

REAL PROPERTY: BUILDINGS AND LAND

IN UKRAINE





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Since opening our Kiev office in the fall of 1991, Frishberg & Partners has had roots in Ukrainian real estate transactions. In fact, our first client matter involved the acquisition of an apartment for a Western Embassy.

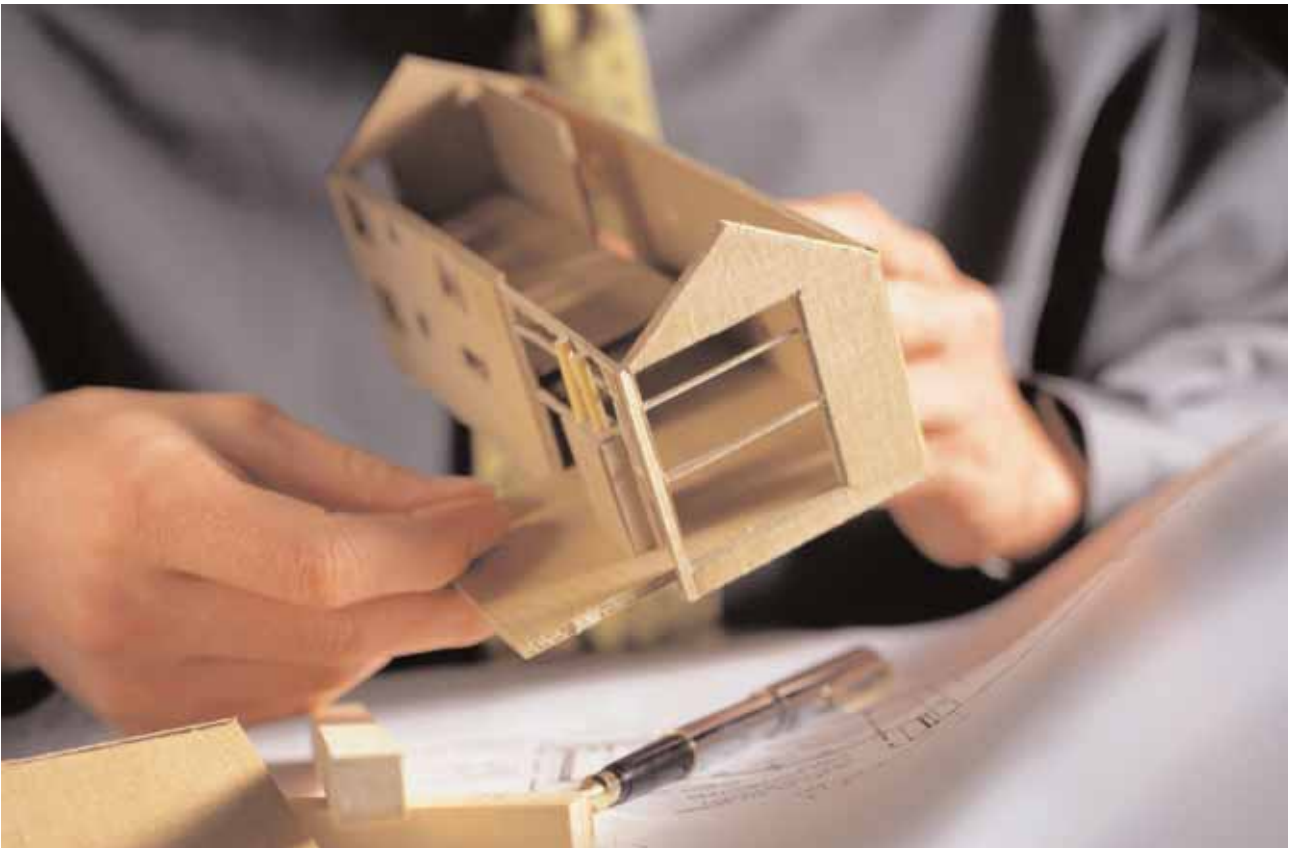
In the past, some of our real estate clients have included: Baltic Beverages Holding AB; Bank Austria Creditanstalt; Bank Austria Creditanstalt Leasing GmbH; Quality Schools International; Skanska East Europe OY; The Austrian Embassy in Ukraine; The Embassy of Sweden; The Embassy of Switzerland; Theeuwes de Jong B.V.; Thorkild Kristensen Properties A/S; the US Embassy in Kyiv, among others.

During our 15 year tenure, we have worked on countless acquisitions and leases of apartments, buildings, office premises, industrial land, warehouses and factories. As a result, we are quite efficient in:

- title searches (legal opinions provided upon request);

- sale-purchase agreements involving gradual payment;
- agreements providing for liens and collateral;
- negotiation and drafting of commercial and residential lease agreements;
- negotiation of long-term land leases (industrial or agricultural purposes);
- structuring financing of large-scale construction;
- verification of the legal validity of all city-issued permits, land allocations, construction permissions and licenses;
- legal compliance with all city ordinances.

We often work with qualified local real property experts, who are capable of securing land allocation rights as well as government-approved construction plans.



COMMERCIAL AND RESIDENTIAL PROPERTY

I. Historical Background

Ever since 1991, foreigners have been purchasing all kinds of real estate. Embassies acquired large communal apartments for personal residences while businessmen converted them for office use. Well-connected investors easily purchased free-standing buildings and even managed to obtain that coveted "free and permanent use of land" thereunder. In other words, the real estate market in Kiev has been booming for quite a long time.

In the early years of 1991-1996, only three Western-quality residential and commercial properties existed. Each charged near-extortionate fees ranging from USD 65 to 85 per square meter per month, and each used their monopoly positions to lock up multi-national companies in a lease for up to 5 years. Competitors quickly followed in their steps,

often demanding an up-front 6-month rent payment, typically wired to an offshore company. Then, out of the blue, the Ukrainian real estate market crashed in early August of 1998.

Many foreign lessees, including those unfortunate tenants who locked in early at unreasonably inflated rents, desperately tried to renegotiate their rent rates, and many succeeded. Today, due to a limited increase in quality residential and commercial properties, office lease prices have dropped somewhat. Prices have jumped from USD 1,500-5,000 per meter to purchase a residential apartment and leveled off to USD 35-65 per square meter per month, excluding VAT and service charges, for rental of centrally-located quality office space.

Though many changes took place since 1991, one thing has remained consistent, and that is the right of foreigners to purchase Ukrainian real property (and in some cases, land).



II. Documents Confirming Property Title and Lessor's/Seller's Identity

In all cases involving real estate (purchase or lease), questions of security in the property's title and ownership rights predominate the agenda, frequently causing great confusion and distrust. The reason is quite simple: fraudulent transactions are abound and, as a consequence, all issues connected with title transfer and identity of the true owner must be flushed out before the actual execution of a sale-purchase (or lease) agreement in front of the relevant officials (notary public or commodity exchange).

In the past, gullible companies incurred significant financial losses after effectuating substantial pre-payment (up to 6 months' of lease price) to false lessors, only to find that their newly leased apartment actually belonged to an innocent third party. Other cases involved premature termination of fake lease agreements (often following repairs at the lessee's expense). Naturally, recourse to the law has minimal, if any, effect on reimbursement of expenses or provisions for alternative office space.

