

POSITIVE LEGISLATIVE DEVELOPMENTS IN REGULATION OF LAND IN UKRAINE IN 2014-2015

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Over the course of the past year, there were two competing tendencies in the regulation of the agricultural land market in Ukraine. On the one hand, general and specific measures were adopted, aimed at deregulation and greater transparency of the agricultural market. On the other, there is much inertia, so that many of the technical changes remain unimplemented.

PERMITTING THE REGISTRATION OF AGRICULTURAL LAND AT OTHER DISTRICTS REGISTRARS

Under Sections 1 and 2 of the Order of the Ministry of Justice of Ukraine, No. 845/5 of 28 May 2014, *On Measures for the State Registration of Rights to Agricultural Land*, the state registration of rights to agricultural land became possible to conduct not only in the district where a land plot is situated, but also by the state registrars of other districts of the same Oblast (Region) where the land plot is located. Such re-allocation of the use of state registrars is determined by the order of the Head of State Registration Service in the respective region.

This measure to permit "extraterritorial" registration was aimed at resolving problems with the registration of rights in districts that are unable to keep up with their workload. Previously, the only solution was to move registrars from one district to another (a measure adopted, for example, in Lvov Oblast on our recommendation after we surveyed the work of every registrar in this region for a large farm experiencing very long delays in the registration of its land plots), but administratively this was more cumbersome to organise and still left the visiting registrars under the

supervision of the officials of the district that was having problems.

AN OPEN SALE OF RIGHTS TO LEASE STATE OWNED LAND PLOTS FOR AGRICULTURAL USE

On 15 October 2014, an initiative was launched for the sale of lease rights (and certain other rights) to state-owned land plots for agricultural use at open auctions, pursuant to an instruction from the Deputy Prime Minister of Ukraine, Volodymyr Groysman, implemented by decisions of the Board of the State Agency of Land Resources. The list of the land plots for which rights to lease certain other rights are offered for sale is published at the official page of the State Agency of Land Resources¹.

This regulation does not affect the current Moratorium created by Section 15 of Chapter X of the *Transitional Provisions of the Land Code of Ukraine, No. 2768-III of 25 October 2001* prohibiting the sale-purchase of state and communal owned land plots for agricultural use (except for those cases of withdrawal (repurchase) for public use) which is to remain in force until the later of (1) the adoption and coming into force of the proposed Act of Ukraine, *On the Circulation of Land for Agricultural Use*, or (2) 1 January 2016 (hereinafter — the Moratorium). Consequently, the proposed auctions are limited to lease rights and certain other rights and will not involve the sale of any land itself. This follows from the provisions of agreements on the alienation of such land, including the transfer of rights for the alienation of land plots and land pairs in the future, which are concluded while this Moratorium is in force, are void from the moment of their conclusion.

¹ <http://land.gov.ua/com-document-documents-catid/com-formdocument/com-groupcategory-perelk-zemelnykh-dilaniok-silskohospodarskoho-pryznachennia-derzhavnoi-vlasnosti-i-pravnolaki-planulutsia-prodavaty-na-zemelnykh-terakh.html>

OPENING OF THE STATE REGISTER OF RIGHTS TO IMMOVABLE PROPERTY AND ENCUMBRANCES TO PUBLIC INSPECTION

The Act No.1701-VII of 14 October 2014, *On the Introduction of Changes to Certain Laws of Ukraine on the Determination of the Ultimate Beneficiaries of Legal Entities and Public Figures* (hereinafter — the Act On Beneficiaries) has opened for public inspection, for the first time, the State Register of Rights rights to immovable property and encumbrances thereto. All information contained in this Register can now be obtained by individuals and/or legal entities in electronic or paper form: (1) through the official website of the State Registration Service of Ukraine (it is, however, still in the process of being transformed to allow such access), or (2) in written replies made in response to written requests submitted in person or send by the post. All such obtained information is treated as being official.

For private individuals and legal entities to obtain such information, they need to be able to cite the address of the real property in respect of which they are seeking information (by contrast with state authorities which can obtain such information by knowing only the identity of the holder of the ownership or other rights).

OTHER ANTI-CORRUPTION MEASURES

Along with opening the State Register of Rights to Immovable Property and Encumbrances, the Act On Beneficiaries imposed certain new requirements, such as for the disclosure of information on the beneficial owners of legal entities; and introduced measures aimed at the more transparent conduct of business in Ukraine. The Act On Beneficiaries, in this sense, was part of the wider anti-corruption package of the Ukrainian Government.

