

# Basic information on legal frame of Real Estate Market in Ukraine

**The relations to land plots are governed by numerous legal acts, such as Civil and Land Codes, Laws of Ukraine “On lease of land”, “On payment for land”, “On land planning”, a bunch of secondary acts.**

Acquisition of buildings is, with certain exceptions, without any restrictions for foreigners. On the other hand, although according to the new Land Code being in force from January 1, 2002, the rights of foreign individuals and legal entities with respect to real property had been significantly expanded, it still contains certain limitations on the purchase of land by foreign governments and investors. Moreover, in Ukraine are applicable certain specific conditions of Ukrainian real property market, such as moratorium for sale of agro-industrial land plots and farmlands.

## **1. Specific Conditions of Ukrainian Real Property Market**

In Ukraine currently exist certain specific conditions applicable to the real property market as a whole, which should be considered when making investments to Ukraine.

### **(i) Categories of Lands**

The Land Code places land into nine categories, including agricultural land, land for residential and public construction, natural reserve lands, historical-cultural lands, etc. Many of land plots attractive for foreign investors are not currently designated for private or business use.

It is strictly prohibited using a land plot not according to its designated purpose under different sanctions, even revocation of property rights for a land plot and/or cancellation of their state registration, invalidation of agreement on transfer of land plot, with administrative and in certain cases even criminal liability, unless the purpose of use was changed.

The Land Code permits land to be transferred from one designated purpose (zoning) to another upon a decision of a local executive body or a local council upon their initiative or on the basis of application from future owner. In case of privately owned land, the transfer may be initiated by its owner. However the satisfactory decision of the responsible body is not guaranteed.

### **(ii) Moratorium**

Currently, there is a moratorium for

sale of land plots owned by Ukrainian nationals and legal entities for the purposes of agricultural production (“agro-industrial lands”), farmlands (so called “OSG” lands) and of land shares .

Although this moratorium existed quite a long times, until recent times it did not impede investors seriously from using agricultural lands primarily for allocation of warehouses - it was only necessary to change zoning of a land plot as described above. However, starting from January, 2007 the moratorium was improved, and currently it prohibits also transfer of zoning for the abovementioned sub-categories of lands.

Moratorium also applies to all agricultural lands which are in state or municipal ownership.

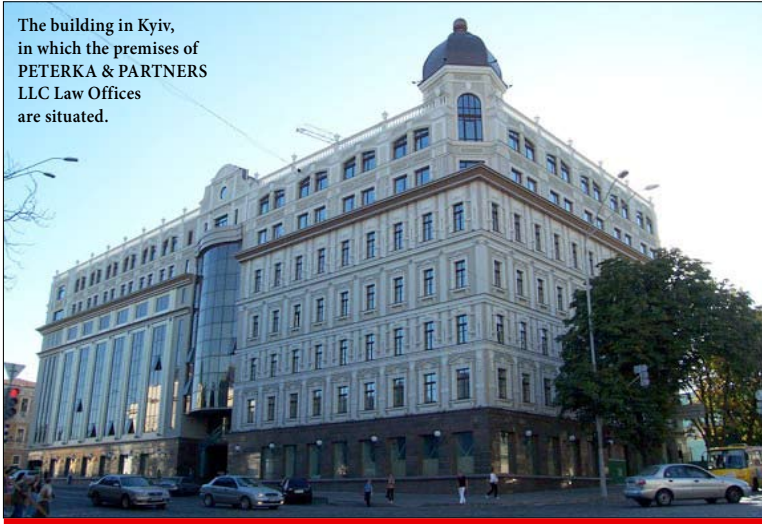
The purpose of the moratorium is to protect fertile lands from using it for business and construction purposes and in this way to preserve agricultural potential of Ukraine. Although it has many opponents, it was more than once prolonged.

Pursuant to current provisions of the Land Code, the moratorium will remain in force until the laws on state land cadastre and on land market are adopted. However, said laws are unlikely to be expected in the near future.

continue on pages 5

# Basic information on legal frame of Real Estate Market in Ukraine

The building in Kyiv, in which the premises of PETERKA & PARTNERS LLC Law Offices are situated.



continued from page 2

## (iii) Auctions

According to recent amendments to the Land Code sale of state and municipal land plots may only be performed on a competitive basis (via auctions) with certain exceptions (such as when the purchaser of the land plot already owns a building or a structure located thereon)..

## 2. Acquisition of Real Property by Foreigners

Real estate property objects include (i) buildings or their parts and (ii) land plots. While the ownership of buildings (both residential and non-residential) by foreign individuals and entities is not, in principle, limited, there exist substantial restrictions as regards the ownership of land plots by these persons.

