

## Ukraine sets new rules for privatising state-owned and municipal property

On 10 May 2018, the Cabinet of Ministers of Ukraine adopted Regulation No. 358-r approving a list of large state-owned enterprises, scheduled to be privatised in 2018.

Thus, 23 companies were included in the list of large-scale privatisation objects for the year 2018, namely:

1. Energy industry: the Centrenergo Public Joint-Stock Company, the Ternopiloblenergo Open Joint-Stock Company, the Zaporizhzhiaoblenergo Public Joint-Stock Company, the Kharkivoblenergo Joint-Stock Company, the Mykolaivoblenergo Joint-Stock Company, the Khmelnytskoblenergo Public Joint-Stock Company, the Kherson combined heat and power plant Joint-Stock Company, the Dniprovsk combined heat and power plant Joint-Stock Company, the Kryvyi Rih combined heat and power plant Public Joint-Stock Company, the Severodonetsk combined heat and power plant State Enterprise.
2. Mining: the United Mining and Chemical Company Public Joint-Stock Company, the Krasnolymanska Coal Company State Enterprise".
3. Engineering: the Azovmash Public Joint-Stock Company, the Turboatom Joint-Stock Company, the Electrotyazhmash Plant State Enterprise, the Dniprovsky Electric Locomotive Plant State Enterprise.
4. Chemical industry: the Sumykhimprom Public Joint-Stock Company, the Odesa Port-Side Plant Public Joint-Stock Company, the Zaporizhzhia Titanium and Magnesium Combine Limited Liability Company.
5. Processing industry: the Oriana Open Joint-Stock Company.
6. Healthcare, culture and sports: the President-Hotel Private Joint-Stock Company, the Indar Private Joint-Stock Company.
7. Agriculture: the Ukragroleasing National Joint-Stock Company State Public Joint-Stock Company.

It should be noted that on 7 March 2018, the new Law of Ukraine On Privatisation of State-Owned and Municipal Property came into force. It provides for many changes in the procedure for sale of state-owned and municipal enterprises and creates transparent privatisation conditions.

The new Law aims at combining all privatisation laws into one and improves the privatisation process. Among other things, a new simplified classification has been adopted: facilities of large-scale and facilities of small-scale privatisation.

Large-scale privatisation facilities include single property units of state-owned and municipal companies and shares in joint-stock companies where more than 50%

of the shares are owned by the state and whose assets, according to the previous year's financial statements, exceed UAH 250 million. The remaining facilities were classified as facilities of small-scale privatisation.

The list of large-scale privatisation facilities that are subject to privatisation is approved by the Cabinet of Ministers of Ukraine on the proposal of the State Property Fund of Ukraine. The list of small-scale privatisation facilities to be privatised, however, shall be approved by the Fund itself.

The new Law provides for the transition to market prices for state-owned facilities by establishing a uniform and clear algorithm for the sale of large-scale privatisation facilities and a uniform procedure for the sale of small-scale privatisation facilities.

The Law also provides that small-scale privatisation facilities will be sold exclusively through the online auctions. The starting price for facilities of small-scale privatisation shall be set by the auction commission at the book value of the facility (the facility assets) of small-scale privatisation. If the facility offered for sale by auction is not sold, another auction will be held with a 50% lower starting price.

As for the state-owned facilities of large-scale privatisation, the procedure and conditions for their sale are now defined by the Cabinet of Ministers of Ukraine. On the other hand, the procedure and conditions for the sale of municipal property facilities of large-scale privatisation are to be determined by the respective local councils. Preparations for the privatisation and sale of large-scale privatisation facilities are carried out using services of consultants hired on a competitive basis. The starting price for a facility shall be set by the consultant (if such a consultant is hired). If no consultant is selected, the starting price shall be set by the auction commission on the basis of the value determined according to the valuation method approved by the Cabinet of Ministers of Ukraine.

In addition, the law prohibits initiating bankruptcy proceedings against insolvent state-owned companies for which a privatisation decision has been made until the privatisation is complete. Moreover, in order to create conditions for the recovery of companies after privatisation, no bankruptcy proceedings against companies may be initiated within one year after the completion of privatisation on the grounds that arose prior to the completion of privatisation.

In order to ensure the protection of investors' rights, the limitation period for challenging the privatisation of large-scale privatisation facilities was limited to three years. Moreover, the Law provides for the possibility of using international best practices in the field of dispute resolution and applying international law to sale and purchase contracts until 2021. For example, if the buyer wishes to enter into a sale and purchase contract under the laws of England and Wales, the privatisation authority must comply with that request.

Finally, according to the new Law, the country denounced as an "aggressor", the persons subject to sanctions and offshore companies may not participate in the privatisation of Ukrainian companies.