

Land Relations in 2009: Trends in Legal Regulation

By Andriy KOLUPAEV
and Yuriy KATSER

Lexwell & Partners

In 2009, the key changes in the regulation of land relations concerned introduction of land lease and acquisition privileges for construction of affordable residential property, resolution of problems related to the acquisition of land rights for EURO-2012 infrastructure projects, simplification of the procedure for acquisition of private land titles, and elimination of conflicting provisions defining the form of land lease agreements.

Analysis of legislative amendments and legal practice exercised in Ukraine during 2009 makes it possible to define the following main trends in the development and regulation of land relations in this period.

1. Land Lease and Acquisition Privileges for Construction of Residential Property

At the end of December 2008, the Ukrainian Parliament adopted the *On Prevention of the Impact of the World Financial Crisis on the Development of the Construction Sector and Residential Construction Act of Ukraine*, which aims to combat crisis phenomena in the construction sector and regulate problems complicating construction of residential property, in particular, in terms of land relations.

Among other things, the Act has prolonged the lease agreements for state and municipal lands provided for construction of residential buildings, which expire before 1 January 2012, on the basis of the same conditions and for the same period if construction works have already started on such lands.

These legislative amendments were called for by the financial and economic crisis, as well as by the fact that developers lacked sufficient financial resources to compete construction in time for the previously planned deadlines. As a result, the lease terms for the land plots, previously provided for construction of multi-storey buildings, were expiring, while construction of such facilities would remain uncompleted. The legislation, which was valid before the amendments, envisaged no legal consequences for such situations and offered no answer for the resolution of cases between landowners and tenants when there was an incomplete construction present on a land plot and a public authority or a body of local self-government would not agree to the prolonging of a lease agreement. Likewise businesses did not regulate these issues in their state and municipal land lease agreements. In turn, such lack of regulation resulted in the appearance of disputable and conflicting situations.

The Act has also introduced privileges for the acquisition and lease of communal land for construction of affordable residential property. In particular, it has stipulated that municipal land is provided for construction of affordable property without an auction and with the annual rent limited to the amount of the land tax established by law. Such establishment of an uncompetitive mechanism for acquisition of rights to municipal lands for construction of affordable residential property is an important condition for the feasibility of the relevant projects,



Andriy KOLUPAEV
is a Partner with Lexwell & Partners



Yuriy KATSER
is a Senior Lawyer with
Lexwell & Partners

since currently it is not possible to hold a legitimate auction on the sale of municipal lands or rights. It should be noted, however, that the developer is obliged to start the designing and construction works within three years from the date of provision of the municipal land plot, which is supposed to be returned to the territorial community if this condition is not met.

2. Simplification of Private Land Sale and Regulation of Land Division and Unification

Before April 2009, only state acts could certify private land titles in Ukraine. The buyer, however, could get such titles only upon the formalisation of the state act and its state registration. Therefore, to acquire land titles, the buyer was supposed to get a new state act upon the signing of the relevant agreement and have it registered, which required development of the necessary technical documents. Such procedures were time consuming and accompanied by additional financial costs for the investor.

In turn, the amendments adopted by Parliament to certain legislative acts adopted on 5 March 2009 to the documents certifying land rights and the land division and unification procedure simplified the acquisition of private land titles. The Act has set that for private lands, purchased without change of their borders and designation, it is the purchase agreement that serves as a title deed, and there is no need to get a new state act. In this case, the notary who notarises the land purchase agreement makes the sale notes on the previous state act. This new procedure aims to reduce the time and financial expenditures of investors required for purchase of land plots.

Businesses often need to sell parts of their land plots, and thus they need to either divide or unify land into one investment project. Previously, there were no clear legislative provisions for

such land division or unification or conditions for the sale of parts of land plots. For this purpose, the new Act has established that a share of a land plot can be sold only if it is singled out into a separate land plot with a formalised title deed for it. The Act also has regulated the land division and unification procedures.

In addition, the Act has introduced a requirement for a special state ownership act per each separate land plot. Though it was previously allowed to certify the titles for a number of land plots (normally, the adjacent ones) by one state act, and such practice was rather widespread, today in cases of a joint state act a separate act is required for the sale of any of them.

3. Conflicting Forms of Land Lease Agreement

After January 2004, Ukrainian legislation was not clear on the forms of land lease agreement, as land legislation envisaged a simple written form, while the *Commercial Code* required such agreements to be notarised.

Despite the explanations given by the state land relations regulator on the legality of land lease agreements made out done in a simple written form, such legal collision threatened that the land lease agreements, which have not been notarised, may be later contested. In order to minimise the risks for big investment projects, lawyers would always recommend notarising the land lease agreements. In its turn, notarisation increased the investors' transaction expenses, and often also prevented the parties from fixing their business arrangements in the most optimal legal way due to the inflexible position on such issues.

This conflict does not exist anymore.

4. Acquisition of Land Rights for EURO-2012 Football Championship Facilities

A number of legislative amendments were adopted in 2009 to establish proper conditions for the preparations for and staging of the EURO-2012 football championship in Ukraine.

One of the key problems in this process, which essentially blocked its development, was lack of efficient mechanisms for acquisition of lands for constructing EURO-2012 facilities, as well as the impossibility of seizure private land plots for EURO-2012 purposes. This problem was particularly obvious in the case of reconstruction of the central stadium in Kiev and in the disputes with the owners of the facilities located on adjacent territories.

In order to regulate the problems, in particular, the above-mentioned ones, on 5 June 2009 the Ukrainian Parliament adopted amendments to the *On Organisation and Staging of EURO-2012 in Ukraine Act* and other legislative acts.

The amendments set out that the lands for construction of EURO-2012 facilities funded from state and local budgets can be acquired through non-competitive mechanisms (i.e. no land auction is required).

In addition, the amendments established the possibility, conditions and procedure for the seizure of private land for EURO-2012, in particular: (a) the seizure should be carried out for the construction and servicing of sport facilities (stadiums), airports, their components, and other transport infrastructure facilities; (b) city development and land arrangement documentation should be taken into account for the definition of lands and the rights to them; (c) the government should compile a list of lands, to be seized for the purpose of EURO-2012, and rights to them; (d) the government or the local council should decide on the seizure of such lands or land rights; (e) the purchase price, offered to the owner, should equal either the value of expert land assessment or the cost of such rights defined on

Lexwell & Partners

Address:

28/19 Lyuteranskaya Street, Office 2,
Kiev, 01024, Ukraine

Tel.: **+380 44 496 2655, 496 2656**
+380 44 496 2657

Fax: **+380 44 496 2658**

E-mail: **kolupaev@lexwell.com.ua**

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the basis of the guidelines established by the government; and (f) should the owner of the land or the rights thereto disagree with the proposed seizure price, the dispute should be settled in a court.

At the same time, in terms of the purchase of lands and land rights for EURO-2012, it is not clear when the landowner is supposed to be notified of the intended seizure, and who should initiate the reference to the court if the landowner does not agree to the proposed purchase price (the owner of the land or the rights thereto or the competent public authority or body of local self-government). In order to avoid any misunderstandings or abuse in the case of seizure of lands or land rights for the purpose of EURO-2012, such issues should be clearly regulated in legislation.

Therefore, it can be summarised that despite the abovementioned changes a number of essential issues, such as liberalisation of rules and procedures for acquisition of agricultural land titles by foreigners, termination of the moratorium for the sale of agricultural land, regulation of the land auction procedure, remained unsolved in 2009, even though they are urgently needed in order to attract investment into Ukraine, in particular under the conditions of current the financial and economic crisis.