

Inna Bernaziuk,
Professor, Department of Law
Private Higher Educational Institution
“European University”,
Doctor of Legal Sciences,
Honoured Lawyer of Ukraine
ORCID: 0000-0002-8460-2687
e-mail: innabernaziuk@gmail.com

LEGAL MECHANISM FOR REDUCING STATE OWNERSHIP IN THE BANKING SECTOR OF UKRAINE: SPECIAL REGIME FOR THE SALE OF STATE-OWNED SHAREHOLDINGS AND BANKING REGULATION

Abstract. The article examines the legal mechanism for reducing state ownership in the Ukrainian banking sector following the adoption of the Law of Ukraine “On Peculiarities of the Sale of Shareholdings Owned by the State in the Authorised Capital of Banks”. It is argued that the sale of a state-owned shareholding in a bank does not constitute ordinary privatisation of state property. It concerns corporate rights in a specifically regulated financial institution and may simultaneously result in the acquisition or increase of a qualifying holding and a change of control over the bank. The study identifies a special legal regime comprising the Government’s decision to prepare the shareholding for sale, taking into account the opinion of the Financial Stability Council, engagement of a sales adviser, preparation of the bank, determination of the bidder risk profile, competitive sale and conclusion and performance of a share purchase agreement. General privatisation legislation does not apply to such transactions.

The article proposes to define the sale of a state-owned shareholding in a bank as a regulated transformation of state corporate participation. Within this mechanism, the State’s decision to sell shares and the selection of the successful bidder do not replace the independent prudential approval of the acquisition of a qualifying holding by the National Bank of Ukraine.

Particular attention is paid to pre-sale due diligence, disclosure of information protected by banking secrecy, determination of the starting price, conditions precedent, representations and the possibility of choosing foreign law. The article identifies areas requiring further regulation, including coordination between competitive and

prudential assessment of the purchaser, sequencing of regulatory approvals, minimum standards for pre-sale due diligence and disclosure, and the division of powers between the State as shareholder and the bank's governing bodies during preparation for sale.

Keywords: state-owned banks, state ownership, sale of shares, state corporate rights, qualifying holding, banking regulation, National Bank of Ukraine, competition, control.

Statement of the Problem

The substantial share of state ownership in Ukraine's banking sector requires several legal objectives to be pursued simultaneously: the effective exercise of the State's shareholder rights, the preservation of banking-system stability, the maintenance of competitive market conditions and the establishment of prerequisites for a gradual reduction in state participation. The OECD links the development of Ukraine's banking sector to improvements in the corporate governance of state-owned banks and to the potential benefits of privatising some of them, particularly in terms of greater efficiency and the mobilisation of private capital [18].

A fundamental change in the legislative framework followed the adoption of Law of Ukraine No. 3983-IX of 19 September 2024, "On Peculiarities of the Sale of Shareholdings Owned by the State in the Authorised Capital of Banks" (hereinafter, Law No. 3983-IX) [1]. The legislature did not subject the sale of these shareholdings to the ordinary privatisation procedure. On the contrary, the Law of Ukraine "On Privatisation of State and Municipal Property" expressly provides that its provisions do not apply to the sale of bank shareholdings governed by Law No. 3983-IX [6, para. 6 of Section V]. Law No. 3983-IX replaced Law of Ukraine No. 4524-VI of 15 March 2012, which regulated the sale of shares in banks whose recapitalisation involved the State [1, para. 2 of Section VII]. Nevertheless, the exclusion of general privatisation legislation does not alter the essential character of the transaction as a disposal of state-owned corporate rights.

The special regime follows from the legal nature of the asset being sold. The State is not disposing of an ordinary property asset but of shares in a bank whose activities and ownership structure are subject to continuing prudential supervision. Accordingly, a

decision to sell, the selection of a successful bidder and the conclusion of a share purchase agreement do not exhaust the legal prerequisites for a change in bank ownership.

This article aims to identify the body of legal rules governing the reduction of state corporate participation in banks, examine the relationship between the special sale regime and banking regulation, and identify matters requiring further legislative or subordinate regulatory clarification.

State of Research, Methodology and Scientific Novelty

The legal regime for the privatisation of state-owned banks in Ukraine has been examined by Ye. Koval, particularly with regard to legislative reform, contractual mechanisms and the possibility of applying foreign law [19]. That study, however, was conducted in 2024 while the legislation was still at the draft stage. The adoption of Law No. 3983-IX and its implementing regulations therefore calls for a fresh systematic analysis. Compared with Law No. 4524-VI, Law No. 3983-IX changed the criteria defining the scope of special regulation as well as the procedural and contractual mechanisms for the sale of state-owned bank shares [1; 25].

