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REAL ESTATE & CONSTRUCTION

Order for prolongation of state and municipal real estate lease agreements

- The State Property Fund with its letter dd. 27.07.2009 #10-16-10753 provided some explanations as to application of amendments to the legislation regarding order for prolongation of state and municipal real estate lease agreements.

Thus, amendments to article 17 of the Law of Ukraine “On State and Municipal Property Lease” made by the Law of Ukraine dd. 19.02.2009 N 1022-VI stipulate that after end of the lease agreement the lessee who duly performed its obligations under agreement has, provided other equal conditions, the priority right for conclusion of the lease agreement for a new term, except for cases when the owner of the leased property needs it for its own use. If the owner intends to use the leased property for its own needs it shall inform the lessee about this in writing not later than three months prior to the end of the lease agreement term.

According to amendments to article 73 of the Law of Ukraine “On State Budget for 2009” made by the Law of Ukraine dd. 10.06.2009 N 1498-VI the lessee who duly performs its obligations under real estate lease agreement term of which is ending has the right for prolongation of the lease agreement for a new term but not more than for two years. The lessee who intends to exercise this right shall inform the lessor about this not later than a month prior to the end of the real estate lease agreement term.

Therefore, according to explanations of the State Property Fund of Ukraine the lessor of state property prolongs the term of lease agreement without additional approval of the authority managing the leased property in the name of the State provided that:

- lessee duly performs its obligation under state real estate lease agreement
- lessee has informed lessor about its intention to prolong the agreement not later than one month prior to the end of the agreement term (this requirement is effective only for 2009)
- within three months prior to the end of the

lease agreement there was no notification of the authority managing the leased property about impossibility to prolong the lease agreement due to intention to use this property for its own needs.

Order for compulsory insurance of property risks under agreement on participation in construction financing fund

- The Cabinet of Ministers with its Order #805 dd. 22.07.2009 has approved the Order and rules for compulsory insurance of property risks under agreement on participation in construction financing fund (CFF) in order to implement provisions of the Law “On Financial and Credit Mechanisms and Property Management by Housing Construction and Real Estate Operations”.

The coverage under a compulsory insurance agreement is set in amount of the price of the CFF participation agreement as to the date of its conclusion. The maximal insurance tariff shall not exceed one percent of the coverage set by the compulsory insurance agreement. Insurance payment to be paid under the compulsory insurance agreement is determined through multiplying coverage by insurance tariff. The insurance payment is to be made one time only.

The order also stipulates the list of documents to be submitted by insured person to insurer in order to receive insurance compensation. Within 15 days after provision of aforesaid documents insurer has to decide whether to pay or decline payment of insurance compensation. Insurer shall pay the insurance compensation within 10 days after respective decision-making. Insured person has the right to contest judicially the insurer’s decline to pay the insurance compensation.

Simplified order for obtaining state certificate for land plot ownership rights

- With its Order #844 dd. 05.08.2009 the Cabinet of Ministers has approved the Order for free execution and issuance for citizens of Ukraine in 2009 of state certificates for land lot ownership rights. The Order stipulates a simplified procedure for execution and issuance of state certificates for ownership rights to land plots for construction and maintenance of residential and household buildings, individual farming within settlements and gardening in amounts determined by article 121 of the Land Code provided respective authorities decided on free transfer of land plots into private property.

Thus, in order to obtain a state certificate citizens or persons authorized by them shall submit respective application to representative of a territorial authority of the Land Resources State Committee which provides for acceptance of such applications in each settlement. Applications shall be submitted according to location of the land plot. Payment for works and services on execution and issuance of state certificates for land plot ownership rights is made by territorial authorities of the Land Resources State Committee out of state budget funds.

It is prohibited to receive from citizens any payments for execution and issuance according to this Order of state certificates and provision of additional and accompanying services as to elaboration of land development documentation, as well as any other payments, in particular contributions to charity and other funds.

Order on project declaration registration

- According to the legislation, in case of construction of residential houses financed with non-government funds collected by individuals and legal entities, the developer is obliged to register project declaration containing information on developer, contractor, manager of the construction financing fund, construction object and investment objects. Registration of project declaration is carried out by the State Architecture and Construction Inspection and its territorial bodies. The order for registration of project declaration and its form is approved by the Cabinet of Ministers of Ukraine with its order dd. 22.07.2009 N 759.

The Ministry for Regional construction and development with its Order dd. 10.07.2009 N 282 stipulated that printed media where project declaration shall be published is newspaper “Uryadovyi Currier”.

Issuance of state certificates for land plot ownership rights in the new form

- As the Order of the Cabinet of Minister of Ukraine dd. 12.11.2008 N 1019 “On amendments to the Order of the Cabinet of Ministers of Ukraine dd. April 2, 2002, N 449” presented new version of state certificate form for land plot ownership rights, the Cabinet of Ministers with its Order dd. 27.05.2009 N 774 accepted proposition of the Ministry of Justice and prolonged period for issuance of state certificate for land plot ownership rights in the old form with taking into account of changes made to this form, until pre-printed forms will have been completely used.

