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Privatization in Ukraine

Realizing the importance of privatization process impact on the companies' performance efficiency, as well as the effect of the positive-going signal being sent through successful privatization of state and municipal facilities to foreign investors, Ukraine improves its legal and administrative framework for privatization. Privatization of about 450 facilities of state and municipal property will run for the next few years, 70 of them are large and medium-sized companies.

10.1. Objects of privatization

The objects of state property subject to privatization include companies as integral property complexes, construction in progress, individual objects, shares, and objects of social and cultural purpose.

In order to employ privatization methods rationally and efficiently, privatization objects are classified into the following groups:

- A – single asset complexes of state companies, their structural units that can be separated into independent companies, including during the restructuring of public companies. The average number of employees at such facilities shall not exceed 100 people, and gross income from sales shall not exceed UAH 70 million (approximately USD 2.5 million);
- B – single asset complexes of state companies, their structural units, with average number of employees exceeding 100 people, and gross income from sales exceeding UAH 70 million (approximately USD 2.5 million). The property value of such facilities is sufficient for the formation of the company share capital;
- C – single asset complexes of state companies and shares of joint stock companies, which at the moment of privatization are of strategic importance for the state economy and security or the national product market. This group also includes the

companies of military-industrial complex, as well as facilities, requiring the special privatization procedure.

Privatization of the facilities of this group is carried out on the basis of the special privatization procedure. The special privatization procedure includes examination of the demand for a particular privatization facility taking into account the current market situation.

An important factor is determining the method of sale, taking into account all the peculiarities of production and technical, financial and property condition of each company subject to privatization, the sale of an integral property complex or stocks of shares in public companies. This approach shall ensure the capital concentration and effective company performance in the post-privatization period;

- D – construction in progress, inactive facilities. These include buildings, constructions, transmission devices not in operation, including together with the land in the state property, they are located on;
- E – shares owned by the State in the companies' share capital (including foreign-owned companies) located on the territory of Ukraine or abroad;
- F – objects of social and cultural designation. This group includes primarily objects of press, television, radio broadcasting, sanatorium-resort facilities, etc.

10.2. Purchasers

Purchasers of privatization facilities may be citizens of Ukraine, foreigners and stateless persons, legal entities registered in Ukraine, as well as foreign legal entities.

However, it should be noted that the privatization legislation identifies the list of persons, not able to be purchasers of state and municipal property facilities. These include:

- legal entities with the share of state ownership exceeding 25%;
- legal entities with a shareholder or the final beneficiary owner (or any related persons) from the country, which is recognized by the Parliament of Ukraine as the aggressor country or in respect of which the sanctions are imposed in accordance with the law;
- public authorities;
- employees of privatization state agencies;
- persons registered in an offshore zone or countries included by the FATF into the list of countries, failing to cooperate in the field of counteracting money laundering;
- persons being directly or indirectly under control of the ultimate beneficiary owners or their related persons.

Thus, important requirements, applied to purchasers in the privatization process are the disclosure of final beneficiaries-investors, purchasing shares in state companies. These requirements are aimed at ensuring transparency of privatization and avoiding re-sale of privatization facilities to related parties at bargain prices.

10.3. The methods, procedures and process of privatization

Each group of privatization facilities might be privatized using certain methods. A decision on approval of a privatization method shall be made by the privatization body. The procedure for determining methods of privatization of various groups of facilities is governed by the law and the State Privatization Program.

Privatization of state property is performed through:

- sale of privatization facilities at the auction;
- sale of privatization facilities on a competitive basis with the opening price offering under the auction principle;
- sale of shares (stocks) owned by the state in entities at the auction, by tender, on the stock exchanges;
- sale of integral property complexes of state companies by tender;
- buy-out of privatization target;
- sale of shares on international stock markets, including the form of depositary receipts.

10.3.1. Sale of privatization targets at auctions, by tender, on stock exchanges

Sale of privatization targets at auction, by tender and on stock exchanges shall be performed under the procedure approved by the State Property Fund of Ukraine, the Antimonopoly Committee of Ukraine, the National Commission on Securities and Stock Market.

If an integral property complex, proposed for sale at auction or by tender, has not been sold, a decision on its restructuring shall be made.

If the facility proposed for sale at auction or by tender has not been sold, the public privatization authority may decide on selling such a facility at auction by reducing the initial bid price.

A selling price at the auction may be reduced to the level of actual demand with no restriction on minimum selling bid price. Facilities not sold at auction by reducing the price of the stock exchange, including by fragmentation, are proposed for sale at auction without price announcement. An auction without price announcement shall be conducted up to the final sale of the facility.

10.3.2. Privatization of leased property

Privatization of leased integral property complexes of state companies, organizations and their departments, except for small public companies, shall be performed by selling state's shares in public companies.

10.4. Information on privatization

The State Property Fund of Ukraine provides transparency of privatization and announces notifications on the process and results of privatization. This is substantially the case of information related to facilities to be prepared for privatization and facilities in respect of which a decision on privatization is made as well as on conditions of their sale.

The results of the privatization of a facility (the winner of the tender, an auction, change of privatization procedure; price of the purchased privatization object; information about purchasers, distribution of privatized shares between new owners) shall be published in the official printed publications of state bodies on privatization, as well as on the official website of the State Property Fund of Ukraine (www.spfu.gov.ua/en/). Such a publication is made within 30 days following approval of the sale results or within 30 calendar days following the date of the purchase and sale agreement.

10.5. Requirements for protection of economic competition

Privatization of companies, having signs of dominance on the national or regional goods (works, services) market, shall be performed subject to approval of the appropriate authority of the Antimonopoly Committee of Ukraine.

The participants of the auction for sale of shares, which results in achieving or exceeding 25% or 50% of the votes in the supreme governing body of the relevant business entity, as well as assets in an integral property complex or a structural unit of a business entity of strategic importance for the economy and state security or which contains signs of dominance on the national market for goods (works, services), shall submit during these procedures the information about the relationship of control. In certain cases, the purchaser must obtain permission from the Antimonopoly Committee of Ukraine for concentration.

10.6. Registration of privatization deals

For privatization of a state property facility through its buying-out, sale at auction, by tender, the relevant purchase and sale agreement shall be concluded between the purchaser and the seller.

The purchase and sale agreement shall include obligations envisaged in the business plan or privatization plan or obligations of the parties identified by the terms of the auction, tender or buying-out on keeping main types of the activity, technical re-equipment, modernization of production, performance of set mobilization tasks, repayment of debt, provision of social protection to workers, requirements and additional restrictions of the environmental legislation on the facility use.

The purchase and sale agreement must be notarized and registered in certain cases. The facility ownership is passed to the purchaser following payment of sale price in full.

At the discretion of the privatization body, the opportunity to resolve disputes arising between the seller and the purchaser in connection with the purchase and sale agreement of the privatization facility or on its basis in the international commercial arbitration court may be provided in the purchase and sale agreement of the privatization facility.