To avoid the various pitfalls, and before making any advance payments, the potential purchaser or lessee must review the background documentation, which serves as the ultimate proof of ownership, including:

1. sale-purchase agreement, gift agreement or privatization certificate for the property;
2. "technical characteristic" certificate from the Bureau of Technical Inventory; and
3. certificate from the 1st Notary Public that the property is not secured by collateral or subject to encumbrances (i.e., it has no liens or "arrests" placed on it).

Other documents may be necessary, such as a waiver of children's rights to the property. In

case the alleged owner is a legal entity, the seller's foundation documents, among other documents, are most helpful. Of course, if the alleged owner is a natural person (individual), his/her passport must be verified.

All of the above documents should contain the relevant seals of the state authorities, and should be collected within 3 months from the date of their presentation for professional review. Based on these documents, a legal opinion is prepared, confirming or rejecting the ownership rights to any given property.

Various excuses, such as lost documents necessary to confirm ownership rights or that a particular document original is somehow inaccessible, are an indication of a potential problem. Contrary to a popular misperception, property ownership records are kept in meticulous order somewhere in the state archives. In fact, we once tracked a complete set of documents dating as far back as 1944, which granted land rights to a Soviet army general, whose children wanted to sell his house to a foreign investor before immigrating.

A title search, however, is only a part of the chain of legal dilemmas surrounding the procurement of property. The supporting legislation concerning currency regulations and taxation also plays a large role in deciding the best way to structure real estate transactions and secure long-term possession and quiet enjoyment of the premises.

III. Procedure for Purchasing Real Property

Article 657 of the Civil Code of Ukraine states that real estate transactions must be executed before a notary public in writing and are subject to state registration. Alternatively, the Law "On Commodity Exchanges" permits certain commodity exchanges to execute real property sale-purchase agreements.

In the past, purchasers had significant difficulties with state-employed notary publics and, because

an alternative existed, 99% of all property transactions were executed at commodity exchanges. Since then, Ukraine has introduced a system of "private notaries" to undertake this role. Currently, sale-purchase agreements are executed either before a state notary public or before a private notary. Below we review both alternatives.

A. State Notary Public

With reference to residential buildings and apartments, the Ukrainian government is represented by various entities, such as notary publics (state and private), the Bureau of Technical Inventory and the local ZHEK (literally translated as "Residential Exploitation Committee"). These bodies attest to the Ukrainian seller's ownership and occupancy rights to any property.

State notary publics are usually state officials and, as a rule, use their own standard forms for most transactions. In the context of real property transfers, the standard 2-page notary form for sale-purchase agreements recites only the most fundamental information concerning the property transfer, such as the names of the parties, the property's address, etc., and bears the parties' signatures and the notary's seal.

Negotiated provisions, including representations and warranties, are viewed as irrelevant.

To encourage sellers and purchasers to state realistic sales price in sale-purchase agreements (instead of a fraction of such value, as was the long-standing practice to avoid property tax), in the spring of 2000, the government decreased the state fee for notarization of agreements on the alienation of immovable property from 5% to 1% of the amount of the transaction (i.e., the total amount indicated in the sale-purchase agreement).

B. Private Notary Public

Ukrainian legislation generously permits the existence of private notary publics. Once licensed, their powers are equal to those of state notary publics without the drawbacks of bureaucracy. By law, private notary publics cannot charge less than the current state fee to notarize real estate sale-purchase agreements. Although private notaries are permitted to take a higher percentage, most private notary publics do not charge higher than the state notary publics due to the tight competition between private notary publics these days.

As a reminder, in all cases, follow-up registrations must take place with the Bureau of Technical Inventory (establishing the new owner's identity), the notary public (central and rayon) and ZHEK.

IV. Conclusion

Today, due to the abundance of privately owned, Western-quality property, foreign investors can easily purchase (or lease) virtually any real estate object, depending on the price. Reviewing ownership documents, drafting (and executing) the sale-purchase agreement, and registering the property at the Bureau of Technical Inventory, are the necessary technical details that accompany any transfer of property rights.



INVESTMENT IN UNFINISHED CONSTRUCTION

The skyrocketing price of real estate in Kiev makes it an interesting and vibrant, yet incredibly challenging, market. Other major Ukrainian cities will undergo the same fantastic change in the near future. The question is, how do foreign investors get access to land and buildings in Ukraine?

The good news is that there are no impediments to purchasing property on the secondary market from a private party. Just review the background title documents and sign a sale-purchase agreement before a notary public. Dealing with the government, however, is an entirely different matter. And yet, the government owns the best (and most) land that could be used for construction.

Below we review the legal and practical issues involved in obtaining access to land for construction of residential and commercial property.

I. Access to Unfinished Construction

International hotels would make millions in Kiev, but they are justifiably apprehensive of investing in existing unfinished construction projects. Instead, they prefer either to obtain a parcel of land and build to their own specifications, or wait until the risks inherent in the construction process have passed and the building has been put into commission.

However, buying land from the government via competitive means such as an auction or tender is often an unrealistic expectation, especially in Kiev under the firm rule of former Mayor Omelchenko and the Kiev City Council. In many cases, therefore, in order to enter the market an investor is forced to join forces with a local partner who has future property rights and is better able to navigate the murky local waters.



From a legal viewpoint, two methods exist to obtain access to land for construction purposes: (a) entering into a lease agreement (for up to 49 years) with or without a right of buy-out; and (b) acquiring shares of a Ukrainian company that owns or leases land. Entering into agreements with future obligations is not advisable for reasons described below.

A. Lease Agreements

The practice of government officials entering into land lease agreements with foreign companies varies throughout Ukraine, depending on the location (i.e., Kiev vs. Ivano-Frankivsk). In Kiev, for instance, only a select few "insiders" with close connections to the City authorities are allocated land rights for construction purposes. This, not surprisingly, expressly excludes foreign companies.

Incidentally, the reason the "insiders" prefer to enter into lease agreements to obtain land is because lease arrangements are signed without any auctions, and land transfer takes place after the construction is finished on a non-competitive basis. In contrast, buying state land takes place only via auctions, and it is more expensive than leasing.

In other Ukrainian cities and regions, where government officials are more even-handed than in Kiev, anyone interested in obtaining land for construction purposes should insist on a buy-out clause in their lease agreements to prevent any future ambiguities.

B. Acquiring a Ukrainian Company with Property Rights

From a strictly legal perspective, the acquisition of a Ukrainian company (or a share therein) that possesses land rights is not the same as a land sale-purchase agreement. Yet, the company's new shareholder exercises the same rights over

the land (and other company assets, if any) as any rightful Ukrainian land-owner. This investment avenue is widely used by foreign companies seeking to bypass the notorious Kiev City administration (see section II, below).

Before acquiring any Ukrainian company with land rights, we highly recommend that any investor conduct full legal and financial due diligence, focusing on the target company's property rights, existing debts and other obligations/liabilities.

C. Preliminary Agreements

As a rule, a foreign company cannot sign a sale-purchase agreement or a lease agreement for a building undergoing construction because such properties do not yet have an owner. These agreements can be signed only after such properties are duly commissioned and their ownership is recorded with the Bureau of Technical Inventory.

