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Comparative
Legal Guides**



Practical cross-border insights into real estate law

**Real Estate
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1 Real Estate Law

1.1 Please briefly describe the main laws that govern real estate in your jurisdiction. Laws relating to leases of business premises should be listed in response to question 10.1. Those relating to zoning and environmental should be listed in response to question 12.1. Those relating to tax should be listed in response to questions in Section 9.

There are three main codified laws governing real estate: the Civil Code; the Commercial Code; and the Land Code. These Codes regulate title to real estate (freehold, leasehold, servitudes, emphyteuses), acquisition, encumbrances and contractual regulations.

There are also the following specific laws:

- the Law “On State Registration of Proprietary Rights to Real Estate and their Incumbrances” governing the state registration of the real estate (including land, encumbrances, a special propriety right to a future real property, etc.);
- the Law “On Land Lease”, which is the main law leasing the land;
- the Law “On Management of State-Owned Properties”, the Law “On Privatisation of State-Owned and Communal Property”, and the Law “On Public and Private Partnership”, which introduce peculiarities of transactions with the state-owned and communal properties;
- the newly adopted Law “On Ensuring Proprietary Rights to Real Property that will be Erected in the Future” introducing the features of the sale and purchase of buildings to be constructed; and
- the Law “On Associations of Co-Owners of Multi-Apartment Houses” governing the rights of the co-owners to the common parts of the residential building.

In addition, there are a number of laws to be considered with respect to, *inter alia*, taxation, anti-trust, sanction regime, restrictions related to the state of martial law in Ukraine, which can materially affect a real estate transaction.

1.2 What is the impact (if any) on real estate of local common law in your jurisdiction?

The Ukrainian legal system is governed by civil law and common law has no substantial impact on real estate. Where the law requires additional interpretation (e.g. discrepancies or legal gaps), the case law of Supreme Court can be applied.

1.3 Are international laws relevant to real estate in your jurisdiction? Please ignore EU legislation enacted locally in EU countries.

As in most countries, the real estate in Ukraine is governed by the local law.

2 Ownership

2.1 Are there legal restrictions on ownership of real estate by particular classes of persons (e.g. non-resident persons)?

It should be noted that Ukrainian law differentiates between the ownership of land and the ownership of buildings, as both are considered real estate under Ukrainian law. There are no legal restrictions on ownership of buildings and constructions in Ukraine. Thus, foreign and domestic individuals and/or legal entities are equal in their rights.

At the same time, the acquisition of freehold to the land is subject to certain restrictions and limitations. In particular, foreign individuals and legal entities are entitled to purchase non-agricultural land in case of acquisition in the following cases: simultaneously with acquisition of buildings located thereon or greenfield land for development within settlements.

Acquisition of the freehold to the agricultural land by foreign individuals or entities (either directly or indirectly) is prohibited unless otherwise approved via referendum, post-2023.

3 Real Estate Rights

3.1 What are the types of rights over land recognised in your jurisdiction? Are any of them purely contractual between the parties?

The following types of rights over land are recognised in Ukraine:

- ownership;
- usage right that can be both contractual (lease agreement) or statutory;
- right of permanent use of public land (inheritance from soviet times);
- emphyteusis (right to use the land for agricultural purposes);
- superficies (right to use the land for development purposes); and
- land servitude (easement).

All of these rights are subject to registration and are considered to be established upon registration. The only exception is

lease right to a property (buildings) if established for less than three years. In this case, this lease right is poorly contractual.

3.2 Are there any scenarios where the right to land diverges from the right to a building constructed thereon?

A legacy of from the Soviet past is that the right to land indeed is separate from the right to a building constructed thereon. It is often the case that buildings were developed on communal or state land and they are in private ownership whereby the land remains state or communal. The building's owner has the right to lease or buy such land.

At the same time, as per Ukrainian law, the owner of a property will own both the land and building. In the case of the buyer purchasing a building, he also acquires the seller's title to the land plot underlying it (be it freehold, leasehold, etc.).

3.3 Is there a split between legal title and beneficial title in your jurisdiction and what are the registration consequences of any split? Are there any proposals to change this?

There is no split between legal title and beneficial title in Ukraine.

