих фінансових послуг розуміти фінансові організації, а у випадках, визначених законом, інші юридичні особи, які на підставі ліцензії надають за плату послуги щодо використання фінансових засобів з метою отримання прибутку або іншої майнової вигоди споживачами або третіми особами для задоволення їхніх особистих, сімейних потреб, не пов'язаних із здійсненням підприємницької чи незалежної професійної діяльності.

Ключові слова: банк, фінансова компанія, кредитна спілка, страхова компанія, ломбард.

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Introduction

With the development of the national economy, there was a gradual formation of the financial services market, without which the effective functioning of the socially oriented structural and innovative model of the economy is impossible. However, the modernization of this sector of the national economy was negatively affected by the financial and economic crisis, the difficult political situation, and martial law. In the conditions of world globalization processes, one of the strategic tasks of the state should be the further reform of the financial services market in order to establish the sustainable development of the national economy. Maslyaeva K. V. (2009) suggests to improve the definition of the economic and legal category «market» and defines that the market is the sphere of economic relations that arise between the subjects of market relations regarding the manufacture and sale of products, the performance of works and the provision services by agreeing on the price and are regulated by the state.

There are two main models of state regulation of the financial services market: monoregulatory and polyregulatory. Monoregulatory model is the model of a single regulator is typical for Great Britain and France. It is characterized by the functioning of a single body of state power, which regulates the activities of all financial intermediaries without exception, the powers of self-regulatory organizations are limited. The polyregulatory model assumes the presence of several state authorities that regulate the financial services market. In the countries of the polyregulatory system, a system of self-regulatory organizations is developed, including the USA and Ukraine (Yashchyshchak, 2010).

Since 01.07.2020, state regulation of financial services markets is carried out by the National Securities and Stock Market Commission in relation to securities and derivatives markets, professional activities in the securities market and activities in the accumulated pension system, and in relation to other non-bank financial markets services and banking services market - by the National Bank of Ukraine. Therefore, the functions of state regulation of financial services markets are divided between these two authorized bodies.

The market of financial services, according to its purpose, should ensure the movement and redistribution of temporarily free financial resources between business entities, the state and consumers, it performs the role of an intermediary in the movement of funds from their owners to people who need them at the moment (Venetska, 2007). Economists propose to divide the market of financial services into the market of banking services, the market of investment services and the market of insurance services based on the types of services provided (Voitenko, 2011).

Markets of financial services cover the spheres of circulation of financial means as capital. In accordance with Article 1 of the Law of Ukraine «On Financial Services and Financial Companies» (which will be implemented from January 1, 2024) (Law No. 1953-IX, 2021), financial means are funds, bank metals, financial instruments, debt obligations and the right to claim debt, which are not included in financial instruments. For example, money is the object of a wide variety of civil relations, but the subject of regulation of the legislation on financial services is its functioning as capital (it fulfills the functions of preservation, accumulation, multiplication of wealth), and not as payment, determining the measure of the value of other objects civil rights. Such capital is a commodity whose professional sphere of circulation is financial services markets.

There is no single method of structuring the financial services market. The classifications of financial services markets by various criteria offered by economists are quite approximate. Obviously, this is why lawyers try to adopt more simplified approaches as a basis. Thus, in Article 1 of the Law of Ukraine «On Financial Services and State Regulation of Financial Services Markets» (Law No. 2664-III, 2001), financial services markets include professional services in the markets of banking services, insurance services, investment services, capital and other types of markets that ensure the circulation of financial assets. Instead, in Article 1 of the Law of Ukraine «On Financial Services and Financial Companies» (Law No. 1953-IX, 2021), the financial services market is defined as the set of participants in the financial services market and the relationships between them related to the provision and receipt of financial and accompanying services.

This article aims to research the legal status of certain types of financial intermediaries and, based on the identification of common principles and features of their activities, formulate the conceptual concept of providers of consumer financial services.

