



# Assessment of Multifamily Building Management in Ukraine

## Analytical Report

IN PARTNERSHIP WITH



Schweizerische Eidgenossenschaft  
Confédération suisse  
Confederazione Svizzera  
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2121 Pennsylvania Avenue, N.W.

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This report was commissioned by IFC through its Ukraine Residential Energy Efficiency advisory project, implemented with the support of Switzerland. The Project promotes energy efficiency in the residential sector and drives housing reform in Ukraine.

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This report assesses the implementation of housing management sector reform in Ukraine. It examines progress on achieving the goals and objectives of housing policy reform and identifies trends and prospects for its further development.

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For questions about the report, please contact:

**Ukrainian Residential Energy Efficiency Project**

**IFC Representative Office in Ukraine**

1 Dniproviskiy Descent, 3rd floor

Kyiv, 01010, Ukraine

Tel.: +38 (044) 490 64 00

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## Abbreviations

|                |   |
|----------------|---|
| <b>BC</b>      | Building cooperative (an obsolete legal entity established in the Soviet era that maintained multifamily buildings)   |
| <b>CMU</b>     | Cabinet of Ministers of Ukraine   |
| <b>EEF</b>     | Energy Efficiency Fund, a state institution founded in accordance with the Law of Ukraine “On the Energy Efficiency Fund”   |
| <b>EU</b>      | European Union  |
| <b>HM</b>      | Housing management  |
| <b>HOA</b>     | Homeowners Association in Multifamily Buildings in Ukraine  |
| <b>IE</b>      | Individual entrepreneur   |
| <b>IFC</b>     | International Finance Corporation   |
| <b>IFI</b>     | International finance institution   |
| <b>MFB</b>     | Multifamily buildings   |
| <b>NAAU</b>    | National Accreditation Agency of Ukraine  |
| <b>SAEE</b>    | State Agency on Energy Efficiency and Energy Saving of Ukraine  |
| <b>SCC Tax</b> | Single Social Contribution Tax  |
| <b>UREEP</b>   | Ukraine Residential Energy Efficiency Project (Phase III) implemented in 2018–21 by the International Finance Corporation (IFC) with financial support from Switzerland |

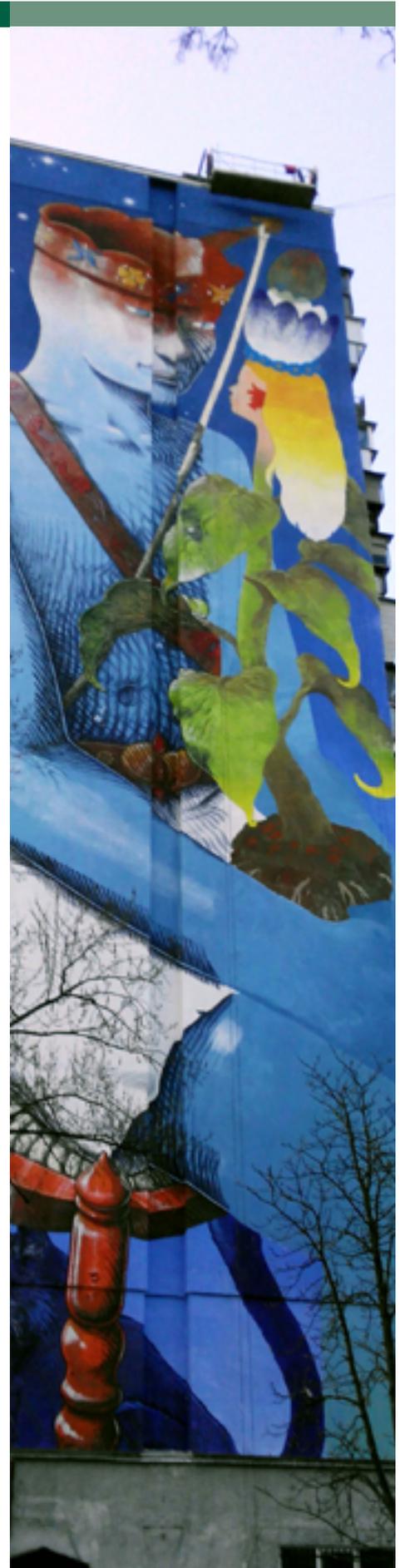
*Note: All dollar amounts are U.S. dollars unless otherwise indicated.*

# Executive Summary

## Introduction

This report aims to assess the status of implementation of the housing management reform in Ukraine. During 2015–17, several key laws were adopted to transform and modernize the housing sector, including the management and maintenance of multifamily buildings in the country. The report assesses the changes in the last five years, thus providing a snapshot of the current situation. The report does not offer policy recommendations. It presents the state of play in the development and maturity of the housing management market while revealing outstanding issues requiring further attention.

The assessment is based on the review and analysis of publicly available information and a series of interviews conducted with central and local government representatives, key market players (homeowner' associations (HOA) and housing manager associations), and expert community during 2019–20. The report will be useful for government agencies involved in and responsible for Ukraine's housing management issues. It will also be of interest to other market players, such as housing management service providers, homeowner associations, and relevant expert community. Lastly, the international donor community might find the information valuable in view of planning further support to Ukraine in the area of housing management.



## Background

Ukraine has made commitments in the field of energy efficiency according to the Energy Community Treaty<sup>1</sup> and European Union Association Agreement between the European Union (EU), European Atomic Energy Community (Euratom), Ukraine and the EU's member states. One of the pillars was to bring high heat energy consumption in the Ukrainian residential sector in line with EU consumption levels.

This was the much-needed push for the reform of the residential sector, especially in the area of management of multifamily buildings (MFBs) and utility services market. The reform aimed to achieve the following key goals:

- High-quality management and maintenance of multifamily buildings by apartment co-owners to achieve comfortable and safe living standards;
- An adequate system of housing management service provisions in the residential sector — high-quality housing management service providers that offer good value for money to apartment owners.

The following objectives were set to achieve the goals of the reform:

- **Creating a responsible homeowner-consumer of housing management services**, which entails providing apartment owners with the knowledge and tools to effectively manage their homes, understand their rights, independently select housing management service providers, and choose their preferred terms of contractual relations.
- **Building the supply of housing management service provisions that will eventually lead to demonopolizing the housing management services market.** This will create equal requirements and a level playing field for market entry to ensure a competitive environment and an improved quality of service.
- **Improving the energy efficiency of residential buildings** by creating appropriate preconditions for the implementation of EE measures, including a special state support mechanism to stimulate energy efficiency in the residential sector.

Although initial attempts to reform the housing sector were made in 1992 (adoption of the Law of Ukraine "On Privatization of State Housing Stock" and subsequent privatization of apartments), as of early 2015, management of multifamily buildings still largely followed the obsolete system of a planned economy.

The restart of the reforms in 2015 was triggered by the adoption of the new version of the Law of Ukraine On Peculiarities of Exercising Ownership Right in Multifamily Building and by the adoption of the Law of Ukraine "On Housing and Communal Services" in 2017. Enactment of these laws created a new legislative framework that unlocked opportunities for the formation of market relations. Thus, the co-owners received effective tools for managing common property in multifamily buildings and the right to choose the form of managing their dwellings. The laws established housing management market regulations and determined the legal status of housing managers, creating a supply of new service on the market.

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<sup>1</sup> Law of Ukraine of 15 December 2010 № 2787-VI "On Ratification of the Protocol on the Accession of Ukraine to the Energy Community".

## Key findings

### Creation of a responsible homeowner: HOAs grow, albeit the trend is slowing down

Since 2015, significant progress has been made on creating a responsible co-owner of a multifamily building - a consumer of housing management and utility services. According to data of the Ministry of Communities and Territories Development of Ukraine, there were about 180 thousand multifamily buildings in Ukraine as of December 2019.

Of these buildings, 18 percent of co-owners have self-organized and created homeowner associations (HOAs). There are three reasons for homeowner's associations to be critical and central elements of effective housing management. HOAs demonstrate the highest effectiveness as

- (a) a tool of joint ownership management in MFBs,
- (b) decision making for the majority of MFBs, and
- (c) the beneficiaries of energy efficiency project financing. Unlike HOAs,

Unorganized owners of apartments have difficulty making decisions about managing their buildings, hiring quality housing managers, or protecting their rights. Thus, HOAs generate demand for the consumption of quality housing and communal services. Homeowners now independently make all decisions regarding the management and maintenance of their premises, including the selection of housing management service providers.

According to data of the Ministry of Communities and Territories Development of Ukraine, the number of HOAs increased from 15,000 to 33,000 between 2015 and 2019 (from 8 percent to 18 percent of the total number of multifamily buildings). Since 2017, the growth of HOAs has somewhat slowed compared to 2015–17. Given the lack of significant legislative factors that could slow down the creation of HOAs, one may assume that subjective factors influence the process. Thus, the introduction of housing reform provided an opportunity and impetus for active residents to organize and create HOAs in their buildings. This trend was seen during 2015–17. However, introducing legal procedures for creating HOAs and decision-making in MFBs has not sufficiently induced many co-owners to take responsibility for managing their buildings. To encourage co-owners to self-organize and create HOAs, the state or local self-governments may create additional incentives (such as programs of support for HOAs).

## Many homeowners independently selected housing management service providers

According to the Law “On Peculiarities of Exercising the Right of Ownership in MFB,” co-owners may choose one of several forms of housing management:

1. Self-government — establishing a legal entity in the residential building is not required; all decisions on housing management are made at co-owner meetings. This form is the least expensive for co-owners and convenient for residential buildings with few apartments.
2. Delegation of housing management to HOA requires the legal establishment of an HOA, the election of its governing bodies (such as the board, audit committee), and the statute's approval. An HOA is an effective form of decision-making in MFBs but is more resource-consuming for co-owners.
3. The hiring of a professional housing manager allows co-owners to have a housing management professional (legal entity or private entrepreneur) who will provide services in MFBs. It is resource-consuming for co-owners to pay the cost of the housing manager's services compared to the previous two forms of management. However, this form has several advantages. The professional housing manager can ensure the proper level of service quality and ensure safety in the MFBs.

The above forms of housing management are not mutually exclusive. The establishment of HOA in the building does not preclude the conclusion of an agreement with housing managers.

According to the Laws of Ukraine “On Peculiarities of Exercising Ownership Rights in MFB” and “On Housing and Communal Services,” homeowners were supposed to choose housing management service providers on their own, and many did. For example, as of January 2020, 8 percent of multifamily buildings selected their preferred housing manager to service their buildings. Many buildings, however, opted to choose their housing manager through a specially organized bidding process managed by several municipality authorities across the country. One-quarter of multifamily buildings chose their housing management service providers this way. This shows that moving from a centrally planned to a housing management system is gradually gaining momentum, but challenges remain. There is still some way to go in terms of shifting the mentality of many homeowners from “somebody will fix it for me” to “I will choose who will fix it and how.” This transition is yet to fully materialize.

The Ministry of Communities and Territories Development of Ukraine is responding to homeowner inertia by proposing amendments to the Law “On Housing and Communal Services”. This envisions municipalities organizing bids of building management services by May 1, 2021, for those multifamily buildings that have not formed HOAs or selected their preferred housing management service provider by January 1, 2021. The current version of the law did not envision this approach. These and other amendments remain under discussion at the time of the publishing of this report (November 2020).

While this top-down approach does not appear to correspond to the spirit of the reform, it follows a similar path to those in other post-Soviet countries. For example, Lithuania's relevant reforms were implemented 15 years earlier than in Ukraine; however, co-owners of about 50 percent of multifamily buildings did not organize and did not decide how to manage their buildings.

## Building a supply of professional housing management service on the market

In Ukraine, there is a variety of entities that provide housing management services. These are:

- Communal maintenance companies and their successors—municipal housing management companies
- Housing management companies affiliated with construction companies
- Independent housing managers (legal entities, private entrepreneurs)
- Private entrepreneurs who provide some housing management services but who do not meet the legal requirements for housing managers
- Associations of HOAs to which HOAs have fully or partially delegated housing management functions

Not all the above-mentioned entities can legally be referred to as “housing managers.” In particular, associations of HOAs, private entrepreneurs who provide limited housing management services, communal building maintenance companies, and companies affiliated with construction companies, are not considered housing managers. This is because they do not comply with the mandatory requirements for a housing manager as envisaged by the Laws “On Peculiarities of Exercising Ownership Rights in MFBs” and “On Housing and Communal Services.” Thus, the housing manager must employ certified specialists to provide a specific scope of services under the terms of a model agreement. Therefore, the enforcement tools envisaged in legislation to ensure the quality and safety of housing management services and consumer rights protection do not apply to these types of housing management service providers. This prevents the co-owners of MFBs from protecting their rights in cases of fraud or negligence.



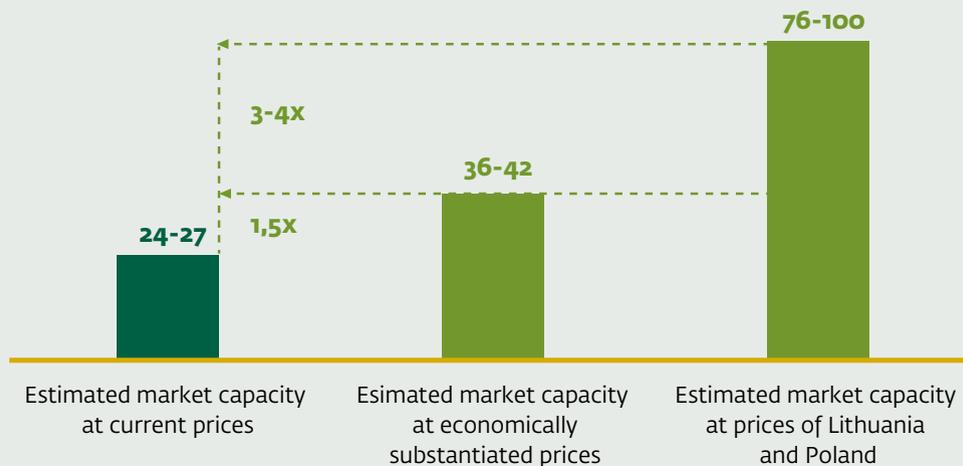
## Market capacity has a room for growth and increase of competition

Twenty-nine million Ukrainian people (or 69 percent of the total population) live in cities, with the vast majority living in multifamily buildings. The quality of life and safety of the majority of residents, therefore, depends on the quality of management and maintenance of these buildings.

According to research estimates, the annual capacity of the MFB management market at current prices is estimated at about 24–27 billion Ukrainian hryvnias (Hrv), or approximately \$1 billion at the exchange rate of \$1 to Hrv 26.7 in effect on June 22, 2020. Based on economically justified prices (the cost of the minimum scope of services according to the law), the estimated capacity would be 1.5 times higher, reaching about Hrv 40 billion. The potential for market growth (calculated at the price levels of Lithuania or Poland, which implemented a full-sized reform in this area more than 10 years ago) is Hrv 75–100 billion.

The market has room for new players, increased competition, and greater revenues for housing management companies. But the lack of solvency of consumers of services may repress market growth. Paying capacity depends mostly on the general economic situation and income growth of the country's population. Ukraine subsidizes low-income families' expenses for housing and communal services, which includes housing management services. However, given the state budget's limited funds, it does not completely address the affordability of housing and communal services.

Figure 1.1. Potential for annual growth of MFB management market (Hrv, billions)



Source: State Statistics Service of Ukraine, data of conducted interviews, IFC analysis.

## Energy efficiency support programs in Ukraine

About 85 percent of the existing housing stock in Ukraine was built before the 1990s. Energy efficiency was not at the heart of construction requirements and standards in those times. This was further exacerbated by a lack of initiative by homeowners to improve the energy efficiency of their residential buildings. According to the New Social and Economic Policy Center, Ukraine's energy consumption per unit of living space is double the level of the European Union countries with similar climates.

To stimulate demand for more efficient energy (and energy efficiency upgrades in the residential sector), Ukraine introduced state programs of financial support (usually grants) at the national and local levels. These programs were sometimes supported by international donor partners and international financial institutions (IFIs). The following programs are currently available in Ukraine:

- The Energy Efficiency Fund (EEF), which has been operational since September 2019
- Warm Loans, a state co-financing program active since 2014
- Municipal-level financial support programs operating independently while often complementing Warm Loans (for example, the Kyiv City 70/30 co-financing program)
- The IQ Energy program, launched in 2016, implemented by the EBRD, and co-financed by the E5P<sup>2</sup> multi-donor fund

The experience of eastern European countries shows that housing management service providers can provide professional support and handholding to homeowner associations implementing energy efficiency modernization projects. For example, in Lithuania, a new role—energy efficiency project administrator—was introduced to implement heating system upgrades in MFBs. A state-supported program covers their services. A significant deterrent to implementing energy efficiency projects in the residential sector is the lack of co-owners' capacity to structure and manage complex projects. Preparing project documentation, selecting and managing contractors, concluding loan agreements, and submitting state support applications require substantial knowledge and skills. Such energy efficiency project administrators/managers can effectively address these problems and accelerate the implementation of energy-efficiency projects in MFBs.

In Ukraine, HOAs themselves mostly implement energy efficiency measures. However, there are cases where co-owners hire third parties for projects (usually these are Board chairpersons or members of other HOAs who have successfully implemented similar projects in their residential buildings). A housing manager capable of performing energy efficiency renovations—or a separate energy efficiency project manager, as in Lithuania—can significantly benefit energy efficiency renovation projects, thereby raising the quality and speed of the project's implementation.

Currently, the Energy Efficiency Fund supports the involvement of project managers into implementation of the Fund's projects. Thus, the Energodim program provides to HOA a partial reimbursement of the cost of project manager's consultancy and guidance in thermal renovation project (source - [www.eefund.org.ua](http://www.eefund.org.ua)).

## Housing reform in Ukraine — going forward

Ukraine has taken significant strides in reforming the housing sector in Ukraine. The assessment revealed positive trends in key reform areas—continued growth in the number of homeowner associations, greater homeowner demand for professional housing management services, and effective government support for upgrading residential buildings to reduce energy consumption. These efforts should be sustained and further encouraged.

The assessment also revealed information gaps filling which will help to identify specific areas and priorities to sustain and grow the achieved reform progress. This includes, among others, finding answers to the following questions:

<sup>2</sup> Eastern Europe Energy Efficiency and Environment Partnership

What is considered a high-quality housing management service? What are the specific criteria for assessing the quality of housing management?

- What is the current quality of management and maintenance of multifamily buildings? How many buildings are currently managed effectively? What are the key drivers of quality (including what form of management provides the best quality)?
- What is the current technical condition of multifamily buildings in Ukraine? How many buildings are in safe livable condition? How many pose safety risks and what kind of risk is it (for example, structural issues or indoor gas networks)?
- How many multifamily buildings are managed in compliance with the effective legislation?
- How many HOAs are currently being used by co-owners to make effective decisions (for example, holding general meetings at least once a year)?

