



# Land Relations in 2010: Trends in Legal Regulation

In 2010, the key developments in the regulation of land relations concerned certain deregulation of the land titles acquisition procedures and strengthened investors rights; also an attempt was made to prevent unauthorised creation of artificial lands, in particular in areas of forest and water resources, as well as to regulate the mechanisms set for the acquisition and compulsory purchase of private lands for public needs (public necessity). At the same time, quite a number of crucial issues have remained unresolved in 2010, in particular elimination of unreasonable restrictions in relation to the acquisition of non-agricultural land outside populated areas by foreigners; regulation of ownership title to land held by companies set up in Ukraine and fully owned by foreigners; termination of the moratorium on the sale of agricultural land; adoption of a law governing the land auction procedures which are absolutely necessary to stimulate investment flow to Ukraine and to enhance the efficiency of the Ukrainian economy.

Analysis of legislative amendments adopted in 2010 and legal practice makes it possible to define the following main trends in the development and regulation of land relations in this period.

## 1. Liberalisation of the Land Title Acquisition Procedure and Land Use Possibilities

In November 2009, the Ukrainian Parliament adopted the *On Amendments to Certain Legislative Acts to Simplify the Land Titles Acquisition Procedure Act of Ukraine of 5 November 2009 No. 1702-VI*. The amendments aim simplifying the procedures established for the acquisition



**ANDRIY KOLUPAEV**  
IS THE PARTNER  
WITH LEXWELL &  
PARTNERS

of land titles in Ukraine, provision of higher guarantees for investors rights, as well as certain deregulation of land relations.

### *Simplification of the Land Allocation Procedure*

Land legislation provides that state and municipal lands (public lands) shall be provided for business use, entailing a change of the land function and/or its borders, on the basis of land allocation plans. Such plans are developed on the permit issued by the competent authorities, which are also supposed to approve them upon their development.

Before the above Act came into force, the investor had to agree on the location site for the planned facilities with the competent authorities and interested parties (apart from a number of narrow examples) before the design stage, and then again coordinate the land allocation with the same authorities at the stage of reconciliation of the land allocation. These two procedures were overlapping and essentially complicated acquisition of the land title. The new Act has established that preliminary reconciliation of the location site for the planned facilities (the choice of the land plot) is obligatory only in cases when a land plot needs to be withdrawn from permanent use or acquired for public needs or public necessity (i.e. when the land that the investor is interested in is already owned by somebody else).

The Act also liberalises to some extent the allocation of public lands for business use and strengthens the rights of investors in this procedure. Thus, the Act establishes clear grounds for the competent authorities to deny a permit for the development of land allocation plans, in particular this can be done only if

the site location is incompliant with legal and regulative requirements, as well as with the city development and land planning documents. Nor can the competent authorities reject such a permit if the location site has been agreed at the stage when the land plot was chosen. In addition, the Act establishes a clear period of time when the Land Allocation Commission should issue its opinion on the allocation plan (three weeks). Reconciliation as well as approval of the land allocation plan can be rejected only due to its incompliance with legal and regulative requirements. The land allocation plan is also not supposed to be reconciled by the Commission if location of any facilities on the relevant land plot has been reconciled at the stage when such land plot was chosen and the conditions of such allocation remain unchanged.

According to the Act, breach of business or investor rights to lands acquisition can be appealed against in court. At the same time, the amendments adopted in 2010 in judicial practice have weakened the judicial powers in the settlement of land disputes. Thus, previously the Supreme Court recognised that, if competent authorities refuse to allocate land to an investor without reasonable grounds, the courts are empowered to resolve such disputes by deciding that a land plot should be provided to the investor in question. However, in March 2010 the Supreme Court changed its position by noting that if a court establishes that any competent authority has taken an illegal decision, such court should just recognise such decision as illegal and may oblige such authority to take certain actions (or abstain from them) within their remit. The court is not entitled to resolve the dispute



**YURIY KATSER**  
IS A SENIOR  
ASSOCIATE WITH  
LEXWELL &  
PARTNERS

by its own decision if the case is attributed to the powers of competent public authorities (in particular, as regards the provision of land for use, land lease renewal, change of designation of land), excluding exceptional cases, when such right is directly envisaged by law.

### **Extension of Land Use Possibilities**

The Act has also extended the possibilities for businesses to use the land at their own discretion. Previously, competent authorities had a rather narrow approach to the understanding of land designation (function), particularly in Kiev. For example, an investor has been granted a plot of land to build and service a shopping mall. Sometime later, however, the investor concluded that it is more reasonable to build an office centre, rather than a shopping mall, which brings about the need to change the function of the leased land. In practice, these issues were often rather disputable. On the one hand, if the land belongs to the category of residential and public construction and such change of the city development facility, there is no need to change its category. On the other hand, competent authorities insisted that it was possible to change the function of a construction only if the land function is changed, which is a lengthy and bureaucratic procedure. In its turn, in most cases the Act entitled the owners and users to define themselves the specific types of land use within the limits of a certain land category in accordance with the requirements established by law for the use of such land category, as well as with due consideration of the city development and land planning documentation.

## **2. Acquisition and Compulsory Purchase of Private Land for Public Needs (Public Necessity)**

An important aspect in the regulation of land relations is the establishment of procedures related to the alienation of private lands for public needs or due to public necessity. Thus, in mid-November 2009 Parliament adopted the *On Alienation of*

*Private Land Plots and Real Estate Facilities Located on them for Public Needs or Due to Public Necessity Act of Ukraine of 17 November 2009 No. 1559-VI.*

Before the new Act came into force, the absence of mechanisms for acquisition (compulsory purchase) of private lands for public needs often hampered implementation of important investment projects. Thus, a mining company would wish to extend its ore pit to neighbouring lands. At the same time, it would appear that such land was divided into smaller plots and allocated to different individuals for agricultural purposes. Under the previous laws, such company would have had no possibilities to get any rights for such land. In addition, in view of the moratorium on the alienation and change of the function of agricultural land, the company had no possibility to agree directly with the landowners on the lease or purchase of land for mining purposes. In addition, the dispersal of landowners also complicated the resolving of such issues, in particular when certain owners would not agree to sell their land. The new Act makes it possible to regulate these issues. Thus, the Act sets an exhaustive list of cases when private lands can be acquired or compulsorily purchased, the conditions of such acquisition and purchase; establishment of guarantees for the owners of the relevant lands, in particular, the necessity of notification them in advance, prior and full indemnification of all losses related to the acquisition or purchase, including lost profit, the possibility for the landowner to make an alternative land assessment, etc. In terms of compulsory land purchase, the Act provides that such purchase is possible only if competent authorities cannot agree with the landowner on the land acquisition; in exceptional cases, for the purpose of public necessity (a narrow circle of public needs), and provided the construction of the relevant facilities is not possible without alienation of a certain landowner's land plot; through settlement of the relevant dispute by a court and on the condition of proper and full indemnification of all losses caused to the current landowner.

## *Lexwell & Partners*

### **Address:**

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

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

**+380 44 496 2656, +380 44 496 2657**

Fax: **+380 44 496 2658**

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

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