Literature review

A specific feature of the financial services market that characterizes it as an independent market segment is the mandatory presence of a financial intermediary as a specific subject of the financial services market. General provisions regarding the activities of financial intermediaries were the subject of scientific research by both economists and lawyers (for example, Maslyaeva K. V., Dragan O. V., Reznikova V. V.). Peculiarities of the legal status of individual financial intermediaries were analyzed in the works of such scientists as Bezklubyi I. A., V. I. Borysov, V. I. Vitka, Y. V., Gorbachova O.O., and others. Etymologically, the term «mediation» comes from the English "intermediation", which means the help of a third party (party), connected with others by a relevant agreement (Dragan, 2011). In economic studies, the activity of such organizations as financial intermediaries is revealed through the use of contractual constructions different from intermediary contracts. Financial intermediaries are considered as investment and credit financial institutions that accumulate funds of individual investors and use them for investment or crediting (Uninets-Khodakivska, 2009). For example, Lavryk O. L. (2015) notes that «the degree of development of the financial market is characterized by the number and variety of financial intermediaries, as well as the range of financial services they provide to market participants... the key role in the implementation of intermediary activities on the financial market in Ukraine belongs to banks, and the main services they provide are bank crediting». This understanding of the essence of financial intermediation is established in economic science.

Reflecting the economic essence of the status of financial institutions as financial intermediaries and the characteristics of the main types of activities they are engaged in should have found a certain assessment by lawyers as well. Reznikova V. V. (2011) suggested the definition of the concept of financial intermediation as a professional business activity of attracting and placing funds of individual investors (clients), which involves long-term relations between individual investors and financial intermediaries and, accordingly, the accumulation of assets on the balance sheets of these financial intermediaries, and financial institutions, whose functions consist in the accumulation of funds of citizens and legal entities (individual investors) and their subsequent provision on a commercial basis to the disposal of borrowers, are called financial intermediaries. Analyzing the role of financial intermediaries in the securities market, Dragan O. V. (2011) concludes that it is manifested in the performance of the following main functions: consolidation (accumulation) of savings of individual investors into a single pool and subsequent diversified investment of the accumulated capital in various projects with promising capitalization; increasing the liquidity of the securities market through professional portfolio management of entrusted and purchased assets; ensuring balance in the market through matching the supply and demand for financial resources; redistribution and reduction of financial risks; specification (recognition; consolidation) of property rights of client-trustees.

Methodology

The methodological basis of the research consists of general scientific and special legal methods. The dialectical method accompanied the entire research process and made it possible to consider the trends in the formation of legislative requirements for financial intermediaries as subjects of the provision of financial services, in particular, to analyze the patterns of the development of the principles of activity of financial services market participants and their transformation at certain stages of updating the legislation.

The methods of analysis and synthesis, as well as the logical-semantic method, were used in connection with the formulation of the definition of the concept of providers of consumer financial services. The comparative legal method was used during the analysis of the civil legislation of Ukraine and foreign countries (France, Switzerland, Poland), in particular, about the characteristics of the types of banking activity, banking operations, and the peculiarities of the legal status of the credit organizations and financial companies. In the process of preparing the research, the formal-legal method was used (regarding the analysis of legislative prescriptions that regulate the participation of banks and other financial organizations in contractual obligations to provide financial services), and therefore to formulate the main theoretical provisions and conclusions on problematic issues of the legal status of financial intermediaries in the market of financial services.

Results and discussion

In the context of the adaptation of national civil legislation to the principles of the EU, the

legislative basis for the functioning of the institutional structure of the financial services market is also being gradually updated. The requirements for the functioning of the foundations of consumer financial services are changing. In that way, in the research process, it`s necessary to ascertain which financial intermediaries will have the right to provide financial services to individuals as consumers and specify the types of such services and the requirements to which these entities must respond. Such research will allow analyzing the expedience of relevant legislative changes in Ukraine, incorporating the positive foreign experience in this area and formulating a generalized characterization of financial intermediaries as providers of consumer financial services.

