

## **IBA Real Estate Law Section e-bulletin June 2008**

### **Real estate for foreigners in Ukraine - legal alerts**

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Ukrainian real estate continues to attract foreign investors due to its great potential for development. Over the past few years real estate prices have rapidly risen, which provides good opportunities for high returns on investment in this sector.

The ownership of non-land real estate by foreigners is not limited in Ukraine. The Land Code of Ukraine envisages certain restrictions on ownership of land plots.

Foreign citizens and legal entities are prohibited from ownership of agricultural lands. With respect to non-agricultural land foreign individuals may acquire property rights (i) to land plots within the settlements, and (ii) to land plots outside settlements, on which real estate objects already owned by such individuals are located.

Foreign legal entities and joint ventures founded with foreign participation may acquire ownership title (i) to land plots within settlements in case of a purchase or construction of real estate objects on such plots connected with business activity in Ukraine; and (ii) to land plots outside settlements in case of a purchase of real estate objects located on such plots.

It is important to note that under the Law, prior to purchasing a land of state or communal ownership, a foreign legal entity is to open a representative office in Ukraine. The procedure of purchasing state and communal lands itself is quite complicated and may take much time as the law doesn't settle the time limits of taking the relative decisions by state bodies. In this respect many foreign legal entities prefer to acquire the shares of Ukrainian companies that already own the land. Thereby a foreign company indirectly obtains a right to the land. There is also a certain tool that allows a foreigner to avoid the above-mentioned limitations, including prohibition to acquire agricultural land, and this is creating a holding company in the territory of Ukraine.

All real estate transactions, including lease agreements for the term exceeding three calendar years, are subject to notarisation and state registration. The state registration of real estate deals is performed by a notary, who submits the necessary information to the State Register of transactions. The ownership title to real estate is also to be registered in the State Register. There exist two different State Registers of (i) lands and of (ii) ownership titles to real estate. The Register of titles to real estate is held by the local Bureau of Technical Inventory and the Register of titles and use rights to land is held by local branches of the State Land Cadastre. But the access to these registers is not, in fact, public as only a limited number of persons are entitled to obtain the respective information (owners, notaries, state officials etc).

Another important issue concerns the right of ownership. Under the Law the ownership right to property (apartment, house) arises only after the state registration of a real estate transaction. However, a person can dispose of the owned property only after the state registration of the ownership right (title). So, a person is considered to be the owner after the state registration of the transaction

by a notary, but he/she can, for example, sell it only after the state registration of the title by the local Bureau of Technical Inventory.

As for the land, the Land Code clearly envisages that the ownership right to the land arises after the state registration of the title in the State Register of lands and obtaining the document confirming the title to the land, which is called the State Act of ownership of land. Thus, property rights to land that have not been duly registered do not become effective. The lease right to land, being a purely contractual right, depends on the state registration of the lease agreement and arises after its completion.

One should also pay attention that in Ukraine any legal act cannot be performed by an individual without a taxpayer identification number. This rule applies to foreign individuals as well. That's why prior to purchasing or selling a property a foreign citizen has to obtain a personal taxpayer identification number at the regional Tax Administration.

Before buying a real estate a buyer should also consult a number of state registers to verify the 'purity' of title to a real estate object, these being the State Register of mortgages, the Unified State Register of real estate disposition bans and the State Register of transactions. These registers are publicly accessible.

The Ukrainian real estate market is definitely worthy of consideration for international property investors seeking investment assets. Ukraine is going through a period of rapid growth, development and expansion. Its economic fortunes are flourishing and inward investment is strong. It is highly likely that well thought-out and well located property investments made today will reap an investor strong returns over the medium to long term. At the same time it is evident for every Ukrainian lawyer that much work is still to be done before the Ukrainian real estate market becomes less risky and more transparent for foreign investors.