In an earlier study, the author argued for a clear separation of corporate powers, the responsibilities of governing bodies and the limits of public oversight in the use of artificial intelligence [26]. The same approach is relevant to identifying the legal limits of the State's involvement, as shareholder, in preparing a bank for sale.

Economic research does not support the proposition that bank privatisation, in itself, guarantees improved performance. A World Bank study covering 475 privatisations in 70 countries reported mixed results in terms of profitability following sale, while identifying certain positive changes in lending and better outcomes for banks recapitalised before privatisation [20, pp. 6, 15]. This reinforces the need to examine the quality of the legal process and the condition of the bank before ownership changes. The research employs formal legal, systemic and functional methods. Law No. 3983-IX is analysed in conjunction with legislation on banking, joint-stock companies, economic competition, sanctions, financial monitoring and private international law.

The scientific contribution consists in substantiating the concept of a regulated transformation of state corporate participation in a bank, comprising three legally

autonomous elements: the State's exercise of its proprietary rights in the shares; the competitive procedure for selecting a purchaser; and prudential and other public-law controls over the permissibility of the ownership change. The article also proposes a distinction between assessing an applicant as a participant in the competition and assessing that person as a prospective holder of a qualifying shareholding.

1. Special Legal Regime for the Sale of State-Owned Bank Shareholdings

Law No. 3983-IX identifies the purposes of selling shareholdings as generating revenue for the State Budget of Ukraine, reducing state participation in banks, ensuring their stable operation and strengthening competition in the banking sector [1, Article 3(1)]. The statutory objective therefore cannot be reduced to obtaining the highest possible sale price.

Importantly, Law No. 3983-IX does not establish a universal regime for every bank with state participation. Under Article 2, it applies to specified systemically important banks whose state corporate rights are managed by the Cabinet of Ministers of Ukraine or the Ministry of Finance, excluding JSC Oschadbank and JSC Ukreximbank [1, Article 2]. Thus, the concept of reducing the State's share of the banking sector is broader than the scope of this special Law [16].

The Law clearly distinguishes three stages of the sale: preparation of the shareholding, conduct of the competition, and conclusion and performance of the share purchase agreement [1, Article 8]. Before the first stage begins, the Cabinet of Ministers of Ukraine decides to prepare the shareholding for sale, taking into account the Financial Stability Council's opinion concerning the potential sale's effect on the financial position and stability of the banking system [1, Article 9(1)].

The involvement of the Financial Stability Council is a significant feature of the special regime. It confirms that the decision to commence preparations cannot be assessed solely from the standpoint of managing a state asset: the Law requires prior consideration of systemic financial risk.

The practical application of the special regime began with Cabinet of Ministers Order No. 1061-r of 1 October 2025 on preparing the State's shareholdings in JSC Sense Bank and JSB Ukrgasbank for sale. The next step was the Government's establishment of a commission for the sale of those shareholdings, officially announced on 18

October 2026. Its remit includes preparing proposals concerning the competition procedure, admission of participants, terms of sale and determination of the competition results. The mechanism established by Law No. 3983-IX has thus entered practical implementation [3; 22; 23].

During preparation, an adviser is engaged, the bank undertakes measures to increase the value of the shareholding, and a bidder risk profile and sale decision are prepared [1, Article 9(2)]. The Law expressly identifies possible measures, including disposal of non-core assets, resolution of non-performing assets, cost optimisation, improvements in corporate governance and remediation of risks identified by audits or other reviews [1, Article 9(4)].

These provisions also have an important corporate-law dimension. Preparing a bank for sale may involve decisions falling within the powers of its governing bodies. The special Law requires the approval of the general meeting for the relevant measures where the State owns 50 per cent or less of the bank's ordinary shares, but does not specify in detail how powers are allocated between the State as shareholder, the supervisory board and the management board during preparation [1, Article 9(2)]. The issue must be resolved under the Law of Ukraine "On Banks and Banking", the Law of Ukraine "On Joint-Stock Companies", the bank's charter and the applicable corporate governance rules [2; 5]. Greater regulatory certainty is particularly necessary where the State's interests as seller do not fully coincide with the bank's corporate interests.

As argued in the author's earlier research, public oversight must remain within the powers conferred by law and should not displace the lawful discretion of corporate governing bodies [26]. This distinction is equally relevant where the State acts as a shareholder preparing a bank for sale.

