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# Compensation for War Damage: Eleven Essential Steps

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*CMS analyses the eleven essential steps to protect your business and assets damaged by the war in Ukraine. Take action now to ensure that Russia compensates you for any damage from its huge resources and assets held outside Ukraine. The mechanism for seeking compensation will be specific for each case and will depend on the chosen strategy. However, time is critical to collect substantive evidence as events are unfolding and Russia continues to wage its illegal and unprovoked war in various regions of Ukraine.*

On 24 February 2022, Russia launched a full-scale military invasion of Ukraine.

One hundred and forty-one participants of the United Nations General Assembly emergency session [condemned](#) Russia's invasion and demanded that Russia immediately cease its use of force in Ukraine.

The International Court of Justice has [granted](#) the request for provisional measures ordering Russia to suspend its military operations in Ukraine.

In violation of international law, Russia continues waging war in Ukraine, targeting, among others, civilian facilities and inflicting substantial losses on businesses operating in Ukraine. In the first few weeks of the Russian invasion, the Kyiv School of Economics [reports](#), 45 factories and enterprises, 15 airports, seven shopping and entertainment centres, seven thermal power stations, hydroelectric power stations, and other infrastructure facilities have been damaged, destroyed, or captured.

Although there is no feasible way to predict who will be the next victim of Russia's aggression in Ukraine, investors should be aware of the specific practical algorithms that can help them protect their rights and interests if such an emergency happens to their facilities.

If your business in Ukraine has been attacked or your assets have been damaged, destroyed, or captured by Russia, below we outline the 11 essential steps you should follow to safeguard your rights and interests, by seeking compensation for losses suffered in Ukraine.

## Eleven steps to follow if you become a target of the Russian military attack in Ukraine:

1. **Ensure** that all essential documents confirming ownership to the affected assets are properly stored in a safe place and, if feasible, arrange for up-to-date extracts from the state registers confirming the title rights, e.g. State Register of Proprietary Rights over Immovable Property.<sup>1</sup>
2. **Call** the State Emergency Service of Ukraine in case of emergency, e.g. disruption caused by a catastrophe, accident, fire, military attack, or natural disaster that poses an immediate risk to health, life or property, and report the circumstances of the emergency.<sup>2</sup> After the officials arrive, request a

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<sup>1</sup> Please note that due to cyber-attacks against governmental websites and the restrictions introduced under martial law, the operation of some state registers in Ukraine may be hindered or suspended.

<sup>2</sup> Hotline to the State Emergency Service of Ukraine in Kyiv: (044) 2023211; (044) 2891241.

copy of the report confirming the occurrence of the emergency and the damage or destruction of the property.