At this the Cabinet of Ministers noted that state certificates for land plot ownership rights issued in old form after the Order of the Cabinet of Ministers dd. 12.11.2008 N 1019 (after December 5, 2008 p.) has come into force are valid.

AGRICULTURE

Regulation of agriculture wholesale markets

- The Parliament of Ukraine passed the Law “On Agricultural Wholesale Markets” which stipulates:
 - order in which a legal entity can gain and lose the status of agricultural wholesale market
 - main directions of activity of agricultural wholesale markets
 - rules for work of agricultural wholesale markets;
 - state support for agricultural wholesale markets.

The Law is effective as of its publication and shall be executed as of January 1, 2010.

ENERGY (RENEWABLE ENERGY)

Approval of minimum fixed amount of “green tariff”

- The National Commission on Electricity Regulation with its Resolution #857 dd. 23.07.2009 has stipulated fixed minimum amount of the “green” tariff for economic entity producing electricity with use of:
 - wind energy: electrical industry facilities with total capacity not exceeding 600 kW - 70,15 kopecks for 1 kWh; with total capacity exceeding 600 kW but under 2000 kW - 81,84 kopecks for 1 kWh; with total capacity exceeding 2000 kW - 122,77 kopecks for 1 kWh
 - biomass - 134,46 kopecks for 1 kWh
 - solar energy: for surface electrical industry facilities - 505,09 kopecks for 1 kWh, electrical industry facilities fixed (installed) on roofs of houses, buildings and constructions with total capacity over 100 kW - 484,05 kopecks for 1 kWh; total capacity of which does not exceed 100 kW - 463,00 kopecks for 1 kWh
 - small hydro power plants - 84,18 kopecks for 1 kWh.

Prices do not include VAT.

Changes to licensing procedure by production, storage and sale of biogas and biomass-derived liquid fuel

- With its Order # 829 dd. 29.07.2009 the Cabinet of Ministers changed the List of licensing authorities which appointed the Ministry for Fuel and Energy as licensing authority in sphere of production, storage and sale of biogas and biomass-derived liquid fuel.

At the same time, with amendments to the List of documents to be submitted along with license application for certain economic activity type the Cabinet of Ministers determined that applicants shall attach to license applications for aforesaid activity types:

- duly certified copies of documents confirming ownership or use rights of the economic entity to equipment, buildings necessary for exercise of the respective economic activity type
- list of equipment, buildings and machinery used or owned by the applicant, their technical characteristics and scheme put on the geographic ground map, signed by the director.

RETAIL AND LEISURE

Approval of hotel rating system

- The Cabinet of Ministers of Ukraine with its Order # №803 dd. 29.07.2009 has approved the Order on category establishment for hotels and other facilities designated for provision of services on temporary accommodation (residence) in order to implement the provisions of the Law of Ukraine “On Tourism”.

The category of hotels is determined upon results of a compulsory certification of services on temporary accommodation provided by them as to level of life and health safety, property and environment protection, and compliance of hotels to requirements of certain category, which is carried out according to the Rules of compulsory certification of services on temporary accommodation (residence).

There are following hotel categories: “five stars”, “four stars”, “three stars”, “two stars” and “one star”. Other facilities designated for provision of services on temporary accommodation (residence), including motels, vacation hotels, holiday homes, tourist camps, camping the category is determined according to their service level (first, second, third, fourth and, respectively, fifth level).

The category of facilities is determined by the Ministry of Culture and tourism. Compulsory certification and evaluation of hotels is carried out by certification authorities appointed by the State Committee of Ukraine for Technical Regulation and Consumer Policy.

As far as all procedures are finished, the hotel owner receives a certificate on conferring certain category. This certificate is issued for not more than 3 years or, provided the hotel has quality management system, for not more than 5 years.

BANKS AND FINANCIAL INSTITUTIONS

Measures for financial recovery of banks

- The Verkhovna Rada of Ukraine by its Law of 24 July 2009 No. 1617-VI introduced changes to some legislative acts on peculiarities of taking measures for the financial recovery of banks.

Specifically, the changes were introduced to the Law On Banks and Banking Activities, pursuant whereto:

- The notion of “moratorium” was stated in new wording and namely as suspension by a bank to satisfy its obligations to creditors as well as tax obligations (compulsory payments) and suspension of measures aimed at procurement of satisfying such obligations
- It was established that a bank can be reorganized according to a decision of its owners, and in case of a bank being in administration, according to NBU’s decision or temporary administrator’s decision approved by the National Bank of Ukraine
- in case of bank’s reorganization via transformation, regulations concerning dissolution of a judicial person shall not apply to such legal relationships, and creditors shall not be entitled to demand from the bank any discharge or termination of its obligation
- In case of bank’s reorganization via transformation according to a decision of its owners, the bank’s reorganization plan shall not be drafted
- The amount of a subordinated debt included in the bank’s added capital shall be annually decreased by 20 per cent of its initial amount during the last five years of the contract. The added capital may not exceed 100 per cent of the fixed capital of the bank