2. Sale Adviser, Information Disclosure and Valuation

The sale adviser is one of the central actors in the special procedure. The adviser analyses the bank's economic, technical and financial indicators; participates in determining what information will be provided to prospective purchasers; identifies investors; makes recommendations concerning the risk profile, draft agreement and starting price; and conducts bidding [1, Article 7]. The procedure for selecting the

adviser was established by Cabinet of Ministers Resolution No. 1385 of 29 October 2025 [4].

In March 2026, the Ministry of Finance of Ukraine announced a competition to select an adviser for the sale of the State's shareholdings in JSC Sense Bank and JSB Ukrgasbank. According to the Cabinet of Ministers' official announcement of 18 October 2026, advisers had already been selected for both banks [22; 24].

Procedure No. 1385 rests on the principles of competition, equal treatment, general accessibility, openness, transparency and independence of the selection commission's members. The principal criteria for selecting the adviser-international experience in selling financial institutions, a high level of expertise and a comprehensive action plan-are established by Article 7(2) of Law No. 3983-IX [1, Article 7(2); 4]. The legislature has thus entrusted much of the professional preparation of the transaction to an independent external actor without conferring public decision-making powers upon that actor.

Comprehensive pre-sale due diligence is not designated by Law No. 3983-IX as a separate mandatory stage of the sale, but it is functionally linked to the adviser's statutory powers and the preparation of information for prospective purchasers.

For meaningful pre-sale due diligence, purchaser access to information is essential. Article 9(3) of Law No. 3983-IX obliges the bank to provide prospective purchasers and competition participants with information designated by the adviser, subject to banking secrecy requirements [1, Article 9(3)]. At the same time, Article 62 of the Law of Ukraine "On Banks and Banking" was supplemented by a special provision permitting a bank, for the purposes of implementing Law No. 3983-IX, to disclose information protected by banking secrecy to interested persons selected by the adviser and to participants in the competition under agreements concluded by the bank [2, Article 62].

A legal basis therefore exists for assembling the information required by a purchaser. The Law does not, however, prescribe the minimum scope of pre-sale legal, financial, tax, regulatory and technological due diligence, rules ensuring equal access to material information, the subsequent use of information obtained, or special access

arrangements for particularly sensitive information. These matters should be specified in the competition procedure or in separate regulatory requirements.

The Law has also moved away from a rigid statutory methodology for determining the starting price. Using the methodology chosen by the adviser, a recommendation is prepared taking into account the bank's condition, historical and projected performance, litigation, the terms of the draft agreement, market conditions, the macroeconomic environment and other factors [1, Article 12(2)]. This flexibility is consistent with the complexity of bank transactions, but increases the importance of a reasoned methodology and proper documentation of the adviser's professional judgement.

Moreover, Article 12(5) of Law No. 3983-IX permits the starting price and sale price of a shareholding to be set below the bank's equity and, on a per-share basis, below the nominal value of a share. General legislation on property valuation does not apply to the valuation of such shareholdings. This further demonstrates the autonomy of the special sale regime and heightens the need for properly substantiated recommendations by the adviser [1, Article 12(5)].

3. Requirements Applicable to Purchasers and Prudential Approval of Qualifying Holdings

The legal framework provides for two distinct procedures for assessing a prospective acquirer: a competition-based assessment under Law No. 3983-IX and a prudential assessment under banking legislation.

At the first level, a person must meet the eligibility criteria applicable to competition participants. The Law excludes, among others, certain former bank owners, persons from specified jurisdictions, persons connected with the aggressor State, sanctioned persons, parties with certain debts to the bank and the sale adviser [1, Article 6(2)]. A participant must also satisfy the risk profile approved by the Cabinet of Ministers of Ukraine [1, Articles 6 and 11].

The risk profile must include requirements regarding own funds for the acquisition of a qualifying holding and their sources [1, Article 11(6)]. The NBU determines the requirements regarding a participant's business reputation and ownership structure,

which the commission takes into account when developing the risk profile [1, Article 5(3)(1) and Article 11(6)].

At the second level, the Law of Ukraine “On Banks and Banking” applies. A person intending to acquire or increase a qualifying holding to the statutory thresholds must undergo a separate NBU approval procedure [2, Article 34]. NBU Regulation No. 149 governs that procedure and the assessment of financial or property standing, business reputation, ownership structure and other circumstances prescribed by law [7].

Compliance with the risk profile does not constitute approval of a qualifying holding. Nor does a Cabinet of Ministers decision to admit an applicant to the competition or confirm its winner replace the NBU approval required by banking legislation for the acquisition of a qualifying holding.

