VASIL KISIL & PARTNERS

ATTORNEYS & COUNSELLORS AT LAW

ADOPTION OF THE LAW OF UKRAINE "ON AMENDING CERTAIN LAWS OF UKRAINE IN RESPECT OF SIMPLIFICATION OF THE PROCEDURE FOR OBTAINING THE LAND TITLES"

This NEWSLETTER has been issued to keep Vasil Kisil & Partners clients and other interested persons informed of the latest developments in the Ukrainian legislation and the firm news.

This NEWSLETTER does not constitute a legal advice or an opinion rendered upon specific request. The information below has been prepared without enquiry into any individual case and should not be treated as a substitute for detailed advice in any such case.

On 10 December 2009, the Law of Ukraine "On Amending Certain Laws of Ukraine in Respect of Simplification of the Procedure for Obtaining the Land Titles" dated November 05, 2009, No. 1702-VI (hereinafter – the "Law") became effective and significantly amended and supplemented the principal land laws. Below we compiled an analysis of the main novelties introduced to the land laws.

Read in this issue:

1. Defining the Type of Land Use 1
2. Simplifying the Procedure for Obtaining the Land Title 2
3. Land Title of the Acquirers of Real Property 3
4. New Exceptions to the Auction Procedure 3
5. Sale of Public Land Shall be Approved by the Tenant 4
6. Alteration of the Procedure for Elaboration of Technical Documentation for Composing the Land Title Documents 4

1. Defining the Type of Land Use

The Law supplemented Article 20 of the Land Code of Ukraine in the way that the type of land use shall from

now on be defined by the landowner (land user) at its sole discretion. When defining the type of land use, the landowner (land user) shall only be bound by general restrictions prescribed by the law in respect of certain land categories, and applicable legislative requirements as regards to its use. Please note that the exception is made in respect of the agricultural and defense lands, which types of land use are much more detailed in the Land Code (farming lands, lands for personal peasants economy, etc.) and in the Law of Ukraine "On Use of Defense Lands".

When defining the type of land use regarding leasehold public lands, it should be noted that certain requirements and conditions for land use are also defined in respective decision on granting the land plot into use. Failure to comply with such conditions may entail negative consequences provided in the land lease agreement.

2. Simplifying the Procedure for Obtaining the Land Title

The Law simplified the procedure for obtaining the public lands into use, inter alia, by introducing the following amendments:

– Abolition of the procedure for selecting the location of the land plot. From now on, the permit for elaboration of the land allotment project shall be given to the interested party immediately upon applying to the local council (state administration). The procedure for selecting the location of the land plot remains applicable solely for the cases of exemption of land plots in permanent use and buy-out (forced alienation) of private lands for public needs or in case of public necessity;

– Abolition of double-approval procedure. Earlier, the approval procedure needed in fact to be passed twice: at the stage of approving the materials for selecting the land plot location and at the stage of approving the land allotment project. Henceforth, the approval procedure shall apply only to the elaborated land allotment project;

– The Law introduces a unified approval approach by establishing special commissions for consideration of matters related to the approval of land management documentation, in other words it introduces the so-called "one stop shop" approach. Thus, from the applicant's perspective the application for approval shall be filed only once – to the said commission. All approvals shall be collected by the commission and the approved project returned to the applicant;

– The legislator has also made an attempt to simplify the procedure for evaluating the state and municipal lands, which could shorten the land privatization procedure. In particular, the reports on expert monetary evaluation of state and municipal lands made for the purpose of sale thereof, are excluded from the list of documents subject to compulsory state land management expertise pursuant to Article 9 of the Law of Ukraine "On State Expertise of Land Management Documentation". However, please note that no similar amendments were

introduced to Article 21 of the Law of Ukraine "On Land Evaluation" stipulating the cases of obligatory expertise, which include also the land evaluation documentation. Practically, said inconsistency could be resolved by some clarification of the competent authority.

3. Land Title of the Acquirers of Real Property

The further progress was given to the legislative provisions on transfer of land title upon acquisition of real property located on it, inter alia, the provisions of Article 120 of the Land Code and Article 377 of the Civil Code of Ukraine. Under a general rule, the land title shall be transferred to the acquirer of the property in the scope and on other terms appurtenant to the previous owner of real estate. The amendments are directed to specify the mechanisms for transfer and re-perfection of land titles for the purchasers of the real property.

The property purchase agreement shall provide for such essential conditions as cadastre number and aggregate area of the land plot subject to transfer in ownership (use) at acquisition of the property located on it.

Where the property purchase agreement provides for the transfer of land title to only part of the land plot, the latter part shall be allotted in kind with respective cadastre number before the transaction takes place.

When the property is acquired by several persons, the land title shall be defined pro rata to their shares in the ownership right to such real property.

The agreement on acquisition of real property partially terminates the land lease agreement in respect of lease by the previous tenant.

All amendments related to transfer of land title upon acquisition of real estate shall become effective from January 01, 2010.

4. New Exceptions to the Auction Procedure

The Law has extended the list of cases when the state and municipal land plots may be transferred into ownership or lease outside any auction procedure a lot more specific and extensive. In particular, Part 2 of Article 134 of the Land Code of Ukraine features the following most significant supplements to the list:

– Granting the land plots exempted from permanent use or bought-out (forcibly alienated) for public needs or in case of public necessity;

– Granting the land plots to persons instead of those bought-out (forcibly alienated) for public needs or in case of public necessity; return of bought-out (forcibly alienated) land plots to former owners upon seizure of the public need;

– Renewal of the land lease agreements;

– Granting the land plots in lease to the investors in pursuance of the investment agreements signed before January 01, 2008 based on the decisions of state and municipal authorities and conditioned on granting such land plots; and

– Granting the land plots in other cases prescribed by the law.

Please, do not hesitate to contact us for any further information on the topic of this Newsletter or to address you other legal service needs.

5. Sale of Public Land Shall be Approved by the Tenant

Pursuant to the amendments to Article 9 of the Law of Ukraine "On Land Lease", sale of the public land plot transferred in lease is allowed only in case of the tenant's prior consent. The previous wording of the aforesaid Article has completely ruled out the possibility of such sale in cases when any construction or design and survey works whatsoever were commenced on such land plots.

As regards the procedure for sale of leased land plots, the latter remains the same, providing for the lessee's preemptive right to acquire the freehold title to the land plot.

6. Alteration of the Procedure for Elaboration of Technical Documentation for Composing the Land Title Documents

By virtue of certain technical amendments to Part 2 of Article 56 of the Law of Ukraine "On Land Management", the land user is from now on entitled to personally order the technical documentation for composing the land title documents. For this purpose, the land user shall submit the landowner's consent (in respect of state lands – the consent of relevant state authority). It should, however, be highlighted that the foregoing amendments affect neither the possibility to obtain the land title documents on behalf of the land owners, nor the issues of renewal of effective lease agreements in respect of public lands, and does not provide for any special exceptions or clarifications to the general auction procedure in such case.

Besides the aforementioned, the Law amends the procedure for free-of-charge land privatization, as well as certain procedures related to the exemption/buy-out of lands for public needs and in case of public necessity, and introduces certain other amendments.

The Cabinet of Ministers of Ukraine and other central executive authorities shall adjust the subordinate legislative acts within one-month period.

Oleg Alyoshin
Partner
alyoshin@vkp.kiev.ua

Leonardo Business Centre
17/52-A B. Khmelnitskogo St.
Kyiv 01030 Ukraine

Telephone: +380 44 581 7777
Fax: +380 44 581 7770

E-mail: vkp@vkp.kiev.ua
www.kisilandpartners.com