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THE ROLE OF THE STATE LAND BANK IN PREVENTION OF MONEY LAUNDERING ON THE LAND MARKET

I.M. GAIEVSKYI, *PhD (Law), associate professor*

This article considers the key provisions of the legal base on establishment of the State Land Bank in the context of its status as a reporting entity. It depicts the role of the mentioned bank in reduction of money laundering risks on land market.

The State Land Bank, land, financial monitoring, money laundering.

The Ukrainian legislation rather precisely stipulates the anti-money laundering procedures. The Law of Ukraine On Prevention and Counteraction to Legalization (Laundering) of the Proceeds of Crime, or Terrorist Financing [1] is aimed directly at protection of the rights and legal interests of citizens, society and state by means of determining legal mechanism of counteraction to legalization (laundering) of the proceeds of crime.

Especially high-risk area on the national level, from the point of view of potential money laundering risks, is land market. This statement arises, particularly, from the provisions of the Article 13 of the Constitution of Ukraine, according to which «the land, its subsoil, atmosphere, water and other natural resources within the territory of Ukraine, natural resources of its continental shelf and of the exclusive (maritime) economic zone shall be the objects of property rights of the Ukrainian people. State authorities and local self-government bodies shall exercise the ownership rights on behalf of the Ukrainian people within the limits determined by this Constitution» [2].

Therefore, prevention of crimes related to money laundering and other illicit financial transactions on land market, and due verification and investigation of these crimes is especially acute task that the state and its all institutions should solve.

The first stage that ensures detection of suspicious financial transactions (including transactions with the land) is presented by the reporting entities. It is them who, under requirements of the legislation, should reveal financial transactions subject to financial monitoring while servicing the customers, analyze and to report them, if there are reasonable grounds, to the State financial Monitoring Service of Ukraine.

Later such reports may form the basis for the case referrals that the SFMS of Ukraine submits to the law enforcement agencies with the purpose of investigating, instituting criminal proceedings and forwarding the cases to the court in order to bring the persons found guilty to the liability.

One of the main reporting entities in Ukraine is the banks. The bank institutions submit to the SFMS of Ukraine the lion's share of the reports on financial transactions subject to financial monitoring. During 2011 the bank institutions reported 96,83 % of financial transactions [3].

For the present moment, taking into account the adoption of the last legislative initiatives by the Parliament, the society actively discusses the issue of establishment and functioning of the State Land Bank.

The issue concerning the State Land Bank was and is still the subject of ardent discussions and draws special attention of such scientists as Demyanenko, Kyrychenko, Kravchenko, Kurylo, Raiskyi, and Sabluk.

The issue of analysis of the status of this bank as a reporting entity and its role in combating money laundering is out of attention. The researches regarding the characteristics of operation of the State Land Bank in financial monitoring procedures are unavailable.

The purpose of this article is to study the issue of conducting by the State Land Bank of financial monitoring and, consequently, its role in mitigation of money laundering risks on land market.

Without mentioning a long history of establishment of the State Land Bank in Ukraine, it is worth stating that the prerequisite of establishment thereof was paragraph 6 of the Chapter IX of the Final provisions of the Land Code of Ukraine [4], that stipulates that the Cabinet of Ministers of Ukraine shall be in charge of establishment of the Land (Mortgage) Bank with the appropriate infrastructure. Paragraph 4 of this Chapter orders the Cabinet of Ministers of Ukraine to draft the laws, particularly on the state land (mortgage) bank and on land market.

Taking into consideration the aforesaid, in 2012 the Cabinet of Ministers of Ukraine took the decision on establishment of the State Land Bank [5].

Under this decision the State Land Bank has been established in the form of public joint stock company with the statutory capital to the amount of UAH 120 million, 100 % of the capital is state owned. The Government also adopted the Statute of the State Land bank [6].

As the banking legislation and the legal bases of supervision over the bank activities ensured by the National Bank of Ukraine have not taken into account the specific characteristics of the State Land Bank, the Parliament of Ukraine passed the Law that stipulates such peculiarities. That is the Law of Ukraine On Amending the Law of Ukraine On Banks and Banking concerning the State Land Bank [7].

It is found out that the Law of Ukraine on Banks and Banking [8] regulates the relationships related to operation of the State Land Bank where it does not contradict to the provisions of the special legislation in the area of land relationships.

By the way, it is difficult to agree with such legal wording. Operation of the State Land Bank is of paramount social importance, first of all, because of that its statutory fund is formed at the expense of contributions as land parcels. Due to that this bank will be authorized to conduct transactions with land parcels and property rights for land parcels under the legislation of Ukraine in the area of land relationships and its Statute.

Therefore, all the transactions with the land parcels that may be conducted by the State Land Bank shall be precisely regulated on the legislative level that arises from the above mentioned Article 13 of the Constitution of Ukraine.

On January 1, 2013 the Law of Ukraine On Amending Some Legislative Acts of Ukraine on Delimitation of State-Owned and Municipal Lands [9] entered into force, according to which the Cabinet of Ministers of Ukraine shall be authorized to transfer land parcels from state-owned lands into property or use in the cases stipulated by the Article 149 of the Land Code of Ukraine, land parcels of the bottom of the territorial sea, and also state-owned agricultural land parcels to the statutory capital of the State Land Bank that is 100 % state owned and is not subject to privatization.

