

EXHIBIT 18



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LAND ISSUE

Recently adopted Decree of the President of Ukraine opens the possibility for foreign companies and individuals to own urban land.

On the 19th of January the President adopted the Decree # 32/99 "On the sale of land plots for non-agricultural use". The core of the above Decree is that Ukrainian business entities are given the right to purchase non-agricultural, i.e. urban areas land plots, provided, however, they own real property located on the land they wish to purchase. For foreign investors the implication would be as follows. If a foreign entity, i.e. individual or company, establishes a Ukrainian legal entity with 100% foreign ownership and this legal entity purchases real property, then, under the above Decree, it has the ability to purchase the land plot on which the property is sited. As a result, we have a legal formula which allows 100% foreign ownership to a land plot by the means of establishing a Ukrainian company.

To date, a foreign investor had the right to own a property, say an office building or a warehouse, but couldn't own the land beneath it and it considerably hindered investment inflow into real estate. From the economic point of view, a land plot and property constructed upon it is a composite economic resource called "real estate" and the difference in the legal status of a land plot and the property contradicts their economic unity.

In this regard the above Presidential Decree is an important and long-awaited legal initiative to rectify this issue and is aimed to further encourage potential investors with an interest in the real estate market. However, as far as legal issues are concerned, when making an investment decision the investor should take a broader approach and analyze not only the relevant legislative acts, but also the legal environment in general. The latter comprises, in addition to legislation, court practice, practice of state bodies, and trends of the development of the above three factors.

And as to private land ownership, this issue has always been one of the fundamentals of any economic and political system. This can be said to be true for the present situation in Ukraine, where we experience an invisible fight for how and by whom such a valuable economic resource as land shall be possessed and distributed.

Currently there are two trends for the development of land legislation in Ukraine, one of which is conservative, and the other - liberal.

The conservative land policy is primarily represented by Parliament - Verhovna Rada, which has always been, at best, reluctant to embrace the concept of private land ownership as well as foreign investors in the land market. Among the legal acts adopted by Verhovna Rada in the sphere of land relations Land Code of 18 December 1990 is the most important one.

"Land conservatives" are opposed by "land liberals", who are relatively tolerant to private land ownership as well as to foreign investors. Their influence is seen in the legal acts adopted by the President, the above mentioned Decree being one of the examples.

What we would like to draw your attention to, is correlation of the **Presidential Decrees on land matters and the Land Code. The legal problem here is that certain basic provisions of the Presidential Decrees contradict the rules lay down by the Land Code.**

Firstly, the Land Code and Presidential Decrees provide for different rules with regard to the right of private ownership of land by foreign individuals.

Under article 6 of the Land Code and article 11 of the Law of Ukraine "On Ownership" dated 7 February 1991 foreign individuals and stateless persons can not have the right of private ownership of land plots.

While paragraph 2 of the Decree of the President "On privatization of objects designated as uncompleted construction" of 14 October 1993 provides the right for foreign individuals and stateless persons to privatize the objects of uncompleted construction as well as land plots, designated as uncompleted construction.

Under paragraph 2 of the Decree of the President "On privatization of petrol stations that sell fuel and oil materials only to public" of 29 December 1993 foreign individuals and stateless persons have right to privatize petrol stations as well as land plots.

Secondly, the Land Code does not mention legal entities among those, which have the right of land ownership. In contrast to the Land Code, a number of Presidential Decrees envisage the right of ownership of land by legal entities.

Pursuant to article 5 of the Land Code, land may be owned only by an agricultural company, while under a number of Presidential Decrees land may be owned by companies involved also in non-agricultural business. Such Decrees include the Decree of the President "On privatization of objects designated as uncompleted construction" of 14 October 1993; the Decree of the President "On privatization and lease of non-agricultural land plots for business activities" of 12 July 1995; the Decree of the President "On the sale of land plots for non-agricultural use" of 19 January 1999.

Therefore, there are at least two key issues on which the legal sense of Land Code does not correspond to that of the various Presidential Decrees. These are the land ownership rights of legal entities and the right of private land ownership by foreign individuals.

We do understand and support the Presidential initiative as to the liberalization of the land legislation. At the same time, there should be no illusions as to existing contradictions between the Land Code and the Presidential Decrees, which may result in serious disputes, including those with the authorities. And when considering the dispute, the court would proceed from the legal status of the colliding legal acts. **Within the hierarchy of legal acts the Land Code holds higher position than the Decree of the President.** The former is classified as codified law, whereas the latter is by-law. A legal act classified as by-law is to be in conformity with legal acts classified as law. Article 1 of the Land Code reads that all land relations shall be regulated by this Code and other legal acts of Ukraine, these legal acts adopted in accordance with the Code.

When analyzing the legislation, one should proceed from the point that the competition between the Land Code and the Presidential Decree leads to the prevalence of the Land Code over the Presidential Decree. Technically, if the President's Decree introduces something, which does not comply with the Land Code, the latter should be appropriately amended. Presently the Parliamentary Committees consider many drafts, including the draft of the new Land Code. But the court does not rule on the basis of drafts however good they may be, it considers only valid legal acts however bad they may be. The court also applies legal acts proceeding from the appropriate hierarchy of legislation.

Returning to correlation of the Land Code and the Presidential Decree, we would say that it be "not quite correct" for the court facing this legal collision to judge proceeding from the prevalence of the Presidential Decree over the Land Code.

That is why if an investor wishes to financially commit funds based upon the provisions of the Presidential Decrees, the investor should be either very careful, or better abstain from investing until the Ukrainian land legislation becomes more stable and concerted.

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