The establishment of HOAs has slowed down as many co-owners have not decided how their buildings should be managed. Central and local authorities should consider implementing further measures (legislative, organizational, informational) to incentivize co-owners to make independent decisions on the management of multifamily buildings.

What the assessment clearly demonstrated is the important role each reform stakeholder plays in achieving positive and sustainable results. Any further reform areas identified by policy makers and other market players representing the supply on the housing market will need to be supported by similar decisive actions of homeowners, representing the market demand.



# 1. The creation of a new regulatory framework enabling a shift to the market economy

Ukraine inherited a system of MFB management based on the principles of a central planning economy. The primary features of this system were:

- The lack of ownership titles to apartments and common use areas and no decision-making power for residents, which led to the reluctance of residents to actively address housing or utility issues
- The paternalistic system led by state and local authorities and heavily subsidized housing and utility services sectors (residents paid only a small share of their actual value)
- The inefficiency of municipal companies providing building maintenance services, which led to the dissatisfaction of most residents with the quality of housing and utility services

The transition to a market economy in this area required a new legislative environment. As in other Eastern European countries, the starting point was the privatization of housing, which began in the early 1990s in Ukraine. Compared to Eastern European countries that joined the EU, the critical transformation of Ukraine's housing sector was much slower. For example, in Lithuania and Poland, the necessary conditions enabling private companies to provide professional housing management services and creating fair competition were in place in the early 2000s (see Annex 6).



## A restart of reforms in 2015

As of early 2015, progress in the housing market was limited to the mass privatization of apartments and entitling co-owners to set up HOAs. Yet, the necessary conditions for the independent management of multifamily buildings by co-owners were not put in place (see Annex 1):

1. Co-owners of most residential buildings could not make decisions on managing common property due to the lack of an effective mechanism for exercising this right.
2. The duties and responsibilities of the co-owners were not clearly defined.
3. Municipal authorities selected the providers of residential building maintenance services. The same authorities also owned communal building maintenance companies, which, as a rule, were appointed to provide these services, creating conflicts of interest.
4. The status of communal building maintenance companies endowed them with broad rights and responsibilities that were enshrined in law.
5. Tariffs for residential building maintenance services were set by local municipal authorities.

The adoption of the Law of Ukraine “On Peculiarities of Exercising Ownership Rights in MFB” (Law 417) in 2015 was a revolutionary step towards creating effective ownership rights in MFBs. The law laid the foundation for co-owners to exercise their ownership rights to common property in an MFB and established their responsibilities and liabilities to manage buildings.

Under the general rule established by this Law, an MFB is managed exclusively by its co-owners. They may opt to transfer all or part of the housing management functions to a manager, who then performs the relevant management functions under a housing management services agreement.

In 2017, the Law of Ukraine “On Housing and Communal Services” was adopted in a new version, which brought the regulation of MFB management in line with the principles introduced by Law № 417. In particular, the law allowed co-owners to elect residential building managers and regulate the cost of their services in agreements, defined the concept of MFB management services, established rules of market access for managers (such as the need for professional certification of at least one full-time manager), and paved the way for finalizing new market rules for MFB management services.

**Table 1.1. Major changes in the legislative framework for co-owners of MFBs that took place with the enactment of the Laws 417 and “On Housing and Communal Services”**

| Prior to 2015   | After the enactment of Laws 417 and “On Housing and Communal Services”   |
|---|--|
| Consent of all owners was required to make decisions related to the management of the common property in a residential building.  | Depending on the nature of the question, decisions were to be made by 50 or by 75 percent of co-owners.  |
| The law did not establish a decision-making procedure for co-owners.  | Established the decision-making procedure regarding the management of common property, including a possibility to conduct a poll of co-owners.<br>All decisions made are binding on all co-owners. |
| Municipal authorities appointed organizations responsible for servicing a building. Co-owners were not entitled to change it.   | Co-owners are entitled to select (or change) the housing manager.  |
| Three types of services existed:<br>1. Housing management<br>2. Maintenance of the building and adjacent area<br>3. Repairs in the building<br>In practice, only one service was provided to maintain the building and the adjacent area. | A single housing management service was introduced, which included maintenance and renovation of the residential building and the adjacent area  |
| Municipal authorities set prices for services. Provider’s profits depended on the break-even level, which was also set by municipal authorities.  | Prices for services are set by negotiations.<br>Introduced the notion of “housing manager’s remuneration” as a separate element of the price for management services, subject to negotiations.     |
| Co-owners in a building could not control where and how their fees for residential building maintenance are spent.  | Housing managers must report annually on the housing management services provided and disclose documents evidencing the provision of such service to co-owners.                                    |

Law 417 also led to significant changes to the Law “On HOAs” (as of 2001), which improves and simplifies the process of managing common property and running the HOA. Specifically, it abolished the concept of membership in HOA,<sup>3</sup> simplified decision-making procedures (repealed the concept of the general meeting quorum and introduced vote by a written survey). These changes have significantly increased the attractiveness of this form of MFB management.

The new legal framework and the solid awareness-raising campaign, run with the support of Ukraine’s international partners, speeded up the creation of HOAs between 2015 and 2017. After 2017, the growth in the number of HOAs slowed down.

Figure 1.2. The number of buildings with established HOAs



Note: From 2015, data does not include Crimea and territories of Donetsk and Luhansk oblasts outside of Ukrainian control.  
Source: Ministry of Communities and Territories Development of Ukraine.

As the legal regulation of the provision of MFB management services was evolving, it was important to ensure the continuity of the housing management process. To this end, Law 417 envisaged an exception to the general rule on selecting the manager at a meeting of co-owners. Municipalities were required to conduct a bidding process within a year (by July 1, 2016) to appoint managers for MFBs where co-owners had not chosen their preferred form of management. The Law did not set clear deadlines for holding bids, leaving it to the discretion of the municipal authorities.

The Law “On Housing and Communal Services,” enacted in part on June 10, 2018, authorized municipalities to conduct bids for the appointment of housing managers only at the specific request of co-owners. However, municipal authorities were entitled to complete bidding and appoint housing managers for the MFBs only if the bidding process had been announced before June 10, 2018.

However, in practice there were almost no voluntary requests from co-owners to select housing managers.

The law also introduces provisions ensuring the continuity of MFB maintenance and includes rules on keeping the existing residential building maintenance agreements in force until new agreements under the new rules are concluded. Under the old agreements with communal building maintenance companies, tariffs for providing services could not be revised, even if they were economically burdensome to the service providers.

<sup>3</sup> The concept of membership meant that co-owners who did not want to be members of an HOA could not follow the decisions made by HOA bodies regarding the building. Thus, the HOA became inefficient form of house management due to controversy of previous version of law.

These clauses were supposed to stimulate municipal authorities to transit to new relations in the field of MFB management as soon as possible, that is, to have co-owners conclude new agreements with housing managers. The law also prohibited communal building maintenance companies from terminating the maintenance of buildings before new housing management agreements are concluded. It also stated that when maintenance agreements expire before new housing management agreements are concluded, the previous agreements will be renewed for the same period and on the same terms.

According to the interviews in some cases, municipal authorities continued to announce and hold bidding processes in 2019 and 2020 without co-owners requests, which is contrary to the Law “On Housing and Communal Services.” According to interviews with municipal authorities, the justification was the risk of leaving residential buildings without maintenance services. So, holding a bidding procedure have been viewed as the only solution when communal maintenance companies could have not been providing services at unreasonably low tariffs, while co-owners unable to choose housing managers. So, holding a competition with the appointment of communal building maintenance company was the only solution.

The new draft law could bring a solution to the issue of selection of housing managers by municipal authority. As of October 2020, the Parliament of Ukraine was considering draft law #2458, “On Amendments to Certain Laws of Ukraine Concerning the Regulation of Certain Issues in the Sphere of Housing and Utility Services.” It eliminates the requirement to municipal authority to obtain specific request from co-owners to conduct bidding procedure. The draft law proposes that if MFBs co-owners have not select a form of housing management by January 1, 2021, the city council or other authorized bodies must announce and conduct a bidding process to select a housing management for such MFB.

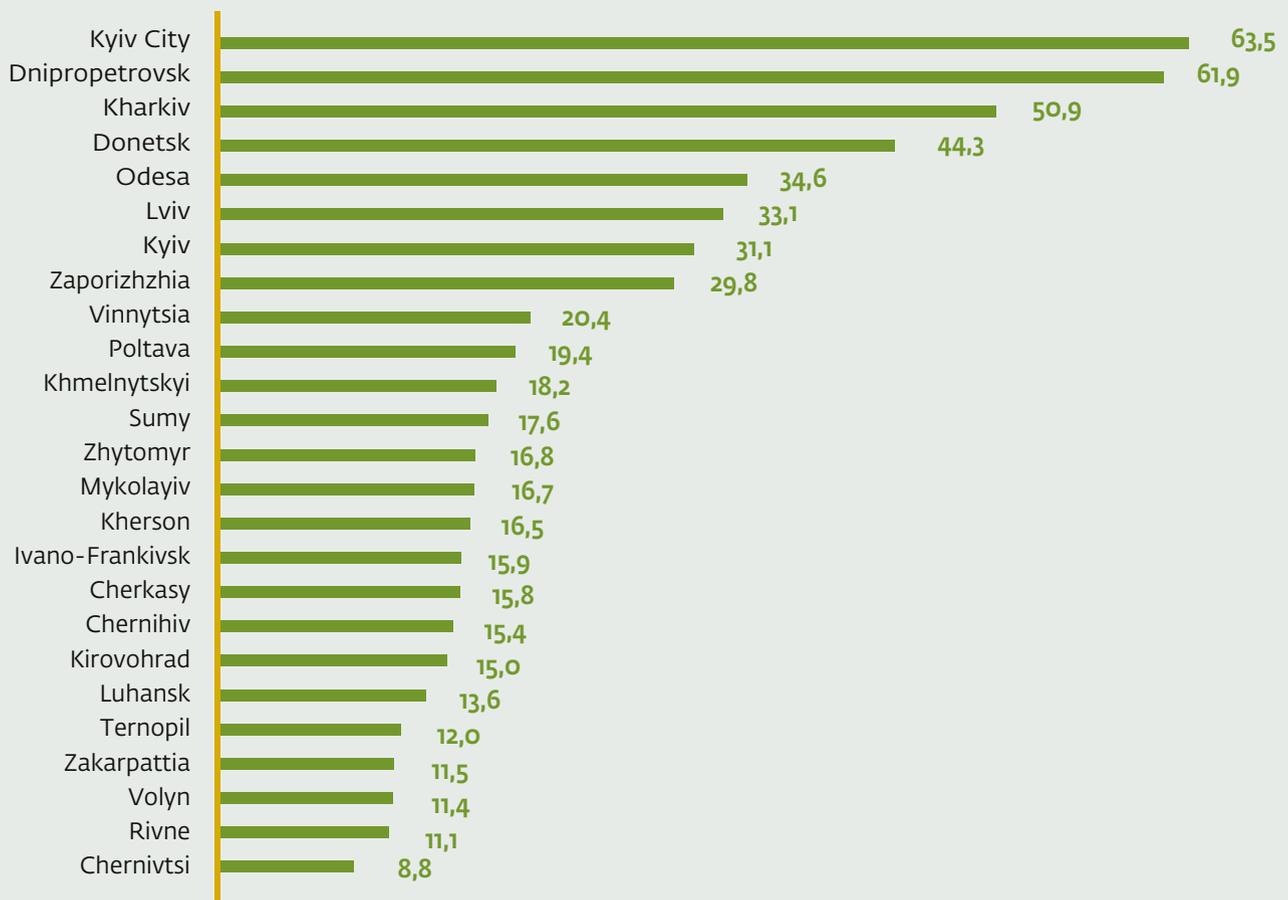


## 2. Analysis of the current status of MFBs management

### Assessment of the MFBs management market's capacity

According to the State Statistics Service of Ukraine, Ukraine's housing stock's total volume amounts to 605 million square meters. Published data shows that around 80 percent (or 500 million square meters) of urban housing stock are multifamily buildings. Almost half of the housing stock is concentrated in Kyiv and the three most urbanized regions: Dnipropetrovsk, Kharkiv, and Donetsk.

Figure 2.1. Urban housing stocks as of January 1, 2019 (m<sup>2</sup>, millions)



Note: 2014 data does not include Crimea and territories of Donetsk and Luhansk oblasts outside government control.  
Source: State Statistics Service of Ukraine.

According to research estimates, the annual capacity of the MFB management market at current prices is estimated at about 24–27 billion Ukrainian hryvnias (Hrv), or approximately \$1 billion at the exchange rate of US\$1 to Hrv 26.7 in effect on June 22, 2020. Based on economically justified prices (the cost of the minimum scope of services according to the law), the estimated capacity would be 1.5 times higher, reaching about Hrv 40 billion. The potential for market growth (calculated at the price levels of Lithuania or Poland, which implemented a full-sized reform in this area more than 10 years ago) is Hrv 75–100 billion.

## Customer profile by the form of managing common property

The current legislation of Ukraine (Law of Ukraine 417) establishes three forms of management of a multifamily building:

1. By co-owners
2. By HOA
3. By a housing manager

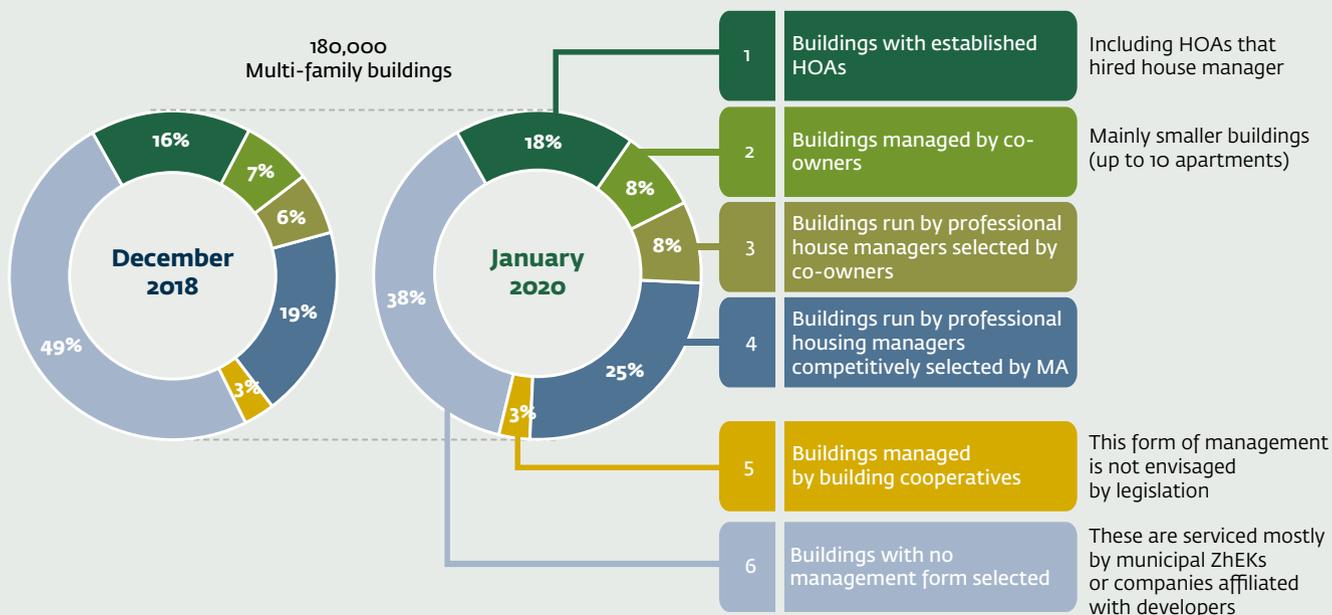
**Management by co-owners** of a residential building—management decisions are made during regular meetings of co-owners. The main advantages of this approach are the low cost (no need to pay a fee to a contracted manager) and the ability to solve problems as they arise at the owners' discretion. The key disadvantage is the need to hold a meeting every time a decision on any type of upgrade or repair is needed. Therefore, this form is more suitable for small buildings (for example, up to 10 apartments).

Multifamily building management is possible by creating a **homeowner association, or HOA**—a legal entity created by owners of apartments and/or non-residential premises in an MFB to manage, maintain, and use common property. The HOA enables co-owners to own and use common property, ensure proper maintenance of an MFB and the adjacent territory, and help co-owners obtain quality utilities and other services.

Establishing an HOA requires the decision of more than 50 percent of co-owners (the founding meeting of the HOA in newly built residential buildings can be held after registration of ownership by more than 50 percent of apartments and non-residential premises). The HOA manages the MFB through its statutory bodies: the general meeting (representative body), the board (the body that executes the decisions of the general meeting on maintenance of the residential building), and the audit commission (financial control body). By decision of the general meeting, the HOA may also delegate the building's management to an Association of HOAs or contract a housing manager.

Co-owners can choose a **contracted housing manager** at a general co-owners meeting. They can enter into an agreement for MFB management services based on a contract template.

Figure 2.2. Dynamics of change of the form of MFB management in Ukraine between December 2018 and January 2020



Source: Ministry of Communities and Territories Development of Ukraine.

The above graph demonstrates a positive trend in housing management. In 37 percent of MFBs, the co-owners independently decided on the form of management of their residential building (buildings with HOAs, self-managed residential buildings, residential buildings that have chosen a manager, and buildings with building cooperatives). This improvement indicates that housing management reform is moving, albeit slower than expected. A detailed breakdown of the forms of management of MFBs by region is presented in Annex 2.

The share of buildings managed by the communal building maintenance companies is decreasing, albeit marginally. Over a period of more than a year (for example, from December 2018 to January 2020), the share of residential buildings that have not chosen any management form decreased by 11 percent. A plausible explanation is that managers were selected for such residential buildings through municipally organized bidding (although this conflicts with the current version of the Law on Housing and Communal Services). Therefore, the share of multifamily buildings whose housing management service providers were competitively selected through municipalities increased from 19 percent to 25 percent.

Although the current legislation does not provide for **building cooperatives** as a form of MFB management, in practice, they continue to exist and manage buildings, despite the lack of proper legal grounds.