Some investors rely on the Ukrainian Civil Code (Article 635) and Commercial Code (Article 182) in an effort to circumvent the above lapse in legislation by entering into a so-called "preliminary agreement" with developers or construction companies. These types of agreements usually obligate the parties to enter into a sale-purchase or lease agreement in the future.

Unfortunately, due to the Bureau of Technical Inventory's refusal to recognize any property ownership rights before the building is commissioned, the notary public will not affix its seal to such an agreement. As a result, we cannot advise the use of preliminary agreements in cases of unfinished construction.

II. Barriers to Entry

The single biggest impediment to entering the construction arena in Kiev to date has been the

city government. Specifically, former Mayor Omelchenko's office and the Council of People's Deputies, which allocate land for construction. In the past, they have handed out plots of land only to an inner circle of people, presumably in exchange for something of value.

For example, a company called "Mars-1" (with two founders and no employees or track record) mysteriously obtained two prime land plots in a sole-source deal; another well-connected company, "KievVisotBud," obtained prime Dniepr River frontage on Obolon without any auctions or tenders. Many of the "insider" companies had no intentions to actually build houses, but simply tried to sell their projects off to third-party investors.

The corruption surrounding the construction industry is a widely acknowledged reality. In fact, one Kiev developer estimates that a building in the center costs around USD 700 per

square meter in production costs. Of this, about USD 200 per square meter goes to bribes. The land allocation process has become so thoroughly riddled with inside deals, that in December of 2005 the Antimonopoly Committee threatened to file a law suit against the Kiev City Council, claiming that its Resolution of July 5, 2005, #810/3385 "On the Temporary Procedure for Acquiring Land Rights on a Competitive Basis" allowed the City Council to circumvent the competitive procedure and allocate land without holding auctions or competitions.

The Antimonopoly Committee recommended to the City Council not to sell land plots without auctions to single purchasers. It also said that including such conditions as "additional investment into engineering and transportation infrastructure" have a negative impact on competition and are not required by Ukrainian legislation. Then came the March 2006 elections, kicking out the Omelchenko administration and welcoming the new Mayor



Leonid Chernovitsky, President of Privat Bank and Parliament member.

Due to the above political situation, we will dispense with the largely theoretical discussion concerning the legal difficulties connected with land allocation process.

III. Risks upon Entry

Entering into a lease agreement can be a long process (up to 3 years in Kiev). It is an extraordinarily expensive and emotionally draining experience that consists of obtaining numerous permissions and signatures of countless city bureaucrats. After the lease agreement is signed, however, significant risks continue to exist, ranging from a unilateral increase in rent by the city to termination of the lease agreement itself.

With reference to an increase in rent, for instance, in December of 2005, the Kiev City Council resolved to unilaterally revise lease payment rates at its own discretion, which means applying much higher tariffs to interested foreign companies (if any).

Termination of a lease agreement is perhaps the most serious risk. For instance, a stock company "Alex Bud" (the "Company") had a long-term, ten-year land lease for construction of a residential building, signed off by the Kiev City Council in 2003. The company began construction in 2004, but residents of neighboring buildings began protesting, so in the end of 2004, the Kiev City Council promptly reversed its prior decision to enter into a lease agreement. By that time, however, the Company pre-sold more than half of the apartments in their building. Fortunately, Ukrainian courts (including the Appellate Court) ruled in favor of the Company, but the City appealed to the Supreme Court. Meanwhile, the investors were justifiably concerned.

In November of 2006, the Kiev City Council cancelled land lease agreements for about 200

more construction projects, many in the process of laying the foundation. In all, about 83% of the scheduled construction was "frozen," according to Milan Paevich, director of company "Slav-Invest." Most of these sites are still "frozen sites" despite the construction companies' ability and desire to finish their projects, and the investors' dreams of moving into their long-awaited apartments. One notable exception is ongoing construction across from the Republican stadium, which was "unfrozen" on March 15, 2006, by the Cabinet of Ministers, headed by the Minister of Construction, Yuri Kazmiruk.

IV. Property Taxes

On January 1, 2005, the Parliament passed a property tax law that was promptly cancelled by the moratorium on property taxes on March 30, 2005. Another futile attempt to tax property owners came on January 1, 2006, imposing a profit tax of 1% to 13% on the sale of real property. This time, the Parliament cancelled profit tax on the sale of property under 100 square meters, provided that such property is not re-sold within the same tax year. Profits derived from the sale of any property above 100 meters will be taxed at 1% (instead of a scale ranging from 1% to 13%, as was originally intended).

V. Conclusion

Foreign investors are at a distinct disadvantage when dealing with the mighty Ukrainian bureaucracy responsible for land allocation and construction permits. The intentionally complex system of procuring land and construction permits is only one of the reasons for the existence of just two high-end hotels in the nation's capital. City hall corruption is another.

And yet, somehow Radisson SAS opened its four-star hotel (reportedly worth USD 57.3 million) in 2005, while Hyatt is reportedly working away on a centrally located glass hotel monstrosity, near the graceful St. Sophia's Church. If there is a will, there is a way.

FINANCING RESIDENTIAL CONSTRUCTION PROJECTS

I. Reason for the New Legislation

On Monday, February 6, 2006, a group of investors arrived to the headquarters of an investment-construction group "Elite Center" to learn that the owners have disappeared with more than USD 100 million in investments. Lacking the necessary construction permits, yet having procured some of the required paperwork from the Mayor's office, the owners pre-sold future apartments to several purchasers at below-market prices.

In all, this little housing scam left 1,500 apartment buyers with nothing. Many implicated Mayor Omelchenko in collaborating with the thieves. In reply, just before being kicked out of his office in the March elections,

the good Mayor said the investors should have known better, adding that his political rival's bank was responsible for the theft (a claim that was vigorously denied). Other components, adding to the mass robbery of Kiev's citizens, was a lack of regulatory oversight from the National Bank of Ukraine and State Tax Inspection and unclear legislation. For all of the above reasons, there was a systematic failure to protect investors.

Since then, restless apartment buyers all over Ukraine have began asking the companies, which have accepted their payment for future apartments, about the documents (licenses and permits) and state of finances. In many cases they discovered total failure to comply with the current legislation, which came into effect on January 14, 2006. At best, the investment



vehicles (investment agreements) did not correspond with the new requirements (concerning deposits into licensed funds, bonds). In the worst situations, intentional fraud was uncovered whereby the developers knowingly pre-sold future apartments to more than one purchaser without having the necessary construction permits in place (on Kniazhni Zaton #9, for instance).

Many developers and construction companies were caught unprepared for the unannounced changes in the legislation, especially those who financed construction with investment or financial agreements other than construction bonds or FFC accounts. These unfortunate entities now need to promptly find their financial partners and issue the necessary securities to comply with the new construction finance legislation.

II. New Construction Finance Legislation

On January 14, 2006, a law "On Amending Certain Legislative Acts Concerning Mortgage Relations" (the "Law") came into effect, trying to clear up ambiguities contained in the laws "On Mortgages," "On Mortgage Loans, Operations with Consolidated Mortgage Debt and Mortgage Certificates," "On Financial-Credit Mechanisms and Management of Property During Construction of Residential Property and Property Operations," among others.

Significantly, the Law altered Article 4 of the Law "On Investment Activity" by clearly providing that public financing of residential property construction can take place only via licensed Funds for Financing Construction (FFC) or bonds, as well as largely theoretical instruments like Funds for Real Estate Operations (FREO), non-governmental pension funds, among others. In other words, it is finally illegal for construction companies to raise their own financing for building projects without a licensed financial company.

