



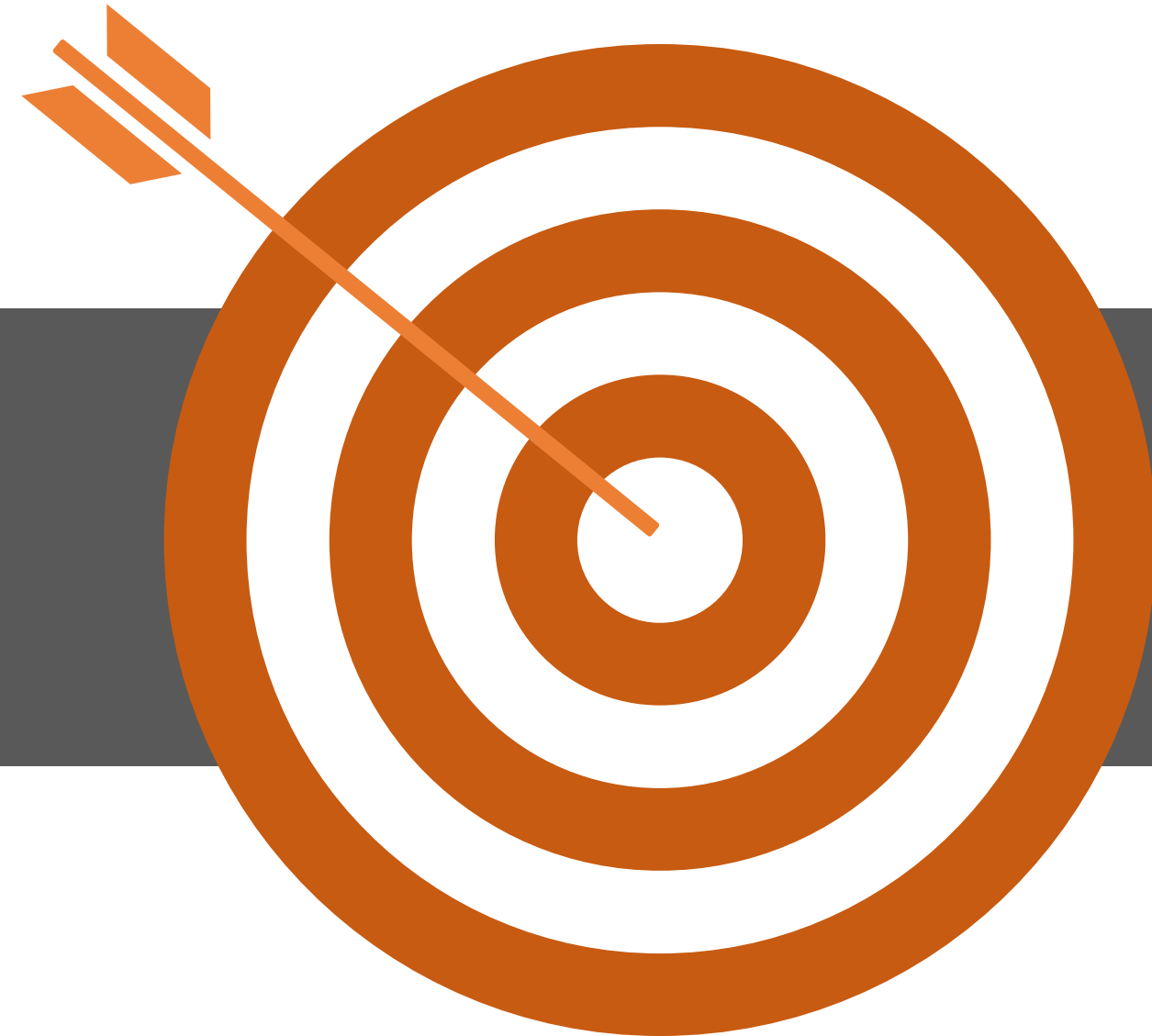
# Privatisation in Ukraine

Key issues



# Privatisation in Ukraine:

## Basic requirements



**Certain categories of individuals and legal entities are not allowed to participate in privatisation**

(see details below)



**Participation of newly incorporated companies may be restricted**

due to the requirement to submit the latest annual or quarterly financial statements



**Preliminary merger control clearance by the Antimonopoly Committee of Ukraine (AMCU)**

is required in the vast majority of cases (see details below)

# “Unwanted guests”

Who cannot participate in privatisation in Ukraine?