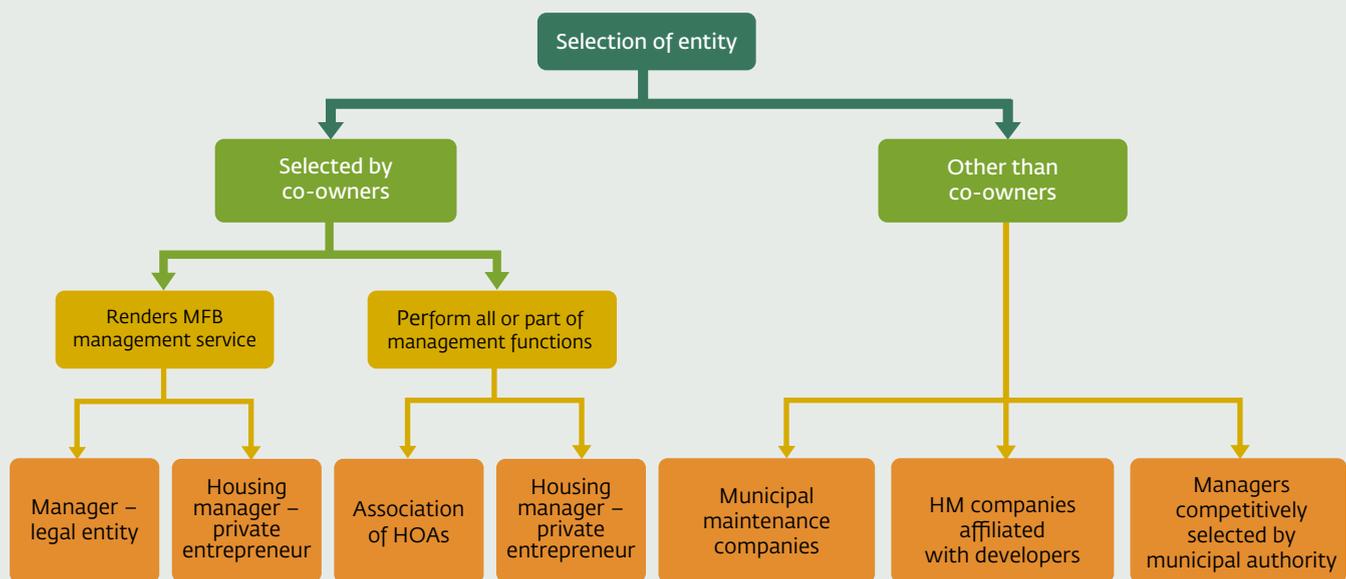
## Types of housing management service providers in Ukraine

According to interviews there are several types of housing management service providers operating in Ukraine (classified in Figure 2.3):

- Communal maintenance companies (and their successors—municipal housing management companies)
- Management companies affiliated with developers (construction companies)
- Independent housing managers (legal entities or individuals)
- Individuals who provide part of the housing management services but do not meet the legal requirements to the residential building managers
- Associations of HOAs to which HOAs have fully or partially delegated housing management functions

Depending on whether the entity performing the housing management functions was chosen by the co-owners themselves or not, these entities are divided into several categories.

Figure 2.3. Classification of entities performing the housing management functions in MFBs



Source: according to interviews

## Communal building maintenance companies and their successors

Communal building maintenance companies mainly serve the old housing stock (built before the 1990s), where the co-owners have neither organized nor chosen a manager independently. Prices (tariffs) of such providers depend on the cost, income level of the city population, and municipal authorities's willingness to subsidize the provision of relevant services. For example, in Dnipro, monthly tariffs of communal companies are about Hrv 7/square meter, while in Kharkiv, the monthly tariff is twice as low—about Hrv 3/square meter. Therefore, the tariff setting has a somewhat discretionary nature.

Municipal companies can receive subsidies from local governments to cover losses (for example, the 2020 municipal budget of Dnipro allocated Hrv 458 million for the operation and maintenance of residential buildings, and another Hrv 60 million for the maintenance of elevators in the residential buildings—or approximately Hrv 52/square meters per year). Communal building maintenance companies generally do not seek to change their relations with co-owners under applicable law, and as such, currently represent the most common category.

## **Management companies affiliated with construction companies**

Typically, when selling newly constructed apartments, construction companies impose an affiliated housing management company on co-owners. For example, when an apartment transfer and acceptance certificate is signed, the keys are handed over only after the new owners sign a service agreement with an affiliated management company. This allows the building management company affiliated with construction companies to receive an additional flow of income. Such companies usually do not establish relations with co-owners under applicable laws and may take actions that do not comply with the law (for example, unilateral price increases). Prices for management services in such companies tend to be significantly higher than the market averages.

## **Managers selected by the municipal authority through a bidding procedure**

Both municipal and private companies may be selected by municipal authorities through the bidding procedure to provide housing management services to multifamily buildings. The agreement template approved by the Cabinet of Ministers of Ukraine (CMU) Regulation № 712, dated September 5, 2018, applies to this type of manager.

## **HOAs' associations**

HOA may delegate housing management functions (in whole or part) to an association of HOAs. This approach has benefits in terms of lower taxation, as the association of HOAs is a non-profit organization. The list of housing management functions in an MFB, as well as the ability to protect the rights of co-owners in the event of poor performance, depend on the terms of the charter of a particular association (for more details on the activities of the association of HOAs, see Annex 3).

## **The housing manager, as an individual entrepreneur, does not provide the full scope of housing management services**

An HOA can also delegate part of the management functions to a housing manager who is an individual entrepreneur. This type of housing management provides the HOA with services under an agreement, but, as a rule, the essence of such services is reduced to performing the functions of the chairperson of the HOA board. This approach allows tax savings (for more details, see Annex 6) and can only be used in residential buildings under HOAs (possible arrangements for such services are provided in Annex 3). The agreement template approved by CMU Regulation № 712 is not applicable to this type of service providers.

## Housing manager, as an individual entrepreneur, selected by co-owners

This category includes individual entrepreneurs who provide a full range of housing management services required by legislation and who have been directly contracted by co-owners. The agreement template approved by CMU Regulation № 712 is applicable to this type of manager.

## Housing manager, as a legal entity, selected by co-owners

This category consists of housing management companies that provide a full complex of housing management services required by legislation that have been hired by co-owners. The key difference from the previous model is the legal form of business organization, which allows capitalizing the business in the future (more details on taxation are given in Annex 5). The agreement template approved by CMU Regulation № 712 is also applicable to this type of manager.

## Profile of entities, performing housing management functions, from the standpoint of co-owners' interests

As with other services, consumers of housing management services are mainly concerned about the quality and price of services, that is, the value for money. There seems to be no correlation between the value for money homeowners get and the housing manager's type/legal status. For example, a municipal housing management company may provide high-quality services at a competitive rate, while a housing manager chosen and contracted by co-owners may charge a higher rate for poor services.

Price is not always the best determinant of the quality of service. Therefore, the study tries to compare different types of housing management services from the point of view of other benefits, such as consumer rights protection, and the scope of delivered service.



Table 2.1. Comparison of housing management services

| HM entity   | List of services offered*  | Consumer rights protection  | Price  |
|---|--|---|--|
| <b>Communal maintenance companies</b>   | Formally, they offer a full list of services, but in reality, some of the services may be missing <sup>4</sup> | Typically, poor. Contractual terms do not meet current legislation                      | Depends on the municipal authority's decision. May be subsidized by local budget, therefore could be lower than the market rates |
| <b>Management companies affiliated with construction companies</b>  | Typically, a full list of services   | Typically, poor. Contractual terms do not meet current legislation                      | In most cases, prices are higher than the market average   |
| <b>Managers selected by municipal authority through a bidding procedure</b>   | Typically, a full list of services   | Depends on the term of the agreement, concluded after the competitive selection         | Depends on the term of the agreement, concluded after the competitive selection  |
| <b>Association of HOAs</b><br>(option available only for established HOA)   | The list of housing management functions is determined by the HOA general meeting (can be a reduced list)      | Depends on clauses of the Association of HOAs statute                                   | Typically, below market average (due to the non-for-profit status and reduced list of services)                                  |
| <b>Housing manager, as an individual entrepreneur who does not provide the full scope of housing management services</b><br>(option available only for HOA) | Typically, a reduced list of services  | Typically, poor. Depends on contractual terms, but it is the consumer's informed choice | Typically, below market average (due to the non-for-profit status and reduced list of services)                                  |
| <b>Housing manager, as an individual entrepreneur, selected by co-owners</b>  | Full list of services  | Excellent, as the manager's liability is fixed in the agreement                         | Market average   |
| <b>Housing manager, as a legal entity, selected by co-owners</b>  | Full list of services  | Excellent, as the manager's liability is fixed in the agreement                         | Average (large companies may offer lower rates saving on the economy of scale)   |

\* The full list of services is understood as the mandatory list of services, approved by the Ministry of Communities and Territories Development's order № 190 dated July 27, 2018.

<sup>4</sup> For example, municipal companies may not carry out routine repairs of structural elements of the building, cleaning of the adjacent territory, or do not adhere to the frequency of work established by regulations.

## Profile of entities providing housing management services, from the standpoint of their impact on the development of the housing management market

Each type of entity described above, providing housing management services, plays a different role in forming and developing a housing management market. Some possess levers of influence that are not conducive to a level playing field. In particular, due to their close ties with local government, municipal housing management companies can indirectly discourage new market entrants by charging low, non-competitive rates for their services, subsidized by local budgets.

Not all entities providing housing management services de facto are housing managers according to the legal definition. According to the law, housing managers have at least one certified staff member and provide a full scope of housing management services. Housing managers such as a private entrepreneur (hired by HOA, not providing the full scope of housing management services), and the Association of HOAs can not be designated as a housing management company.

Homeowners also have their say in creating a competitive market of housing management. They do so by being more proactive in creating homeowner associations, deciding how their premises are managed and maintained, selecting housing management service providers, and choosing their preferred quality standards. In this way, they can exert competitive pressure from the consumer side and generate the demand for high-quality services, which will force gradual transformations on the market, making it more competitive.

The experience of implementing reforms in Poland shows that the compulsory establishment of co-owners' associations (in Polish—towarzystwo mieszkaniowe) was a key element in the reforms of communal and housing management services. As a result, it created a demand for energy efficiency renovation projects in MFBs.



Table 2.2. Profile of entities performing management functions, from the standpoint of their impact on the development of competition

| Entity  | Relation to Municipal Authorities (MA)   | Room for stifling competition | Chosen by co-owners independently (yes/no) |
|---|--|-------------------------------|--|
| <b>Communal maintenance companies</b>   | Very close ties with municipal authorities (with possible subsidies from the budget) | Large                         | No   |
| <b>Management companies affiliated with construction companies</b>  | May have close ties with municipal authorities                                       | Significant                   | No   |
| <b>Managers selected by municipal authorities through a bidding procedure</b>   | Typically, closely related to municipal authorities                                  | Significant                   | No   |
| <b>Association of HOAs</b><br><i>(option available only for established HOA)</i>  | Have no close ties to municipal authorities  | Little                        | Yes  |
| <b>Housing manager, as an individual entrepreneur, who does not provide the full scope of housing management services</b><br><i>(option available only for HOA)</i> | Have no close ties to municipal authorities  | Little                        | Yes  |
| <b>Housing manager, as an individual entrepreneur, selected by co-owners</b>  | Have no close ties to MA   | Little                        | Yes  |
| <b>Housing manager, as a legal entity, selected by co-owners</b>  | Have no close ties to MA   | Little                        | Yes  |

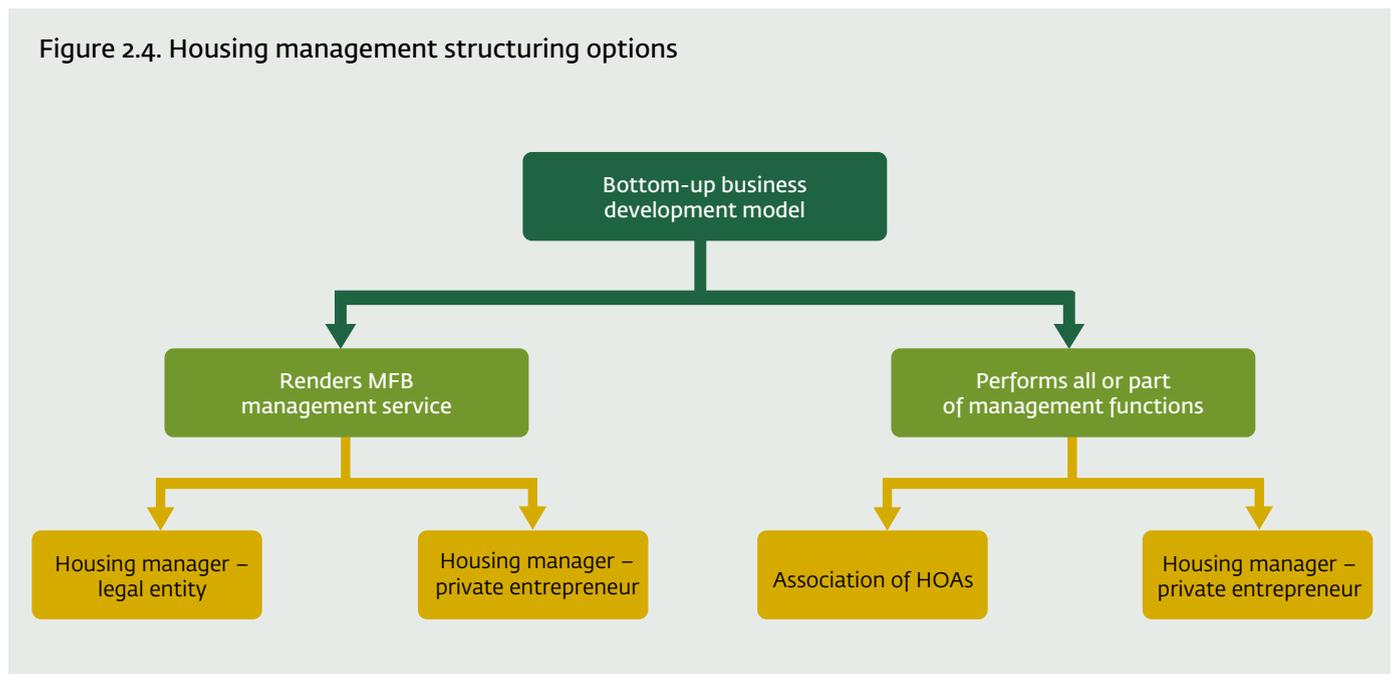
## Options for starting a housing management business

Today, the housing management market's 'bottom-up' development is driven primarily by successful chairs of HOA boards, who seek to expand their business by providing management services to other MFBs. In this case, they are faced with the question of which "business model" to choose and what are the advantages and disadvantages of each.

Consider the following possible models:

- **A housing manager legal entity** which will provide a full list of services as specified in the approved template of a contract
- **A housing manager—an individual entrepreneur** who will provide a full scope of services as specified in the approved model agreement
- **The HOA association**, to which an HOA transfers part or all of the housing management functions
- **A housing manager—an individual entrepreneur**, whom the HOA will hire as a consultant (in fact to serve as the chair of the HOA board, not provide the full scope of services).

Figure 2.4. Housing management structuring options



In the Table 2.3 below, these models are analyzed by the following parameters:

- Taxation
- List of provided services
- Liability for the services
- The possibility of capitalizing the business (selling or passing the business on to another owner)
- The need for professional certification
- Potential customer base.

Table 2.3. Comparison of housing management business organization models

|   | <b>Housing manager—<br/>a legal entity</b>   | <b>Housing<br/>manager—<br/>individual<br/>entrepreneur</b>  | <b>Association<br/>of HOAs</b>   | <b>Individual<br/>entrepreneur—<br/>consultant</b>    |
|---|--|--|--|---|
| Taxation  | There is a possibility to choose the general or the simplified taxation form   |  | As a non-profit organization, enables to save on taxation a lot  | The tax base includes only the manager's remuneration |
| The need to meet minimum requirements and liability | Uses a model agreement, provides the list of mandatory services and bears liability for their quality (liability limited to the legal entity). Must have at least one certified manager on staff | Uses a model agreement, provides the list of mandatory services, and bears liability for their quality (liability extends to the individual). Must have a certificate of the housing manager | May provide a list of selected services, for which responsibility is typically lower than under a Model agreement. No certification is required. |   |
| Possibility to capitalize on business               | Full range of opportunities to capitalize on business: sale, transfer to another owner, change of legal form   |  | None   |   |
| Potential customer base                             | All MFBs. Also, can provide similar services to commercial entities (such as shopping malls and business centers)  |  | Only MFB with established HOAs   |   |

## Interaction between co-owners and housing manager

Management of residential MFBs is essentially regulated by two laws: "On Peculiarities of Exercising Ownership Right in MFB" and "On Housing and Communal Services." Also, four secondary legislative acts are key to housing management.

Figure 2.5. Key legislation and regulatory acts applicable to housing management services



Source: Ukrainian legislation, IFC analysis.

The list of mandatory services and works related to maintenance of an MFBs that a housing manager should provide in accordance with the housing management service model agreement is approved by order of the Ministry of Communities and Territories Development of Ukraine of 27.07.2018 № 190, while the frequency of these services and their quality requirements shall be agreed upon in a specific agreement between the manager and co-owner. The list of services can be reduced for a building only when the co-owners can reasonably prove that their residential building does not need specific services due to the design characteristics (for example, the absence of an elevator). The manager can also provide additional services by agreement with the co-owners. The typical responsibilities of the manager are described in more detail in Annex 4.

Figure 2.6. List of mandatory services of a housing manager



Source: Order № 190 of the Ministry of Communities and Territories Development of Ukraine.

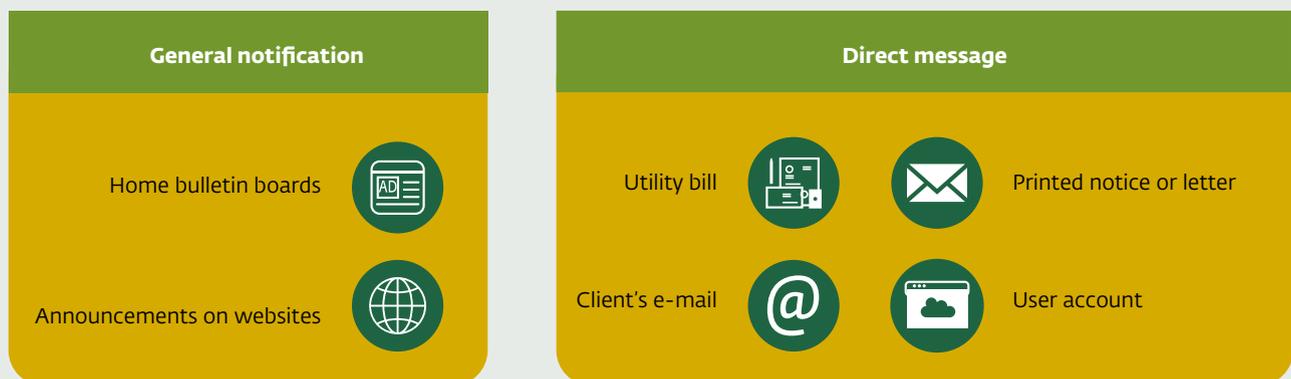
Current legislation is liberal in other aspects of regulating the relationship between the manager and co-owners. It gives the flexibility to change the scope of the manager's functions at the co-owners' discretion. Thus, the manager may collect contributions of co-owners for renovating the residential building if the co-owners commission the manager to do that.