Below we briefly review two of the more popular financing mechanisms, FFC's and bonds.

A. Funds for Financing Construction (FFC)

FFC's were introduced by the law "On Financial-Credit Mechanisms and Management of Property During Residential Construction and Property Operations," dated June 19, 2003, which came into effect on January 1, 2004. According to this law, each constructed property must have its own FFC, and investors' funds are used for the construction of that specific property (and no other). At the time this text was submitted for print, about 70 FFC's were registered, but only four buildings have been commissioned.

A financial company that creates an FFC is under strict state supervision from the moment such fund is registered. Specifically, the financial company must obtain a license to accept investments from natural persons to finance a given construction project and submit monthly accounting regarding each FFC. Plus, such company reviews the land allocation documents, construction permits, business plan, labor and material resources, any sub-contracts, and responds to investors' queries regarding the status of construction. For the duration of the construction process, the financial company is responsible for technical supervision, procuring the necessary insurance policies, monitoring investors' deposits, etc.

The financial company monitors the construction progress on a monthly basis by requiring the construction company to provide a statement of completed work and financial accounting, which the financial company forwards to the state authorities. Should the construction company fail to live up to any of its obligations, the financial company has the right to replace them.

B. Bonds

The law "On Mortgage Bonds," dated December 22, 2005, prescribes new rules for yet non-existent mortgage securities market. For instance, issuers must provide bond purchasers certain guarantees or, alternatively, create a reserve or insurance fund to protect the investors. A construction project is entered into a state registry and cannot be used as collateral in other transactions.

Moreover, the bond issuance procedure is fairly straight-forward. In a nutshell, after receiving the necessary land allocation act and construction permits, the construction company/developer estimates the total cost of the future building and issues bonds equal to that amount. These documents are submitted to the State Commission on Securities and the Stock Market, the issuance is duly registered and a project-specific prospectus is published, containing information including the term, purpose for issuance, information about the construction company and its founders, number

of square meters in a defined apartment in a specified building, etc. The issuer then enters into sale-purchase agreements with investors via financial intermediaries. See generally, SCSSM Regulation #322 "On Corporate Bond Issuance," dated July 17, 2003.

Several other reasons exist to explain the popularity of bonds. Since bonds are debt securities, their issuance is not subject to taxation according to Article 7.9 of the Profit Tax Law #334/94-BP, dated December 28, 1994. This makes bonds attractive to issuers. Unlike funds sitting in FFC accounts, bonds can be re-sold or used as collateral. This makes bonds attractive to banks. In fact, according to the SCSSM, more than 50% of all bond issues are for construction financing.

In comparison to bonds, the FFC system is more cumbersome and expensive (due to increased state supervision over the fiscal management and the construction process). As a result, FFCs are not as popular as bonds.



THE LAND CODE

I. Introduction

While no shots were fired from the proverbial battleship Aurora, the passing of Ukrainian land into the hands of the "peasants" was accompanied by its own mini-revolution: on the day Parliament was to vote on the adoption of a new Land Code (the "Code"), Communist fractions surrounded the podium in a futile effort to block the deputies from casting their votes. On October 25, 2001, however, the Parliament finally adopted the Code, which was subsequently signed by the President.

According to the Code, land is finally deemed as an "object of private ownership rights." In other words, landowners have the right to sell, exchange, donate or pledge their land plots as of January 1, 2002 (however, until 2010, they will not be able to sell more than 100 hectares of land). In spite of the moratorium on the alienation of agricultural land until January

2008, with agricultural land in the hands of private landowners and the introduction of a new law governing land mortgages, the quality and condition of such land are likely to improve.

At last, foreign investors can feel somewhat more secure in that they will be dealing with actual owners of land, not the former chairmen of collective farms who were able to illegally grant land use under a shadow land market. Foreign investors will also be able to receive something of real value as collateral if their Ukrainian counterparts fail to fulfill their contractual obligations since land, unlike cash or other movable property, is impossible to move or otherwise hide. This process will also contribute to the much-needed development of credit and loan terms in Ukraine.

With this brief overview in mind, we immediately below discuss in further detail the impact of the Code on foreign investment.



II. Discussion

On January 1, 2002, the Code went into effect in Ukraine, expanding the rights of foreign governments, foreign legal entities, foreign citizens and persons without citizenship in the sphere of land rights. While this expansion of land rights is significant, it does not give the green light to foreign investors to take the full ownership of the fertile, black earth of Ukraine. In fact, the Code still contains certain limitations on the purchase of land by foreign governments and investors alike.

The Code places land into several categories, including agricultural land, land for residential and public construction, natural reserve lands, historical-cultural lands, water and forest reserves, recreational lands, lands designated for sanitary/health purposes (i.e., health resorts, sanatoriums) and, finally, lands for industrial, transport, communication, energy, defense and other purposes. The Code permits land to be transferred from one category to another upon a decision of the executive bodies of government or bodies of local self-regulation to transfer such land into ownership, use, the historical-cultural fund or natural reserve fund. If the land is owned by a citizen or legal entity, the category of such land may be changed upon the initiative of such citizen or legal entity. This is important because many attractive land plots are not currently designated for private or business use (i.e., they are designated to other zoning areas).

There are three categories of land, which are of most importance for foreign investors and governments: agro-industrial, industrial and residential land. The Code strictly prohibits foreign citizens, legal entities and governments from owning agricultural lands, making lease arrangements the only way for foreign investors to get access to agro-industrial land (including land for personal farming or gardening). Notwithstanding this restriction and the Code's moratorium on the sale of land until 2007, Ukrainian owners of agricultural land

may still use their agricultural land plots as security in order to obtain credit or loans.

As a general overview, residential land includes land plots within populated areas, which are used for construction of residential buildings, public constructions and other structures of public use. Industrial land includes lands allocated for industrial, mining, transportation and other enterprises, including their communication networks, administrative-infrastructure buildings and other structures.

A. Ownership Rights to Land

Under the Code, the right to ownership of land includes the rights of possession, use and disposal of land plots, which are acquired and exercised on the basis of the Ukrainian Constitution, the Code and other laws issued in accordance therewith. For the first time since Ukraine's independence, the Code clearly provides that land can be privately owned.

The Code defines a land plot as a part of the land surface with established borders, a defined location and certain designated rights thereto. The ownership rights to a land plot apply within its borders to the surface (soil) layer and any water objects, forests and long-standing plantation thereon. Further, ownership rights to a land plot apply to any space above or below the surface of the plot of a height or depth "necessary for constructing residential, production and other buildings and structures." The Code does not further explain this vague provision.

Formerly, all bodies of water and forests belonged to the State. Therefore, the Land Code has significantly extended the meaning of ownership rights to a land plot. However, if the land to be purchased will be used in connection with the use of its minerals, then the new landowner will have to receive all licenses and permissions for the use of minerals and the restoration of land in accordance with an



approved re-cultivation plan or concession agreement.

