

A is for Adversity, W is for War.

Alesya Pavlynska and Anton Molchanov report on the corporate and restructuring novelties in Ukraine resulting from the Russo-Ukrainian war



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For the absolute majority of Ukrainians, their lives changed drastically on 24 February – with air defence alarms heard for the very first time since the end of WWII and the first Russian cruise rockets hitting Ukrainian infrastructure and housing.

As the third month of the war is coming to an end, the Ukrainian Parliament (*Verkhovna Rada*) continues to introduce new legislation, not just aimed at tackling the consequences of the war, but also becoming a weapon itself against the aggressor.

Corporate governance

With the start of the war and introduction of the martial law no major changes in corporate legislation have taken place in Ukraine. However, some restrictions implemented due to martial law have changed the corporate landscape directly or indirectly. Most of these restrictions affect Russian-affiliated companies.

For instance, the legislation currently provides for the following restrictions relevant to Ukrainian legal entities:

1. Moratorium on fulfilment of obligations¹ towards Ukrainian companies with Russian affiliation (i.e. those having Russian UBOs or shareholders holding $\geq 10\%$ of the share capital).
2. Moratorium on sale (or actions that may result in property title transfer)² of real estate, securities, shares, vehicles, aircrafts and vessels possessed by Russian-affiliated

Ukrainian companies. These restrictions are applied in both ways – neither sale nor acquisition is possible.

3. Prohibition to conclude notarial acts³ at the request of Russian-affiliated Ukrainian companies.
4. Prohibition of foreign exchange transactions⁴
 - i. with Russian and Belarusian roubles,
 - ii. with any individuals/companies residing/registered in the Russian Federation or the Republic of Belarus,
 - iii. for the fulfilment of the obligations before individuals/companies residing/registered in the Russian federation or the Republic of Belarus.

The above restrictions have affected all companies with Russian shareholdings, be it purely Russian businesses or international companies with Russian subsidiaries in the ownership chain.

Moreover, even if the affected companies wish to restructure and change their shareholders (e.g., within the same group of international companies, transferring the shares held by the Russian subsidiaries to the headquarters) this is also now not technically possible. In practice, this means that it is impossible to change shareholders or UBOs in the Ukrainian corporate register even if legitimately changed at the foreign ownership level. This restriction is universal and refers even to companies without any Russian shareholdings in the chain.

On the other hand, the Ministry of Justice have identified a limited list of permissible registration actions, not including changes of the shareholders or UBOs (as registration of charitable organizations, NGOs and limited liability companies, change of the director and the address). Placement, turnover and redemption of securities, as well as operations in the depository system, have also been suspended (with some exceptions made for government securities). This means that joint stock share trading/transfers also remain blocked.⁵