Subjects of the right to carry out financial services operations are defined by Article 5 of the Law of Ukraine «On Financial Services and State Regulation of Financial Services Markets» (Law No. 2664-III, 2001). Financial services are provided by financial institutions, as well as, if it is expressly provided by law, by natural persons - entrepreneurs. The possibility and procedure for providing certain financial services by legal entities that are not financial institutions by their legal status are determined by laws and regulations of state bodies that regulate the activities of financial institutions and financial services markets, issued within their competence. Instead, in Art. 1 of the Law of Ukraine «On Financial Services and Financial Companies» (Law No. 1953-IX, 2021), the approach to determining the requirements for such entities has been changed and the provider of financial services is named a financial institution, and in cases expressly defined by special by law - another legal entity or a branch of a foreign legal entity that has the right to provide financial services in accordance with this Law and special laws. At the same time, natural persons and natural persons - entrepreneurs, along with legal entities, can provide accompanying (auxiliary and intermediary) services.

In Art. 1 of the Law of Ukraine «On Financial Services and Financial Companies» (Law No. 1953-IX, 2021) proposes the definition of a financial institution as a legal entity, the purpose of which is to provide financial services, which, in accordance with the law, provides one or several financial services based on the relevant license issued by the regulator. Providers of accompanying services who do not also provide financial services at the same time, as well as other persons who received a license to provide financial services without acquiring the status of a financial institution, are not financial institutions. Therefore, according to the functional purpose, such participants of the financial services market are more clearly divided as providers of financial and accompanying services. At the same time, the issue of using legal terminology remains debatable. Article 83 of the Civil Code of Ukraine (Code No. 435-IV, 2003) refers to any legal entity as an organization, and distinguishes a partnership and an institution as organizational and legal forms of legal entities under private law. That is, all legal entities are organizations, but some of them can be created in the form of companies, others - institutions. Therefore, the term "institution", guided by the norms of the Civil Code of Ukraine, should also be used in other legislative acts to denote the organizational and legal form of a legal entity. Therefore, for financial organizations, only an institution should act as an organizational and legal form in accordance with the above legislative provisions. Financial institutions include, in particular, banks, credit unions, pawnshops, leasing companies, insurance companies, and others. The largest group among them are banks that are created in the form of a joint-stock company or a cooperative bank. Also, insurance companies, pawnshops, and financial companies are business associations, not institutions. In addition, the very definition of the concept of an institution as an organization created by one or more persons (founders) who do not participate in its management, by combining (separating) their property to achieve the goal determined by the founders, at the expense of this property, does not comply with the principles of functioning of the specified legal entities engaged in financial activities. Borysov V. I. (2016) notes that there are significant differences between the types of financial institutions that are created only in the organizational and legal form established by special legislation, and which can be both non-entrepreneurial and entrepreneurial, public and private legal entities, do not provide an opportunity to recognize the institution as an organizational and legal form of legal entities - participants in the financial services market. In order to avoid inaccuracies in the application of legal terminology, it would be more correct to call legal entities engaged in professional activities related to the circulation of financial assets financial organizations, rather than institutions. Therefore, entities providing financial services (banks, insurance companies, financial companies, etc.) by their legal status are financial organizations under private law, and entities such as the National Bank of Ukraine, the

Individual Deposit Guarantee Fund are financial organizations under public law.

Credit institutions are distinguished among financial institutions. The definition of the term credit organization is contained in Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (Directive 2013/36/EU, 2013) and Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No. 648/2012 (European Union, 2013). So, in accordance with Clause 1, Part 1, Art. 4 of Regulation No. 575/2013, a credit organization is defined as an enterprise whose activity consists in accepting deposits or other refundable assets from an unspecified number of persons and granting loans at its own expense. At the same time, in accordance with paragraph 1 of Article 9 of Directive No. 2013/36/UE, member states are obliged to prohibit individuals or enterprises that are not credit organizations from carrying out activities to attract deposits and other assets on a revolving basis from an undefined circle of persons.