## 1

### Potentially interested parties:

- state authorities
- state-owned enterprises
- employees of the State Property Fund of Ukraine (“SPFU”) and advisors engaged in the sale of a privatisation object

## 2

### Persons included on “black lists” who, among other things:

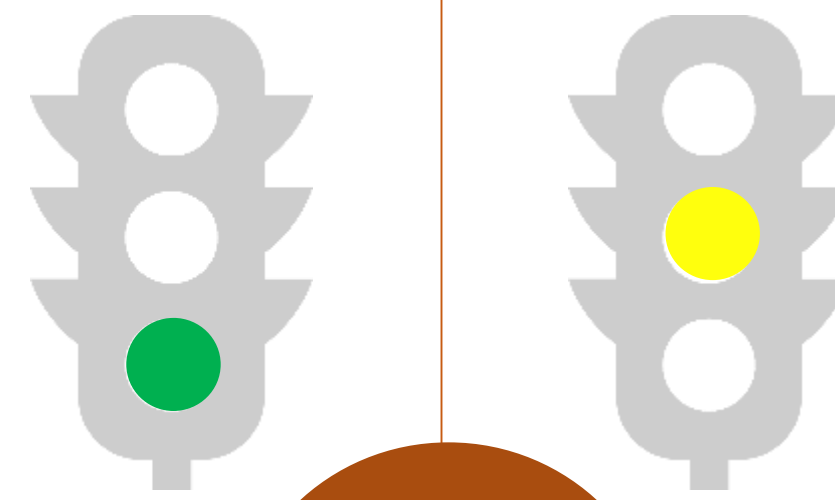
- have a non-transparent ownership structure (ultimate beneficial owners are not fully disclosed)
- are incorporated in offshore jurisdictions
- are subject to Ukrainian sanctions
- are located in a jurisdiction that does not implement anti-money laundering practices
- are incorporated in or are affiliated with an aggressor state (e.g., the Russian Federation)

## 3

### Unfair buyers:

- i.e., individuals or legal entities with whom a sales/purchase agreement for a privatisation object was terminated due to their fault

# Small-scale privatisation



VS

# Large-scale privatisation

**≤ UAH 250 million**

as per financial statements for the last reporting year

- integral property complexes of state-owned and municipal enterprises
- separate movable and immovable assets
- unfinished construction objects
- social and cultural objects
- shares in a joint-stock company

**ProZorro.Sale**

an electronic auction system

**4-5 months**

before the auction

**book value**

**privatisation objects**

**method of implementation**

**announcement of a sale**

**> UAH 250 million**

as per financial statements for the last reporting year

- integral property complexes of state-owned enterprises
- shares in companies in which the state owns > 50%

**Auction**

**11-12 months**

before the auction

# Small-scale privatisation

# Large-scale privatisation

&

## Small-scale privatisation objects

approved for privatisation –  
as of 14 September 2020:

<http://www.spfu.gov.ua/ua/content/spf-privatization-objects-perelik-obektov-na-god.html> and  
[https://privatization.gov.ua/wp-content/uploads/2020/09/list-privatization\\_14\\_09\\_2020.xls](https://privatization.gov.ua/wp-content/uploads/2020/09/list-privatization_14_09_2020.xls)  
(the full list)

## Small-scale privatisation objects

the expected sale of which has been announced: certain assets of  
[Nemyrivske Production and Storage Site of SE Ukrspyrt](#),  
[Ovechatske](#) and [Artemivske operating location and alcohol storages of SE Ukrspyrt](#)