The law does not oblige the manager to insure her/his liabilities, although, by agreement with the co-owners, he/she may purchase an insurance policy to cover his/her liability for damage caused to common property, rights, and the legitimate interests of co-owners due to non-performance or improper performance of his /her duties.

The manager is obliged to keep separate records of income and expenses for each MFB under her / his management and provide access to this information for the residential building's co-owners as specified in the agreement. The manager is also required to submit a budget for the current year (to be approved by the co-owners) as well as an annual budget report.

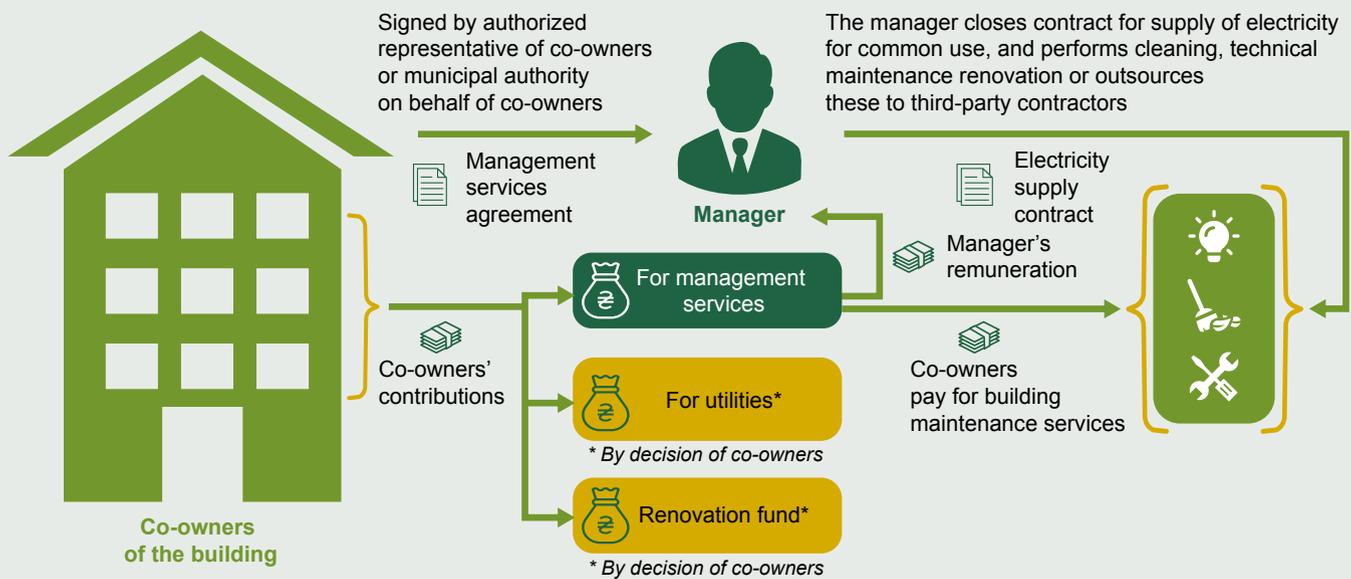
The procedure for providing management performance information is specified in the agreement with the co-owners. .

Figure 2.7. Housing manager's communication channels



Source: Based on data obtained from interviews.

Figure 2.8. Model of relationship between housing manager and co-owners

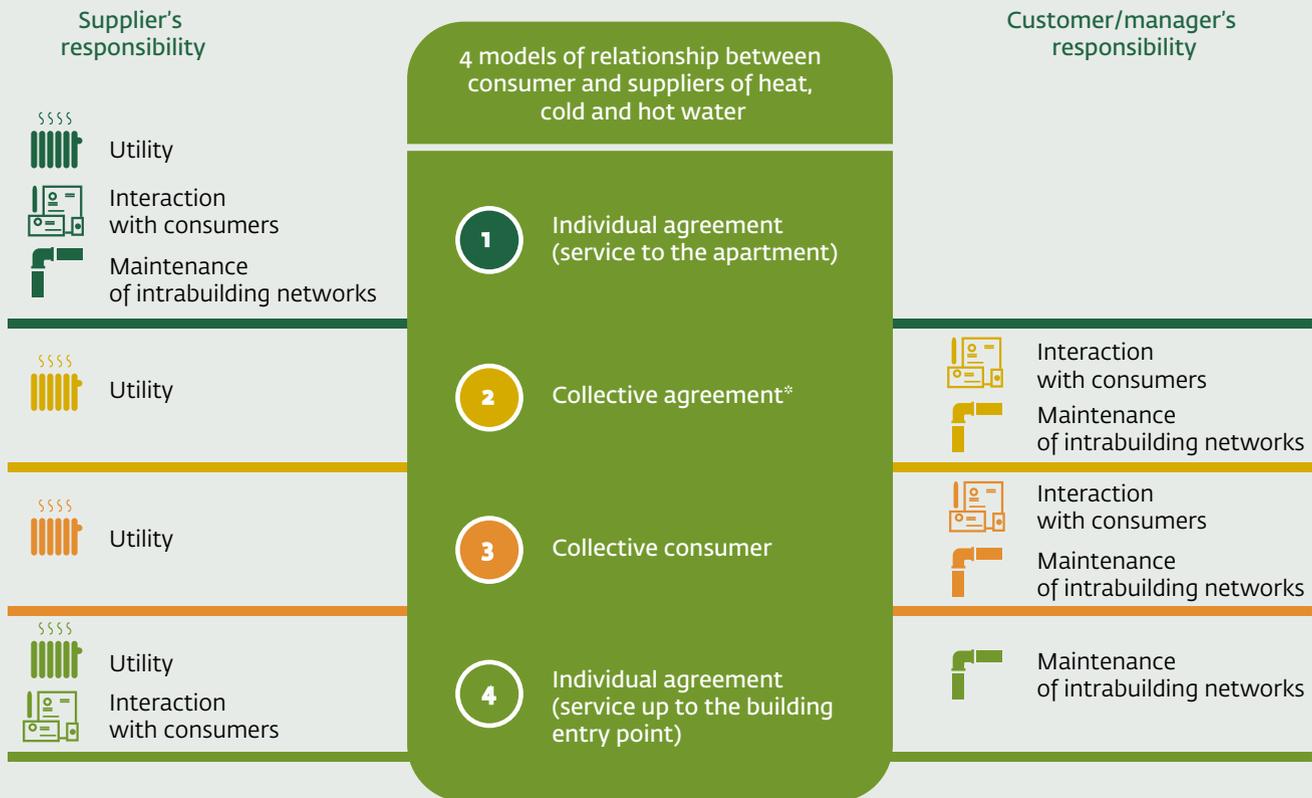


Source: Law of Ukraine "On Housing and Communal Services".

The contractual relationship with utility service providers is also important. The Law "On Housing and Communal Services", envisages four possible contractual models that define relations between apartment owners and utilities. These are shown in the diagram below.



Figure 2.9. Models of interaction between co-owners and utility providers



\* A collective agreement is also possible for solid waste handling services.  
 Source: Laws of Ukraine "On Housing and Communal Services", and "On Commercial Metering of Heat and Water Supply".

If the co-owners chose a model other than the individual agreement (supply of utility service to the apartment), the maintenance of indoor networks is the responsibility of the manager (if selected or appointed), as it is included in the list of mandatory services approved by Order № 190 of the Ministry of Communities and Territories Development of Ukraine. If the collective agreement model is chosen, the manager may be obliged to divide the consumed amount of services (for payment purposes) between the building residents.

## Housing management market entry

Ukraine's legislation enables the unconstrained entry of new players to the housing management services market. Under the current law, neither central nor local governments can block new managers from entering the market. There are no permitted procedures (for example, licensing or equivalent, making entry into a special register) to legally become a housing manager or enter into appropriate agreements to provide management services with co-owners.

On January 1, 2019, the requirement of the Law "On Housing and Communal Services" to obtain professional certification came into force. It stipulates that housing managers are required to be professionally certified to establish his/her qualification as a professional manager of a residential building (or group of residential buildings)—or have at least one full-time person on staff with this certification. However, from a legal view, such certification does not constitute a procedure that regulates market entry since the law has not created an authorized body to issue permits to operate.

A housing manager (legal entity or individual entrepreneur) can work as a housing manager at any time without special permits. Obtaining a certificate is a legal requirement; however, the law does not include enforcement or verification procedures, which could have served as a regulating market entry tool. The law also does not contain any penalties for the lack of a certificate. This approach eliminates the value of this requirement. Therefore, to ensure the level of professionalism of housing management services provided, it is reasonable to consider developing legal mechanisms of compliance with the law (such as the availability of professional certificates).

The procedure for professional certification is approved by CMU Regulation № 1010, dated November 28, 2018. According to this regulation, certification of specialists can be provided by all organizations that meet certain criteria and have been accredited by the National Accreditation Agency of Ukraine (NAAU).

The Ministry of Communities and Territories Development of Ukraine maintains a publicly available register of certified managers on its website. As of March 2020, the Register lists 671 certified managers accredited by the following three institutions:

- 56 managers accredited by the All-Ukrainian public organization, the Association of Construction Industry Experts
- 72 managers accredited by the Institute of Municipal Management LLC
- 543 managers accredited by the Standart Certification Center LLC

Currently, the market for housing manager certification is competitive (although the market is only in its infancy). A housing manager seeking certification has a choice of institutions where he/she can get certified.

Although at the legislative level the market access is quite liberal, municipal authorities in some cities may significantly complicate market entry of housing managers by imposing bureaucratic and administrative barriers that conflict with current legislation, in particular:

- Delay hand-over of technical documentation on MFB to new housing managers
- Local utilities (specifically, companies-natural monopolists) may obstruct the conclusion of agreements with such managers for the supply of electricity and water for the operation of the common property in a residential building (such as for the lighting of common use areas or power supply for elevators)
- Local councils adopt regulations with unlawful requirements for managers to submit additional certificates to the municipal authorities to obtain permission to operate in the city. For example, one of the Ukrainian city councils' decision poses additional requirements for managers not provided by the Law "On Housing and Communal Services".

## Sample calculation of MFB management services cost

According to the new Law "On Housing and Communal Services," the price for the management services is negotiable. For housing managers appointed by municipal authorities, the price is set at the level of the winning bid.

The price of the housing management service includes:

1. The cost of maintaining the MFB and adjacent territory and routine repairs of the common property according to the budget, and
2. The remuneration of the manager, which is determined by the agreement of the parties

The budget is based on the list of mandatory services and the frequency of their provision. The manager must provide an annual budget report to the co-owners on the fulfillment and, at the consumers' request, report the actual costs incurred.

The manager may reallocate the actual costs in the building budget without changing the total amount of such costs and without changing the management services' total price. However, this should not affect the quality of service, particularly the frequency of service specified in the agreement. The manager is not accountable to the co-owners regarding remuneration.

However, maintenance service providers in most residential buildings are still operating under the old agreements with the co-owners, under which the service was called "the maintenance service." Its cost (tariff) was established by the municipal authorities. The current maintenance tariffs set by municipal authorities largely depend on the city's population and the average level of income. Thus, out of 20 Ukrainian cities covered by the study, the highest monthly tariffs were in Dnipro (Hrv 6.9/square meter), Kyiv (Hrv 6.3/square meter), and Zaporizhzhia (Hrv 6.4/square meter).

This correlation, however, is not always true. For example, in Kharkiv, the second-largest city by population in Ukraine, the monthly tariff is quite low—Hrv 3.3/square meter. Also, some cities did not adjust tariffs over the last decade, so the tariffs for maintenance are still low (Mariupol—Hrv 1.6/square meter), and Okhtyrka (Hrv 1.8/square meter).

Contrary to the Law on Housing and Communal Services, which prohibits amending the existing agreements for the maintenance of buildings (including tariffs for such services), there are cases where local governments raised tariffs following an increase in energy costs or revision of the minimum wage.

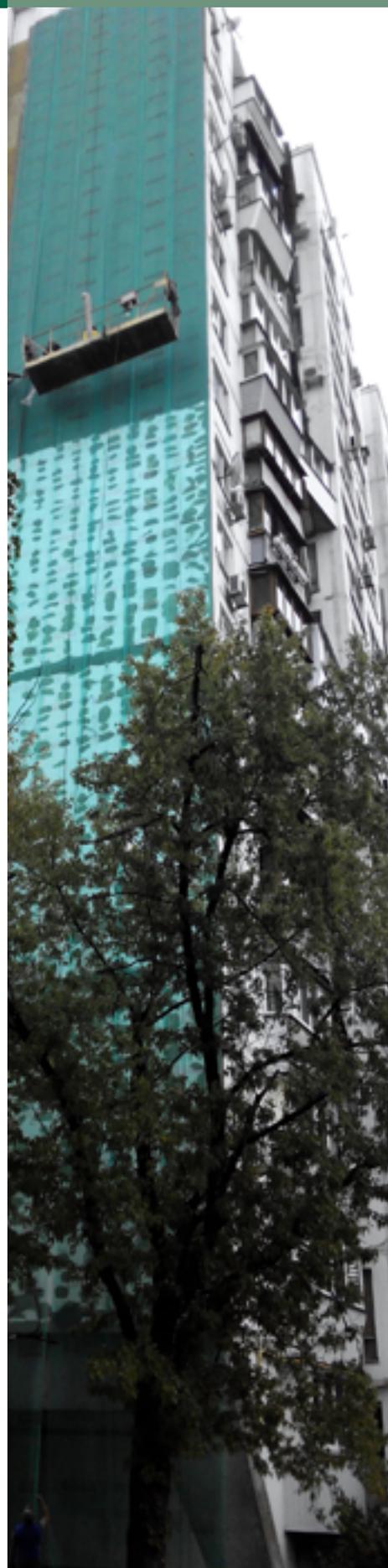


Table 2.4. Comparison of tariffs for MFBs maintenance in 20 Ukrainian cities as of April 2020

| City   | Population, thousand | Tariff for maintenance, Hrv/m <sup>2</sup> | Year the tariff was last set |
|--|----------------------|--|------------------------------|
| <b>Top 10 cities of Ukraine by population (except Odesa)</b>   |                      |  |                              |
| Kyiv   | 2,868                | 6,3  | 2017                         |
| Kharkiv  | 1,451                | 3,3  | 2018                         |
| Dnipro   | 993                  | 6,9  | 2018                         |
| Zaporizhzhia   | 766                  | 6,1  | 2018                         |
| Lviv   | 729                  | 3,5  | 2018                         |
| Kyryvy Rih   | 652                  | 1,5  | 2011                         |
| Mykolayiv  | 494                  | 2,7  | 2016                         |
| Mariupol   | 458                  | 1,6  | 2008                         |
| Vynnytsia  | 372                  | 4,0  | 2019                         |
| Kherson  | 298                  | 2,3  | 2017                         |
| Average weighted tariff  | 4,6                  |  |                              |
| <b>Municipalities with a population from 50,000 to 200,000</b> |                      |  |                              |
| Bila Tserkva   | 200                  | 5,0  | 2018                         |
| Pavlograd  | 110                  | 3,8  | 2019                         |
| Brovary  | 98                   | 3,8  | 2019                         |
| Oleksandria  | 83                   | 3,1  | 2017                         |
| Lozova   | 56                   | 4,8  | -                            |
| Average weighted tariff  | 4,2                  |  |                              |
| <b>Municipalities with a population up to 50,000</b>           |                      |  |                              |
| Okhtyrka   | 49                   | 1,8  | 2008-2012                    |
| Fastiv   | 48                   | 5,0  | 2018                         |
| Netishin   | 37                   | 5,3  | 2017                         |
| Chuhuiv  | 33                   | 4,7  | -                            |
| Pervomaiskyi   | 31                   | 3,2  | -                            |
| Average weighted tariff  | 3,9                  |  |                              |

Source: Analysis based on data obtained from municipal authorities, State Statistics Service of Ukraine.

Services provided by communal maintenance companies at understated prices restrict the competition. According to expert estimates found by the study the average economically reasonable price may be about 1.5 times higher

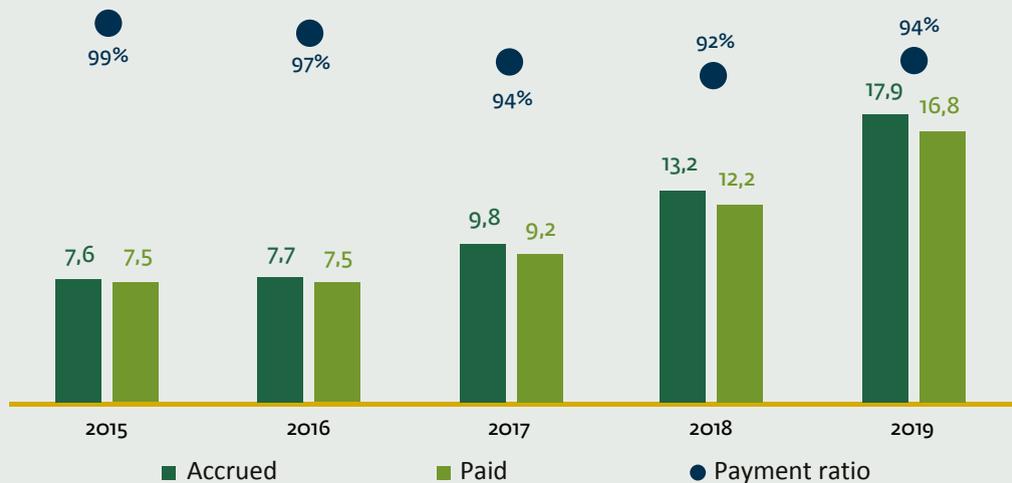
than current prices. The table below presents the estimates of the real costs incurred by a small management company for the three categories of cities.

In some cases, the real cash flow of housing managers may be slightly lower due to residents' poor payment discipline.

## Payment discipline

While in 2015–16, the population was able to pay for their building maintenance services, in 2017–19, the payment discipline deteriorated. In this context, it is important to note that the existing debt collection tools are not effective (judicial and enforcement procedures require huge outlays of time and money, and therefore using them may be unreasonably time-consuming and expensive). Since May 1, 2019, the penalty for late payment of bills is established at 0.01 percent for each day of delay, which does not exceed the inflation rate.

Figure 2.9.1. Level of payment discipline for residential building maintenance services in 2015–19 (Hrv, billions)



Source: State Statistics Service of Ukraine.