4 System of Registration

4.1 Is all land in your jurisdiction required to be registered? What land (or rights) are unregistered?

There are two registers in Ukraine: one is the land cadaster, which concerns the physical characteristics of the land, (i.e. boundaries, coordinates, land designation, limitations, and, most importantly, the cadaster number); and the real estate register, under which the right to the land plot is registered, once it has been registered in the land cadaster.

As from 2013, it is mandatory to register all titles to land and buildings as well as related encumbrances in the State Register of Proprietary Rights to Real Estate ("Real Estate Register").

The titles established prior to 2013 and not registered are recognised. Transactions with non-registered land or buildings are, however, possible only after their registration in the Real Estate Register.

4.2 Is there a state guarantee of title? What does it guarantee?

There is no state guarantee of title in Ukraine. However, the information about real estate provided in the Real Estate Register is assumed to be objective, complete, and correct. The state registrars are liable for the losses caused to natural individuals and/or legal entities. The purchaser may rely on the information entered in the Real Estate Register while having disputes in court.

4.3 What rights in land are compulsorily registrable? What (if any) is the consequence of non-registration?

All proprietary rights to land derived from ownership should be registered and they are considered to be established, transferred or terminated only upon state registration. Such rights include servitudes, emphyteusis, superficies, right of permanent use of public land, and lease (sublease) of the land plot.

4.4 What rights in land are not required to be registered?

The pre-emptive right to buy or lease the land is not required to be registered. Also, the interested party may require such registration. In addition, the lease rights to buildings less than three years do not require registration.

4.5 Where there are both unregistered and registered land or rights is there a probationary period following first registration or are there perhaps different classes or qualities of title on first registration? Please give details. First registration means the occasion upon which unregistered land or rights are first registered in the registries.

Under Ukrainian law, there is no probationary period following first registration as well as any classes or qualities of title on first registration.

4.6 On a land sale, when is title (or ownership) transferred to the buyer?

The title is transferred at the time of registration in the Real Estate Register.

4.7 Please briefly describe how some rights obtain priority over other rights. Do earlier rights defeat later rights?

As almost all proprietary rights to real estate are subject to registration in Ukraine, the registered rights have priority over the rights that have not been registered. Earlier registered rights will also have an impact on the rights registered afterwards.

5 The Registry / Registries

5.1 How many land registries operate in your jurisdiction? If more than one please specify their differing rules and requirements.

In Ukraine, there are two registers related to real estate, in particular: (i) the Real Estate Register, which contains data on real estate rights and encumbrances with respect to both land and buildings; and (ii) the land cadaster, which contains details of the land plot (area, address, boundaries, designated use, restrictions, cadaster number, etc.).

The registers are interlinked and, for example, the title to a land plot can only be registered in the Real Estate Register if details of that land plot have been already registered in the land cadaster and the land plot has been assigned with a cadaster number.

5.2 How do the owners of registered real estate prove their title?

The owners of registered real estate prove their title by receiving an extract from the Real Estate Register.

5.3 Can any transaction relating to registered real estate be completed electronically? What documents need to be provided to the land registry for the registration of ownership right? Can information on ownership of registered real estate be accessed electronically?

In 2013, Ukraine started digitalisation of its real estate market and gradually launched electronic registers with information on the whole life cycle of real estate (starting from land, its development and up to the registration of the title to buildings). In certain cases, there is a procedure allowing the electronic registration of the title to real estate (for instance, title to newly constructed individual residential buildings, ownership acknowledged by a court). However, during the state of martial law, such procedure has been suspended.

At the same time, no real estate transaction can be executed electronically. Any real estate transaction requires notarisation. The notary has access to the Real Estate Register and enters the information about the transaction into the Real Estate Register.

The list of documents required for ownership registration usually depends on the type of transaction, the parties, and the type of property (buildings, land, special right to future real estate, etc.). As a rule, a person would have to present to the notary or state registrar the title document and personal identification documents in order to enter the information in the Real Estate Register.

The Register is held in an electronic format and information on ownership can be accessed electronically. However, during the state of martial law in Ukraine, the information can be obtained only through a notary or a state registrar.

5.4 Can compensation be claimed from the registry/registries if it/they make a mistake?

Yes, please refer to question 4.2 above.

5.5 Are there restrictions on public access to the register? Can a buyer obtain all the information he might reasonably need regarding encumbrances and other rights affecting real estate and is this achieved by a search of the register? If not, what additional information/process is required?