Possible nationalization

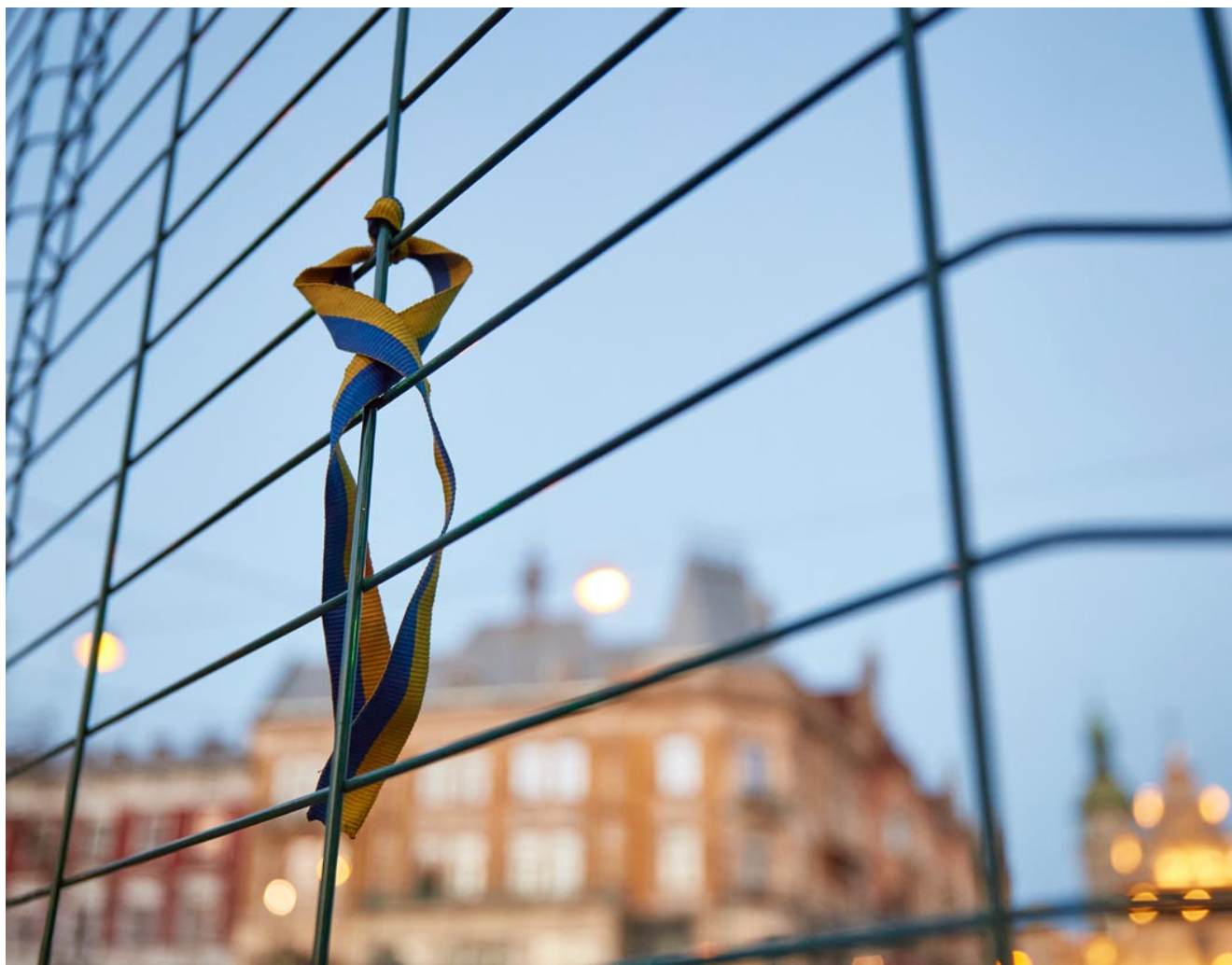
Law of 3 March 2022 has established the following mechanism for the nationalization of the property of the Russian Federation in Ukraine:

- no compensation as the by-default approach;
- the procedure consists of the following stages:
 - i. submission of a draft decision with a list of objects by the Cabinet of Ministers of Ukraine to the National Security and Defence Council;
 - ii. adoption of the decision by the National Security and Defence Council; and
 - iii. its implementation by a decree of the President of Ukraine;
- nationalization applies to the possessions of the Russian Federation and its residents.



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Currently, Ukrainian legal entities controlled by private Russian companies are not affected by this Law. Nevertheless, due to the changes soon to be in force, either the National Security and Defence Council or a court will be granted a right to expand the nationalization to any individuals or legal entities supporting the aggression and/or not stopping their activities in the Russian Federation. This puts at risk even those companies with no direct nexus to Russia.

Restructuring and workouts

Immediately after the war began, the Ukrainian National Bank instructed domestic lenders to

suspend default interest and maturity of contractual penalties prior to martial law coming to an end as well as use long-range restructuring for NPLs arising from the war with a direct workout restriction.

Later in March 2022, a separate law expanded the relief measures by suspending the default 3% p.a. interest and inflation compensation accruals for all UAH defaults and also all default interests and contractual penalties (be those loan-related, commercial or private ones). At the same time, general interest accrual under pre-war loans have not been suspended – nor have principal loan payments.

This, together with the lack of insolvency-related moratoriums, threatens debtors

with a continued snowballing of NPLs and the following tsunami of war-related insolvencies driven by creditors. ■

Footnotes:

- 1 Resolution of the Cabinet of Ministers of Ukraine “On Protection of the National Interests of Ukraine in Future Claims related to the Military Aggression of the Russian Federation” No. 187 of 03 March 2022.
- 2 Ibid.
- 3 Resolution of the Cabinet of Ministers of Ukraine “On Certain Matters of the State Registration Under Martial Law” No. 164 of 28 February 2022.
- 4 Resolution of the National Bank of Ukraine “On Amending the Resolution of the National Bank of Ukraine: On the Operation of the Banking System Under Martial Law, No. 18 Dated 24 February 2022” No. 21 of 24 February 2022.
- 5 Decision of the National Securities and Stock Market Commission No. 136 of 24 February 2022.
- 6 See: <https://zakon.rada.gov.ua/laws/show/2116-IX#Text>.



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