Ukrainian citizens may acquire the ownership rights to a land plot on the basis of (i) a sale-purchase, gift, barter or other civil agreement; (ii) gratuitous transfer from state or communal ownership; (iii) privatization of land plots previously allocated to them for use; (iv) inheritance; and (v) an in-kind share to which they are legally entitled. In contrast, foreign citizens may acquire non-agricultural land plots by way of (i) sale-purchase, gift, barter and other civil agreements; (ii) buyout of land plots on which real estate under their private ownership is located; or (iii) inheritance.

Foreign legal entities may acquire ownership rights non-agricultural land plots:

- a) within the limits of populated areas in case of the acquisition of real estate and for purposes of constructing objects connected with their business activities in Ukraine (i.e., they must have the right to carry out commercial activity in Ukraine, which excludes non-commercial representative offices);
- b) outside the limits of populated areas if they have real property already located on the plot.

Likewise, foreign governments may acquire ownership rights to land plots for construction of diplomatic missions and other organizations of equal standing on the basis of international agreements.

In essence, these provisions of the Code are what foreign investors have been waiting for since Ukrainian independence. With the moratorium on the sale of non-agricultural land lifted in 2005, foreign investors have the right to purchase the land under their privately owned production and storage facilities (provided, however, such land is not designated as agricultural or other land restricted for foreign

citizens and businesses). Buyer beware, however, because the land on which the real estate is located must not be re-allocated from agricultural land. If this happens, the land on which the real estate is located will be subject to mandatory sale or disposal within one year.

B. The Right to Use Land

The Land Code permits two basic rights to land: (i) the right to permanent use; and (ii) lease rights. The former gives the holder the right to possess and use a land plot under state or communal ownership without an expiration term. Unfortunately, this right may only be acquired by enterprises, institutions and organizations under state or communal ownership.

Fortunately, land lease is a viable alternative for foreign investors, international organizations and foreign governments. Under the Code, leases may be either short-term (no more than 5 years - the old Code defined "short-term" as no more than 3 years) or long-term (no more than 50 years). The Code also allows the lessee to sub-let the land plot upon consent from the lessor. All other issues in connection with the lease of land are regulated by Law of Ukraine No. 161-XIV "On Lease of Land," dated October 6, 1998 (as completely re-written on October 2, 2003 pursuant to Law No. 1211-IV).

C. The Sale of State or Communal Land

The governmental bodies and bodies of local self-regulation carry out the sale of land plots under state or communal ownership to Ukrainian citizens, legal entities-residents (i.e., joint ventures and resident companies) and, in some cases, foreign governments on a competitive basis (auction, tenders), except for the buyout of land plots on which real estate objects are located under the ownership of the buyer. For this purpose, the interested buyer

submits an application (petition) to the relevant body of the executive power or local council, indicating the desired location of the land plot, the purpose of its use and its size. The following documents must be attached to the application (petition):

- a) the State Act on the right of permanent use of land or a lease agreement;
- b) the land plot's layout and the document, evidencing the issuance thereof in case of the absence of a State Act; and
- c) the certificate of registration of a subject of entrepreneurial activity.

The relevant governmental body must review the application within a month and render a decision on the sale of the corresponding land plot or a substantiated refusal. If the applicant wishes to acquire land that is not currently under its use, then the sale of the land will only take place after its application is accepted and no later than 30 days after the development of a land allocation draft by a land management organization.

The grounds for refusal to permit the sale of a land plot in the above scenario are as follows:

- a) the absence of documentation necessary for rendering a decision on the sale of such land plot;
- b) the discovery of false information in the applicant's documentation; and
- c) if bankruptcy proceedings or other proceedings to terminate the applicant's business activities have been initiated.

Once the decision has been rendered by the relevant governmental body, the applicant may sign the sale-purchase agreement. Next, the sale-purchase agreement must be notarized and

the receipt, confirming the payment of the notary fees, must be presented in order to receive the State Act on the ownership right to the land plot and complete state registration.

The procedural rules change a bit if the land is under state or communal ownership. If land is under state ownership, then the land will be sold to foreign states or foreign legal entities by the Cabinet of Ministers of Ukraine only upon the consent of the Ukrainian Parliament. However, if the land is under the ownership of a territorial community, such community needs to receive the consent of the Cabinet of Ministers to sell such land to foreign states and foreign legal entities. Once again, in these cases a foreign legal entity must register a permanent representation with the right to carry out commercial activity (i.e., no representative offices) on the territory of Ukraine in order to obtain consent to purchase communal and state owned land.

Procedurally, foreign legal entities, interested in acquiring land plots, must submit an application to the relevant state body (Council of Ministers of the Autonomous Republic of Crimea; the regional, Kiev and Sevastopol city state

administrations or the relevant local council), along with a lease agreement for the land plot, and a copy of the certificate of registration of a permanent legal entity with the right to carry out business activities on the territory of Ukraine. As mentioned above, the relevant state body will review the application only after it receives the consent from the Cabinet of Ministers.

Having acquired a land plot in Ukraine, a purchaser is guaranteed by the State the right to own land, the right to remove any violations on his/her land or seek compensation due to damages caused by third parties, etc. Ukrainian courts, bodies of local self-governance and the executive bodies in charge of issuing land resources are responsible for deciding land disputes within their competence.

III. Conclusion

While foreign legal entities and individuals are not yet entitled to own agricultural land, they may now freely own the land parcels under their Ukrainian factories and plants. Still, the State retains the right to exercise control over the use of land by its owners and can deprive such owners of their land rights if violations are uncovered.



BASIC STEPS TOWARD LAND OWNERSHIP

On October 25, 2001, the new Land Code of Ukraine (the "Land Code") was adopted and came into effect on January 1, 2002. In general, the Land Code is intended to facilitate the development of the real estate and land market in Ukraine. And, surprisingly, it actually has led to some long-awaited changes.

The first, and probably the most important, change is that land in Ukraine may be privately-owned. Of course, the Land Code has retained the archaic, socialistic notions of communal and state ownership. Another provision of the Land Code stipulates that ownership rights to land are now acquired and realized on the basis of the Constitution of Ukraine and the Land Code. This is another step confirming that it is not a crime to be a proud owner of land.

Article 657 of the newly enacted Civil Code of Ukraine (the "Civil Code") clearly states that agreements involving the sale of land must be notarized and are subject to state registration. Accordingly, the failure to comply with the requirement to notarize and register a land sale-purchase agreement may render such agreement null and void. Agreements involving the sale, exchange and gift of land in all cases are subject to notarization at the location of the land plot in question and such agreements are of equal legal-binding force and effect, regardless of whether a state or a private notary certifies the agreement.

With respect to the sale of land, prior to visiting a notary, the seller must prepare a number of documents, which are required for the proper processing and execution of the sale-purchase agreement. Notably, the right to dispose of land plots and specifically the right to enter into sale,



exchange and/or gift agreements belongs exclusively to the owners of such land plots. Pursuant to this presumption, the notary will require the seller to present the relevant State Act confirming his or her ownership rights to the land plot according to Article 126 of the Land Code of Ukraine (the "Land Code"). Any other documents evidencing ownership rights, such as a decision of a local council on the allocation of a land plot, will not be accepted by a notary.

Further, the notary will be required to verify that there are no liens and other encumbrances on the land plot offered for sale. A notary receives this information from the Unified Register of Liens to Immovable Property, which accumulates such data from all over the nation. Should the notary find out that a lien is imposed upon a land plot in question, they will refuse to certify the sale-purchase (gift, exchange) agreement.

