

TO: Clients and Friends of the Firm  
FR: Frishberg & Partners  
RE: Investment in Unfinished Construction

The skyrocketing price of real estate in Kiev makes it an interesting, albeit incredibly challenging, market. Other major Ukrainian cities will undergo the same fantastic change in the near future. The question is: how do foreign investors get access to land and buildings in Ukraine?

The good news is that there are no impediments to purchasing property on the secondary market from a private party. Just review the background title documents and sign a sale-purchase agreement before a notary public. Dealing with the government, however, is an entirely different matter.

Below we review the legal and practical issues involved in obtaining from the city authorities access to land for construction of residential and commercial property.

## **I. Access to Unfinished Construction**

International hotels would make millions in Kiev, but they are justifiably apprehensive of investing in existing unfinished construction projects. Instead, they prefer either to obtain a parcel of land and build to their own specifications, or wait until the risks inherent in construction process have passed and the building has been commissioned.

However, buying land from the government via competitive means, such as an auction or tender, is often an unrealistic expectation, especially in Kiev under the firm rule of former Mayor Omelchenko and the Kiev City Council. In many cases, therefore, in order to enter the market an investor is forced to join forces with a local partner who has *future* property rights and is better able to navigate the murky local waters.

From a legal viewpoint, two methods exist to obtain access to land for construction purposes: (a) entering into a lease agreement (for up to 49 years) with or without a right of buyout; and (b) acquiring shares of a Ukrainian company that owns or leases such land.

## A. Lease Agreements

The practice of government officials entering into land lease agreements with foreign companies varies throughout Ukraine, depending on the location (i.e., Kiev vs. Ivano-Frankivsk). In Kiev, for instance, only a select few “insiders” with close connections to the city authorities are allocated land rights for construction purposes. This, not surprisingly, expressly excludes foreign companies.

The reason the “insiders” prefer to enter into lease agreements to obtain land is because lease arrangements are signed without any auctions, and land transfer takes place after the construction is finished on a non-competitive basis. In contrast, buying state land takes place only via “open” auctions or tenders.

In other Ukrainian cities and regions, where government officials are more even-handed, anyone interested in obtaining land for construction purposes should insist on a buyout clause in their lease agreements to prevent any future ambiguities.

## B. Acquiring a Ukrainian Company with Property Rights

From a legal perspective, the acquisition of a Ukrainian company (or a share therein) that possesses land rights is not the same as signing a land sale-purchase agreement. Yet, the company’s new shareholder exercises the same rights over the land (and other company assets, if any) as any rightful Ukrainian landowner. This investment avenue is widely used by foreign companies seeking to bypass the notorious Kiev City Administration (see section II, below).

In such cases, we highly recommend that any investor conduct full legal and financial due diligence, focusing on the target company’s property rights, before assuming its existing debts and other obligations.

## II. Barriers to Entry

As explained in greater detail in the next chapter, the single biggest impediment to entering the construction arena to date has been the city government. Specifically, former Mayor Omelchenko’s office and the Council of People’s Deputies, which allocate land for construction. During their heyday, they would hand out the choicest plots of central Kiev land to an inner circle of people, presumably in exchange for something of value.

For example, a company called “Mars-1” (with two founders and no employees or track record) mysteriously obtained two prime land plots in a sole-source deal; another well-connected company, “KievVisotBud,” obtained *Dnepr* River frontage on Obolon without any auctions or tenders. Many of the “insider” companies had no intentions to actually build anything, but simply tried to sell their

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