No legislative act in Ukraine contains a list of credit organizations, which also has negative consequences for law enforcement activities. According to Art. 1 of the Law of Ukraine «On Financial Services and Financial Companies» (Law No. 1953-IX, 2021) credit institutions are defined as financial institutions that, in accordance with the law on the activities of the relevant financial institution, have the right to provide financial loans on their own risk. Therefore, they are professionally engaged in the accumulation and redistribution of monetary capital. The difference in the given definitions of a credit organization is the definition of the circle of persons whose assets can be involved on the basis of return: according to the Directive and the Regulation, this is an undefined circle of persons, and the Law does not specify this aspect. Peculiarities of the legal regime of the funds involved, bank metals that can be credited in the future, make it possible to distinguish the specifics of the credit organization from other financial structures and outline its legal status. Those involved on the basis of returnability are invited to consider funds, bank metals, the receipt of which has the consequence of the emergence of a fixed-term debt obligation for the same or greater amount. The Law of Ukraine «On Financial Services and Financial Companies» (Law No. 1953-IX, 2021) does not contain a definition of the concept of a credit institution, however, it is proposed to distinguish the raising of funds by financial institutions as the provision of a financial service and other cases of raising financial assets. In accordance with Article 14, financial institutions also have the right to attract funds from: 1) participants, shareholders, owners of significant participation and affiliated persons of the financial institution - in any form; 2) other providers of financial services - in the form of a loan and/or credit, if there is a right to provide such a financial service as the provision of funds on credit; 3) international financial organizations - in any form; 4) individuals whose requirements are established by the Regulator, and legal entities - in the form of an interest-free loan (revolving financial assistance) or subordinated debt; 5) any persons - by placing emission debt securities, in accordance with the Law of Ukraine «On Capital Markets and Organized Commodity Markets» (Law No. 3480-IV, 2006). 6) any persons - by issuing shares when increasing (decrease) the size of the authorized capital of the joint-stock company; 7) Regulator - in cases provided by law; 8) any persons (including non-residents of Ukraine) - in the form of a charitable contribution, donation, grant, financial assistance, technical assistance - exclusively on an irrevocable basis and in the manner determined by the legislation of Ukraine. Such fundraising is not considered a financial service. This approach is also not without certain drawbacks. For example, financial companies and pawnshops will be able to provide loans at the expense of the funds they received on credit from banks. Such double intermediation between the entity that owns free funds and the entity that needs them to meet consumer or commercial needs will contribute to a significant increase in the interest rate. So, in Ukraine, banks and credit unions have the right to engage in activities related to the attraction of assets as a financial service for the purpose of their further placement through lending. The difference is that banks can attract financial resources from an unspecified range of persons, while restrictions are set for credit unions.

According to article L.511-1 of the Monetary and financial code of France (Legifrance, 2001), credit institutions are enterprises that carry out their activities in their own name and as a professional occupation, in order to attract repayable funds from an unspecified circle of persons mentioned in Article L. 312-2, and the provision of loans mentioned in Article L. 313-1.

Financial companies are legal entities, other than credit organizations, that carry out credit operations for their own account and on their own behalf under the conditions and restrictions determined by their accreditation. They are financial organizations within the meaning of article L.511-21.

According to article L. 311-1 of the Monetary and financial code of France (Legifrance, 2001), banking operations include the raising of funds on the basis of returns from an unspecified circle of persons, credit operations and payment banking services.

In Switzerland, the activities of financial institutions are regulated by the Federal law «On financial institutions» (Federal law No. 954.1, 2018), which in Article 2 defines the entities to which it applies, namely: managers (managers, administrators) of assets, trusts, managers of collective assets, fund management companies, securities firms. According to Article 3, commercial activity within the meaning of this law is granted if there is an independent economic activity aimed at permanent profit. The Federal Council establishes minimum requirements for the organization of financial institutions, taking into account the different business activities and sizes of companies, as well as the risks of financial institutions. However, the effect of this law does not extend to individual entities, in particular, banks whose activities are regulated by the Federal law of Switzerland «On banks and savings banks» (Federal law No. 952.0., 1934). The expression «bank» or «banker» alone or in combination with the words may only be used in the company name, in the description of the commercial purpose and in the estimate for institutions that have received a license from FINMA (the supervisory authority for the Swiss financial market) as a bank.

A bank is anyone who works mainly in the financial sector and: a. accepts deposits from the public of more than 100 million Swiss francs on a commercial basis or publicly recommends itself to do so b. commercially accepts deposits from the public up to 100 million Swiss francs or publicly recommends them and invests or pays interest on these deposits from the public; or c. is largely refinanced from several banks that do not take a significant part in it, for the purpose of financing an unspecified number of people or companies with which it does not in any way form an economic unit on its own account. The types of financial services that are provided in the course of the activity of financial institutions are determined by Federal law of Switzerland «On Financial Services» (Federal law No. 950.1, 2018).