In case a spouse has acquired a land plot during marriage, written consent from the other spouse will be required in order to alienate the land plot. As an exception, however, such consent will not be requested if the land plot was acquired by way of privatization.

In order to process and execute certain land-related transactions, the land plot may have to be appraised by a licensed appraiser and the results of such appraisal must be compiled in an appraisal report. The general legal issues related to the value of the land are regulated by the Civil Code, the Land Code and the Law "On Appraisal of Land." In general, both Codes state that the sale of a land plot is executed at the price agreed upon by the parties. However, specific requirements exist in the recently enacted Law "On Appraisal of Land" and related regulations, approved by the Cabinet of Ministers of Ukraine. Notarization of an agreement to alienate land is subject to a state duty, which in most cases will amount to 1% of the value of the agreement. In cases when the value of the agreement has been intentionally decreased by a party and is lower than the value stipulated in an appraisal report issued by the state land management bodies (as is often the case), the state duty will be based on the larger value.

Interestingly, upon the certification of land-related agreements by a state notary, rather than a private notary, any provision of legal services by the state notary, such as the drafting of a proper agreement, is free of charge. The parties

to the agreement simply reimburse to the notary the value of the special blank form on which the agreement is set forth in writing, as well as the value of the verification service with the relevant register with respect to liens and encumbrances. On the other hand, private notaries will not charge the state duty. The amount payable to a private notary is set according to an agreement reached between the parties to the land-related agreement and the corresponding private notary.

In purchasing land, one should clarify the designated usage "assigned" to the land plot as land may only be used in compliance with its designated purpose (e.g., farming, industrial, residential, etc.). It is acceptable and, in fact, possible to apply for a change of the land's designated use (purpose). This change, however, usually tends to be rather expensive and extremely time consuming, especially with respect to a change from non-commercial to commercial designation.

Notably, the Land Code sets forth several direct prohibitions with respect to the sale or purchase of land. For the most part, foreign citizens and foreign legal entities are discriminated against under the Land Code. Specifically, agricultural land may not be transferred for direct ownership to foreigners, persons without citizenship, foreign legal entities, etc. The said persons may use farming land and other agricultural lands only under lease agreements.

Further, foreign citizens may own non-agricultural land only within urban (city, town, village, etc.) limits. Outside such urban limits, foreign citizens may own non-agricultural land only if they privately own the immovable property objects thereon. Notably, foreign legal entities are allowed to own non-agricultural land, provided that they have acquired the immovable property located on such land. Many foreign business organizations have been lobbying for changes to the Land Code to remove all discrimination against foreign citizens and companies.

If a legal entity wishes to acquire ownership rights to land that belongs to the state or a community, the procedure is different from the one set for purchasing land on the secondary market. In general, state-owned or communally-owned land may be offered for sale to legal entities on a competitive basis, with the exception of cases when land is being sold to legal entities which already own real property located thereon.

Moreover, a legal entity is required to file a petition and other required documents with the relevant national or local body requesting to purchase the ownership rights to a certain land plot. Such body will consider the petition and within one (1) month will return its consent to the sale or decline the petition. If the legal entity receives consent to purchase, it may acquire the ownership rights to the land plot upon preparation of the technical documents legally describing such plot.

The sale of the land plot will be effectuated on the basis of a sale-purchase agreement, which is executed pursuant to the decision of the proper national or local body. Please note that foreign legal entities should seek prior consent of the Cabinet of Ministers of Ukraine in order to purchase state-owned or communally-owned land. Alternatively, there is always the option of a long-term lease arrangement of up to 50 years.

In conclusion, a foreign buyer of Ukrainian land should remember that the land market in Ukraine is still under formation and malpractice is still quite common. Land prices continue to grow and, therefore, before taking any practical steps towards the acquisition of land and getting a fair deal, any potential buyer should seek professional legal guidance. All too many foreign companies are offered a cheap and quick deal to purchase land only to find out later that violations in the purchase procedure have endangered their ownership rights. Careful due diligence and verification of all steps in a land-purchase transaction can often reveal that a seller's offer was really too good to be true.



INDUSTRIAL LAND LEASE

I. Introduction

Until the recent passage of the new Land Code, which came into effect on January 1, 2002, foreign investors in Ukraine long dreamed of the time when they could by-pass the central government bureaucracy and run things on their own terms. As Cargill's foray into the unchartered Donetsk free economic zone confirmed, constructing a 100% foreign owned pre-fabricated building on a parcel of land has numerous advantages. Now that such treatment is equally extended to other Western investors, greenfields will surely become one of the favorite methods for the foreign investors to establish quality production in Ukraine.

Until recently, no parcel of Ukrainian legislation dared to raise the topic of land allocation for industrial use (production purposes). While the old Land Code governed

many questions concerning land rights, these were concerned primarily with agricultural or "datcha" land allocations. Once upon a time, President Kuchma even made a half-hearted effort to allow investors access to land for industrial use, but it was virtually unenforced notwithstanding vigorous attempts by foreign investors to secure its benefits. Several years later, in the crisis-ridden fall of 1998, a law on land lease was adopted, which once again attempted to grant some land rights to foreign and local investors alike.

Below we briefly compare the laws passed in 1995 and 1998 (which was subsequently re-written upon the passage of the new Land Code).

II. The Decree "On Privatization and Leasing of Non-Agricultural Land for Business Purposes"

At the height of his power, on July 12, 1995, President Kuchma signed a very promising



Decree No. 608 "On Privatization and Leasing of Non-Agricultural Land for Business Purposes" ("Decree No. 608"). This decree specifically permitted the privatization and leasing of so-called "non-agricultural" (industrial) land and, therefore, was quite interesting for foreign investors. Unfortunately, this Decree was completely ignored. Even foreign investors did not complain, realizing it was simply too good to be true.

For the record, the purpose of the Decree was to increase foreign and Ukrainian investment by finally opening access to industrial property for production purposes. The Decree expressly promised foreign investors clear land ownership rights, giving them greater security in controlling their investments. The Decree also aimed at solving the duality of real property rights, whereby an investor could formerly privatize a building located on a plot of land, but could not actually privatize the land thereunder. The land rights always remained with the State, as represented by the Local Councils of People's Deputies.

Decree No. 608 was unique because, for the first time, it expressly granted the purchasers of buildings the right to purchase the land underneath. Unfortunately, such rights were not extended to non-residents. However, by forming a Ukrainian resident company, the non-resident was theoretically able to effectively participate in the privatization process through its Ukrainian resident company.

Also, Decree No. 608 provided that many land parcels would be privatized on a competitive basis. The Decree further provided that new owners of privatized industrial land would enjoy full rights to their property, including the right to possession, use and disposal by any means (sale, gift, will, exchange, collateral, lease, etc.). The owner of land could also contribute the land to the authorized capital of any business entity.

Indeed, the Decree was a breakthrough in land

ownership rights. The only problem was the complete lack of its application and enforcement in practice, which was unfortunate (yet predictable). The Decree gave potential investors false hope that they would finally be able to purchase Ukrainian land and obtain full control over their production facilities, but this time nobody was surprised.

Because this precedent-setting, but useless, legislation found no application whatsoever, we will devote the bulk of our discussion to the more recent legislation (which has proved to have at least some effect).

