

New opportunities for agri-product processors in Ukraine

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On 18 August 2022, the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on Facilitation of Enterprise Relocation under Martial Law and Economic Recovery of the State" (hereinafter – the "Law") was published. The Law introduces important amendments to the rules of sale of property of state and municipal enterprises.

Among other things, these amendments could provide new opportunities for operators in the agricultural and food industry to purchase bread-baking plants, processing enterprises, granaries, and production facilities.

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In addition, such legislative changes will facilitate the relocation of production facilities from regions where hostilities are taking place – to safer regions of Ukraine.

1. Key changes

First and foremost, the following innovations should be singled out:

- sale of encumbered property complexes (except where such encumbrances are imposed within criminal cases) shall be allowed;
- registration of the ownership title to the property complexes acquired in the process of privatisation shall be permitted in the presence of encumbrances registered on them;
- the use of a qualified electronic signature in the document turnover is allowed;
- enforcement proceedings on property acquired in the privatisation process should be suspended for 1 year. This rule, however, does not mean that the new owner is exempted from the debts of the predecessor – this issue is addressed by the privatisation terms and conditions;
- licences and permits required for the use of property acquired through privatisation (e.g., for working with precursors in elevator laboratories) shall be transferred to the new owner as long as they are valid;
- until the martial law is lifted and the relevant technical amendments are worked out, a sale contract with the winner will be concluded only after the sale price of the lot is paid;
- if a winner is disqualified in any two auctions in the chain, the guarantee deposit

will be increased;

- the fee for the auction will be deducted from the guarantee deposit, the remainder of which will be added to the selling price of the lot;
- if the third auction fails due to disqualification of the winner, the fourth auction – price reduction (a "Dutch auction") will take place;
- auctions for large privatisation objects (the balance value of which exceeds UAH 250 million, approx. USD6,794,000) will be held in the electronic trading system only after the electronic sales system is technically fine-tuned and the sales procedure is settled by the Cabinet of Ministers of Ukraine. Until then, large privatisation objects may only be sold at the first off-line auction without reducing the starting price under the current rules. Under the law, the mentioned technical fine-tuning and regulatory work shall be finished by 19 December 2022.

2. Opportunity for foreign companies to participate in auctions

Foreign companies have the right to bid at auctions on equal terms with Ukrainian companies. For foreign companies participating in auctions, the Law sets forth a number of requirements, including the following:

- they shall not be registered in offshore zones (the list of such zones is established by the Cabinet of Ministers of Ukraine);
- their beneficial owners must be 100% disclosed;
- they may not have russian federation as a participant or be under its control;
- they may not have as participants beneficiaries of 10% or more of the shares (stakes) that are residents of the russian federation. An exception to this rule is when the shares of a foreign participating company are admitted to trading on foreign stock exchanges. The list of such exchanges is established by the Cabinet of Ministers of Ukraine;
- they may not have participants owning more than 50% of the share capital, which are registered in the countries on the FATF list;
- they may not be subject to sanctions or be affiliated with sanctioned persons;
- they may not participate in an auction if they have previously participated in privatisation in Ukraine, but their contract of sale of the privatisation object was terminated due to a violation on their part. Nor can they be associated with such persons.

3. What is required for foreign companies to participate in auctions

To participate in an auction, foreign companies shall, among other things:

- provide information on their ultimate beneficial owner. If such information is unavailable, the company must disclose this fact and provide the reasons why it is unavailable;
- provide financial statements for the last year or quarter;
- pay the registration fee;
- pay the guarantee deposit. The guarantee deposit is set at 20% of the starting price (the starting price of the object of small-scale privatisation is determined by the auction committee at the level of the balance value of the assets under sale);
- to settle only via bank accounts opened with banks located in countries that are not on the FATF list;
- undertake the obligations set out in the terms of sale;
- provide information on the creditor and documents confirming that such

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creditor is willing to consider providing an appropriate amount of financing, if the purchase is carried out using borrowed (credit) funds. Note that such a creditor must meet all the requirements for companies participating in auctions.