The above mentioned law ensures per se the opportunities to establish land market in Ukraine where the land will be the object of sale-purchase.

But to legitimize the operation of the State Land Bank, first of all, it is necessary to determine the problematic aspects of the national legislation in this area that are the following:

1) The Constitution of Ukraine provides for that only the state authorities are empowered to dispose the state-owned lands on behalf of the state. The State Land Bank is a state legal entity and is not vested with the powers to dispose the lands. Due to that, the activities of the bank concerning conducting of land transactions shall be coordinated with the Constitution.

2) It has not been determined under what title the state shall transfer the lands to the statutory capital of the State Land Bank. According to the Article 92 of the Land Code of Ukraine [4], state-owned lands may be transferred to the state legal entities (including the State Land Bank) exclusively into permanent use (that includes possession and use). But the right of disposal of the land is unavailable that may become a legal hurdle for conducting transactions with the land.

The State Land Bank is a state bank, therefore, it is authorized with the rights and obligations of a reporting entity. This may be stated after analyzing the Statute of the State Land Bank.

Under paragraph 114 of the Statute, the State Land Bank ensures fulfillment of the requirements of the regulations of the National Bank of Ukraine and other legislative acts concerning the following:

- 1) detection and registration of the financial transactions subject to financial monitoring;
- 2) customers' identification;
- 3) submission of anti-money laundering information to the SFMS of Ukraine pursuant to the legislation.

Paragraph 113 of the Statute stipulates that the State Land Bank elaborates, implements and updates on a regular basis the rules of internal financial monitoring and the procedure of conducting thereof, taking into account the requirements of AML legislation and relevant regulations of the National Bank of Ukraine.

Chairman of the Management Board is a compliance officer responsible for fulfillment of the requirements of AML legislation and organization of AML internal bank system (paragraph 115 of the Statute).

The competence of the Supervisory Council includes decision-making under the results of consideration of suggestions of the compliance officer of the State Land Bank that presides internal AML bank system if the above mentioned suggestions have been rejected by the Management Board.

In its turn, the competence of the Management Board includes decision-making with regard to the suggestions of the compliance officer of the State Land Bank concerning ensuring compliance with the requirements of AML legislation.

The National Bank of Ukraine is a state regulator of the State Land Bank that shall ensure conducting financial monitoring according to the Regulation on conducting of financial monitoring by the banks [10].

Undoubtedly positive aspect is that the State Land Bank is involved into AML procedures. But there is certain specificity of this institution. The law directly provides for the right of the State Land Bank to conduct transactions with land parcels and property rights for land parcels, that is closely related to the purpose of operation of the bank, namely to ensure beneficial conditions for development of economy and agriculture, particularly functioning of land market.

The State Land Bank is vested with the characteristics of self-supporting institution that will be operating in two directions:

- to manage state-owned lands (sale-purchase, leasing and other);
- to exercise financial functions (first of all, crediting of landowners under pledge of lands). This direction of the activity of the bank is aimed at solving the problem of crediting agricultural branch [11, p. 366].

Regardless the fact that the State Land Bank will certainly be functioning after agricultural land market is created, the concept for establishment of the State Land Bank gives no clear and cut understanding how it will be operating.

The experience of other countries shows that the land banks as exclusively financial institutions have been established in 1960-70 of the previous century and have not succeeded very much, for in the majority cases they were unprofitable and required an on-going support of the state. Among relatively late and close to Ukraine examples is Hungary. In 1999 the state land bank was established in this country, but two years later it was privatized (one of the reasons is distortion of the market of agricultural crediting for commercial banks were not able to compete with the state institution with regard to cheapness of lending).

For the present moment, land banks of foreign countries operate mainly not in the form of financial institutions, but as land management funds, as a rule, state ones. Their key purpose is effective management of lands that should contribute to increasing its quality and market value. This can be carried out by means of leasing, sale or purchase, etc. [12].

Regarding operation of the State Land Bank as a reporting entity, it is of paramount importance that this bank, contrary to other bank institutions, is authorized for conducting transactions with such assets as land.

The State Land Bank would be useful as a land management fund being used as an instrument for combating money laundering.

This is conditioned by the fact that many money laundering schemes through the land market have place because there is no a unified regulator for land management that would trace possible illicit transactions on this market.

The advantage of type of the land bank as a data bank (with possible additional functions of financial intermediary) is that this type promotes forming of adequate prices for land resources on the market, and the bank itself may be a guarantee of transparency and legality of land sale-purchase operations.

This can be ensured by the opportunity of a landowner to address the land bank for assistance in land sale, and the latter will put up it to auction and will sell it at a real price. By the way, the buyer is protected as it buys the land through a state guarantee. Under these terms both parties will benefit.

Taking into consideration the aforesaid, operation of the State Land Bank actually may serve to ensure economic stability on land market, to induce counteraction to legalization of the proceeds of crime in this area and to attract investments.

At the same time, in the instance of violation of parity of functions of the State Land Bank by means of deviation from its status as a «data bank», it may be misused as a powerful instrument for division and disposal of the most important of strategic resources of Ukraine – its land.

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