The data from the registers is publicly available and can be obtained by anyone online for a small fee. However, since the martial law in Ukraine, access to the most registers has been restricted and such information can only be obtained through a notary or with the request to authorised bodies.

6 Real Estate Market

6.1 Which parties (in addition to the buyer and seller and the buyer's finance provider) would normally be involved in a real estate transaction in your jurisdiction? Please briefly describe their roles and/or duties.

Assuming the land is registered, the transaction would involve a notary who has access to the Real Estate Register. The transaction can be reflected in the Real Estate Register by the notary on the same day as the certification of the transaction documents.

Sale of real estate requires an evaluation report that shall be order prior to transaction.

Non-registered land firstly requires the involvement of certified land engineers who prepared technical documentation on

the land plot and made a submission to the land cadaster. Once the land plot is registered in the cadaster, the land can be transacted as mentioned above with the involvement of a notary.

6.2 How and on what basis are these persons remunerated?

A notary fee is equal to 1% of the contract price and the evaluation fee is subject to commercial negotiation.

6.3 Is there any change in the sources or the availability of capital to finance real estate transactions in your jurisdiction, whether equity or debt? What are the main sources of capital you see active in your market?

The acquisition of a newly constructed residential property is typically financed by equity, whilst commercial real estate is typically financed by debt. Before the war, both equity and debt were available.

6.4 What is the appetite for investors and/or developers to invest in your region compared to last year and what are the sectors/areas of most interest? Please give examples.

Due to Russia's aggression, Ukrainian non-residential and residential real estate, including other infrastructure, was significantly damaged. As of September 2022, the amount of documented damages has reached \$127 billion. Now, Ukraine is doing its best to develop investment incentives in the industrial sector, as this sector is vital for the recovery of the Ukrainian economy. Such incentives include the simplification of small-scale privatisation, a special tax and customs regime for industrial parks, and special regulations for construction of the industrial properties with high added value, etc. It is expected that, in the post-war period, the main investment interest will be concentrated in industrial areas, including energy, agri-food, waste-processing plants, logistic real estate, and other heavy and light manufacturing.

6.5 Have you observed any trends in particular market sub sectors slowing down in your jurisdiction in terms of their attractiveness to investors/developers? Please give examples.

The war started by Russia in February 2022 caused a significant decrease of business income and the commercial real estate market (retail, offices, entertainment) has slowed down significantly. This tendency might not improve until the end of the war or stabilisation of the situation.

7 Liabilities of Buyers and Sellers in Real Estate Transactions

7.1 What (if any) are the minimum formalities for the sale and purchase of real estate?

Under Ukrainian law, a sale and purchase agreement of real estate (land plots, buildings) must be executed in the form of a notary deed and title to property must be registered in the Real Estate Register.

The parties shall also present an evaluation report to the notary.

7.2 Is the seller under a duty of disclosure? What matters must be disclosed?

There is no general duty of disclosure under Ukrainian law, save for information about rights of third parties affecting the property (i.e., mortgage, lease, pre-emptive rights, etc.). Should the seller hide such information, the buyer may request the termination of the agreement. To eliminate risks associated with the real property in question, the buyer should order relevant due diligence (legal, technical) of the assets and other related matters.

7.3 Can the seller be liable to the buyer for misrepresentation?

Yes, if the seller intentionally misled the buyer regarding “*circumstances that are of significant importance*”, namely: if he denies the existence of circumstances that may prevent the execution of the agreement or omits to provide the information of their existence. Significant importance means the nature of the deed, the rights and obligations of the parties, such qualities of the property that significantly reduce its value or the possibility to use for its intended purpose. In this case, the buyer may demand invalidation of the agreement by the court and reimbursement of damages in a double amount.

7.4 Do sellers usually give any form of title “guarantee” or contractual warranties to the buyer? What would be the scope of these? What is the function of any such guarantee or warranties (e.g. to apportion risk, to give information)? Would any such guarantee or warranties act as a substitute for the buyer carrying out his own diligence?