In the Republic of Poland, Law «On banking law» (Law No. 140, 1997) divides types of banking into 2 groups. The purely banking types (of the first group) include those that are carried out on the basis of a license, namely, accepting cash deposits (on demand or time), keeping accounts for these deposits; maintaining other bank accounts, lending, providing and confirming bank guarantees, opening and confirming letters of credit, carrying out bank cash settlements, carrying out other types of activities provided exclusively for the bank in separate acts. The second group includes activities that can be carried out not only by banks, but also by non-banking organizations, if the provisions of individual acts allow them to do so. Such services include, for example, check and promissory note transactions and transactions, the subject of which is a guarantee, provision of payment services and issuance of electronic money, purchase and sale of monetary claims, other.

In Ukraine, among financial institutions, banks and non-bank financial institutions are distinguished, as well as the provision of financial services by legal entities without the status of a financial institution is regulated by separate normative acts. A significant part of consumer financial services is provided by banks. In the Law of Ukraine «On Banks and Banking Activity» (Law No. 2121-III, 2000) (Article 2) a bank is defined as a legal entity that, on the basis of a banking license, has the exclusive right to provide banking services, information about which is entered in the State Register banks. The peculiarity of banking activity is determined by the exclusive right of banks to perform banking services in aggregate, which, in accordance with Article 47 of the Law «On Banks and Banking Activity», include 1) attracting funds and bank metals from an unlimited number of legal entities and individuals into deposits (deposits); 2) opening and maintaining customer current (correspondent) accounts, including bank metals, and escrow accounts; 3) placement of funds and bank metals involved in deposits (deposits), including current accounts, on one's own behalf, on one's own terms and at one's own risk. Bezklubyi I. A. (2006) notes that the peculiarity of financial services with the participation of the bank is that there is a constant redistribution of quite significant funds within this sphere. In connection with this, the question arises

regarding the ratio of private and public interests of the subjects of the relevant relations. The impact of public law norms on bank activity is due to the need to minimize the risks of loss of assets of both bank clients and the bank itself, which in turn affects the stability of the banking system and the economic indicators of the country as a whole.

Currently, the development of the financial market is closely related to the development of financial technologies (FinTech) of financial organizations (Roshylo et al., 2020). Non-banks that provide their services online are gaining considerable popularity in the financial markets. Such digital banks do not have branches, offices, they work with clients remotely, via mobile phones and computers. The first neobanks began to appear in Europe (Great Britain, Germany, France, Finland) in 2015. Famous neobanks in the world are Monzo Bank, Revolut, Roketbank, Atom Bank, Number 26, Nemea, Fidor Bank, Saxo Bank, Sberbank Direct and TVB Direct, Neat, Mondo, Solaris Bank.

Neobanking usually includes such functions as a classic or virtual payment card; mobile deposits; individual payments using phone numbers, e-mails or even identifiers in social networks; mobile budgeting tools and real-time digital technologies.

According to analysts, in the near future more than 99% of transactions will be conducted online (Guba et al., 2019). There are 2 types of neobanks: 1) which independently provide financial services on the basis of a license; 2) cooperate with traditional banks that have a license, receive financial services from them wholesale, so to speak, and then sell them retail (Payments Cards & Mobile, 2018). So, in Ukraine, in 2017, Monobank was created as a Ukrainian internet banking that uses the license of Universal Bank for its work. This digital mobile bank has no branches and provides all services through mobile applications.

Art. 1 of the Law of Ukraine «On Credit Unions» (Law No. 2908-III, 2001) contains a definition of the concept of a credit union as a non-profit organization founded by individuals, trade unions, and their associations on a cooperative basis to meet the needs of its members in mutual lending and provision of financial services at the expense of the combined monetary contributions of the members of the credit union. A credit union is a financial institution, the exclusive type of activity of which is the provision of a list of financial services defined by law. This financial institution accepts introductory and mandatory share and other contributions from union members; provides loans to its members on the terms of their payment, term and security in cash and non-cash form. Farms and private enterprises owned by the members of the credit union can also receive loans on behalf of the members of the credit union. The total amount of funds raised, including credits, cannot exceed 50 percent of the value of the total liabilities and capital of the credit union at the time of attraction.

