

TO: Clients and Friends of the Firm

FR: Frishberg & Partners

RE: The Land Code

I. Introduction

While no shots were fired from the proverbial battleship Aurora, the passing of Ukrainian land into the hands of the “peasants” was accompanied by its own mini-revolution: on the day Parliament was to vote on the adoption of a new Land Code, Communist factions surrounded the podium in a futile effort to block the deputies from casting their votes. On October 25, 2001, however, the Parliament finally adopted a new Land Code, which was subsequently signed by the President. Since then, many have dubbed this event as the “Great October Land Revolution.”

According to the Land Code, land is finally deemed as an “object of private ownership rights.” In other words, landowners have the right to sell, exchange, donate or pledge their land plots. Unfortunately, these valiant provisions they do not have an immediate effect for all landowners: a moratorium on the sale of agro-industrial land, which came into effect on January 1, 2007, specifically prohibits anyone from selling and/or changing land allocation of their farmland, including OSG. Thus, the owners of agricultural lands will not be able to exercise these rights until January 1, 2008, when the moratorium is due to be lifted. Despite the temporary moratorium, with agricultural land in the hands of private landowners and the introduction of a new law governing mortgages of land, the quality and condition of such land is likely to improve in the near future.

With this brief overview in mind, below we discuss in further detail the impact of the Land Code on foreign investment.

II. Discussion

Since January 1, 2002, the Land Code has taken full effect in Ukraine, expanding the rights of foreign governments, foreign legal entities, foreign citizens and persons without citizenship in the sphere of land rights. While this expansion of land rights is significant, it does not give the green light to foreign investors to take the fertile, black earth of Ukraine. In fact, the Land Code still contains certain limitations on the purchase of land by foreign governments and investors alike.

The Land Code places land into several categories, including agricultural land, land for residential and public construction, natural reserve lands, historical-cultural lands, water and forest reserves, recreational lands, lands designated for sanitary/health purposes (i.e., health resorts, sanatoriums)

and, finally, lands for industrial, transport, communication, energy, defense and other purposes. The Land Code permits land to be transferred from one category to another upon a decision of the executive powers or bodies of local self-governance to transfer such land into ownership, use, the historical-cultural fund or natural reserve fund. If land is owned by a citizen or legal entity, the category of such land may be changed upon the initiative of such citizen or legal entity. This is quite important as many attractive land plots are not currently designated for private or business use (i.e., they are designated to other zoning areas).

There are three categories of land, which are of most importance for foreign investors and governments: agro-industrial, industrial and residential land. Importantly, the Land Code strictly prohibits foreign citizens, legal entities and governments from acquiring agricultural lands into ownership. Thus, lease arrangements are the only way for foreign investors to get access to agro-industrial land (including land for personal farming or gardening). Notwithstanding this restriction and the Land Code's moratorium on the sale of agricultural land until 2008, Ukrainian owners of agricultural land may still use their agricultural land plots as security in order to obtain credit or loans.

Interestingly, a foreign legal or natural entity may receive agricultural land into inheritance. However, such land will be subject to alienation within one year from the time of inheritance or the ownership rights thereto will be revoked. While the importance of agro-industrial land should not be underestimated, an analysis of the possibilities within the agricultural sphere is beyond the scope of this discussion. Interestingly, despite heavy lobbying, there still have been no significant movements towards the liberation of agricultural lands for purchase by foreign investors. Therefore, savvy foreign investors are forced to seek loopholes through which they may gain access to agricultural land once this prohibition is lifted.

As a general overview, residential land includes land plots within populated areas, which are used for construction of residential buildings, public constructions and other structures of public use. Industrial land includes lands provided for the allocation and exploitation of principal and auxiliary buildings and structures of industrial, mining, transportation and other enterprises, including their means of access, communication networks, administrative-infrastructure buildings and other structures.

A. Ownership Rights to Land

Under the Land Code, the right to land ownership includes the rights of possession, use and disposal of land plots, which are acquired and exercised on the basis of the Ukrainian Constitution, the Land Code and other laws issued in accordance therewith. For the first time since Ukraine's independence, the Land Code clearly provides that land can be privately owned.

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