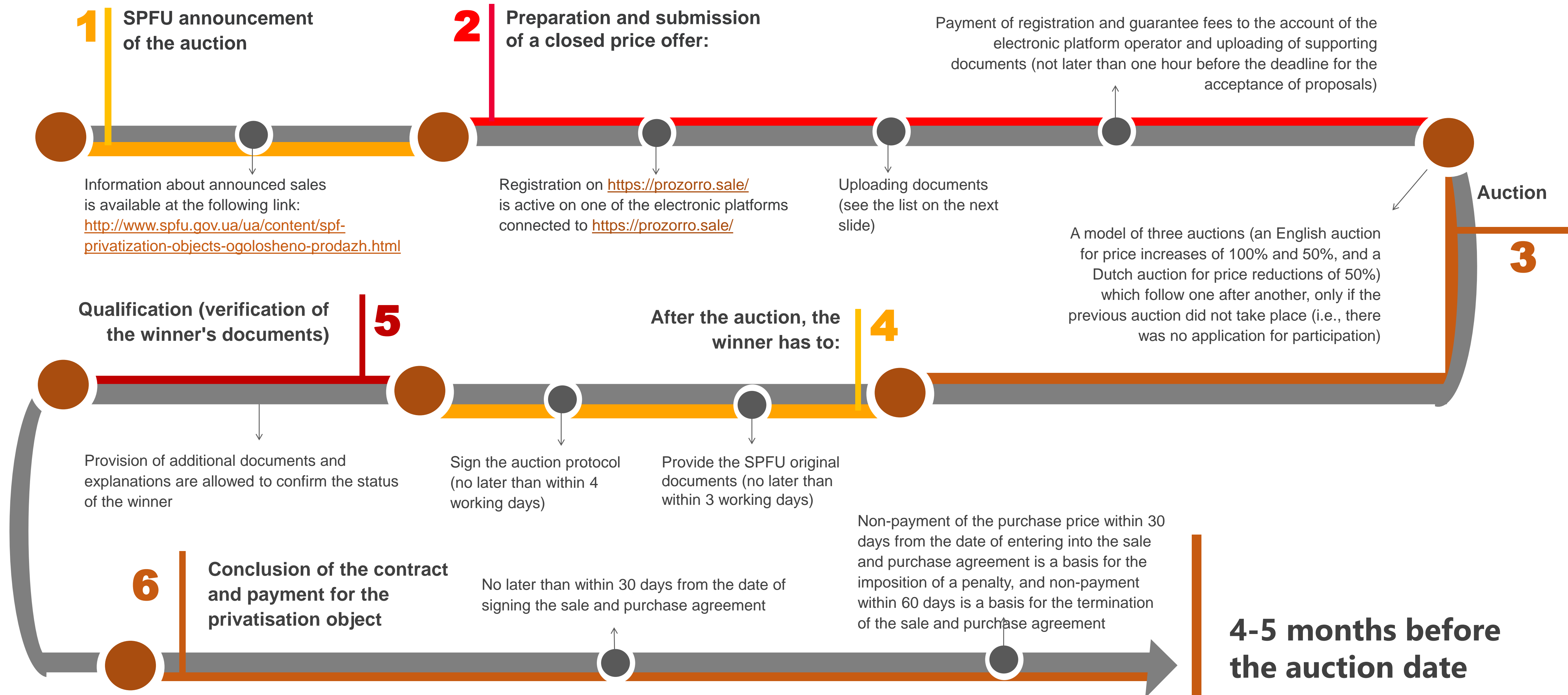
## Large-scale privatisation objects

approved for privatisation:

<http://www.spfu.gov.ua/ua/documents/tagged-baza/spf-privatization-Ob-ekti-privatizacii-grup-V-G-E-Organizaciya-prodazhu.html>