This dual assessment nevertheless creates difficulties of procedural sequencing. Although the NBU establishes some of the risk-profile requirements, Law No. 3983-IX does not provide a comprehensive mechanism for coordinating the two procedures. On the one hand, applications to the NBU at an excessively early stage may impose an undue regulatory burden. On the other, selecting the winning bidder before the substantive prudential assessment is completed increases the risk that the sale cannot be finalised.

It would therefore be appropriate to specify by regulation the stage at which an applicant or a limited group of bidders must commence the qualifying-holding approval procedure, while fully preserving the independence of the NBU’s decision.

4. Competition, Sanctions and Anti-Money-Laundering Requirements

The acquisition of a bank shareholding may also constitute a concentration under the Law of Ukraine “On Protection of Economic Competition”. Concentrations include, in particular, the acquisition of direct or indirect control and the acquisition of shares enabling the exercise of decisive influence [8, Article 22; 9, Section II].

Where the statutory financial thresholds are exceeded, a concentration requires prior clearance from the Antimonopoly Committee of Ukraine [8, Article 24]. The AMCU’s clearance and the NBU’s approval therefore address different matters: the former protects competition, whereas the latter safeguards a proper ownership structure and the bank’s prudential stability.

Sanctions restrictions constitute another independent layer. The Law of Ukraine “On Sanctions” provides, among other measures, for the freezing of assets and prohibitions on participation in the privatisation of state property in relation to specified persons [10, Article 4]. The special Law additionally establishes its own list of persons ineligible to participate in the competition, including persons subject to sanctions [1, Article 6(2)].

Requirements regarding ownership transparency and the sources of funds also interact with anti-money-laundering legislation. Law No. 361-IX defines the concepts of ultimate beneficial owner, source of funds and source of wealth and imposes customer due-diligence obligations on banks [11, Articles 1, 8 and 11; 12]. However, AML due diligence, the adviser’s verification of compliance with the risk profile, and NBU approval perform different legal functions and must not be regarded as interchangeable. The legal model for selling a bank accordingly encompasses several parallel mechanisms for assessing the purchaser. The regulatory task is not to merge them into a single procedure, which could compromise the independence of the competent authorities, but rather to coordinate their timing and information requirements to the extent compatible with their respective functions.

5. Share Purchase Agreement and Legal Completion of the Transaction

A share purchase agreement concerning a bank shareholding has a considerably more complex structure than an ordinary agreement for the transfer of corporate rights.

Law No. 3983-IX permits conditions precedent governing the transfer of title to the shareholding [1, Article 16]. The agreement may include security arrangements for the purchaser’s obligations, representations concerning material circumstances, and obligations to pay compensation or contractual penalties where such representations prove inaccurate [1, Article 16(4)–(5)]. Ukrainian legislation has thereby expressly recognised the use of contractual mechanisms characteristic of complex transactions involving corporate rights.

The aggregate compensation or contractual penalties payable by the State under Article 16(5) of Law No. 3983-IX may not exceed 30 per cent of the shareholding’s sale price. At the same time, Article 16(6) requires the State to provide in the agreement for repayment of the purchase price and payment of penalties if a final judgment of a

competent court or arbitral tribunal requiring the shares to be returned to former owners becomes effective in Ukraine [1, Article 16(5)–(6)].

Of particular importance is the parties' right to choose the law of England and Wales or the law of the State of New York to govern the agreement and related documents, subject to compliance with the Law of Ukraine "On Private International Law" [1, Article 16(7); 13]. However, a choice of foreign law cannot displace mandatory provisions of Ukrainian banking, competition, sanctions and other public law. Where the purchaser is a foreign legal entity or an enterprise with foreign investment, the agreement may, with the parties' consent, contain an arbitration clause [1, Article 16(7)].

Article 16(3) of Law No. 3983-IX expressly provides that the necessary regulatory approvals constitute conditions precedent to the transfer of ownership of the bank shareholding, including clearance by the Antimonopoly Committee of Ukraine for a concentration and NBU approval of the acquisition of a qualifying holding, where required by law. The principal issue is therefore not the need to restate those requirements in legislation, but to ensure their effective fulfilment and coordinate the relevant procedures.

This illustrates the distinction between selling shares and completing a change of control. Selection of the winning bidder, confirmation of the price and signature of the agreement are necessary but not invariably sufficient legal facts. Completion of the transaction must be linked to satisfaction of the contractual conditions, receipt of mandatory approvals, settlement of the purchase price and transfer of rights to the shares.