Recent changes to the Civil Code of Ukraine allow for the inclusion into an agreement of warranties on circumstances that are essential for entering into, execution, or termination of that agreement. Typically, such warranties pertain to: good and valid title to the real estate and its technical condition; encumbrances over real estate; pending court proceedings; and rights of third parties to the real estate, etc. In the case of their violation, the buyer may hold the seller liable and request for the reimbursement of damages caused or other remedies agreed by the parties (for instance, termination of the agreement, decrease in price). The guarantees and warranties are in any case advisable to include into the agreement; however, it makes sense to carry out your own due diligence, as sometimes even the seller might not be aware of all issues that might be discovered in the acquisition chain.

7.5 Does the seller retain any liabilities in respect of the property post sale? Please give details.

After the sale, seller remains liable for the warranties provided in the agreement. Please also refer to questions 7.3 and 7.4 above.

7.6 What (if any) are the liabilities of the buyer (in addition to paying the sale price)?

There are no additional liabilities of the buyer.

8 Finance and Banking

8.1 Please briefly describe any regulations concerning the lending of money to finance real estate. Are the rules different as between resident and non-resident persons and/or between individual persons and corporate entities?

In Ukraine, the Civil Code is the main law that governs loan and credit agreements. Also, investments into real estate are regulated by the Law “On Joint Investment Institutes”, the Law “On Financial and Credit Mechanisms and Property Management in Housing Construction and Real Estate Transactions”, and the Law “On Ensuring Proprietary Rights to Real Property that will be Erected in Future”. The National Bank of Ukraine can also issue specific regulations on those agreements. As for the imperative requirements, loan (save for certain exceptions granted to individuals) and credit agreements must be executed in a written form. Also, there are no different rules or restrictions for residents/non-residents and/or individual persons and corporate entities with respect to acquisition of real estate, save for land plots (please refer to question 2.1 above for details).

8.2 What are the main methods by which a real estate lender seeks to protect itself from default by the borrower?

A mortgage over real estate is the main method used by lenders to secure loan repayments. The mortgage agreement must be certified by the notary; the mortgage itself must be registered with the Real Estate Register. As an option, the lender may ask for a pledge over all collateral assets or shares owned by the borrower (if corporate owner). If the bank considers such methods insufficient, the borrower can also provide surety from persons with good reputation. In addition, the borrower and the lender may enter into an agreement on a pledge of the borrower’s bank accounts, so that the lender can easily withdraw the debts.

8.3 What are the common proceedings for realisation of mortgaged properties? Are there any options for a mortgagee to realise a mortgaged property without involving court proceedings or the contribution of the mortgagor?

If the borrower fails to pay, the lender has the following options: (i) to initiate out-of-court settlement (if such option is agreed in the mortgage agreement); (ii) obtain notarial writ for execution by the enforcement officer; or (iii) court proceeding. Under the out-of-court settlement, the lender may either (i) take over the mortgaged property, or (ii) sell the property to a third parties. To launch an out-of-court settlement, the lender must send to the borrower a 30-day prior cure notice, save for when a delay caused by such notification may result in the destruction, damage, or loss of the mortgaged property. Foreclosure through notarial writ or court proceeding is executed through public auction.

8.4 What minimum formalities are required for real estate lending?

Please refer to questions 8.1 and 8.2 above.

8.5 How is a real estate lender protected from claims against the borrower or the real estate asset by other creditors?

The most common protection is a registered security interest (encumbrance) to the collateral. It secures the lender’s priority right to the collateral over other creditors. If there is more than one registered encumbrances over the same asset, then the highest priority would be the one that has been registered first.

8.6 Under what circumstances can security taken by a lender be avoided or rendered unenforceable?

Under Ukrainian law, there are effective tools to protect the lender and to ensure his rights over mortgaged property, including the lender’s right to early foreclosure in the case of bankruptcy proceedings against the borrower and the priority right over other encumbrances (including seizures) registered later.

However, if there is a seizure imposed over the property as evidence in criminal proceeding and transferred to the National Agency of Ukraine for the finding, tracing and management of assets derived from corruption and other crimes (“ARMA”), the foreclosure over the property will be impossible. Even if the ownership passes to the lender, the ARMA will still continue controlling and managing the property.

The mortgage can also be declared for invalid in court if legislative requirements were not met. In this case, the mortgage will be unenforceable.

8.7 What actions, if any, can a borrower take to frustrate enforcement action by a lender?

The borrower can challenge foreclosure over the real estate property in court, irrespective which option was chosen by the lender (out-of-court settlement, court judgment), which, in turn, will complicate the foreclosure until the court case is pending.