**NB!** Because of the quarantine due to COVID-19, large-scale privatisation auctions have been put on hold.

# Stages of small-scale privatisation





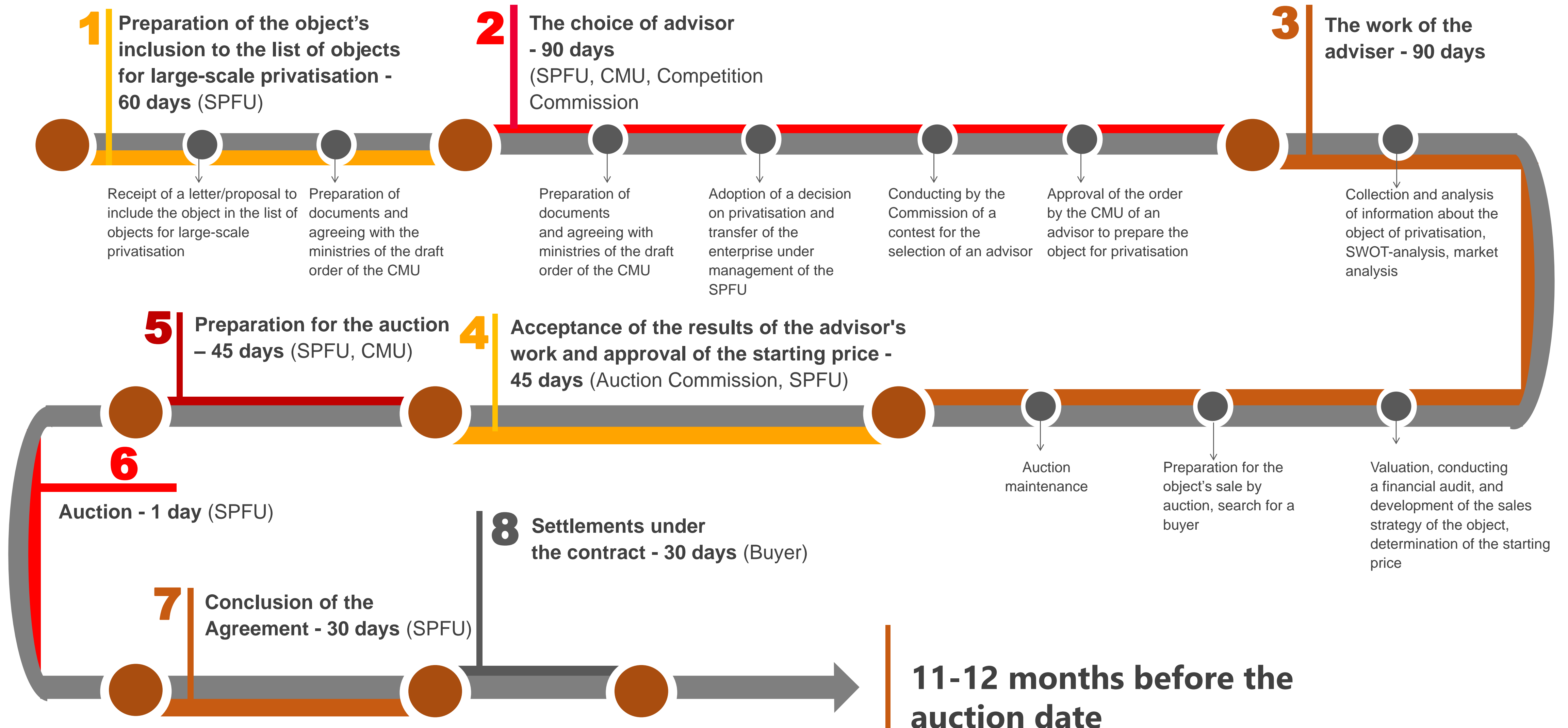
# Small-scale privatisation:

## Required documents



- written application for participation in an e-auction
- consent of the potential buyer to the terms of sale
- registration documents (for legal entities resident in Ukraine – an extract from the companies' register; for legal entities not resident in Ukraine – an extract from a trade, bank or court register, etc.)
- certificate of the ultimate beneficial owner
- confirmation that the potential buyer does not belong to the category of prohibited persons
- last annual or quarterly financial statements confirmed by the auditor
- if creditors are involved, provision of the following documents with the offer is mandatory: documents mentioned in points 3–5 above, and a letter of confirmation from the creditor on the existence of the ability and consent to finance the acquisition of the privatisation object by the buyer
- documents confirming the payment of registration and guarantee fees: payment orders for the payment of a registration fee in the amount of UAH 944.60; a guarantee fee in the amount of 10% of the starting price of the privatisation object; and a bank certificate on the opening of a current account for the potential buyer with the bank that transferred the payment

# Stages of large-scale privatisation





# Large-scale privatization:

## Required documents



- written application for participation in an e-auction
- consent of the potential buyer to the terms of sale
- registration documents (for legal entities resident in Ukraine – an extract from the company register, for legal entities not resident in Ukraine – an extract from a trade, bank or court register, etc.)
- certificate of the ultimate beneficial owner
- confirmation that the potential buyer does not belong to the category of prohibited persons
- last annual or quarterly financial statements confirmed by the auditor
- if creditors are involved, provision of the following documents with the offer is mandatory: documents mentioned in points 3–5 above; and a letter of confirmation from the creditor on the existence of the ability and consent to finance the acquisition of the privatisation object by the buyer
- documents of the payment confirmation of the registration and guarantee fees: payment orders for the payment of a registration fee in the amount of UAH 47 230; a guarantee fee in the amount of 5% of the starting price of the privatisation object; and a bank certificate on the opening of a current account for the potential buyer with the bank that transferred the payment

# Merger control thresholds



Prior merger control clearance by the AMCU is required if one of the following threshold tests is met:

## TEST 1



## TEST 2



**NB!** All indicators are calculated for the previous financial year of the group of persons related by the control relations.





Kinstellar has extensive experience supporting privatisation projects in Ukraine. Our lawyers supported the landmark privatisation of JSC "Odesa Port Plant" in 2015–16 and have represented the State Property Fund of Ukraine in this project since 2018. In July of this year, we represented a foreign investor in preparation for the small-scale privatisation of the Dnipro Hotel. Members of our team also advised potential investors – YILDIRIM GROUP and EUROCHEM on participation in privatisation auctions.

We have also been involved in the development of Ukrainian privatisation legislation and are therefore well acquainted with regulatory, corporate, commercial, compliance and other related issues that accompany the privatisation process in Ukraine. We also have extensive experience in competition law and in obtaining concentration permits for clients when acquiring assets in Ukraine, which is an important step in the privatisation process.



## Olena Kuchynska

Managing partner

+38050 339 4884

[olena.kuchynska@kinstellar.com](mailto:olena.kuchynska@kinstellar.com)



## Iryna Nikolayevska

Partner

+38050 338 5335

[iryna.nikolayevska@kinstellar.com](mailto:iryna.nikolayevska@kinstellar.com)



## Emerging Europe and Central Asia's Leading Independent Law Firm

With offices in ten jurisdictions and over 250 local and international lawyers, we deliver consistent, joined-up legal advice and assistance across diverse regional markets – together with the know-how and experience to champion your interests while minimising exposure to risk.

**ALMATY** | KAZAKHSTAN

**BELGRADE** | SERBIA

**BRATISLAVA** | SLOVAKIA

**BUCHAREST** | ROMANIA

**BUDAPEST** | HUNGARY

**ISTANBUL** | TURKEY

**KYIV** | UKRAINE

**NUR-SULTAN** | KAZAKHSTAN

**PRAGUE** | CZECH REPUBLIC

**SOFIA** | BULGARIA

**TASHKENT** | UZBEKISTAN