Special rules governing judicial protection also form part of the sale regime. A finding that certain individual administrative acts are unlawful and their subsequent annulment do not restore the previous position of the bank or other persons; protection of infringed rights takes the form of monetary damages [1, Articles 18 and 19]. Article 266-2 of the Code of Administrative Procedure of Ukraine establishes a three-month period from publication for challenging the relevant acts, which cannot be reinstated, and lays down special rules for judicial review of regulators' assessments and conclusions [1, Section VII, paragraph 3(3)].

6. Directions for Further Legislative Development

Law No. 3983-IX has substantially modernised the regime governing the sale of state-owned bank shareholdings. Nevertheless, its practical application will require further regulatory specification.

First, the sequencing of competitive and prudential assessments of the purchaser should be regulated. The Law provides for a risk profile, certain requirements of which are established by the NBU, but does not identify with sufficient precision when the qualifying-holding approval procedure should begin.

Second, minimum standards for pre-sale due diligence and information disclosure should be specified. A special statutory basis for disclosing banking secrecy to prospective purchasers has been established [2, Article 62]. Regulatory rules should nevertheless address equality of access to material information, safeguards for particularly sensitive information and its permitted use after completion or termination of the competition.

Third, the powers of a bank's governing bodies during preparation for sale require clearer definition. The Law provides for the bank to undertake measures to increase the value of the shareholding, including changes to the asset structure and corporate governance [1, Article 9(2) and (4)]. Such measures must, however, be adopted by the bank's organs acting within their statutory powers. The State's interest in increasing the sale price must not in itself justify interference with the exclusive powers of the supervisory board or management board.

Fourth, practical coordination should be ensured between the competition procedure and the regulatory approvals that, under Article 16(3) of Law No. 3983-IX, are conditions precedent to the transfer of title to a bank shareholding. This would enhance legal certainty and reduce the risk of the transaction failing to complete.

Fifth, the special Law does not provide a universal mechanism for reducing state ownership throughout the banking sector, since Article 2 limits its scope. In the longer term, the legislature should decide whether this special framework ought to remain confined to a particular class of banks or whether its principal features could extend to other instances of reducing state participation in banking.

Conclusions

1. Law No. 3983-IX established an autonomous special regime for the sale of state-owned bank shareholdings, to which the general privatisation procedure does not apply. Its object is the transfer of corporate rights in a prudentially regulated financial institution; the sale must therefore be considered in conjunction with banking regulation.

2. The sale of a state-owned bank shareholding should be understood as a regulated transformation of state corporate participation, encompassing the State's decision as owner, the competitive selection of the purchaser and independent public-law scrutiny of the permissibility of the change in ownership structure. Admission to the competition and compliance with the risk profile do not replace NBU approval for the acquisition of a qualifying holding.

3. The special Law has established a modern legal basis for preparing a bank for sale, including engagement of an adviser, the opinion of the Financial Stability Council, prospective purchasers' access to information, measures to enhance the bank's value, contractual representations and conditions precedent. The commencement of sale preparations for the State's shareholdings in JSC Sense Bank and JSB Ukrgasbank, the selection of advisers and the Government's establishment of a sale commission demonstrate the transition from a legislative framework to practical implementation. Regulatory clarification remains necessary concerning pre-sale due diligence, information disclosure and the allocation of powers between the State as shareholder and the governing bodies of banks in which the State holds more than 50 per cent of ordinary shares.

4. A change of ownership may entail simultaneous compliance with banking, competition, sanctions and anti-money-laundering legislation. These mechanisms serve independent legal purposes and cannot replace one another; the principal requirement is to coordinate their procedural sequence.

5. Further legislative development should focus on specifying the point at which qualifying-holding approval must commence, minimum standards for pre-sale information disclosure, limits on the State's influence as seller over the bank's corporate decisions and coordination of the regulatory approvals referred to in Article 16(3) of Law No. 3983-IX. These elements should reconcile the State's proprietary

interests with the bank's stability, protection of competition and the independence of banking supervision.

6. Further research within this series will address corporate governance in state-owned banks and the autonomy of their governing bodies; economic, legal and international preconditions for reducing state ownership; prudential control over the acquisition of qualifying holdings; competitive neutrality and State aid; and pre-sale due diligence, information disclosure and the contractual allocation of risks.

Declaration on the Use of Artificial Intelligence

In preparing this article, ChatGPT was used as an auxiliary tool for editorial and linguistic refinement, checking logical and terminological consistency, identifying possible inaccuracies and developing editorial suggestions. The scientific conclusions, legal assessments and final version of the article were determined by the author, who bears responsibility for its content.

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