

Russian property to be nationalised

Risks to consider when doing business with Russia-related counterparties in Ukraine

01 Background to the current situation



On 7 March 2022, the Law of Ukraine “*On the Basic Principles of the Forcible Seizure of Objects of Property Rights of the Russian Federation and its Residents in Ukraine*” (the “Law”), previously adopted by the Parliament of Ukraine on 3 March 2022, came into force.

The Law was adopted in response to Russia’s full-scale aggression against Ukraine. The main aim of the Law, according to its preamble, is to “*protect the sovereignty and territorial integrity of Ukraine, its national interests, national security, and to ensure its economic independence, the rights, freedoms and legitimate interests of Ukrainian citizens, society and state*” and to provide an “*immediate and effective response to existing threats to the national interests of Ukraine*”. Nationalisation of so-called “Russia-tied” property is effectuated in the public interest, including military necessity.

Generally, the Law regulates the procedure on the forcible seizure of property directly or indirectly owned by the Russian Federation (see below for more details).

Property that can be seized under the Law includes:

- ❑ property rights that are required to be registered under Ukrainian law – movable and immovable property, funds, bank deposits, securities, corporate rights, other property (assets) located (registered) in Ukraine (which may include IP rights); and
- ❑ other property rights that are not required to be registered under Ukrainian law (i.e., inventory, furniture, and other items of movable property).

02 Who is affected under the Law



The Law concerns (i) the Russian Federation as state as well as (ii) its residents, currently defined as legal entities, including their branches and subsidiaries operating in Ukraine according to Ukrainian law, which are owned or controlled directly or indirectly by the Russian Federation as a state.

On 15 March 2022, a draft law introducing amendments to the scope of "residents" was registered ("the Draft Law"). According to it, "residents" in the meaning of the Law would also include individuals holding citizenship of the Russian Federation, or other nationals with very close liaison to the latter (i.e., reside or have a main place of business in Russia).

The Draft Law also provides that the National Security and Defence Council of Ukraine (NSDC) or Ukrainian courts may also consider other legal entities or individuals (regardless of their citizenship or place of business) to be "residents" in the meaning of the Law based on their support of Russian aggression and/or the continuation of their economic activities in Russia during the period of martial law in Ukraine.

As of now, the Draft Law has not yet been adopted and remains under debate in parliament.

03 Procedure for prospective seizures



Seizure of the above-referred property may come into effect under the prescribed procedure:

1. The Cabinet of Ministers of Ukraine (CMU) prepares a draft decision enumerating the property to be seized, its owners, and the timeframes for seizure to be effectuated;
2. The NSDC approves the above list of property to be seized and related terms by its decision;
3. The President of Ukraine issues a decree to enforce the NSDC's decision;
4. The Parliament of Ukraine approves the President's decree (no later than six months after the cancelation or termination of martial law).

In addition, property not requiring registration under Ukrainian law shall be considered as state property immediately upon approval of the NSDC's decision by the President of Ukraine, meaning that parliament's approval is not necessary in this case.

There is no compensation provided for the property to be seized under the Law. It is also provided that the seized property is to be temporarily or permanently managed by a specifically designated state enterprise to be established by the CMU as the need arises.



04 Act now: recommended actions for business having Russia-related counterparties



Due to the prospective seizure of property owned by Russia-tied entities, it is essential already at this stage for businesses working with them to consider the associated risks.

For these purposes, the main first-step actions of your business may include:

- a background check of counterparties, in terms of them falling under the provisions of the Law;
- reviewing pending agreements with counterparties affected in light of force majeure provisions, as well as provisions on agreement termination;
- deciding whether to continue partnering with affected entities;
- considering the financial risks related to business activities conducted together with entities affected by the Law;
- assessing property temporarily used by your business (if any) that may be confiscated as one owned by affected entities;
- considering a prompt risk-mitigation strategy.

Our team is ready to assist you with the above and any further steps your business may find necessary to take.

We will continue to update you as new developments occur:



Olga Vorozhbyt

Partner, Kyiv, Head of Compliance, Risk & Sensitive Investigations (CRSI) and White-Collar crime services

+380 067 449 0511
olga.vorozhbyt@kinstellar.com



Oleksii Gerasymchuk

Senior Associate, Kyiv

+380 67 547 5235
oleksii.gerasymchuk@kinstellar.com