3. **Call** the National Police of Ukraine if a criminal offence has been committed, e.g., looting, theft, illegal takeover, including by Russian soldiers or other unknown persons, and report the circumstances of the offence.<sup>3</sup> The police officer will check your identity and register your notification in the Unified Register of Pre-Trial Investigations (URPTI) immediately or within 24 hours from receipt of the notification. Once registered, a pre-trial investigation will be commenced and you as an applicant/victim will be served with the extract from the URPTI confirming the key facts of the investigation. Please ensure you have properly received and stored the extract from the URPTI. Assistance from an advocate at this stage is advisable.
4. **Record** the emergency, crime and inflicted damage as soon as possible after the incident, but only if and when it is safe for you, using photo/video equipment. Such photo/video recording must clearly show the location, date, and the details of the person making the recording (bearing in mind the restrictions on video recording certain objects that have been established by the authorities). For the recording, use the abundant technical features of smartphones, e.g., timelines, high-resolution photos, 360-degree view, that will allow the underlying facts to be better captured.
5. **Write down** the contact details of eyewitnesses to the incident, so that they can be contacted or summoned for interrogation by the law enforcement authorities later.
6. **Take** written or video testimonies of eyewitnesses, if the law enforcement authorities (e.g., the police) are not immediately available or are overloaded. Please bear in mind the possibility to involve advocates who are authorised, among other things, to collect information that can be used as evidence and take testimonies from people with their consent. The advocate or, if unavailable, you or your representative, must ensure that the testimony is properly structured and reliable by including the following details with it:
  - identification of the person taking the testimony;
  - identification of the witness's name and contact details;
  - identification of the type of attacked object (industrial facility, infrastructure, housing, other);
  - identification of the location of the attacked object (city/village, area, district, street, building);
  - identification of the date and time of the attack;
  - brief description of the circumstances of the event and its consequences.
7. **Gather** all evidence of the incident/committed offence and prepare a written submission to the law enforcement body alleging, e.g., destruction or damage to property, theft, looting, illegal takeover, breach of the laws and customs of war, with the advocate's assistance. If the pre-trial investigation has already been initiated (*see step 3 above*), a written submission should still be filed in the pending pre-trial investigation. When filing the documents, please ensure that you keep copies of all evidence gathered and submitted.
8. **Report** the details to the official governmental channels ([wacrimes.gov.ua](http://wacrimes.gov.ua); [damaged.in.ua](http://damaged.in.ua); [dokaz.gov.ua](http://dokaz.gov.ua)), which gather the data on the war crimes committed by Russia to prosecute war criminals in Ukraine and abroad, and to use those details as evidence in the proceedings at the international courts and tribunals. Those websites allow witnesses of Russian crimes to fill in a brief questionnaire by providing the information about themselves, a description of the violation with all details (location, victims, damage, etc.), and allow them to upload relevant photo and video materials.
9. **Review** existing (especially long-term) contracts, related in any manner to the damaged assets, and check whether they contain provisions regulating a force majeure event or prescribe notification

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<sup>3</sup> Hotline to the National Police of Ukraine: 0 800 500 202; 102.

obligations on the defaulted party regarding, e.g. the destruction or damage to the mortgaged property. It is worth bearing in mind that on 28 February 2022, the Ukraine Chamber of Commerce and Industry published a [letter](#) certifying the existence of force majeure circumstances in Ukraine; namely, military aggression by the Russian Federation, which led to the imposition of martial law in Ukraine.

10. **Analyse** the insurance policies in place and check the coverage for war and similar risks. Although insurance policies do not usually cover damage or expenses arising from acts of war or any hostile act by a threatening power, some commercial parties might have deviated from such rules in their contracts.
11. **Revise** your contingency plan (if any) in the context of the realised risks and exiting vulnerabilities.

These 11 steps will allow you to properly secure evidence of the inflicted damage for prospective compensation in Ukraine or abroad. It may also be possible to seek compensation directly from Russian assets in many foreign jurisdictions where Russia or Russian state-owned entities have assets, including funds in bank accounts or other liquid assets.

Although the Ukrainian government has not yet established the explicit legal mechanisms for compensating losses incurred by businesses that were targeted by Russian military attacks, there is little doubt as to the overall obligation of the Russian Federation to compensate such losses. Officials are actively developing such mechanisms, as can be inferred from the fact that the draft law prescribing a procedure for compensating victims of armed aggression has already been [included](#) on the Ukrainian parliament's agenda, and four monetary funds have already been [established](#) for that purpose.<sup>4</sup> With this in mind, the importance of properly documenting incurred damage as early as possible should be a priority.

For more information on how you can implement these recommendations in your company, please contact your CMS partner or local CMS experts:



**Ihor Olekhov**  
**Partner, Head of Banking & Finance**  
T +38 044 391 3377  
E [ihor.olekhov@cms-cmno.com](mailto:ihor.olekhov@cms-cmno.com)



**Olga Shenk**  
**Counsel, Dispute Resolution practice  
Coordinator**  
T +38 044 391 3377  
E [olga.shenk@cms-cmno.com](mailto:olga.shenk@cms-cmno.com)



**Roman Hryshyn-Hryshchuk**  
**Associate, Dispute Resolution**  
T +38 044 391 3377  
E [roman.hryshyn-hryshchuk@cms-cmno.com](mailto:roman.hryshyn-hryshchuk@cms-cmno.com)

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<sup>4</sup> The Fund for the Restoration of Destroyed Property and Infrastructure, the Fund for Economic Recovery and Transformation, the Public Debt Service and Repayment Fund and the Small and Medium Business Support Fund.