### (i) Buildings

According to the Law of Ukraine "On legal status of foreigners and stateless persons", foreigners in Ukraine exercise the same rights and fulfill the same duties as Ukrainian nationals, unless otherwise is provided by laws of Ukraine or international treaties.

Moreover, the Civil Code which mainly regulates acquisition of real property (except for land plots) does not provide any specific restrictions or limitations for acquisition of buildings and/or their parts by foreign individuals and entities.

Agreement on sale and purchase of real property are subject to mandatory notarization and state registration (which is performed by the notary simultaneously with notarization of the agreement). The notary fee may be near 1% of the value of the property, however, the actual costs would be even higher (they include evaluation of the property; payment for extracts from state registers of mortgages, tax pledges, liens; contribution to the Pension Fund amounting to 1% of the property's value; seller's income tax).

Ownership of a building (its part) needs to be registered with a bureau of technical inventory (BTI). Purchaser

becomes owner of the acquired property since the moment of registration of its property title with BTI.

On the basis of the changes that were introduced to the Land Code of Ukraine in April, 2007 in case of acquisition of a building or a structure, the purchaser should automatically obtain in rem rights for the underlying land plot (ownership, right to use land plot). The purchaser of the building would have the same volume of rights with respect to the land plot as the seller did. However, for avoidance of doubt and due to controversial legal implementation practice, the surface area, exact location and legal relation of the seller to the land plot should be expressly indicated in the sale and purchase agreement.

### (ii) Land Plots

Foreign investors, in principle, may acquire ownership of land plots on the basis of civil contracts (sale and purchase, gift, barter, etc.) or inherit. Similarly to acquisition of a building, agreement on transfer of a land plot must be notarized and property title for a land plot has to be registered in the respective state register.

It should be noted however that there exist numerous legal limitations of acquisition of land plots by foreigners.

First and foremost, the Land Code prohibits foreigners to acquire agricultural lands. If a foreign individual or legal entity inherits an agricultural land plot, it must be sold within one year, otherwise ownership for such land plot would be revoked.

A foreign citizen can acquire a non-agricultural land plot only:

- within city boundaries ;
- outside city boundaries in case purchaser already owns a building or a structure located on such land plot.

A foreign legal entity may acquire a non-agricultural land plot only:

- within city boundaries - in case of acquisition of a structure or a building already existing thereon, or for the purpose of construction of an object related

to commercial activity of such foreign entity;

- outside city boundaries, only when purchasing the building thereon.

The above described limitations apply both to foreign and Ukrainian companies with foreign capital, regardless of the percentage of foreign ownership.

Acquisition of state or municipal land plots has its own peculiarities and in general is even more complicated and time consuming. To give an example, sale of a state owned land plot to a foreign legal entity requires prior approval of the transfer by the Cabinet of Ministers or, in certain cases, even by Ukrainian Parliament (in case of sale of state owned land plots except for those on which objects which may be privatized are located). Local municipalities are entitled to take decisions on sale of municipal land plots to foreign companies, though, upon approval of the Cabinet of Ministers. Moreover, in order to acquire state or municipal land plot, a foreign legal entity must register its branch in Ukraine.

## 3. Development Projects in Ukraine

During several recent years, Ukraine exercises a real construction boom. Nevertheless, demand still significantly exceeds supply, especially with regard to commercial property. Office rent payments reach, and in certain cases even exceed the ones in Western Europe (in 2007, growth of rent payments reached 20-30%).

Another factor of risk is unstable political situation, which in many cases leads to unreasonable decisions of state and local authorities (e.g., in 2006-2007 Kyiv City Council has unilaterally terminated numerous agreements with investors; there exist "sound" cases where decisions on granting land plots to legal entities were revoked without sufficient reasoning, etc.).

What is typical, such situation is common in large industrial cities, such as Kyiv and surrounding area, Dnepropetrovsk, Donetsk, as well as in the Southern parts of Ukraine (Southern Coast of Crimea: Yalta, Alushta), whereas in smaller cities investment climate is much better.

\* \* \*

The land market and its legislative frame has many difficulties in Ukraine and requires many amendments and improvements such as more transparent procedures for acquisition of real estate property, transfer of purpose of land plots and establishment of functioning and fully public accessible database with information on real estate property and relations to it.

By Monika Šimůnková Hošková, General Director of the Ukrainian branch of PETERKA & PARTNERS Law Offices.

*Should you need any further information on the issues addressed in this article, please contact our Law Firm PETERKA & PARTNERS in Kyiv, Bohdana Khmelnytskoho 17/52, Ukraine. Tel: +380 44 581 11 20, E-mail: office@peterkapartners.com; www.peterkapartners.com*