

Year in review 2023

Corporate / M&A

ARZINGER 20 YEARS

Forecasts for 2024

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Privatization gains momentum

In Ukraine, 2023 witnessed an average of 40 successful privatization auctions per month, accumulating a total of UAH 4 billion, surpassing the average figures of the last five years. This trend, initially launched as part of a program aimed at modernizing the state sector of the economy and temporarily paused in 2022, regained momentum in 2023. The same pace is expected to continue into 2024.

Corporatization as a step towards large-scale privatization

In 2023, Ukraine made significant progress in the corporatization of state enterprises, a crucial step towards their further privatization. This year saw numerous state enterprises transform into JSC or LLC. Plans for 2024 also include the corporatization of several strategic state enterprises.

Rise of M&A activities

In 2023, the volume of M&A transactions in Ukraine reached \$1.2 billion, which is likely an underestimate, with the actual figure closer to \$1.4 billion due to the low public profile of these deals. Compared to the previous year, the volume of transactions increased 3.5 times, yet it remains half of the pre-war levels. The number of transactions rose to 87 in 2023, with the most active sectors being technology, commercial real estate, and agro-logistics.

Changes with regard to ultimate beneficial owners ("UBO")

The Methodology for determining the UBO by a legal entity has been approved (Resolution of the CMU No. 1011) ("Methodology"), Order of Ministry of Justice of Ukraine ("MJ") No. 3265/5, and No. 3258/5 were adopted:

- Legal entities are obliged to check and update the ownership structures and information on UBO in compliance with the requirements of the Methodology until 03.04.2024.
- In case of detection of discrepancies between information on the ownership structure, UBO's information in the USR and information obtained in the process of DD, the authorities are obliged to notify MJ on this matter from 01.12.2023. In turn, MJ will send notification to the local registrar to enter a note to the USR on ownership structure and UBO's information inconsistency. At the request of the registrar, the company must provide explanations and documents re the identified discrepancies. Based on the results of the review, the mark may be deleted.
- If ownership structure and UBO's information are re-identified as inconsistent, MJ may impose a fine up to UAH 340,000 on the company and up to UAH 51,000 on company's director.

Changes with regard to the registration of representative offices ("RO") and branches of foreign entities in Ukraine

The Law No. 3257-IX (coming into force in September 2024) was adopted.

- Registration of ROs of foreign entities (companies, NGOs and charitable organizations, foreign banks, etc.) will be carried out by local state registrars (currently is registered by the Ministry of Economy of Ukraine).
- Information on the ROs will be entered to the USR, ROs will have an identification code in public access.
- Submission of additional documents for foreign entities: the founding document (the founding agreement, charter), the ownership structure and information on UBO.
- Term of registration of the RO: 5 business days from the moment of receipt of package of documents (currently: 20 business days).
- The liquidation of ROs will take place by analogy with the liquidation of legal entities in Ukraine.
- The foreign bank will submit a package of documents for the RO's registration in the USR (currently: RO of foreign bank passes through accreditation at the NBU, RO's data is entered to the State Register of Banks).

THESE CHANGES COULD ENCOURAGE FOREIGN INVESTORS TO CHOOSE MORE OFTEN A REPRESENTATIVE OFFICE AS THEIR PREFERRED MEANS OF ESTABLISHING A PRESENCE IN UKRAINE.

The Law on the General Meeting of Shareholders

Entry into force of the provisions of the Law No. 2465-IX on the General Meeting of Shareholders ("GM") using the authorized electronic system ("AES") of the Central Depository ("CD")

Provisions on remote voting enter into force from 01.01.2024.

Ways of conducting of GM:

1. BY IN-PERSON VOTING:
 - Joint presence at the venue.
 - The shareholder's right to participate by means of electronic absentee voting by means of an AES (from 01.01.2024).
2. BY E-VOTING:
 - Electronic absentee voting by means of an AES (from 01.01.2024).
3. BY POLLING (remote GM) - remote filling of ballots and sending them through the depository system of Ukraine.

The Law on accounting of shares

Entry into force of the provisions of the Law No. 2465-IX on shares accounting in the Central Depository ("CD") from 01.01.2024

The share accounting system ("SAS") is a collection of information, records of LLC and ALC's shares on shareholders' accounts, company, shareholders, restrictions on the rights of shareholders, etc.

Peculiarities:

1. Voluntary basis - change to the SAS is carried out by unanimous decision of the company's shareholders.
2. A reverse change from the SAS to the USR is also possible.
3. Compulsory reflection of provisions on the shares' accounting in the charter.
4. SAS is not a depository system.
5. Reflection on shares' accounting information in the USR.
6. Information on the owners of the company's shares is disclosed by CD in public access.