8.8 What is the impact of an insolvency process or a corporate rehabilitation process on the position of a real estate lender?

Secured creditors enjoy a special status within the insolvency and bankruptcy proceedings; their claims shall be satisfied from the value of the collateral out of the general lines of priority, and respective collateral cannot be used other than for the satisfaction of such creditor’s claims. If the value of the collateral is not sufficient for discharge of the entire indebtedness, the rest of the claims shall be satisfied in general order.

However, the secured creditors have little influence on the administration of the debtor and the relevant decision-making, hence a creditor might choose to surrender its secured interest if exercising control over the debtor is more preferable.

Please refer to question 8.6 above for further details.

8.9 What is the process for enforcing security over shares? Does a lender have a right to appropriate shares in a borrower given as collateral? If so, can shares be appropriated when a borrower is in administration or has entered another insolvency or reorganisation procedure?

In the case of a Ukrainian limited liability company, the pledge of shares (participatory interests) can be enforced through an out-of-court enforcement (such as the appropriation of shares

granted as collateral or direct/public sale of the collateral), or a court/arbitration-sanctioned enforcement. A pledge over the shares in a joint-stock company is usually more complex as it involves a depository institution as a party to the pledge agreement and must comply with statutory requirements and the depository’s internal regulations with respect to the blocking, unblocking and transfer of securities. In practice, appropriation of shares can sometimes be problematic if it requires cooperation from the pledgor and/or other shareholders of the company. It also may require clearance from the competition authority (if certain criteria/thresholds are met). The enforcement into shares may be simplified by issuing a non-revocable power of attorney to re-register the pledged shares in the name of the lender.

Administration is not a separate procedure under Ukrainian laws, but rather part of the insolvency procedure. Given that the debtor is usually subject to a comprehensive moratorium during such period, appropriation of shares and other enforcement of collateral is only possible within the insolvency procedure (unless the debtor has not been declared bankrupt or sanated within 170 days from the introduction of administration).

9 Tax

9.1 Are transfers of real estate subject to a transfer tax? How much? Who is liable?

There is no separate transfer tax.

9.2 When is the transfer tax paid?

Please refer to question 9.1 above.

9.3 Are transfers of real estate by individuals subject to income tax?

As a rule, the transfer of real estate is subject to income tax by individuals, although with certain exemptions.

Income tax does not apply to the first sale during one calendar year of the following assets: residential buildings; premises; garden (cottage) houses; land plots of certain areas; and agricultural land acquired as the result of privatisation (“Specific Assets”). These types of assets must be owned by an individual seller for, at least, three years.

The next sale of the Specific Assets or sale of the other real estate properties by residents of Ukraine is subject to income tax, as follows:

Type of assets	Quantity of transaction within one year	Rate
Any real estate properties	First sale	5%
Specific Assets	Second sale	5%
Any real estate properties	Second and next sale	18%
Specific Assets	Third and next sale	18%

Some of the above exclusions are also applicable to foreign individuals. In particular, if the sale of Specific Assets is done after the period of three years following the date of their purchase/acquisition by foreign individuals, the income of such individuals shall be exempt from the income tax, as well as the military levy. Otherwise, the income must be subject to income tax (18%/military levy (1.5%) regardless of the number of sales within one year.

Foreign individuals must also obtain personal tax codes from Ukrainian tax authorities to properly pay income tax/military levy.

9.4 Are transfers of real estate subject to VAT? How much? Who is liable? Are there any exemptions?

The transfer of real estate is subject to 20% VAT, save for transactions with undeveloped land plots and/or residential buildings/premises (depending on their reflection in the accounting system). The payment of VAT depends on the parties to the transaction (whether they are legal entities or individuals and if they are VAT payers). The amount of VAT is usually included in the contractual price and is paid by a seller within the statutory deadline.

9.5 What other tax or taxes (if any) are payable by the seller on the disposal of a property?

Real estate transactions are subject to the following taxation and charges depending on the contractual parties:

Transactions between legal entities

Seller: 18% corporate income tax or 15% withholding tax (see below).

Buyer:

- 20% VAT (please refer to question 9.4 above for details);
- 1% pension fund duty (excluding sale of land plots);
- 1% stamp duty (or notary fee), unless otherwise agreed with seller; and
- administrative fee for title registration amounting from 0.1–5% of the living wage (around EUR 7 up to EUR 340).