III. Law "On Lease of Land"

A. Introduction

On October 6, 1998, President Kuchma once again attempted to provide land rights by signing Law No. 161-XIV "On Lease of Land." On October 2, 2003, this Law was completely amended under Law No. 1211-IV "On Amendments to the Law of Ukraine 'On Lease of Land'" (the "Lease Law"). The Lease Law permits anyone, Ukrainian or foreign legal entities and natural persons, including international associations and organizations and foreign governments, to lease land.

The Lease Law specifically states that the lease of a land parcel does not affect the rights of third parties with regard to that land parcel. In other words, protection of a third party's interests in land, such as collateral or debts, exists in Ukraine. Upon concluding a lease agreement, a lessor must disclose any existing liens, encumbrances and third party rights connected to the relevant land parcel. Moreover, land parcels subject to pledge may not be transferred into lease without the consent of the pledge holder.

As with most Ukrainian laws, the Lease Law refers back to the Land Code for the rights of lessees to lease and, eventually, own land.

Fortunately, under the new Land Code, foreign entities can now officially obtain ownership rights to Ukrainian land. The Lease Law also refers to the Civil and Economic Codes as the basis for the lease of land and it refers to the Law of Ukraine No. 2269-XII "On the Lease of State and Communal Property," dated April 10, 1992, for further peculiarities related to the lease of state or communal property.

B. Legal Requirements

The legal requirements for entering into a valid lease agreement are quite straightforward: lease agreements must be in writing and may be certified by a notary public if the parties so desire. The Cabinet of Ministers of Ukraine has released a standard draft lease agreement taking into account all of the requirements of the Lease Law. Once a lease agreement is concluded, it must be registered with the proper state authorities.

The Law provides the material terms and conditions which must be contained in all lease agreements, including:

- 1) The object of lease (location and size);
- 2) The validity term of the lease agreement (up to 50 years);
- 3) The lease payment (amount, indexation, form of payment, terms and procedures for payment and reconsideration and liability for failure to pay);
- 4) The terms and conditions of use and the purpose/designation of the land parcel;
- 5) The conditions for maintaining the condition of the parcel;
- 6) The conditions and term for the transfer of the parcel to the lessee;
- 7) The terms and conditions for the return of the parcel to the lessor;
- 8) Any existing limitations and encumbrances with regard to the use of the land parcel;
- 9) The party (lessor or lessee) that bears the risk of accidental damage or destruction of the leased object, or any part thereof; and
- 10) The responsibility of the parties.



The absence of any one of these material terms may serve as grounds for the refusal to register a lease agreement, and such lease agreement may thereafter be deemed invalid. In addition to the mandatory terms and conditions, the parties may include any other terms and conditions in the lease agreement concerning the quality of the land condition, the procedure for carrying out the obligations of the parties, the obligation to procure insurance for the land, security measures, circumstances which can change or terminate the lease agreement, among others. In summary, lease agreements can be very flexible, as long as the above obligatory terms are covered therein.

In addition, a lease agreement must also contain certain documents, which become an integral part of the agreement. These documents are (i) the plan or map of the leased property, (ii) the land survey with an indication of restrictions (encumbrances) related to the use of the land, (iii) the act determining the natural boundaries of the land parcel, (iv) the transfer-acceptance act (this is a mandatory document in all cases of lease, which basically evidences that the lessor transferred the land parcel to the lessee and the lessee accepted the land parcel for possession and use pursuant to the lease agreement), and (v) the separation plan in case only a specific part of the land parcel is being leased. If a lease agreement calls for protection and improvement of the land parcel, then an agreement with respect to the compensation of the lessee's expenses for such measures must also be attached to the lease agreement.

C. Procedure for Executing Lease Agreements

The procedure for concluding a lease agreement is also deceptively simple. The lease agreement is concluded between the owner (lessor) of the land parcel and the entity (individual) who wishes to lease the land (lessee). If the lessee

wishes to lease a parcel of state-owned or communally owned land, the lessee simply submits an application to the relevant executive body or body of "local self-governance" at the land parcel's location. According to Article 124 of the new Land Code, the transfer of a land parcel owned by the state or under communal property must be executed based upon a decision by the local authorities and must be concluded in the form of a lease agreement.

If the lease agreement provides for a use of the land that is essentially the same as the owner's use, without physically changing any boundaries, a simple lease agreement is all that is required. On the other hand, if the lessee intends to use the land for a different purpose, or if the land parcel was taken from the so-called "reserve fund" and is intended for use in construction, a land allocation project must be prepared in accordance with the form and procedure provided by Articles 118 and 123 of the new Land Code. Such land allocation project becomes an integral part of the lease agreement.

If two or more applications for the lease of state or communal land are submitted simultaneously, then the corresponding state body must conduct an auction or tender, unless otherwise established by law. The procedure for conducting an auction or tender for the lease of land is determined by law and is beyond the scope of this discussion.

After the lease agreement is concluded and notarized, if one of the parties requires notarization of the agreement, it must go through formal state registration. State registration of the lease agreement is evidenced by a stamp from the appropriate state registration authority, the signature of the authorized officer of the state registration authority and an indication of the date of registration. One registered copy of the agreement is kept by the state registration authority. In case of the lease of



state or communal property, a copy of the registered lease agreement must be sent to the tax authorities as well.

Of course, the parties to the lease agreement have the right to amend their agreement by mutual consent. If an agreement cannot be reached, however, the dispute will be judicially

resolved. A lessee, who fulfills all of the rights and obligations contained in a lease agreement, also has the right of first refusal to renew such lease agreement. If the lease agreement is extended for a new term, its terms and conditions can be modified according to the mutual agreements of the parties, unless the original lease agreement states otherwise.

D. Payments

The issue of lease payments is subject to the agreement of the parties. Lease payments may be made in cash, in-kind (according to a certain quantity or a part of the production on the leased land parcel) or by so-called "working-off" (i.e., the lessee provides services to the lessor in exchange for use of the land parcel). Lease payments are not limited to the above forms, and any other form of payment the parties agree on may be included in the lease agreement. However, lease payments for land parcels under state or communal ownership may only be effectuated in cash (via bank transfers). A lease agreement may also take into account inflation in the calculation of lease payments.

The parties to the lease agreement are free to change the amount of lease payments pursuant to mutual agreement. Interestingly, the lessee has the right to demand a decrease in the lease payments when the condition of the leased land parcel deteriorates without such lessee's fault (i.e. negligent acts or omissions to act). As mentioned above, lease payments may also be increased in correspondence with increases in land taxes. Annual lease payments for state or communally owned land parcels are applied to a corresponding budget and are allocated and used pursuant to the law, but they may not exceed 10% of their normative cash value unless leased as a result of an auction or tender.

If a court of law deems a lease agreement invalid, then the lease payments for the factual term of

lease will not be returned to the lessee. Finally, payments for the sublease of a land parcel under state or communal ownership may not exceed the amount of lease payments under the original lease agreement.

E. Termination

Lease agreements can be terminated by mutual agreement of the parties. The lease agreement can also be prematurely terminated at a party's request by court decision if the other party fails to fulfill its obligations under the lease agreement and/or Ukrainian law. A party may unilaterally terminate a lease agreement only if the agreement provides for unilateral termination or legislation provides for such termination. The Land Code and other Ukrainian laws provide additional grounds for unilateral termination.