## The role of professional associations

The maturity of a housing management market manifests itself through existing and operating professional associations of managers. In Poland and Lithuania, managers' associations and confederations perform a wide range of functions, including training their members, self-regulation, and protecting industry interests.

In Poland, for example, most managers are members of local professional associations that are part of national federations. Such associations devise standards and codes of conduct for managers that are binding on their members and serve as valuable platforms for training and sharing experiences. Also, they actively defend managers' interests both at the local level and in dealing with public authorities.

In Ukraine, professional associations of managers are only getting a foothold. As of May 2020, the largest association, the Association of Housing Managers, had about 100 members, including large and small management companies from regions. According to the association, one member manages about 300 residential buildings. The association represents the interests of its members and has its own training center for housing management practitioners.

The initiative to set up a regional association of housing managers is currently implemented in Lviv and Dnipro cities, where the relevant city-wide associations have been operating for some time. They are aimed at market participants who cooperate with HOAs and support them in implementing energy efficiency measures. Members of these associations include professional managers and representatives of individual HOAs and HOA associations; on average, one member of the association manages about 20 MFBS.

These three associations are the largest housing managers' associations in Ukraine. Having signed memoranda of cooperation between themselves, they are jointly advocating for the necessary legislative changes to facilitate the market's proper functioning.

In addition to these associations, the Unified State Register of Legal Entities, individual entrepreneurs, and public associations feature other managers' associations, none of which are operational. These are mainly associations created within a particular city by the existing management company. These are not active and do not have their websites or social media pages.

Associations of HOAs, which are represented in most regions, are much more common in Ukraine. Many such associations were established based on the HOA resource centers, organized in the past with international donors' support. Such associations' primary role is to guide newly created HOAs, protect the interests of HOAs, and conduct training seminars/workshops for members. These associations are usually active advocates of energy efficiency measures in buildings. Although such associations represent the interests of co-owners (demand) rather than residential building managers (supply), they are pivotal for market development. Also, such HOA associations often co-operate with professional managers' associations in lobbying amendments to housing legislation, as interests and visions of both often converge.

## Questions for further research

The analysis showed that housing management reform is being implemented with fragmented success. The demand (homeowners associations) and the supply (housing management service providers) have steadily grown in the last five years, albeit slower than anticipated. The pace, however, is comparable with other transition economies that went through similar transformations. Ukraine should continue learning and applying the lessons of housing management reform in countries with similar backgrounds and reform pre-conditions, such as Poland, Lithuania.

The study identified the following questions answering which will help advance the reform and identify future priorities for Ukraine's housing management market development.

### **What is the current quality of MFBs management and maintenance?**

Improving the quality of MFB management services is one of the main goals of the reform. Meanwhile, there is currently no consolidated data on the assessment of quality, dynamics, and key drivers of quality (including the model of housing management).

The legislation stipulates the requirements for the quality of housing management services. It defines the procedure for checking the quality and the rules for recalculating the service's price if it was unsatisfactory or was not provided. However, the consumer protection mechanism envisaged by legislation can be applied only if a housing management services agreement frames the legal relationship between co-owners and the manager. These consumer protection mechanisms can't be applied in those MFBs where the chosen housing management model does not comply with legal requirements for the residential building manager (see Annex 7 for more details).

The full use of legislatively granted consumer protection mechanism depends on how well the co-owners are organized and committed. Passive co-owners, even in buildings that have managers (for example, those selected by the local government in bidding procedure), will not be able to protect their rights in cases of substandard services.

### **What is the current technical condition of MFBs?**

Gradual deterioration of MFBs housing stock condition, and, consequently, compromised comfort and safety of living, was a key reason for initiating the reform in the first place. Eighty-five percent of MFBs were constructed during the Soviet era and have not been properly maintained.



However, there is currently no consolidated information on the actual technical condition of the entire housing stock, including the number of buildings posing a risk to the safety (including which elements represent the biggest hazards, such as structural elements of the building and indoor gas networks).

An important related issue is a liability in the event of an accident. According to the Law "On Peculiarities of Exercising Ownership Right in Multifamily Building," – co-owners are obliged to ensure proper maintenance and sound sanitary, fire-fighting, and technical condition of the common property in the MFB. Co-owners are liable for damage caused to third parties due to non-performance or improper performance of their duties as co-owners. However, the co-owners will not be liable if the damage is caused by actions or inaction of the residential building manager, who has violated the housing management agreement. Therefore, the legal form of the relationship between co-owners and persons who provide management services must reflect that relationship's essence. Properly executed agreements between co-owners and managers, with clearly set responsibilities and liability of the parties, is critical to determine who will be liable in the case of accidents or other adverse events.

## **How many MFBs are managed under current legislation?**

Upon entering into contractual relations with a housing management service provider, co-owners want to have the necessary tools to be protected from possible negligence of the selected provider (including liability for damage or other negative consequences due to the manager's actions or inaction). This legal remedy may help get the proper quality of services in the short term and improve the buildings' overall technical condition in the medium term.

Today there is no consolidated information on the percentage of MFBs serviced by housing manager selected co-owners. Thus, it is advisable to develop monitoring tools to obtain information on the share of agreements concluded per the new model housing management agreement's requirements.

## **How many HOAs are used by co-owners as an effective decision-making mechanism?**

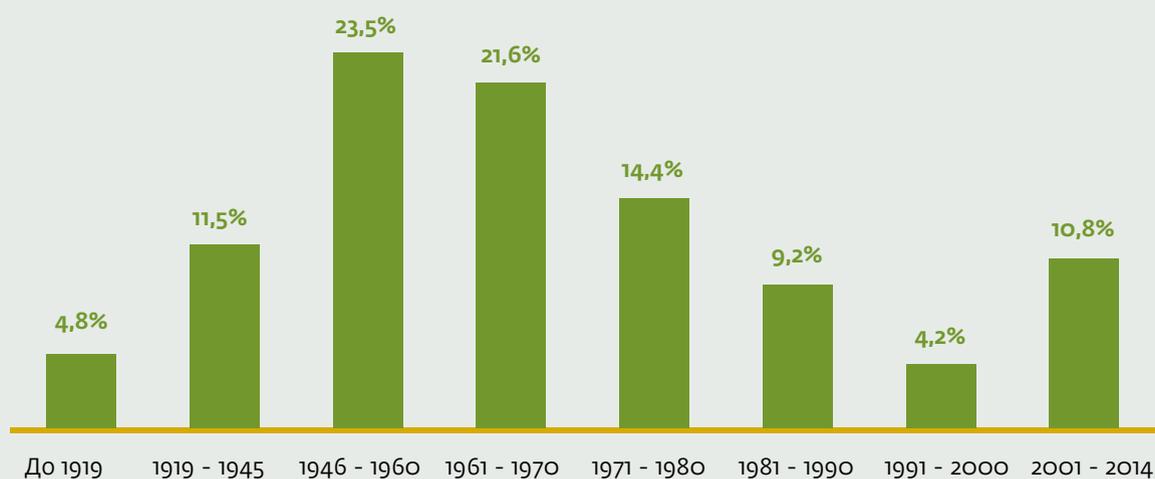
According to official information, more than 33,000 HOAs are registered in Ukraine. However, sound conclusions on the results of reform and plans for future actions require information on the number of HOAs that are officially registered and those operating. Currently, such information is not available.

### 3. MFB thermal renovation program in Ukraine and the possible role of housing managers

#### Energy efficiency potential in multifamily buildings

About 85 percent of the existing housing stock in Ukraine was built before 1990 using building codes with low energy efficiency standards. Also, most homes have hardly had any energy efficiency measures. According to the New Social and Economic Policy Center, Ukrainians spend twice as much energy per unit of living space than do residents in the European Union countries with similar weather conditions.

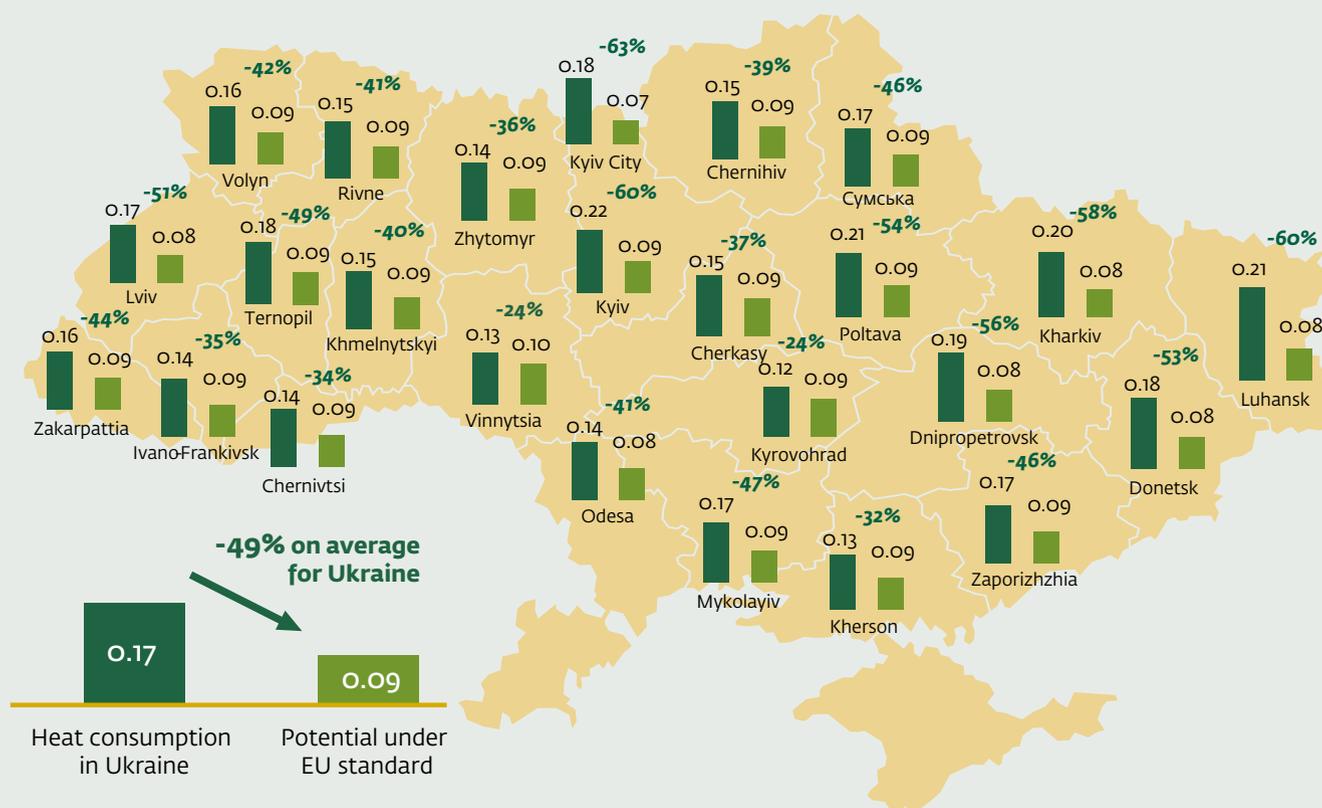
Figure 3.1. Distribution of residential buildings by years of construction, as of 2015



Source: State Statistics Service of Ukraine.

Thus, Ukraine has a huge potential to curb energy consumption, which, once unlocked, will provide significant economic, social, and environmental benefits and contribute to the country's energy independence. If energy consumption per unit of living space in MFBs is brought down to the EU level, it will help to save annually approximately 2 million tonnes of oil equivalent of energy, avoid about 4.5 million tons of CO<sub>2</sub> emissions, and \$1 billion of heating costs.

Figure 3.2. Energy efficiency potential in Ukraine, GCal/m<sup>2</sup>



Source: Data of New Social and Economic Policy Center (2013).

## Creation of the relevant legislative environment

During 2015–17, Ukraine enacted laws that created the necessary conditions for implementing energy-efficient projects in MFBs.

In addition to the main laws that provide a legal framework for the housing reform (for example, the Law "On Housing and Communal Services" and the Law "On the peculiarities of the ownership of an apartment building"), the following laws were also adopted:

- Law of Ukraine "On the Energy Efficiency Fund" № 2095, dated June 8, 2017
- Law of Ukraine "On the Energy Efficiency of Buildings" № 2118, dated June 22, 2017
- Law of Ukraine "On Commercial Metering of Heat Energy and Water Supply" № 2119, dated June 22, 2017

In particular, they defined the principles of ensuring commercial metering of public utilities, introduced effective mechanisms for energy certification of buildings, and a tool for financial support of thermal renovation projects based on best European practices.

## Available financial support mechanisms

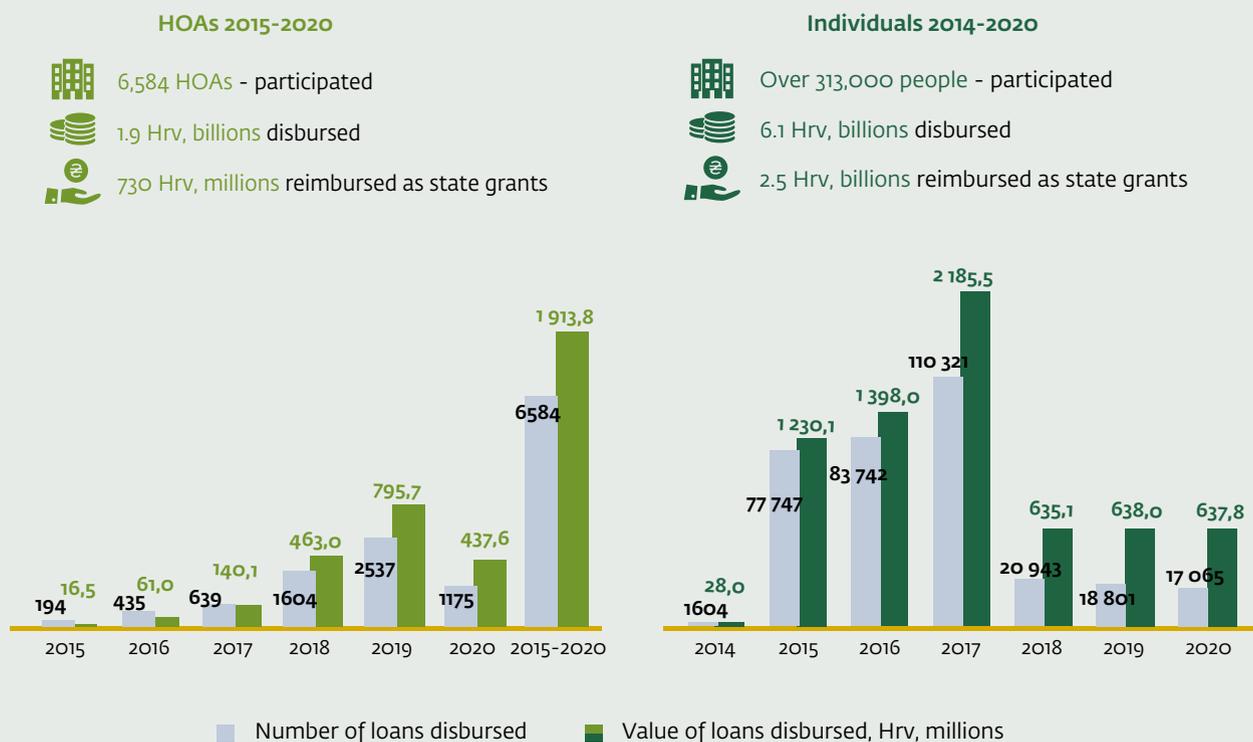
According to the Ministry of Communities and Territories Development of Ukraine, the investment need for EE renovations of Ukraine's multifamily housing sector is about \$17 billion. Scarce funding, however, is one of the main barriers to energy efficiency projects (especially in MFBs where co-owners need to make a collective decision).

In Ukraine, there are several government-funded programs supporting homeowners in their energy efficiency renovations, including:

- The Energy Efficiency Fund, which started operating (accepting applications from HOAs) in September 2019
- The state program, Warm Loans, which has been running since 2014
- Local financial support programs that can complement “Warm Loans” or operate independently (for example, the Kyiv City’s 70/30 program)
- The IQ Energy program, launched in 2016 and implemented by the EBRD and co-financed by the E5P multi-donor fund

So far, most projects have been implemented under the Warm Loans Energy Efficiency Support Program. The program encourages individual residential households and HOAs to obtain loans to purchase energy-efficient equipment or implement energy efficiency measures, compensating from 30 to 70 percent of their cost. According to the SAEF in 2015-20, approximately 330,000 loans worth Hrv 9 billion were disbursed, and about Hrv 3.2 billion were reimbursed by the state through grants. The 2020 state budget allocates Hrv 400 million to finance the program.

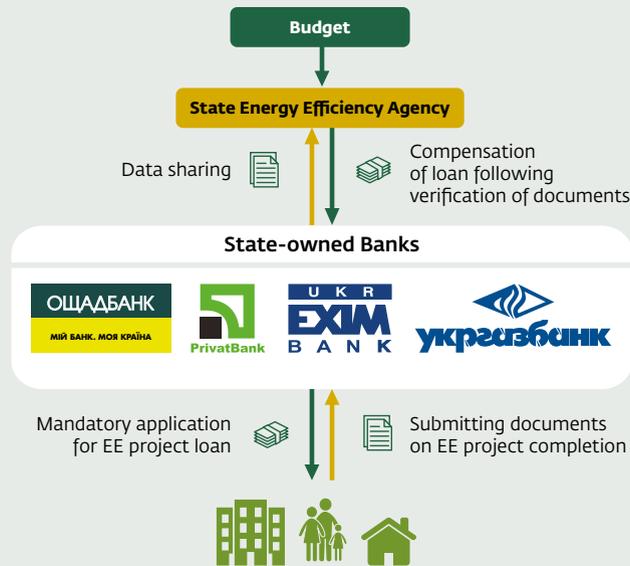
Figure 3.3. Loans taken out by households and HOAs under the Warm Loans program (Hrv, millions)



Source: Official web-page of the Parliament of Ukraine, [www.rada.gov.ua](http://www.rada.gov.ua).