Transactions between individuals

Seller: personal income tax (please refer to question 9.3 above for further details) and 1.5% of a military levy.

Buyer:

- 1% pension fund duty (excluding sale of land plots);
- 1% stamp duty (notary fee) unless otherwise agreed with the seller; and
- administrative fee for title registration.

Foreign legal entities are subject to 15% withholding tax on the Ukrainian-sourced income unless otherwise established by a relevant double taxation treaty with Ukraine.

9.6 Is taxation different if ownership of a company (or other entity) owning real estate is transferred?

Under Ukrainian law, the share deals are more attractive from the taxation perspective, due to the following: (i) share deals are not subject to VAT; and (ii) pension fund duty is also not payable and notary fees are not linked to the transaction value. However, capital gains derived from the indirect or direct sale of shares or corporate rights by a foreign company in a Ukrainian company (so-called “*property rich company*”) may be subject to withholding tax at the rate of 15%. A property rich company means a company where shares or corporate rights derive 50% or more from the value of real estate property located in Ukraine. In this case, such foreign company must be registered with the Ukrainian tax authorities.

9.7 Are there any tax issues that a buyer of real estate should always take into consideration/conduct due diligence on?

The buyer should check whether the land tax has been paid and

whether there are no encumbrances of the tax authority over the real estate due to unpaid taxes.

10 Leases of Business Premises

10.1 Please briefly describe the main laws that regulate leases of business premises.

The main laws that govern leases (including lease of business premises) are the Civil Code of Ukraine (Arts 759-78 and, 793-797) and the Commercial Code of Ukraine (Art. 283-289). The Law of Ukraine “On lease of state-owned and municipal property” applies to state-owned and municipal real estate.

10.2 What types of business lease exist?

Ukrainian law provides for regular leases and financial leases. Sale and lease back transactions are also possible.

10.3 What are the typical provisions for leases of business premises in your jurisdiction regarding: (a) length of term; (b) rent increases; (c) tenant’s right to sell or sub-lease; (d) insurance; (e) (i) change of control of the tenant; and (ii) transfer of lease as a result of a corporate restructuring (e.g. merger); and (f) repairs?

According to our experience and law requirements, typical provisions for lease of business premises in Ukraine are as follows:

Lease term

There are no restrictions regarding term of lease and term usually varies from five to 10 years depending on the area and tenant’s policies. Leases with a term of three or more years are subject to notarisation; lease rights must be registered in the Real Estate Register.

Rent increases

Typically, parties agree on fixed (basic) rent and, sometimes, a percentage from the tenant’s turnover income gained in the leased premises. Though all payments must be performed in Ukrainian currency (*hryvnia*), the rent is typically linked to USD or EUR currency, which allows for the national currency devaluation risk to be avoided. Also, parties may agree on rent indexation by certain percentages after a certain period.

Tenant’s rights to sell or sub-lease

The assignment of the lease or sub-lease is subject to the landlord’s approval unless parties agreed otherwise (for example, intergroup assignment or sub-lease for certain commercial activities).

Insurance

It is not mandatory to insure the real estate property. However, usually, a landlord is liable for insurance of the building, while a tenant provides liability insurance.

Change of control of the tenant

Usually, the landlords do not insist on including a change of control clause in a lease agreement. This is more the prerogative of the tenants.

Transfer of lease as a result of a corporate restructuring (e.g., merger)

Formally, in the case of a tenant restructuring all of its rights, including its lease, these will transfer to tenant’s successor.

Therefore, it should not be a problem for the landlord if there is no change in the commercial activity of the tenant or its trademark. If not, the landlord may deny cooperating with the successor and claim for termination of the agreement.

Repairs

Usually, the landlord is liable for structural alterations while the tenant bears responsibility for non-structural alterations and repairs. The tenant's repairs in the premises are usually subject to the consent of the landlord.

10.4 What taxes are payable on rent either by the landlord or tenant of a business lease?

Income derived by the landlord under the commercial lease is subject to corporate income tax (the tax rate depends on the tax status of the landlord and is usually equal to 18%). The rent is also subject to 20% VAT, which is included in the rent payments and paid by the tenant.

10.5 In what circumstances are business leases usually terminated (e.g. at expiry, on default, by either party etc.)? Are there any special provisions allowing a tenant to extend or renew the lease or for either party to be compensated by the other for any reason on termination?