Non-state pension provision is implemented by pension funds by concluding pension contracts between administrators of pension funds and depositors of such funds; by insurance organizations by concluding lifetime pension insurance contracts with fund participants, insuring the risk of disability or death of a fund participant; by banking institutions by concluding contracts on opening pension deposit accounts for the accumulation of pension savings within the limits of the amount determined for the reimbursement of deposits by the Individual Deposit Guarantee Fund.

The principles of the functioning of non-state pension funds are defined by the Law of Ukraine «On non-state pension provision» (Law No. 1057-IV, 2003). A non-state pension fund (NPF) is a legal entity that has the status of a non-profit organization (non-entrepreneurial company), functions and conducts activities exclusively for the purpose of accumulating pension contributions for the benefit of pension fund participants with further management of pension assets, and also makes pension payments to participants of the specified fund in the manner determined by the laws of Ukraine. In an open pension fund, participants can be any natural persons, regardless of the place and nature of their work, and in a professional pension fund, the founder(s) can be organizations of employers, their associations, associations of citizens, trade unions, their associations or individuals related by the type of their professional activity (occupation), defined in the foundation's charter. Participants of such a fund can be exclusively natural persons related by the type of their professional activity (occupation), defined in the fund charter, as well as natural persons who are employees of employers' organizations, their associations, members or employees of professional unions, their associations that created such a fund. A fund contributor is a person who pays pension contributions for the benefit of a fund participant by transferring funds to the pension fund in accordance with the terms

of the pension contract and the law. These contributors can be the fund participant himself or his wife (husband), children, parents and employer, as well as a professional association of which he is a member. A participant of any NPF can be its depositor at the same time. The amount of pension payments from the National Pension Fund is determined based on the amount of accumulated funds of the participant, which depends on the amount of pension contributions, the period of their accumulation and distributed investment income.

To ensure the legal personality of the non-state pension fund, the council concludes agreements on the administration of the NPF, on the management of the assets of the NPF and on the maintenance of the NPF by the custodian. The administrator of a non-state pension fund can be 1) a legal entity that provides professional services in the administration of the NPF (professional administrator); 2) a legal entity that is the sole founder of a corporate pension fund that has made a decision to independently administer such a fund; 3) asset management company (AMC). A legal entity that intends to carry out activities in the administration of the NPF must obtain a license to carry out activities in the administration of non-state pension funds. The provision of non-state pension fund administration services can only be combined with asset management activities.

The administrator acts on behalf of the pension fund and in the interests of its participants, in particular, he concludes contracts with depositors, ensures the implementation of pension payments to participants. Vitka Y.V. (2010) notes that the legal relationship between the administrator and the NPF contains elements of the civil-law institution of representation, questions the attribution of administration services to financial services and suggests that under «administration» we understand the legal relationship between the NPF and the administrator, which consists in the provision by the administrator for a fee for a set of services for accepting pension contributions, making pension payments, keeping personalized records, organizational, technical and material support for the activity of the board and meetings of the founders of the fund, as well as advertising, agency, accounting, information and explanatory services. It should be agreed that the administrator does not provide a financial service, since the subject of the administration contract is not financial means. The administrator enters into contracts with the contributors and raises their funds on a representative basis for the NPF, and the rights and obligations under the pension contract arise for the NPF, the depositor and the member, and not for the administrator. It is proposed to exclude from the list of financial services the activities of NPF administration, provided for in Article 41 of the Law of Ukraine «On Capital Markets and Organized Commodity Markets» (Law No. 3480-IV, 2006). Instead, the financial service is provided on the basis of the pension contract itself, which is the basis for attracting depositors' funds and, in the future, non-state pension provision of participants.

