

LAND RELATIONS IN 2012: TRENDS IN LEGAL REGULATION



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Establishing a land market remains one of the highest priorities of social and economic development in Ukraine. As of today, the country has not fully defined the principles, procedures, or practice that will characterize its land system. However, efforts to carry out land reform have been ongoing for a long time and the previous year was no exception. In 2012 Ukraine took a few more steps toward creating a legislative base for the free and effective functioning of land market aimed at increasing transparency and investment. Please note that the significant legal developments in land regulations that would have to become effective as of 1 January 2012 were postponed. In particular, this applies to the *State Land Cadastre Act of Ukraine of 7 July 2011* and *Registration of Property Rights to Real Estate and their Encumbrances Act of Ukraine of 11 February 2010*. During 2012 the Government had been requiring the development and introduction of the necessary technical mechanisms to allow implementation of the respective acts starting in 2013.

Analysis of recent legislative amendments and legal practice make it possible to identify the following main trends in the development and regulation of land relations in this period.

IMPLEMENTATION OF LAND AUCTION PROCEDURE

Effective from 21 August 2012 amendments to the *Land Code of Ukraine*, introduced by *On Changes to the Land Code of Ukraine Concerning the Procedure for Land Sales through Auction Act of Ukraine of 5 July 2012*, detail the procedure for the public sale (auction) of ownership rights, lease, superficies and emphyteusis over state and municipal land in Ukraine. Previously, procedures for a land auction were established by local authorities despite the *Land Code* provision which states that the procedure for the sale of land will be established by a special law. There were also attempts by the Cabinet of Ministers of Ukraine to regulate the land sales process through its resolutions. From the legal perspective, such regulation was not quite legitimate and thus, in theory, the results of land auctions held since 2002 to the present times can be challenged.

Under the new rules of the *Land Code*, the sale of state and municipal land or rights thereto shall be carried out exclusively through a land auction, except for the cases expressly provided

by law. New provisions regulate the detailed procedure for carrying out land auctions, provide requirements for financing this process, and prescribe the procedure for entering into an agreement resulting from an auction ensuring the transparency of the entire process connected with land auctions. The law provides that the bidder who offered the highest price for the land plot or the highest annual lease payments obtains the right to conclude a relevant agreement (namely, land plot sale and purchase agreement or lease agreement). Foreign entities and Ukrainian companies with foreign capital are entitled to conclude an agreement subject to further approval of the transaction by Parliament (in case of auction for state land) or the government of Ukraine (in case of auction for municipal land) to be granted in a separate procedure. Today, unfortunately, there is no clear procedure for obtaining such approval and it normally takes a long period of time to complete the transaction.

In general, introduction of the explicit land auction rules into the *Land Code* filled the legal gap which for many years had exposed those who purchased the right of ownership or the lease right over the public or municipal land to legal risks.

ESTABLISHMENT OF THE STATE LAND BANK

The decision to create the State Land Bank (the Bank) Public Joint Stock Company with share capital of UAH 120 million was passed by the Cabinet of Ministers of Ukraine on 7 July 2012. At the legislative level the Bank was established by the *On Changes to On Banks and Banking Act of Ukraine Concerning State Land Bank Act of Ukraine of 18 September 2012*. The Bank is created for the purpose of managing state lands (purchase and sale, consolidation, leasing) and preferential crediting of the agribusiness. The Act introduces the following: (i) the Bank has the right to perform operations with land plots and ownership rights to land plots in accordance with Ukrainian legislation; (ii) the right to form the Bank's share capital through cash contributions and contributions in the form of land plots belongs to the Cabinet of Ministers of Ukraine; (iii) the National Bank of Ukraine determines the peculiarities of issuance of banking license, regulation and conduction of supervision over the Bank's activities.

According to government officials, the concept of the State Land Bank provides, above all, effective management of state lands, land consolidation, development of agriculture. In addition,

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this institution will promote the development of small and medium farming business through the granting of cheap loans (at least cheaper than the current rates of commercial banks). Therefore, the main functions of the State Land Bank will be to attract additional resources to the agricultural complex in the domestic and external markets as well as leasing land to an efficient user.

It is premature to evaluate the prospects of the Bank's creation and its impact on land relations since adopted legislation regulates its activities only in outline. In future the Bank will probably be regulated in more detail by a separate act (as provided in the Transitional Provisions of the *Land Code*).

CLARIFICATION OF PROCEDURE FOR ACQUIRING LAND OWNERSHIP RIGHTS

The list of persons prohibited from buying agricultural land in Ukraine has been specified so that it is absolutely clear that foreign individuals and legal entities, as well as Ukrainian legal entities with foreign investments, are proscribed from purchasing agricultural lands. On 2 October 2012, Parliament adopted the *On Changes to the Land Code of Ukraine Regarding Acquisition of Land Ownership Act of Ukraine*, draft registration No.11128 of 3 September 2012. According to information posted on the official website of the Parliament, the Act is going to be passed to the President of Ukraine for signing. In case the respective Act is signed, it comes into effect from the day following the day of its official publication.

If the amendments come into force, the existed procedure of acquisition of land by foreign legal entities will sustain certain changes. According to the new wording of Article 22 of the *Land Code of Ukraine*, agricultural land shall not be purchased (except for the acquisition of agricultural land by inheritance provided its mandatory alienation for a year from date of acquisition) by the following persons/entities: (i) foreign citizens and stateless individuals; (ii) foreign enterprises; (iii) enterprises that have a foreign investment in authorized capital (joint ventures, enterprises with foreign investments); (iv) legal entities incorporated under the laws of foreign countries; and (v) foreign states, international governmental and non-governmental organizations.

The right of legal entities established under the laws of Ukraine by a foreign entity having a 100% stake to acquire ownership of land would finally be recognized at the legislative level. According to the new wording of Article 82 of the *Land Code of Ukraine*, such entities (100% subsidiaries) can acquire non-agricultural land plots from private property, as well as under prescribed procedure and within some restrictions acquire land plots from state and municipal property. In the current wording of Article 82 of the *Land Code of Ukraine*, which sets out a list of legal entities subjected to land ownership, there is no reference to a subsidiary of foreign entity, which provoked the widespread practice by the authorities of creating obstacles for such entities in their acquisition of land plots.

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