Please note that the lease agreement for a land parcel also expires in the following cases:

- 1) expiration of the term for which the agreement was concluded;
- 2) the receipt of the land parcel into ownership by the lessee according to the procedure provided by the Land Code;
- 3) forced buyout (eminent domain) and alienation of the land parcel for "social needs" in accordance with the relevant procedure provided by the law;
- 4) the lessee's death or conviction (resulting in a jail sentence) or a party's refusal of the lease agreement; and
- 5) liquidation of a legal entity-lessee.

A discussion concerning the various consequences of expiration or termination of the lease agreement, the procedure for returning the land parcel to the lessor, compensation to the lessor for any damage inflicted upon the land parcel by the

lessee, and the settlement of disputes, is beyond the scope of this brief overview. As a general observation, however, these provisions imitate standard provisions found in comparable Western property legislation.

F. Inherent Defects to Land

As in the West, the lessor is liable for any defects of which he knows about and fails to inform an unknowing lessee (e.g., environmental contamination, infertility, etc.) Such defects must be clearly disclosed in the lease agreement, and if so, the lessor will not be subject to liability for any damage caused thereby. If defects that materially impede the use of the land are subsequently uncovered, and such defects were not described in the lease agreement, the lessee has the right to:

- 1) demand a decrease in the lease payment or the compensation of expenses for removing the defects;
- 2) retain the appropriate amount of lease payments for expenses incurred by removing the defects upon prior notice to the lessor regarding such defects; and
- 3) demand premature termination of the lease agreement.

IV. Conclusion

The Law "On Lease of Land" does not grant anything to foreign investors that was not already promised by Decree No. 608 "On Privatization and Leasing of Non-Agricultural Land for Business Purposes." Unlike Decree No. 608, however, the Lease Law did not even attempt to give foreign investors the right to purchase leased land by merely deferring to the ultra-conservative, former Land Code. Fortunately, this deficiency has been overcome with the passing of the new Land Code on October 25, 2001.

LAND APPRAISAL

The Law of Ukraine No. 1378-IV "On Appraisal of Land," dated December 11, 2003 (the "Law"), entered into force on January 13, 2004. The Law's principal objective is to protect the lawful interests of the state and other entities in connection with land appraisal matters. It also touches upon taxation and the land market in general.

The Law describes several types of land appraisal, including (a) the comparative appraisal of natural soil qualities and economic appraisal of land as a natural resource, means of production in agriculture and forestry, and as a spatial basis of public production according to indicators characterizing productivity of land, efficacy of their use and profitability per area unit and (b) monetary (pecuniary) appraisal.

Monetary appraisal is further divided into (i) expert monetary appraisal (i.e., the result of a defined value of a land plot and the rights associated therewith) and (ii) normative monetary appraisal (i.e., capitalized rental

income generated from a land plot).

The Law designates the following "subjects of appraisal activity," which may officially carry out appraisal activity in Ukraine:

1. state executive bodies and bodies of local self-governance, which carry out administrative management in the sphere of appraisal;
2. legal entities and natural persons interested in practicing land appraisal, provided they obtain the relevant certificate of an expert appraisal;
3. legal entities, which employ certified expert appraisers and possess a license to carry out appraisal activity;
4. the legal entities and natural persons, which are registered business entities or entrepreneurs and which have obtained proper licenses according to the procedure established by law.

Article 13 of the Law provides the list of



instances when monetary land appraisal is mandatory by law and, specifically, when determining:

- a) the amount of land tax;
- b) the size of lease payments for state-owned and communally-owned land plots;
- c) the amount of state duties in connection with the exchange, inheritance or gift of land parcels pursuant to law;
- d) losses in agricultural and forestry production;
- e) the indicators and mechanisms of economic stimulation for the rational use and preservation of lands.

In addition, expert monetary land appraisal must be carried out whenever:

- a) alienating or insuring state-owned or community-owned land plots;
- b) pledging land plots according to the law;
- c) determining investment contributions upon the realization of investment projects for land improvement;
- d) determining the value of state-owned and/or communally-owned land plots upon the contribution of such land plots into the authorized capital of a company;
- e) determining the value of a land plot for purposes of the reorganization, bankruptcy or liquidation of a company, which is the owner of such land plot and in which the state or a community holds a share;
- f) identifying the share of the state or a territorial community in the joint ownership land plots;
- g) reflecting the value of land plots and the right to use land plots in accounting according to Ukrainian legislation;
- h) determining losses for owners or users of land in cases provided by law or

agreement; and

- i) pursuant to a court decision.

In all other cases, the appraisal of land may be carried out pursuant to the agreement of the parties and in cases determined by the Law.

At the same time, Article 14 of the Law provides that a certified appraiser is prohibited from carrying out an expert monetary land appraisal in the following cases:

- a) when the land plot subject to appraisal belongs to such certified appraiser or to appraiser(s) employed by an expert appraiser;
- b) when an expert monetary appraiser has familial relations with the client (i.e., the person ordering the expert monetary land appraisal) or a business entity has management with familial relations with the client; and
- c) when the land plot subject to appraisal belongs to the founders of, or participants in, a subject of appraisal activity.

The provisions of Article 14 further state that an expert monetary land appraisal will be deemed null and void if carried out in violation of its requirements or by entities, which are not subjects of appraisal activity.

Moreover, the Law states that any land appraisal should be carried out pursuant to a decision of the relevant state executive body or body of local self-governance. A normative monetary appraisal may be carried out on the basis of an agreement concluded by the interested parties as provided by law. In this case, the grounds for carrying out the normative monetary appraisal will be either the agreement or a court decision.

The Law requires that a comparative appraisal of agricultural land be carried out at least once every seven (7) years. Further, the Law requires

that an economic appraisal of the same category of land be carried out at least once in every five (5) to seven (7) years. A normative monetary appraisal of agricultural land should be carried out at least once in every five (5) to seven (7) years, whereas the same type of appraisal of non-agricultural land should be carried out at least once in every seven (7) to ten (10) years. Of course, all of these appraisals may be performed exclusively by those legal entities, which have obtained proper licenses for land use organization.

The expert monetary appraisal should be carried out by appraisers in compliance with the requirements of the Law, as well as the Law of Ukraine "On Appraisal of Property, Property

Rights and Professional Appraising Activity in Ukraine," and other relevant rules, regulations and state standards. Appraisal work may either be financed at the expense of the State Budget of Ukraine, local budgets, the funds of landowners and land-users, or any other sources not expressly prohibited by law.

In all, the Law is a rather positive development. The structured types of land appraisal, the defined requirements regarding the documentation related to land appraisal, a rigidly regulated appraisal business and other finalized statutory requirements will facilitate transparency of the land appraisal procedures. This should influence the development of the land market. As with many sectors of the economy involving land, one should expect more detailed changes



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Jan Huijbregts, Joss Chemicals BV

"We hired Frishberg & Partners to analyze certain issues in the Ukrainian legislation in the process of acquiring a company in Ukraine and were very happy with the services we received. All your lawyers we worked with are extremely professional, competent and helpful. Thank you for a job well done."

Dmitriy Kasyanenko, Vimpel Communications



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