Gorbachova O. O. (2014) suggests considering the legal nature of the NPF as a special type of legal entity on whose behalf other persons - professional subjects of financial services - act, by exercising the powers of the relevant bodies of the NPF (executive, supervisory, etc.). Since the NPF does not have the right to independently invest pension assets, such services in the interests of NPF participants are provided by the persons who manage them. They can be an asset management company; the bank regarding the assets of the corporate pension fund created by it, if it does not act as the custodian of this fund; the National Bank of Ukraine regarding the assets of the corporate pension fund created by it; a professional administrator who received a license to conduct asset management activities. Asset management of the pension fund is carried out on the basis of a license for carrying out professional activities on the capital markets - asset management activities, which is issued by the National Commission for Securities and the Stock Market in accordance with the procedure established by it. At the expense of pension assets, in respect of which such person is empowered to own, use and dispose with the restrictions established by the contract, he/she can conclude, in particular, contracts for a bank deposit, purchase and sale of real estate, securities, that is, invest them for the purpose of obtaining profit. Separate limitations of the manager's activity are established directly by law. For example, such person on behalf of the pension fund cannot grant a loan or take a loan or credit that is subject to repayment from the fund's pension assets.

However, the system of non-state pension provision may be at risk during a period of prolonged high inflation or a serious financial market crisis, in addition, the risk of the decreasing in the value of pension assets due to objective changes in the financial market rests with the fund participant.

Insurance companies play an important role in the market of financial services, protecting individuals and legal entities from possible losses in the event of insurance events. The basis of special legislation regulating the activities of insurance companies is the Law of Ukraine «On Insurance» (Law No. 1909-IX, 2021). Insurance market participants are insurers, reinsurers and providers of accompanying services in the insurance market, their associations, and clients. An insurer is a financial institution or a branch of a non-resident insurer that has the right to carry out insurance activities on the territory of Ukraine. Insurers in Ukraine are created in the form of a joint-stock company or a company with additional liability. The exclusive type of activity of the insurer is the activity of insurance, including the activity of providing guarantees, and the activity of providing accompanying services in the insurance market. Insurers who carry out life insurance can grant loans to policyholders who have concluded life insurance contracts.

However, to date, the market development is restrained by a number of factors, in particular, a number of insurance companies have problems with solvency and liquidity, there is no clear business model, and the level of risk management and corporate governance is low. All this makes the market opaque and non-competitive.

According to Article 27 of the Law of Ukraine «On Financial Services and Financial Companies» (Law No. 1953-IX, 2021), a financial company is a financial institution that, on the basis of a license, can carry out activities to provide one or more of the following types of financial services: provision of funds on credit; provision of guarantees; factoring; financial leasing; trading in currency values; financial payment services for transferring funds without opening an account and/or acquiring payment instruments. A financial company has the right to acquire (to purchase) rights of claim under contracts for the sale of products (goods, works, services), including contracts for the provision of financial services, as well as manage debt under such contracts.

According to Article 28 of the Law of Ukraine «On Financial Services and Financial Companies» (Law No. 1953-IX, 2021), a pawnshop is a financial institution that, on the basis of a license, has the right to provide individuals with financial services for lending funds secured by property. A pawnshop has the right to provide individuals with the following financial services if they are included in the pawnbroker's license: 1) financial payment services for transferring funds without opening an account and/or acquiring payment instruments; 2) trade in currency values. A legal entity that intends to carry out the activities of a financial company or a pawnshop acquires the status of a financial institution and the right to carry out financial services activities after obtaining the appropriate license. It specifies all financial services that a finance company or a pawnshop is allowed to provide.

A special place among the entities providing financial services to individuals is occupied by a broker /legal entity that is formed and functions in the form of a business partnership and that, in accordance with the established procedure, received a license to carry out professional activities on the stock market (securities market) - securities trading activities/. A broker can conclude a general agreement, commission agreements, and commissions with clients for the provision of services. Economists draw attention to the fact that financial intermediation is significantly different from broker-dealer activity. The peculiarity of the latter is that brokers and dealers do not create their own requirements and obligations, but act on behalf of clients, receiving income in the form of a commission (brokers) or the difference in the purchase and sale rates (dealers). Financial intermediaries operate in the market in a completely different way, on their own behalf, on their own account, creating their own liabilities. In scientific literature, the dealership contract is considered by the legal orientation of the result as a contract on the transfer of property into ownership (Yavorska, 2009). Acting in the interests of individuals on the basis of power of attorney contracts or commissions agreements, the broker provides a legal service, but not a financial one. Financial means are not the material subject of these contracts. Brokerage services consist in the performance of lawful actions of a factual and/or legal nature (according to the broker's sphere of professional activity) (Orzih, 2008). According to Article 44 of the Law of Ukraine «On Capital Markets and Organized Commodity Markets» (Law No. 3480-IV, 2006), brokerage activity is the activity of an investment firm to conclude derivative contracts and perform transactions on financial instruments at the expense and on behalf of clients or at the expense of clients, but on his/her own behalf. The broker performs pre-arranged transactions regarding financial means, i.e. does not make independent decisions, and accordingly does not assume all or part of the

