

# LAND RELATIONS IN 2011: TRENDS IN LEGAL REGULATION



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**F**ormalization of real estate ownership (including land rights) and formation of effective land market are key priorities in order to create and sustain a favorable investment climate that applies equally to domestic and foreign investors. In Ukraine, there is an overdue need for the formation of a unified state system of land and real property rights registration. Absence of such a system hinders land turnover and has a negative influence on the country's investment attractiveness. The lack of adequate legal protection of landowners affects the investment climate as well. There have been significant changes in 2011 to Ukrainian legislation and subsequent changes are on the agenda, in particular *State Land Cadastre Act* (adopted on 7 July 2011) and Draft *Land Market Act* (introduced to Parliament).

Analysis of recent legislative amendments allows major trends of development and regulation of land relations in this period to be identified. However, the majority of such amendments will come into effect from 2012 and so the practice of their application remains rather unclear.

## Establishment of State Cadastre of Land

The *State Land Cadastre* was adopted by Parliament in July 2011 and will take effect on 1 January 2012. However, the vast majority of experts recognize that the *State Land Cadastre* cannot start proper functioning from 1 January 2012, as it takes time to create a full database of land plots.

Under the above Act, the *State Land Cadastre* will contain information on the cadastral number, location, area, category of land, borders, limitations of use, data on the quantity and quality characteristics of land, the land's monetary value and the distribution of land

between owners and users. Moreover, the *State Land Cadastre Act* provides a detailed procedure for the registration of land plots and information thereon, the list of documents required for the land assessment, the state and regional authorities responsible for keeping data on land plots in the Cadastre.

Also, starting from 1 January 2013 information included in the Cadastre will be posted on the official web-site of the State Land Agency and will be publicly available for free. Thus, any person may review, copy and print data and information regarding any land, including its cadastral number, boundaries, category, usage limitations, quantity and quality characteristics, etc. More detailed information (such as the normative monetary assessment of land, encumbrances imposed on a land plot, its legal status, etc) will be provided on a payable basis.

Simultaneously with the *State Land Cadastre Act*, certain provisions of the *On Registration of Property Rights to Real Estate and their Encumbrances Act of Ukraine of 11 February 2010*, which regulates the functioning of the Registry of Property Rights to Real Estate, will come into force. In this regard, it should be noted that the laws provide two types of registration – with the *State Land Cadastre* (land registration) and the State Registry of Property Rights on Real Estate (property rights registration, namely ownership, lease, superficies, servitude, emphyteusis, etc).

The State Registry of Property Rights to Real Estate is defined as a unified information system which shall include data on property rights to real estate, relevant encumbrances, objects and holders of these rights. Land plots, as well as immovable objects located thereon, shall be included in the State Registry of Property Rights on Real Estate. The *State Land Cadastre* and the State Registry of Property Rights

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to Real Estate is expected to be administrated by two different authorities, namely the State Agency of Land Resources and the Ministry of Justice. The law also sets out automatic exchange of information between relevant authorities. Previously, property rights to land plots were registered by the territorial offices of land resource authorities, while registration of mortgages and other encumbrances by notaries whose activities were monitored by the Ministry of Justice.

Furthermore, the *State Land Cadastre Act* will enact changes to the documents which evidence ownership title to land. Currently, ownership to land is confirmed by a state act of ownership title to land. However, starting from 1 January 2013, the ownership title to land will be certified by an extract from the State Registry of Property Rights to Real Estate issued by the Ministry of Justice.

### Land Market Prospective

In March 2011, the Ukrainian Parliament adopted a decision not to prolong the moratorium on alienation of agricultural lands, which had been extended several times earlier. Under the *Land Code of Ukraine*, the functioning of the land market is conditional to enactment of the *Land Market Act* and the *State Land Cadastre Act*. As mentioned above, the *State Land Cadastre Act* was adopted by Parliament and will come into force soon. So, the *Land Market Act* remains to be adopted. It should be noted that when we talk about the land market, it means "the market of certain types of agricultural land", the alienation of which are at the moment forbidden under the moratorium. Actually, land plots of other categories enjoy a free turnover regime despite different procedures which have to be followed in the course of their acquisition or disposal, depending on the form of property (private, state or municipal) and status of the owner (resident or non-resident).

On 27 September 2011, the Draft of the *Land Market Act* proposed by the Government was submitted to Parliament. Thus, the probability of the formation of agricultural land market in the near future is quite consider-

able (although it is possible that some provisions of the Act will take effect from 2013 or even later). The aim of this bill is due regulation, organization and functioning of a land market in Ukraine. This law will determine the legal and economic principles of the land market, establish the order of sale of land plots and rights on lease, and establish legal limitations in relation to agricultural lands in order to prevent speculative operations and monopolization of the land market.

The document provides for a common procedure for land ownership and lease rights transfer at auctions. It also establishes unified rules and restrictions of land turnover on the market. One of the main restrictions deals with the status of owners. The Draft of the *Land Market Act* envisages that agricultural lands, namely lands for agricultural production could be acquired by Ukrainian citizens, Ukrainian farm enterprises, government and local authorities only. It also stipulates that foreigners, foreign companies, Ukrainian companies with foreign capital (at least 10%), foreign states are not eligible to acquire and own agricultural land. Furthermore, non-residents are obliged to alienate the owned land within a year from the moment they acquire it. If non-residents do not alienate agricultural land within the required period, such land plot is subject to alienation based on the decision of the court in favor of the government. In addition, the above persons are not entitled to provide any encumbrances (e.g. pledge, mortgage, etc) over agricultural land other than lease for a term not exceeding the term for which they are obliged to alienate these plots.

In brief, from a legal perspective the possible adoption of the *Land Market Act of Ukraine* will make mere changes to the ability of a non-resident to acquire agricultural lands. Therefore, the leasing of land will remain the only form of access to agricultural land resources for foreign investors.