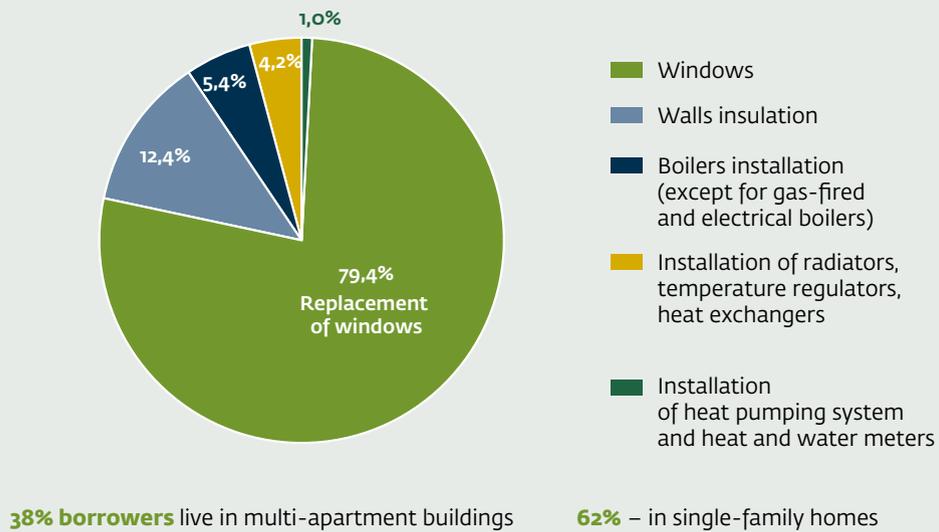
The program's beneficiaries are primarily individual households, which obtain loans for one-off EE measures (approximately 80 percent of the loans were used to replace windows).

Figure 3.4. Operational diagram of the State Program, Warm Loans



Source: SAEE.

Figure 3.5. Uses of Warm Loans by households in 2016



Source: SAEE.

The IQ Energy program is almost identical to the Warm Loans program. Under this program, individual households and HOAs can obtain a loan for energy efficiency measures and receive compensation of 20 percent (for households) and 40 percent (for HOAs) after their successful implementation.

Funds from EBRD and donors are distributed by banks—partners of the program, such as Ukrsibbank, Raiffeisen Bank Aval, and OTP-Bank. The program has a budget of €90 million for four years (until 2020), of which €75 million was provided by the EBRD for loans and €15 million by the E5P multi-donor fund for grants.

The two existing programs have achieved remarkable progress in supporting the implementation of energy efficiency measures. However, the implementation of projects in MFBs requires substantially more resources. That is why the Ministry of Communities and Territories Development of Ukraine, with the support of international partners, initiated the creation of the EEF, which began operating in 2019.

## Energy Efficiency Fund

Historically, a key feature of energy efficiency programs was the focus on individual measures rather than integrated solutions. This simplified their implementation but was not optimal in terms of the efficient use of funds and energy saving, especially for MFBs. For example, it is common practice to install energy-efficient windows without the possibility of regulating the heat supply (in this case, the comfort of residents may improve, but the consumption of thermal energy will not decrease).

The establishment of the EEF was initiated by the Ministry of Communities and Territories Development of Ukraine with the support of international partners to implement integrated energy efficient projects in MFBs. The EEF's MFB thermal renovation program, Energodim, is financed from the state budget (Hrv 2.7 billion, or €82 million, has already been transferred to the Fund) and co-financed by the European Commission and the German government (another €100 million).

The EEF's Energodim program was adopted on August 16, 2019. The first applications for participation from an HOA were received in September 2019.

The Fund's program enables HOAs to choose either of the two packages of energy efficiency measures:

1. Package A "Light" offers a set of simple energy efficiency measures with about 20 percent potential for energy savings. The percentage of construction cost compensated under the Program is 40 percent (60 percent for the first 500 HOAs)
2. Package B "Complex" offers a comprehensive thermal renovation of the building with an energy-saving potential of up to 60 percent. The percentage of construction cost reimbursed under the program is 50 percent (70 percent for the first 500 HOAs)

More detailed information can be found on the Fund's website: <https://eefund.org.ua/en>.

### Role of housing managers in MFB thermal renovation

Implementation of an integrated solution on thermal renovation achieves a much better result but requires going through a more complex project implementation procedure (for example, energy audit, development of project documentation, or technical supervision of construction works). An HOA board may not have the appropriate qualifications or time to manage a comprehensive thermal renovation process.

As proven by Eastern European countries' experience, housing managers can take an active part in the organization and administration of such projects. In Poland, the degree of involvement of a housing manager is subject to agreement with the co-owners (the manager acts within the duties delegated to him). For example, managers can:

- Call an HOA general meeting to make the necessary decisions
- Organize the contractor selection process
- Organize the loan application process
- Prepare the necessary documents for participation in financial support programs
- Administer loan repayment

As a rule, the board of a housing association in Poland (similar to HOA under Ukrainian law) controls the most critical stages, including the competitive selection of contractors for costly works and signing a loan agreement. The manager's remuneration is also negotiable—the manager can either receive an additional fee or provide these services free of charge.

In Lithuania, a separate role of the renovation project administrator was introduced for the thermal renovation of MFBs. The administrator's services are covered at the expense of the state (an average of €1,000 per project).

The renovation administrator supports the project implementation and performs the following key tasks:

- Calls the general meeting of the co-owners to make the necessary decisions
- Organizes the process of contractors' selection (tender) and works acceptance
- Liaises with the state agency BETA about participation in the program and prepares relevant documents
- Submits loan application to the bank and signs loan agreement on behalf of the co-owners (the administrator does not assume financial obligations)
- Administers the loan repayment by co-owners

Renovation administrators may either be specialists with particular narrow expertise in administering such projects or housing managers (as a rule, project administration is included in the service offering of large management companies).

In Ukraine, energy efficiency measures are mostly implemented by HOAs themselves. However, there are known cases of co-owners contracting third parties to administer such projects (usually the chairpersons or members of the board of other HOAs with a track record in implementing relevant projects in their homes). A housing manager performing this function will have significant competitive advantages. Also, the renovation of the residential building, as a rule, makes its maintenance simpler (and hence the manager's job easier) in the future.

An important point is a payment for the administration of thermal renovation projects. Such services are not included in the standard list of a manager's responsibilities. Co-owners of some residential buildings may disagree with paying extra for the administration of thermal renovation.

Currently, the Energy Efficiency Fund supports the involvement of project managers into implementation of the Fund's projects. Thus, the Energodim program provides to HOA a partial reimbursement of the cost of project manager's consultancy and guidance in thermal renovation project (source - [www.eefund.org.ua](http://www.eefund.org.ua)).

# Annexes



## Annex 1. Legislative background of the housing reform: key changes between 1992 and 2015

The Law of Ukraine "On Privatization of State Housing Stock" adopted in 1992, triggered massive privatization of apartments by the households on preferential terms. Today, over 90 percent of apartments in Ukraine are privatized:

- Housing space within the established social norms (depending on the number of residents in an apartment) was subject to free privatization;
- If the footage of an apartment was bigger than the norm, the residential building hold could pay extra for the "surplus" using their securities (obtained for the privatization of state-owned enterprises or land);
- Only if a residential building hold did not have securities it could pay cash. Moreover, a residential building hold could pay this amount in installments over a period of up to 10 years.

The law established a joint ownership title to common use areas. A similar approach was preserved in the new version of the 2003 Civil Code of Ukraine.

Although the Law on Privatization of Housing Stock was supposed to begin the transformation of the housing sector; however, some of its provisions, as well as the other legislative acts, have blocked the possibility of developing a competitive housing management market. In particular, this law

1. Did not provide an effective mechanism for the co-owners to exercise their right to use joint property. The version of the Civil Code that was in force before the adoption of Law 417 established that all decisions should be adopted with the consent of all co-owners (100 percent), which was next to impossible to ensure in practice.
2. Fully retained the role of communal companies in the maintenance of MFBs. The law did not envisage the co-owners' right to change housing manager (except communal companies).
3. Obligated the former owners of the apartments (government, municipal authorities) to finance and organize the renovation of the MFBs. Therefore, attempts to encourage co-owners to unite to renovate the MFBs were not successful due to the conviction of the latter that it's the municipal authorities' duty to make the initial renovation before "handing over" the residential building to its co-owners.

The adoption of the Law "On Associations of co-owners in MFB" (the Law "On HOA") in 2001 did not change the situation regarding the right to run common property, although entitled the co-owners to create HOAs. The Law has had significant shortcomings: it introduced the concept of membership in HOA. It meant that the decisions made by HOA might not apply to non-members of HOA. This compromised the idea of joint property management and that all co-owners of apartments and non-dwelling premises in an MFB should abide by the joint decisions.

Thus, due to inefficiencies of the legislation and due to the absence of a public awareness campaign designed to explain the rights and responsibilities of co-owners, the responsible owner responsible for the residential building as a whole, and not only for his/her apartment, did not emerge.

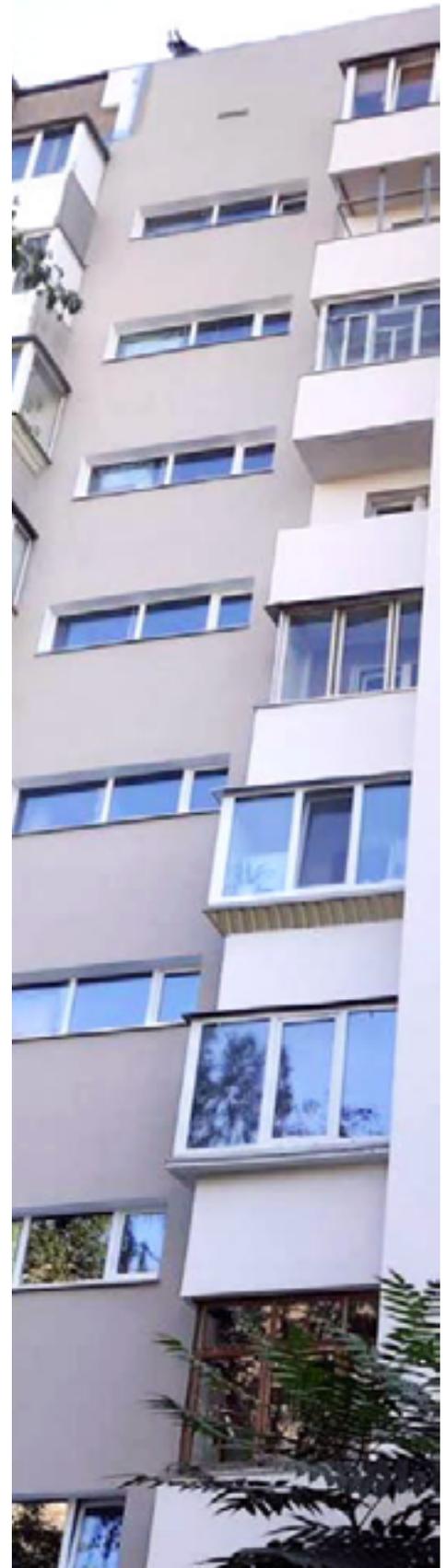
In 2004, the Law on Housing and Communal Services was adopted (this version of the Law is no longer in effect), which, among other things, regulated the area of management and maintenance of MFBs. However, not only this Law has not changed the old system of relations, but it also consolidated the powers of municipal authorities to regulate this area, in particular, to select a provider of housing and communal services and set respective tariffs.

In addition, the concept of a balance holder was introduced. In most cases, the balance holders were communal building maintenance companies, whose responsibilities were in particular:

- Keep MFBs on their balance sheets
- Determine the operating procedure and repair of buildings
- Conclude contracts with the utility providers
- Decide on the use of funds for routine repairs and major renovations

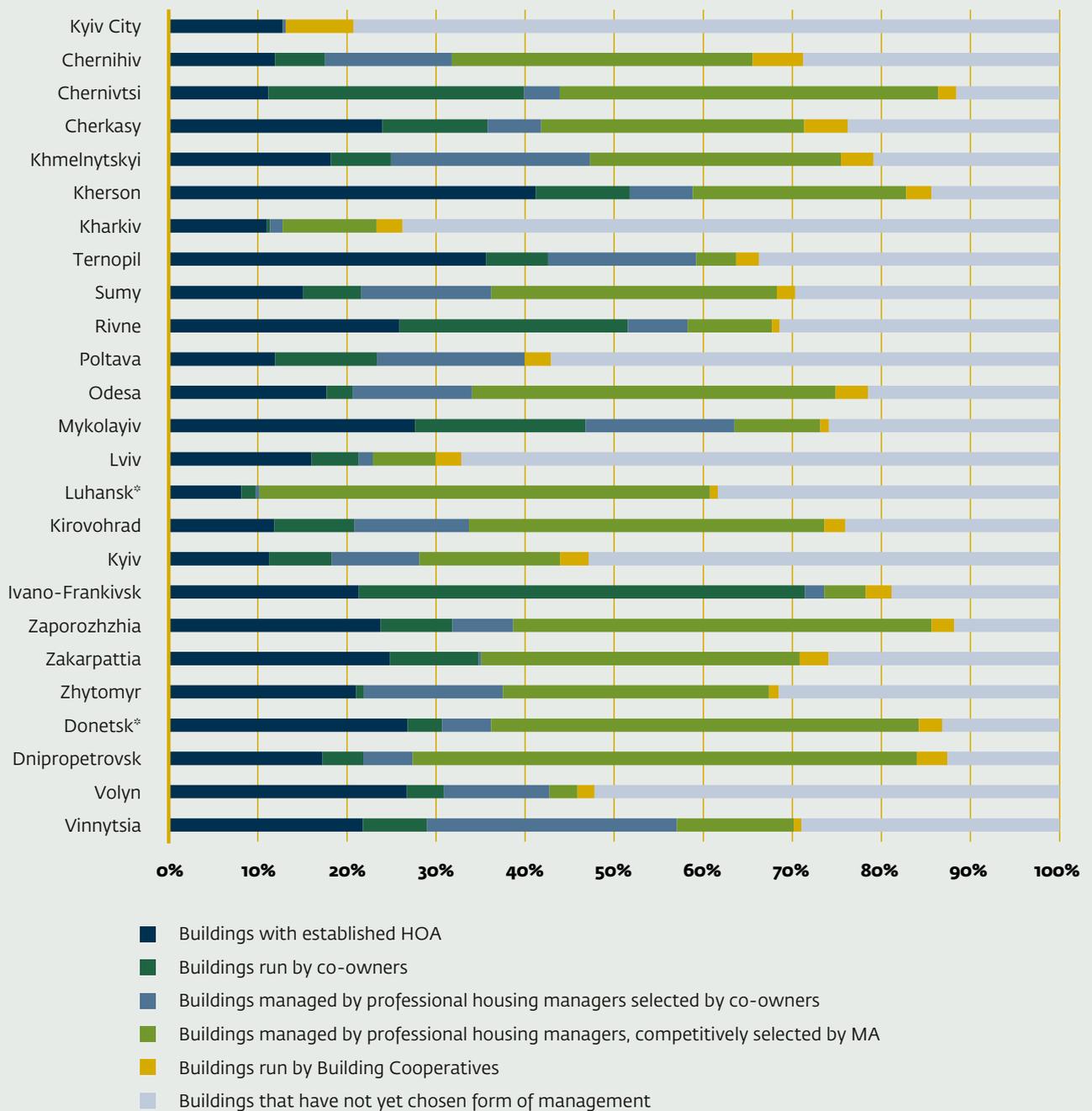
Over the decade that followed, the legal framework in the field of MFB management changed only slightly (the changes touched particular aspects of relations in an MFB, but almost did not affect the overall set-up in this area). Thus, as of early 2015, the progress on the way to having in place market relations in the housing sector was limited to the mass privatization of apartments and entitling co-owners to set up HOAs. Unfortunately, conditions for the rise of true market relations in the management of MFBs were not created:

1. In practice, co-owners of most residential buildings could not make decisions on the management of common property due to the inexistence of an effective mechanism for exercising this right:
  - Property in joint ownership could be disposed of only subject to the consent of all co-owners.
  - Co-owners had the right to allocate in kind their share of common property.
  - Property that was in joint ownership could be divided between the co-owners by agreement between them.
2. The duties and responsibilities of the co-owners were not clearly defined.
3. Providers of residential building maintenance services were selected by municipal authorities. The same MA were also the owners of communal building maintenance companies, which, as a rule, were appointed to provide these services.
4. The status of communal building maintenance companies endowed them with broad rights and responsibilities and was enshrined in law.
5. Tariffs for residential building maintenance services were set by local municipal authorities..



## Annex 2. Regional breakdown of housing management forms

Figure A2.1. Types of MFB management, by regions of Ukraine, as of January 1, 2020



Note: Data does not include territories of Donetsk and Luhansk oblasts outside of Ukrainian control.  
 Source: Ministry of Communities and Territories Development of Ukraine.

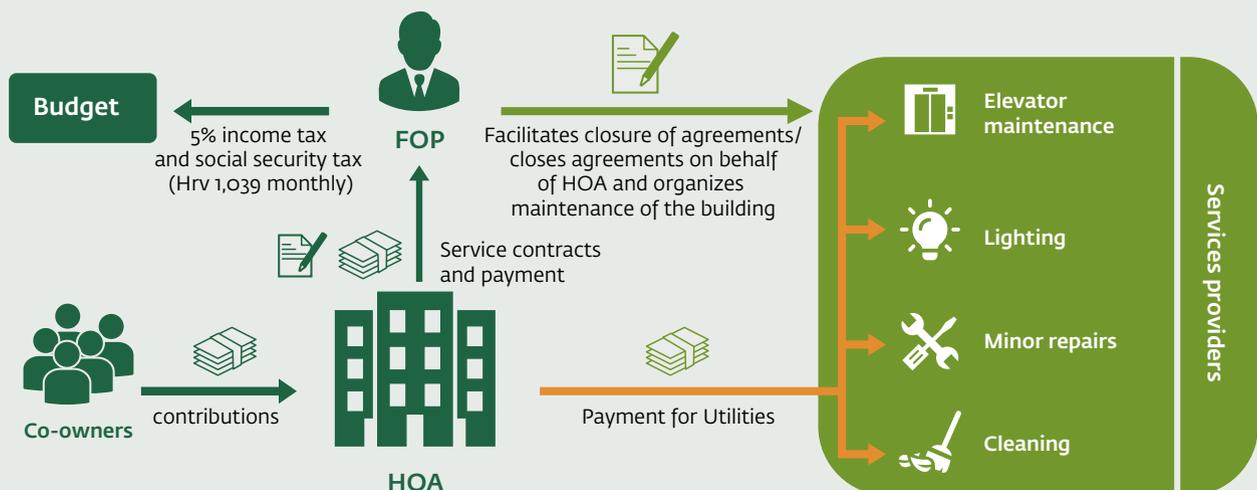
## Annex 3. Possible options of delegating housing management functions in buildings with HOA

### Hiring an individual entrepreneur

Hiring an individual entrepreneur who assists in the management of a specific HOA involves delegating to him the functions of organizing maintenance of the residential building. In this model, the individual entrepreneur actually plays the role of the chairperson of the HOA board, but legally, this relationship is formalized as the purchase by the HOA of certain services from such individual entrepreneurs. Usually, an individual entrepreneur uses a simplified system of taxation, which reduces the cost of HOA because of lower taxes. Instead of 41.5 percent of taxes paid on the salary of the HOA board chair, the individual entrepreneur pays only 5 percent as the single tax on the amount of remuneration and Hrv 1,039.60 of SCC tax per month (the amount of SCC tax is calculated at 22 percent of the minimum wage established by law). This amount is calculated on the effective minimum wage in 2020, which is Hrv 4,723 per month).