financial risk in relation to contracts concluded with a third party, and this is one of the main goals of the functioning of financial intermediaries.

For individuals, an investment firm can provide a financial service on the basis of a contract for managing a portfolio of financial instruments. The transfer of property into management is a way of transfer by the founder and granting the manager ownership powers over someone else's property, taking into account the restrictions defined by the contract and the law (Tsyura, 2017). Representation also differs from property management in that the representative powers provide for the performance of, as a rule, clearly defined acts, which is not typical of the powers of the property manager, since the essence of management consists in the implementation of any lawful actions necessary for the purpose of trust management, which is not can be determined by an indication of the commission of a certain one-time transaction or a combination of them (Tsyura, 2017). The scope of powers of the manager is based on the presumption of the maximum possible range of powers. The manager has the discretionary nature of powers, which is manifested in the rule, according to which, within the limits defined by law and the contract, the manager independently determines the actions that must be taken to achieve the goal of management. The founder of the administration has no right to interfere in his activities in cases not provided for by the contract, and cannot give him binding instructions (Maidanyk, 2002). The specifics of the manager's powers determine the assignment of part of the risks to him.

In accordance with Article 1 of the Law of Ukraine «On Financial Leasing» (Law No. 1201-IX, 2021), the lessor can be a legal entity that has acquired the right to provide financial leasing services in accordance with the procedure established by law and, on the basis of a financial leasing contract, transfers possession to the lessee and use of the object of financial leasing. Currently, financial leasing services are provided by banks, financial companies that are financial institutions, as well as legal entities that are not financial institutions (leasing companies). The latter must be included in the Register of persons who are not financial institutions, but have the right to provide separate financial services. In order to carry out financial leasing services, it is necessary to obtain a license. The Law on Payment Services defines nine categories of payment service providers, including: banks, payment institutions, postal operators, electronic money institutions, branches of foreign payment institutions, state authorities (under certain conditions). Non-bank providers of payment services (payment institutions, electronic money institutions, postal operators and some other payment service providers) have the opportunity to open payment accounts, to issue payment cards and electronic money (previously such opportunities were available only to banks) for conditions for obtaining a certain authorization.

Conclusions

The presented results of the analysis of the provisions of national and foreign legislation regarding the legal status of banks and other organizations as financial intermediaries testify to the relevance of scientific research on the issue of the legal status of providers of consumer financial services as a basis for changing the relevant legislative norms in order to improve the institutional structure of the financial services market to ensure optimal conditions for implementation by consumers their rights.

The activity of financial organizations in attracting financial resources and placing them on their own behalf is called financial intermediation, taking into account only its economic essence. So, the bank is considered a financial intermediary, as it is engaged in placing the involved financial resources. However, among the providers of financial services there are entities that are not financial intermediaries even by their economic characteristics (for example, leasing companies that are not financial institutions). However, at the same time, the similarity with the activity of financial intermediaries is, in particular, in the possibility of providing leasing services at the expense of borrowed funds.

The article analyzes legislative norms and scientific positions regarding the characteristics of financial intermediaries and other participants in civil relations as subjects of providing financial services to individuals. It is suggested that the ***providers of consumer financial services*** should be understood as financial organizations, and in cases specified by law, other legal entities that, on the basis of a license, provide for a fee services regarding the use of financial means for the purpose of obtaining profit or other property benefit by consumers or third parties for the satisfaction of their personal, family needs, not related to entrepreneurial or independent professional activity.

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