Other anti-corruption laws from this set of proposals included the *Act of Ukraine No. 1699-VII of 14 October 2014, On the Basics of the State Anti-Corruption Policy in Ukraine*, the *Act of Ukraine No. 1700-VII of 14 October 2014, On the Prevention of Corruption* and the *Act of Ukraine No. 1698-VII of 14 October 2014 On the National Anti-Corruption Bureau*.

These anti-corruption laws constitute, in particular, the basis for the creation of the National Anti-Corruption Bureau of Ukraine, which has the power to investigate acts of corruption by high-ranking state and local government officials, and the National Agency on the Prevention of Corruption. How effective the practical implementation of this legislation will be remains to be seen. It appears to be a good first step to tackle official corruption.

LIQUIDATION OF THE STATE LAND BANK AND THE STATE AGRICULTURAL INSPECTORATE

In line with this policy to fight corruption, on 5 July 2014 the President signed the *Act No. 4784 of 24 April 2014, On Changes to Certain Legislative Acts of Ukraine on the Operation of the State Land Bank* (however, this Act is still not published, and therefore, has not yet entered into force). The State Land Bank was created in 2012 to manage state agricultural land and implement governmental credit programs, especially to benefit small and medium size businesses in rural areas. However, concerns on problems with the regulation of the State Land Bank, as well as its potential for corruption and its failure to comply with international standards, lead to a decision on its liquidation. Currently, control over state land in Ukraine, following the liquidation of the State Land Bank, will remain with the State Land Resources Agency.

In addition to the liquidation of the State Land Bank, another entity which was similarly considered to be problematic by the business community was the State Agricultural Inspectorate of Ukraine. It was liquidated under the Cabinet of Ministers of Ukraine Regulation No. 442 of 10 September 2014, *On Optimization of the System of the Central Bodies of Executive Power*. The former powers of the State Agricultural Inspectorate have since been divided among several other state bodies.

Notwithstanding these positive developments in the regulation of the agricultural market in Ukraine, due to the current military aggression, the effective closure of certain markets and the general economic situation in Ukraine, further substantial reforms and better implementation of the recently adopted reforms is urgently needed. This is especially important due to the critical importance of the agricultural sector.

As the next steps in the reform program, which would not cost much, but shall simplify and speed up the land lease rights registration process (vitally important since land leases form the legal basis for agricultural land use in Ukraine) we would recommend:

- updating and entering all technical data on individually privatized land into the Cadastre (the absence of such data, in a number of cases due to archaic maps and plans, hampers registration of land lease rights currently);

- unifying the Registration Process by transferring the current tasks of the Ministry of Justice to the State Land Resources Agency to create a "One-Stop Shop based on the sole use of the better software of the Agency; and

- permitting the filing of electronic copies of applications for land lease registration and the supporting documents, as currently the process is too slow in part because of the need for copying and scanning by the registrars themselves).

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C. Toms & Co is a multinational law firm of Ukrainian and Western lawyers specializing in Ukrainian law. It was the first Western law firm to open a Kiev office, having focused

its practice on Ukraine at its independence in 1991. The firm has handled, for example, many of Ukraine's largest agricultural land leasing projects and acquisitions of land for commercial property developments as well as the first and the most IPOs to raise funding for Ukrainian projects. Based on our over 23 years of experience in Ukraine, we can provide practical commercial advice on how to establish and develop a business in Ukraine.

The firm has recruited and trained its Ukrainian lawyers from students at Ukraine's leading law schools, most of whom have also studied at UK and US law schools as Chevening, Pinchuk, Fulbright and Muskie fellowships. Based on the firm's practical experience, it has written numerous articles on Ukrainian law, including the legal section of the book *Doing Business in Ukraine*.

The principal practice areas of B. C. Toms & Co include real estate and land development, oil and gas and natural resources, agriculture, banking and finance, M&A, environmental, labor, bankruptcy and administrative law. In addition, the firm has a successful litigation and arbitration practice. The firm also regularly advises on Ukrainian tax law, including from a multinational tax planning perspective.

B. C. Toms & Co has prepared a wide variety of documentation for clients, including Ukrainian law share purchase agreements, asset purchase agreements, joint venture agreements, construction contracts, project financing documentation, production sharing and oil and gas sales agreements, airport investment and management agreements, hotel management agreements, private placement agreements, real estate acquisition agreements, loan agreements, leases and corporate acquisition, agency, distribution, franchise and licensing contracts.