Under this model, individual entrepreneur—consultant organizes the management of the residential building on behalf of HOA, contracts third-party providers of individual works and pays to them (in both cases, HOA pays service providers directly; that is, this money are not credited to accounts of individual entrepreneurs and are not subject to taxation). Thanks to this model of contractual relations, significant tax savings are achieved compared to the situation when an individual entrepreneur receives payment from HOA for all management services and then procures works (services) from contractors on his/her own behalf and pays for them from his/her own account. But since under such a model, the individual entrepreneur-consultant is not by law the residential building manager, he/she is not accountable to the co-owners as the manager.

Figure A3.1. Organization of building maintenance with a hired manager



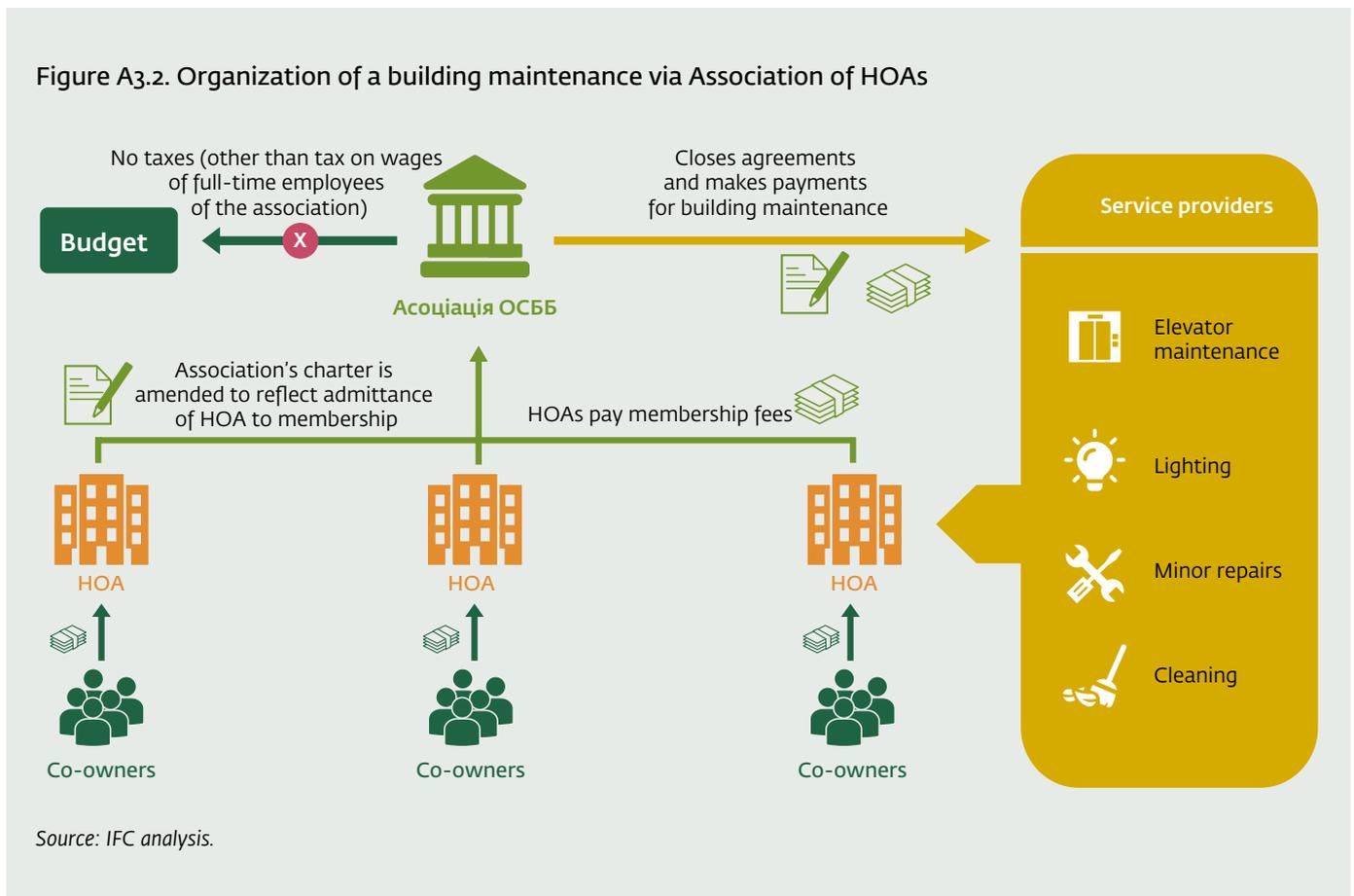
Source: IFC analysis.

## Delegating management functions to HOAs' Association

The general meeting of HOA may decide to delegate part or all residential building maintenance functions to the Association of HOAs, which is a non-profit organization, and therefore, has significant tax benefits compared to hiring a manager.

In this model, the organization of residential building maintenance is carried out by the governing bodies of the association and not by the governing bodies of HOA. The decision-making, rights, and obligations of the parties are defined in the statute of the association. Each HOA delegates its representative to the general meeting of the association to present its interests. The key document to be adopted by such a meeting is an estimate of the costs of the Association of HOAs for the maintenance of the buildings it looks after.

This model is usually sought after if the Association of HOAs serves a small number of residential buildings located relatively closely. Otherwise, the decision-making process (such as the approval of the annual budget) can be significantly complicated.

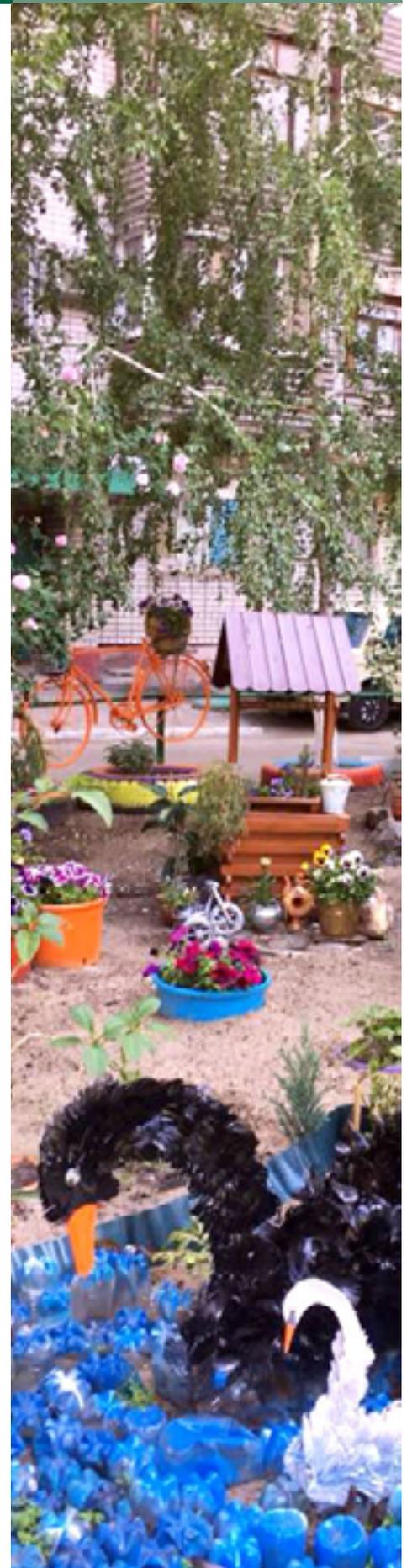


## Comparison of housing management models for HOAs

In fact, there are four management models for HOA (essentially), although only one of them is considered management service by law:

- The building is managed by the HOA itself (independent management)
- Bring an individual entrepreneur, who de facto acts as the HOA board chair, and de jure is a consultant to the HOA, which empowered the individual entrepreneur to decide on the contracting of certain services and enter into agreements with them on behalf of the HOA or organize the execution of such agreements by HOAs
- All or part of the building management functions are transferred to an HOAs association
- A true manager is hired in accordance with the current legislation

To ensure the quality of housing, management services, and the protection of consumer rights, it is advisable to involve those residential building managers who meet the mandatory requirements of the law (such as having professional certificates, provide services under the Model Agreement).



## Annex 4. Housing manager's duties

The list of mandatory services and works as part of MFB residential building maintenance is presented in Order № 190 dated July 27, 2018 of the Ministry of Communities and Territories Development of Ukraine, whereas the frequency of these services is subject to an agreement between the manager and the co-owners. In particular, mandatory services and works include:

- Purchase of electricity for lighting of common areas, the power supply of elevators, and ensuring the functioning of other common property
- Maintenance and repair of indoor systems that provide relevant utilities (water, electricity, gas, and heat), depending on the decision of the co-owners on the chosen model of relations with the utility suppliers
- Maintenance of elevators, building automation systems, smoke and ventilation ducts, automated fire control devices and smoke removal systems, as well as other indoor engineering systems (if any);
- Routine repair of the building, as well as elements on the adjacent territory (including sports, children's and other playgrounds) and other common property of the MFB
- Cleaning of common areas and adjacent territory
- Cleaning and removal of snow, a sprinkling of anti-ice mixtures on the part of the adjacent territory intended for the passage of pedestrians and vehicles
- Rodent and pest control

The responsibilities of the manager are defined in the Law "On Housing and Communal Services" and are conditionally divided into mandatory (those that must be in each agreement) and optional (those that the parties may further agree to). Mandatory services, in particular, include:

- Ensuring the proper maintenance of the common property of the MFB and the adjacent territory in accordance with the regulatory requirements and the management agreement, as well as contracting providers of certain works and services on the manager's behalf
- Making available to co-owners comprehensive information on the price of housing management services, their structure, and performance procedure
- Protection of common property and indemnification of damages at the cost of entities responsible for the damage;
- Maintaining technical documentation for the residential building
- Communicating the need for renovation of the residential building
- Keeping separate records of income and expenses for each residential building
- Concluding power supply agreements for common areas and operation of common property
- Annual reporting on the implementation of the budget and having the new budget approved by the co-owners
- Drawing up an action plan for the maintenance and minor repairs of MFB's adjacent territory
- Performance of works on elimination of emergency situations within the budget (if the cost of repair is higher than indicated in the budget and further operation of the object causes danger, the manager notifies co-owners and suggests appropriate changes to the budget. The manager terminates operation of the object in disrepair until the co-owners make a decision)

Additional responsibilities of the manager appear only when the manager and co-owners agree and write additional conditions in the agreement. These may include, in particular:

- Buying out by the manager of professional liability insurance policy in case s/he fails to perform or improperly performs the duties
- Opening an account to accumulate contributions of co-owners for the renovation of the residential building. These funds remain the property of the co-owners and are used for their intended purpose;
- Renting out and establishing easements for the common property of the residential building. The proceeds are used for renovations unless the owners decide otherwise
- Organization by the manager of the renovation in the MFB
- The manager is obliged to manufacture (restore) the missing technical documentation for the residential building with the relevant costs reimbursed by the co-owners
- Concluding collective agreements on behalf of co-owners with utility service providers (heat and water supply, wastewater, hot water supply, and residential building hold waste handling), if the co-owners have chosen a collective agreement model. In this case, the manager enters into a separate agreement with the co-owners, which contains:
  - the procedure of metering the volume of consumed service and paying for it;
  - the methodology of distribution of the consumed service between co-owners;
  - the procedure for payment by co-owners for the service consumed; and
  - the amount of the manager's remuneration and payment procedure under such agreement.



## Annex 5. Taxation of housing managers and cash flows

Under Ukrainian law, businesses (legal entities and private entrepreneur) can choose the general or simplified system of taxation that differ by implications and restrictions. In most cases, private entrepreneurs choose the simplified system of taxation.

In addition, private entrepreneurs and legal entities may elect to self-register as value-added-tax (VAT) payers. However, if an entity that has opted for the general taxation system has generated over Hrv 1 million in VAT-taxable income from operational activity in the last 12 months, it must register as a VAT payer.

Thus, there are four models of taxation, which are described below.

Under the simplified taxation system, special rates of the single tax are applied (5 percent or 3 percent of the received income (3 percent is applied if the person is registered as a VAT payer), and no income tax is paid. The maximum amount of income for the application of the simplified taxation system is Hrv 7 million per year.

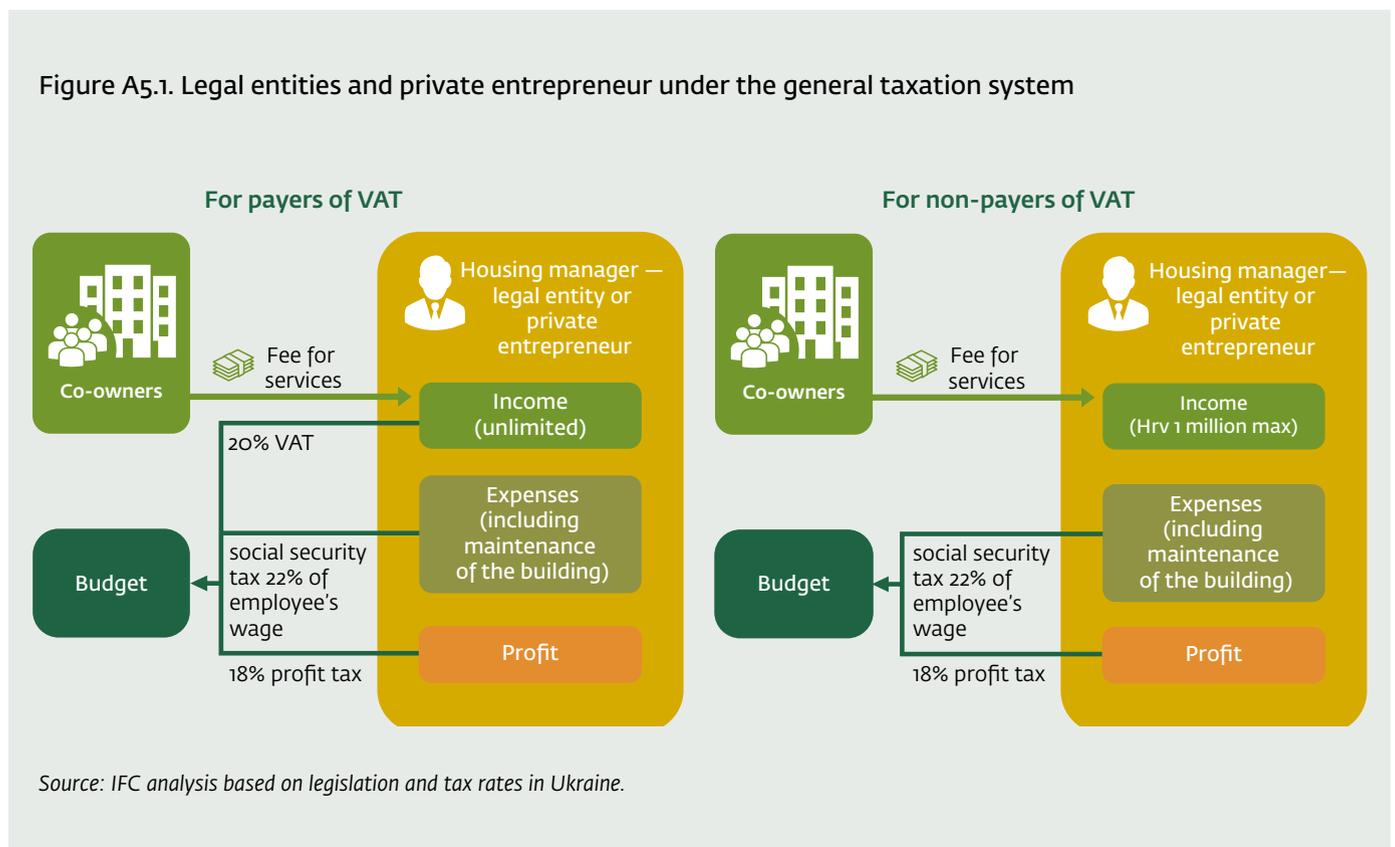
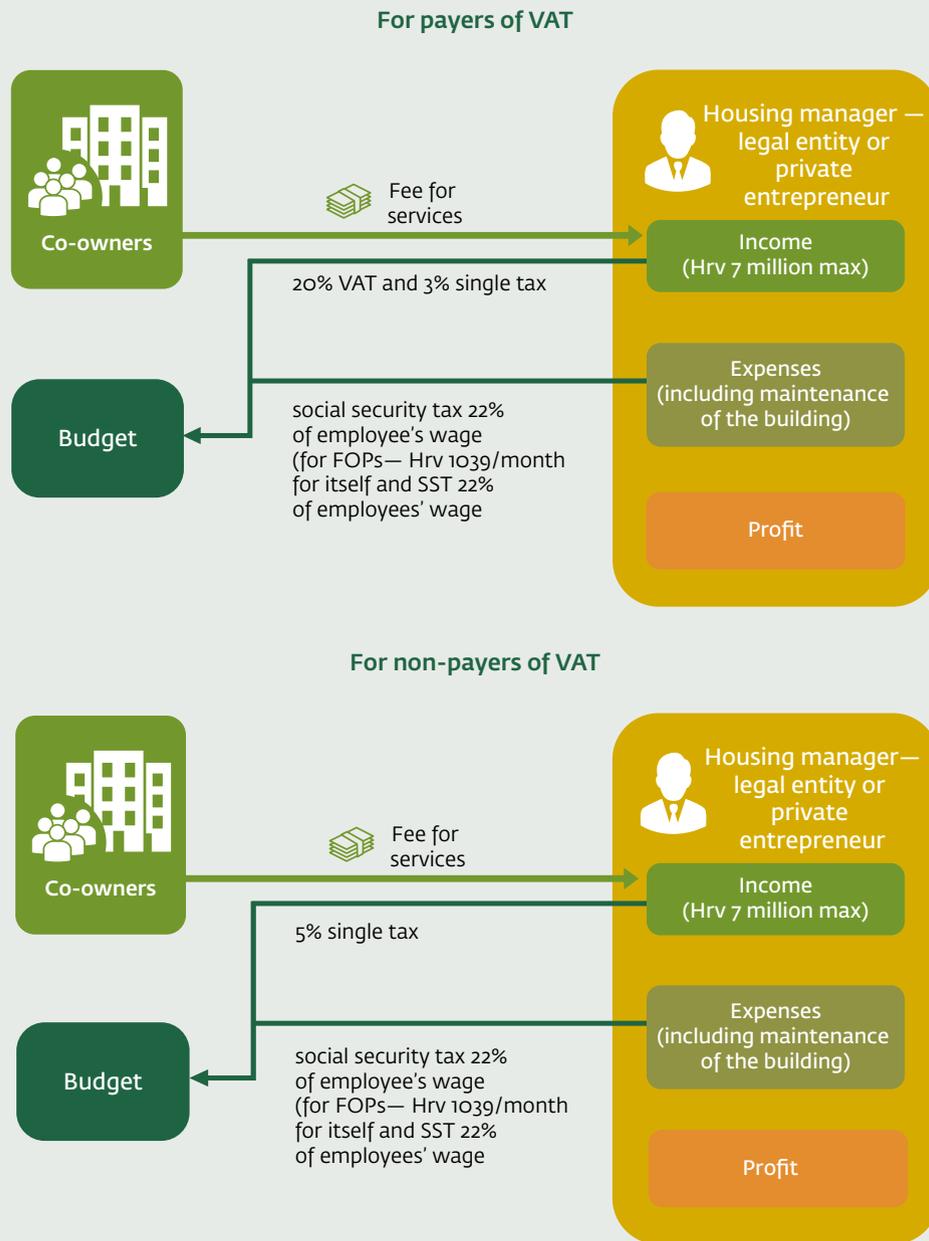


