

REGULATORY UPDATE: NSSMC has simplified the procedure for identifying non-residents – there is no longer a need for the client's physical presence in Ukraine

NSSMC has improved the procedure for financial monitoring National Securities and Stock Market Commission Decision "On Amendments to the Regulation on Financial Monitoring by Subjects of Primary Financial Monitoring, State Regulation and Supervision of whose Activities is Performed by the National Securities and Stock Market Commission" dated 18.10.2022 No. 1254 (<https://ips.ligazakon.net/document/view/re38691>)

With the decision of 18.10.2022 No. 1254, the National Securities and Stock Market Commission of Ukraine made changes to the *Regulation on the implementation of financial monitoring by primary financial monitoring entities, the state regulation and supervision of whose activities is carried out by the National Commission for Securities and the Stock Market* (https://ips.ligazakon.net/document/view/re36154?an=1&ed=2021_03_11).

In particular, it is determined that a responsible employee, an employee of the subject of primary financial monitoring, involved in the conduct of primary financial monitoring, a natural person who provides agency services on the basis of a mandate contract for the provision of such services concluded with the administrator of a non-state pension fund cannot be a citizen the place of registration of whom is the aggressor state, which is determined by the Resolution of the Verkhovna Rada dated 27.01.2015 No. 129 VIII "On the Appeal of the Verkhovna Rada of Ukraine to the United Nations, the European Parliament, the Parliamentary Assembly of the Council of Europe, the NATO Parliamentary Assembly, the OSCE Parliamentary Assembly, of the Parliamentary Assembly of GUAM, national parliaments of the countries of the world on the recognition of the Russian Federation as an aggressor state", and/or the Republic of Belarus (https://ips.ligazakon.net/document/view/t150129?ed=2015_01_27).

In addition, the Regulation is supplemented by provisions, according to which persons who conduct clearing activities, on clearing sub-accounts that provide for collective accounting of clients and counterparties of the clearing participant, identify the person on whose behalf or in whose interest the financial transaction is conducted, establish its ultimate beneficial owner or establish a beneficiary for a financial transaction by using **any of the following methods**:

- receiving information/data from the client (client representative) - clearing participant;
- receiving information/data from operators of organised markets.

An **addition to the list of methods of verification of the client - natural person and natural person - representative of the client by the subject of primary financial monitoring in case of remote establishment of business relations** is also provided for. Namely, **the new methods are**:

- receiving an electronic copy of an e-passport / e-passport for traveling abroad / e-passport for permanent residence / e-passport for temporary residence, generated by means of the [Diia Portal](https://diia.gov.ua) (<https://diia.gov.ua>) with the imposition of a remote qualified electronic signature "Diia.Signature" ("Diia ID") the identity and the qualified electronic seal of the technical administrator of the Diia Portal with the appropriate qualified electronic time stamp, which will correspond to the date of the verification of the identity by the subject of the primary financial monitoring;
- taking a photo of the person being verified with their own identification document (pages/sides containing the photo of the owner) in such a way that the photo image makes it possible to clearly recognise the person and the details of the identification document (including the photo and identification data contained on such a page /side of the identification document). **This method of remote verification can be used by the subject of primary financial monitoring only when establishing business relations with non-residents.**

The decision has been registered with the Ministry of Justice on **November 2, 2022 under No. 1355/38691 and takes effect from the day of its official publication**. Note that some changes were made to this decision by the decision of the National Securities and Stock Market Commission dated 07.11.2022 N 1323 "On Amendments to the Decision of the National Securities and Stock Market Commission dated October 18, 2022 No. 1254" (https://ips.ligazakon.net/document/view/re38731?ed=2022_11_07).