Bank’s principal shareholders, managers (apart from heads of detached structural units of the bank) shall be liable pursuant to the legislation for fictitious insolvency, bringing to insolvency or concealment of a steady financial insolvency of the bank

- NBU has the right to establish special control over the bank’s activities and to appoint an administrator. These measures are deemed a special vehicle of banking supervision applied as a rule simultaneously with influence measures. During the period of a bank being in administration or under special control the National Bank of Ukraine shall be entitled to prohibit the bank to use its direct correspondent accounts for settlements and/or demand from the bank to affect settlements exclusively through a consolidated correspondent account.

Moreover, this Law provides for an opportunity of creation by the Cabinet of Ministers of Ukraine of a sanation bank, which is not a member of the Deposit Insurance Fund and whose main task is to protect the interests of banks’ depositors (creditors).

The banks in which at the moment of adoption of this Law NBU’s moratorium had been imposed, shall be entitled to extend the moratorium on satisfying creditor’s claims for the term up to 6 months.

Banks’ activities in the period of financial and economic crisis

- With the purpose of creation of favorable conditions for the recovery of banks’ steady activity in the period of financial and economic crisis and enhancement of banks’ capitalization, the National Bank of Ukraine adopted a Resolution of 22 July 2009 No. 421 whereby it:
 - obligated loss-making banks to suspend payment of dividends to shareholders or otherwise distribute capital including payment of bonuses and other supplementary compensations to banks’ employees.

Moreover, the banks shall be obliged to desist from increasing capital investments and intangible assets, making expenditures on financial consulting services, and establishing subsidiaries and branches.

- prohibited loss-making banks to issue unsecured credits, affect active transactions with insiders as to issuance of new loans and guarantees, affect early repayment of debt securities of their

own emission (unless such repayment is affected at the price not higher than 50% of the nominal value and does not result in a substantial reduction of bank's liquidity), repurchase their own stock, and purchase non-state securities in their name.

Furthermore, the National Bank of Ukraine spelled out cases when influence measures shall not be applied to the banks.

AGRICULTURE

Regulation of agricultural market

– The Parliament of Ukraine with its Law dd. 4.06.2009 N 1447-VI introduced changes to some laws of Ukraine as to improvement of mechanisms for state regulation of agricultural market of Ukraine. Thus, the Law of Ukraine “On State Support for Agricultural Sector of Ukraine” provides new definition of agricultural production, changes to the list of goods subject to state price regulation and mechanisms for state price regulation. A number of provisions as to insurance of agricultural goods have been changed as well. The Law stipulates new types for support of agricultural producers independent of type and amount of goods produced by them, in particular:

- Provision of budget subsidies calculated on unit of farmed land
- Partial budget compensations for cost of sown high reproductive seed of arable crops
- Implementation of state programs directed at improvement of soil capabilities, pest and disease control for agricultural plants and farm animals, farming on radiation polluted territories.

CORPORATE LAW / M&A

Execution of the Law of Ukraine “On Joint Stock Companies”

– The Securities and Fund Market State Committee with its letter dd. 14.07.2009 N 8 explained issues as to application of single provisions stipulated in Section “Final and Transitional Provisions” of the

Law “On Joint Stock Companies”, in particular, it noted that:

1. In order to bring activity of closed and open joint stock companies in line with the Law “On Joint Stock Companies” (hereinafter referred to as “the Law”) following actions shall be taken:
 - amending charter of the company which include change of the name of the company from open joint stock company into public/private joint stock company or closed joint stock company into public/private joint stock company
 - bringing of internal documents of the company in line with new requirements.
2. Date for bringing activity of open and closed joint stock companies in line with the Law is the date of state registration of amendments to the charter which among other change the name of the company.
3. Procedure of bringing the activity of companies in line with requirements of the Law does not provide for cessation of their activity.
4. In order to meet requirements of the legislation as to period of time foreseen for bringing charters and internal documents of the joint stock company in compliance with legal requirements, the companies have been advised to decide on annual general meeting in 2010 about introduction of changes to the charter (execution of a new charter version).
5. As long as charter and internal documents have not been brought in line with provision of the Law, joint stock companies shall follow in their activity within period from 30.04.2009 till 30.04.2011 provisions of the Law of Ukraine “On Economic Companies” and respective sublegislative regulatory legal acts. Joint stock companies which after 30.04.2009 have brought their activity in line with the Law of Ukraine “On Joint Stock Companies” shall follow in their activity provisions of this Law.
6. Beginning with 01.05.2011 all joint stock companies shall meet the requirements of the Law in full amount, including provision of part two article 20 as to exceptionally uncertified form for securities.
7. Starting with 30.04.2009 joint stock companies can be only established in form of public or private joint stock company according to the Law. Respective decision shall be made at founders' meeting.