Figure A5.2. Legal entities and private entrepreneur under simplified system of taxation

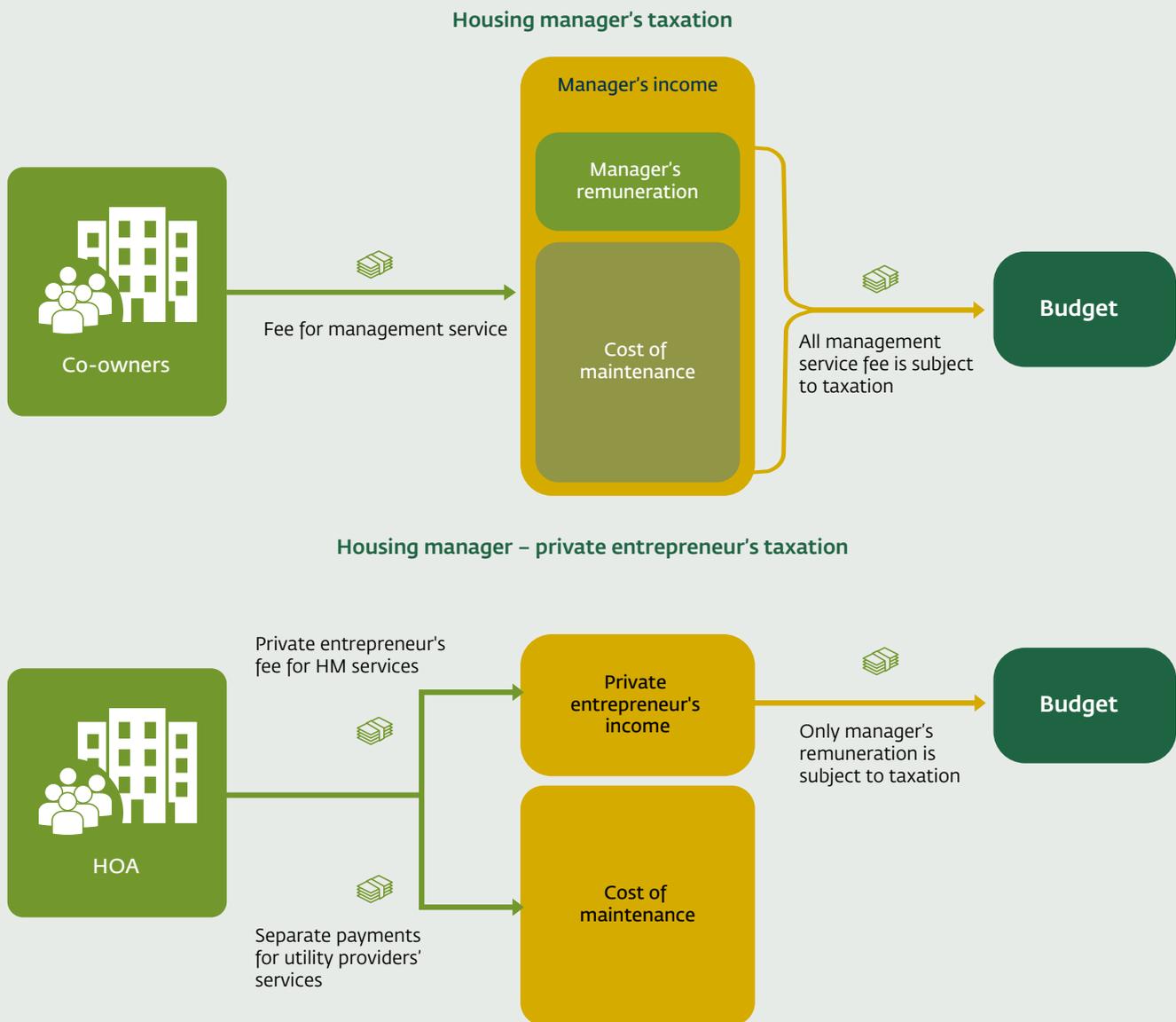


Source: IFC analysis based on legislation and tax rates in Ukraine.

## Individual entrepreneur cash flow and taxation

The taxation of IE-manager is identical to the above schemes. However, the difference is that the payment for services from co-owners or HOA is made directly to the accounts of the providers of the service that is part of the housing management service (cleaning, maintenance of internal networks), while the income of the IE-manager is the only remuneration for his services; as a result, the single tax (if the IE works under the simplified taxation system) is paid only from the amount of such remuneration.

Figure A5.3. Comparison of cash flows and taxation of a housing manager under simplified system of taxation and private entrepreneur



Source: IFC analysis based on Ukrainian legislation.

## **Annex 6. Lessons learned for Ukraine on the housing management market development from the experience of Poland and Lithuania**

When conducting the assessment of Ukrainian housing management market development, a comparative analysis of the formation of Polish and Lithuanian markets was conducted. Both countries were similar to Ukraine in terms of starting conditions (housing was in state or communal ownership; management is carried out by administrative methods, managers are appointed, prices are set). At the same time, these countries differ in their approaches to the development and regulation of the housing management market. While in Poland, the role of the state and local government is minimized, in Lithuania, the government keeps its role in the management of MFBs.

The new legal framework in Poland and Lithuania was finalized in the early 2000s. Therefore, housing management services markets in both countries have been operating for quite a while already. Based on this experience, several important drivers were identified that are believed to have created preconditions and/or accelerated the transition from the "Soviet" centralized housing management system of MFBs to a system based on market relations.

### **Key drivers of the transition of housing management market to market relations from relevant international experience**

#### **Privatization of housing**

- Both Poland and Lithuania administered massive privatization of housing, which became the basis for all further transformations in the housing and communal services sector.
- Ukraine has also carried out large-scale privatization of housing, which has become a prerequisite for changing relations in the field of housing management.

#### **Exercising the rights of co-owners to manage common property**

- Another fundamental condition for the introduction of market relations is the possibility for co-owners' to exercise their rights to manage common property (including the ability to select a manager).
- In Poland, privatization legislation has introduced a mechanism of mandatory creation of housing associations, according to which entries were made to the registry of legal entities without co-owners' initiative. This procedure not covered housing cooperatives, another form of ownership that already has effective housing management tools. Additionally, for all housing associations as of seven and more apartments, it was mandatory to elect a board (single-person or collegiate), which acted on behalf of the association. In fact, the legal status of Polish housing associations is most similar to the status of HOAs in Ukraine. As a result, in a short period of time, all MFBs in Poland created an effective mechanism for independent decision-making.

- In Lithuania, co-owners can create associations of co-owners of MFBs (similar to HOAs in Ukraine) and form the relevant governing bodies (board of association) or enter into a joint management agreement, according to which all decisions are made by the general meeting of co-owners. However, this approach resulted in a situation where residents of about 50 percent of MFBs have not been self-organized and still rely on the intervention or intercession of local authorities in resolving housing problems.
- The current dynamics of the creation of HOAs in Ukraine is very similar to the experience of Lithuania. Almost half of the Ukrainian MFB co-owners remain passive in accepting responsibility for the management of buildings.

## Regulation by municipal authorities of pricing for management services and market access

- In Poland, municipal authorities almost never intervene in market access and market regulation. Professional associations, associations, and federations of managers, which to some extent, perform self-regulatory functions, play a much greater role in this.
- In contrast to Poland, in Lithuania, municipal authorities play a significant role in regulating the provision of housing management services. They maintain a register of managers entitled to provide services in the city, use a statutory methodology to set national thresholds for the maximum cost of some components of management services, and appoint managers to buildings that have not chosen it themselves. However, such regulation is carried out transparently, in accordance with the relevant legislation and, as a rule, without a conflict of interest, as the share of municipal companies on a market of cities is negligibly small.
- Considering the somewhat passive attitude of the Ukrainian population in decision-making on the management of MFBs, granting of some powers for local government may be appropriate. For example, the right of local government to hold a bidding procedure to select residential building managers to ensure uninterrupted service

## Legal framework for the provision of services

- In Poland and Lithuania, the most critical principles and rules for providing services are formalized in legislation. For example, in Lithuania, there is a minimum scope of housing management services, while the Polish law obliges the manager to keep the real estate in good state of repair, which, together with building codes, implies a certain minimum of functions. In both countries, the law requires that the manager has a civil liability insurance policy and is accountable to co-owners for the money spent. Also, in both countries, at the initial stage of the market, there was a system of professional certification of specialists, which allowed to set minimum professional standards for practitioners.
- Ukrainian legislation has also defined rules for the provision of services, the minimum scope of services (works) included in the housing management service, a Model agreement for the services. Also, the law requires obtaining professional certification by at least one employee of the residential building manager, which is operating as a legal entity or a private entrepreneur. Unlike Poland and Lithuania, Ukraine does not require housing managers to have compulsory liability insurance. Given the experience of markets in Poland and Lithuania, after the development of the competitive housing management market in Ukraine, it is advisable to introduce professional liability insurance for housing managers, which will improve the quality of management services and consumers' loyalty.

## Privatization of communal building maintenance companies

- Both Poland and Lithuania accomplished massive privatization of communal building maintenance companies (with the exception of mostly small towns due to the lack of demand from the private sector). Although such a step has nothing to do with the formation of the legislative framework and rules of the industry, market participants from both countries claim that it significantly accelerated the process of competition and deprived local governments' motivation to provide support to selected market participants.
- In Poland, many cases of privatization have resulted in the fragmentation of large communal building maintenance companies. Clients of privatized companies could not change their manager for 2-3 years, which, in turn, enabled the companies to reorganize their operations and avoid bankruptcy.
- In Ukraine, the privatization of municipal companies is not considered as a solution that will accelerate the development of the housing management market. In many cases, the relationship of communal building maintenance companies with co-owners of the MFBS does not comply with current legislation. Therefore, any new owner of such service providers will immediately face a difficult procedure of concluding new housing management services agreements with quite a passive initiative from clients (co-owners).

## Annex 7. Legislative framework for housing management service quality

The clauses related to the quality of service and consumer protection mentioned below apply only to MFB management service, formalized in accordance with the requirements of the sector-specific legislation (in particular, the Law "On Housing and Communal Services" and the CMU Resolution as of 05.09.2018 № 712). The tools designed to protect communal services consumers' rights envisaged by the legislation do not apply to the services, which are management services de facto but are not so de jure.

The current legislation of Ukraine has clauses protecting co-owners' rights under the housing management agreement if the services are of substandard quality or haven't been provided. In addition to the general consumer protection clauses (such as the Civil Code of Ukraine, Law of Ukraine "On Consumer Protection" of 12.05.1991 № 1023-XII), special legislation on the provision of housing and communal services applies to consumers of housing management services.

According to the Law "On Housing and communal services," a consumer is entitled to receive housing and communal services of proper quality and in a timely manner in accordance with the law and agreement terms. The obligation to make sure that the quality of housing management service is in line with the established requirements and the agreement is incumbent on the housing manager.

### How does the law define a quality MFB management service?

The quality of the MFB management service is defined in the legislation through a list of requirements for the procedure of its provision. In particular, the Order of the Ministry of Communities and Territories Development of Ukraine № 190 as of July 27, 2018, contains a list of mandatory services expected from a manager. The frequency of performance (provision) of works (services) standards, criteria, and rates of the housing management service quality are set in the secondary legislation.

The existing system of gathering and consolidation of information does not allow one to judge the quality of MFBs management services provided at present. However, the issue of quality monitoring is important for assessing the achievement of the objectives of MFB management reform, as the ultimate goal of the reform is ensuring the safety and comfort of living in MFBs. Therefore, the reform won't be considered complete unless this goal is achieved.

### How does the law propose to act in cases of poor service?

The Law of Ukraine "On Housing and Communal Services" states that the fee for housing management service shall be recalculated if the service was not provided or its quality was inappropriate. The guidance for checking the quality of services and for recalculating their price is set forth, respectively:

- In the Procedure of verifying the quality of certain utilities and the housing management services against the parameters established by the relevant agreement on the provision of these services (approved by the CMU on 27.12.2018 № 1145)
- the Procedure for recalculation of the cost of the housing management service for the period of its non-provision, or in case of substandard quality (approved by the CMU Regulation of 05.06.2019 № 482)

A consumer may file a complaint to the manager and request him/her to audit the quality of services that were provided. The consumer's request is registered by the MFB residential building manager in the consumer complaints register. A manager must arrive for an audit in response to the consumer's request within the period specified in the housing management services agreement, but not later than one day from the date of receipt of the consumer's request.

## Checking the quality of management services

The manager verifies the quality of the service in the presence of the consumer. In the process of verification, the MFB manager considers the following:

- Whether actually provided works and services conform with the scope of works and services envisaged in the agreement on the housing management services
- If the frequency of performance (provision) of works (services) corresponds to the frequency specified in the agreement
- Whether the established standards, criteria, rates, procedures, and rules concerning the quality of housing management services in the MFB were respected

A service is considered of improper quality if it was provided in violation of the quality requirements specified in the agreement, and in breach of the relevant standards, criteria, rates, procedures, and rules; for example, its frequency was lower than established in the agreement, and/or the manager failed to provide certain components of the service.

Where the service was of inappropriate quality, the manager recalculates its cost based on the actual costs incurred in relation to the provision of the service in a particular building.

## What happens if the consumer and the manager agree that the service was not of good quality?

Where a quality audit detects instances where the quality of MFB management services falls short of the parameters established in the agreement, the respective statement of claim shall indicate:

- The date and time of the inspection
- Revealed facts of inconsistency in the quality of service
- The date effective as of which the service was of substandard quality

## What happens if the consumer and the manager agreed that the service quality was good?

Where a quality audit does not confirm that the quality of MFB management services fail to meet the parameters established in the agreement, the statement of claim shall indicate that no non-conformities with the required quality of MFB management services have been detected.

## What if the consumer and the manager disagree with regard to service quality?

If the consumer and the manager do not agree on the presence (absence) of non-compliance with the quality of services and/or the causes of violations or non-compliance, the statement of claim shall be signed with reservations, which constitute its integral part.

The findings of the MFB management quality audit may be disputed in court.

## **What happens if the manager does not arrive/does not sign the statement of claim?**

If the MFB manager fails to arrive in due time to check the quality of services or unreasonably refuses to sign the statement of claim, the statement of claim shall be valid if it is signed by the consumer and at least two other consumers living in neighboring premises. The statement of claim is sent to the MFB manager by registered mail.

The manager accommodates the demands set out in the statement of claim or gives the consumer a reasoned written refusal to do so within five working days. If the manager fails to respond within the prescribed period, the consumer's claims are considered accepted by the manager.

## **What happens if the manager refuses to recalculate the cost of services?**

In this case, the consumers of housing management services may seek the protection of their rights by applying to the State Service of Ukraine for Food Safety and Consumer Protection and/or to a court.

The legally established instruments of consumer protection can only be applied in situations where the legal relationship between co-owners and a manager has been formalized by an agreement for the provision of housing management services (for example, in other instances where the relations are housing management relations de facto and are not so de jure, co-owners may not use the tools to protect their rights as consumers of housing management services).

In addition, the extent to which co-owners will benefit from the statutory protection instruments depends on the co-owners' ability to organize and be resolute about the use of such instruments. Passive co-owners, even if they have managers (for example, those selected by the local government in bidding procedure), will not be able to protect their rights in case of service of low quality.

## Glossary

|   |  |
|---|--|
| <b>Association of HOAs</b>                    | A non-profit organization established by several HOAs  |
| <b>Building maintenance</b>                   | A service of building maintenance was provided to MFBs by communal companies before the housing reform took force, does not comply with actual legislation |
| <b>Civil Code</b>                             | The Civil Code of Ukraine of January 16, 2003, #435-IV   |
| <b>Communal maintenance company</b>           | A municipal company providing services of residential building maintenance according to outdated agreement   |
| <b>Communal housing manager</b>               | Municipal housing management company, providing services according to actual legislation   |
| <b>Housing management</b>                     | A service provided after housing reform took force that complies with the requirements of the Law "On Housing and Communal Services"                       |
| <b>Housing manager</b>                        | An individual, an individual entrepreneur, or a legal entity providing housing management services to multifamily building                                 |
| <b>Law 417</b>                                | Law of Ukraine "On Peculiarities of Exercising Ownership Right in Multifamily Building" of May 14, 2015 #417-VIII  |
| <b>Law "On HOA"</b>                           | Law of Ukraine "On Associations of co-owners in multifamily buildings" of November 29, 2001, № 2866-III  |
| <b>Law "On Housing and Communal Services"</b> | Law of Ukraine "On Housing and Communal Services" of November 9, 2017 № 2189-VIII  |
| <b>Law "On Privatization of Housing"</b>      | Law of Ukraine "On Privatization of State Housing Fund" of June 19, 1992 № 2482-XII  |

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|--|--|
| <b>Model agreement</b>                               | An agreement approved by the CMU Resolution as of on 05.09.2018 № 712, listing mandatory MFB management services provided by the residential building manager  |
| <b>Order № 190</b>                                   | Order of the Ministry of Communities and Territories Development of Ukraine № 190 as of July 27, 2018  |
| <b>Organized co-owners of multifamily building</b>   | Co-owners of a multifamily building that manage their residential building on their own through general meetings, or who, at their own initiative, delegate management functions to a selected residential building manager  |
| <b>Unorganized co-owners of multifamily building</b> | Co-owners of a multifamily building that neither set up home-owners association nor adopted a decision on the form of management of their residential building (a self-management decision at the co-owners general meeting or to select a residential building manager) |

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