

BUSINESS ADVISER

NEW RULES OF THE PRIVATIZATION OF STATE AND MUNICIPAL PROPERTY



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The Law of Ukraine "On Privatization of State and Municipal Property," which was adopted by Verkhovna Rada of Ukraine on Jan. 18, 2018 entered into force on March 7, 2018. The Law contains a number of innovations that are aimed at changing the procedure for the privatization of state and municipal property, which in turn should ensure its transparency and make it quicker, and hence attract more foreign investors to Ukraine.

One of the main innovations of the Law is the division of privatization objects into large scale privatization objects and objects of small scale privatization.

The category of objects of large scale privatization includes objects of state or municipal property (single property units of state enterprises or blocks of stocks

(shares) of business entities, more than 50% of stocks (shares) in the charter's capital of which is owned by the state), the value of assets of which exceeds Hr 250 million (\$10 million). The category of objects of large scale privatization includes single property units of state and municipal enterprises, their structural units, including leased single property units and their structural units; separate property; unfinished construction objects, inactive objects; objects of social and cultural intention; blocks of stocks of joint stock company, established in the process of privatization or corporatization, stocks (shares) owned by the state in the charter's capital of economic entities, other economic organizations and enterprises based on the association of property of various forms of ownership and located on the territory of Ukraine or abroad, and other objects not of large scale privatization.

As separate property, the Law defines movable and immovable property of state or municipal enterprises (including buildings, structures, non-residential premises), property remaining after the liquidation of state or municipal enterprises, declared bankrupt; property of enterprises liquidated by the decision of the body authorized to manage state or municipal property; property of state or municipal enterprises that were not sold as single property complexes; public or municipal property not included in the authorized capital of economic partnerships and registered in the account of business partnerships created as a result of privatization or corporatization.

In the process of privatization, various forms of auctions are used, i.e. auction with conditions, auction without conditions, auction with a starting price decrease, auctions with a study of pricing proposals, etc. The Law provides for the introduction of Internet auctions, but only for the sale of objects of small scale privatization, while objects of large scale can be sold at an auction with the involvement of an investment advisor. The Law stipulates that the list of objects of large scale privatization that are subject to privatization is approved by Cabinet of Ministers on the proposal of State Property Fund of Ukraine, and the list of state property objects of small scale privatization subject to privatization is approved by State Property Fund of Ukraine on its own, and of municipal property - by local councils. Such lists are to be accessible to the public.

As for the process of sale, the Law introduces two types of sale, i.e. the auction and the buy-back, in cases when the auction is declared to not have taken place and, in the event of the property already being leased at the time of the adoption of the Law.

The Law also provides possibility to include an advisor, whose function is to render services in the process of the privatization of state-owned objects, including the search for potential buyers of privatization objects, with the determining of the starting price of objects of large scale privatization and the conditions for the auction. Moreover, the Law strictly defines the subjects of privatization, in particular the buyers of the privatization objects, and who cannot be considered as ones.

No less important is the provision of the Law which provides the possibility for dispute settlement by means of an international commercial arbitration court, moreover, by Jan. 1, 2021, on the basis of the processing of comments and proposals of potential buyers to the draft contract of sale of the object of large, the privatization body, at the request of a potential buyer, should determine in the contract purchase and sale of a large privatization object that the contract is governed by the law of England and Wales.

The provisions of the Law "On privatization of the state and municipal property" allows us to conclude that, by nature, it is a progressive normative act and answers the current technical challenges. In the meantime, it is difficult to say how the Law is going to be implemented, but we hope that it will work and attract potential investors to Ukraine.



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