Generally, the lease agreement may be terminated on the party's default, or in case of destruction of the leased object. Under the Civil Code, the landlord may terminate the agreement if the tenant fails to pay the rent within three consecutive months. Also, landlord can terminate the agreement should the tenant transfer the premises into a sublease without permission, use it in contrary to its designation, or create a situation that may cause damage to the premises. With respect to the tenant, termination can occur if the premises does not meet the agreed requirements or if the landlord fails to make capital repairs, if such are required. As a matter of practice, the parties usually agree on the termination of/withdrawal from the lease when the tenant interrupts its operation in the leased object or, in case of the landlord, if there are interruptions in supply of utility services, lack of access to the premises, etc.

As a general rule, the lease can be renewed on the same term upon the tenant's prior written notice and subject to parties' agreement on new commercial conditions.

10.6 Does the landlord and/or the tenant of a business lease cease to be liable for their respective obligations under the lease once they have sold their interest? Can they be responsible after the sale in respect of pre-sale non-compliance?

Unless otherwise stipulated in the agreement, change of the property owner does not cause termination of the lease and all rights and obligation thereunder transfer to the new owner. At the same time, from the tax perspective, all advance and deposit payments received by previous landlord are recommended to be transferred back to the tenant, and then repaid to a new landlord.

Assignment of the lease agreement is possible upon the landlord's/tenant's consent and, usually, made as a three-party agreement where the parties regulate all matters related to such assignment. The parties must regulate the liability in the assignment agreement.

If the interest is sold as a share deal, the shareholders (the seller of interest) are not liable under the lease. Only the parties to the lease agreement remain liable.

10.7 Green leases seek to impose obligations on landlords and tenants designed to promote greater sustainable use of buildings and in the reduction of the "environmental footprint" of a building. Please briefly describe any "green obligations" commonly found in leases stating whether these are clearly defined, enforceable legal obligations or something not amounting to enforceable legal obligations (for example aspirational objectives).

As a matter of practice, there are no such provisions in the lease agreements in Ukraine.

10.8 Are there any trends in your market towards more flexible space for occupiers, such as shared short-term working spaces (co-working) or shared residential spaces with greater levels of facilities/activities for residents (co-living)? If so, please provide examples/details.

Recently, co-working spaces in the large cities, such as Kyiv and Lviv, have become quite popular. While, initially, co-working spaces were mainly used by IT companies and individuals, currently, businesses from other spheres also show interest. It is expected that co-working spaces will be even more in demand in the post-war period.

11 Leases of Residential Premises

11.1 Please briefly describe the main laws that regulate leases of residential premises.

The lease of residential premises is regulated by the Civil Code of Ukraine (Arts 759-786 and 810-826).

11.2 Do the laws differ if the premises are intended for multiple different residential occupiers?

There is no differentiation.

11.3 What would typical provisions for a lease of residential premises be in your jurisdiction regarding: (a) length of term; (b) rent increases/controls; (c) the tenant's rights to remain in the premises at the end of the term; and (d) the tenant's contribution/obligation to the property "costs" e.g. insurance and repair?

Typically, the lease agreements of residential premises are quite simple.

- (a) A term of lease is usually between one and three years. The tenant has pre-emptive right to renew the lease (for leases with a term of one or more years). In this case, the landlord shall, three months prior to the date of expiry, give to the tenant an offer to renew or notice of withdraw from such renewal. Otherwise, the lease agreement will be deemed as prolonged.
- (b) The tenant usually pays rent in advance and provides one month of security deposit. The tenant is also obliged to pay utility charges. Rent increase depends on parties' agreements and is, commonly, required by the landlord within renewal of the lease.
- (c) When the lease term expires, the tenant must vacate the premises on the last day of the term.

- (d) Under the law, the tenant is responsible for simple repairs, while the landlord remains liable for capital ones unless agreed otherwise. However, commonly, the tenant takes the premises in lease “as is” and does not conduct any repairs.
- (e) Residential premises are typically transferred into rent furnished.

11.4 Would there be rights for a landlord to terminate a residential lease and what steps would be needed to achieve vacant possession if the circumstances existed for the right to be exercised?

According to Ukrainian law, the landlord can terminate the agreement through the court if the tenant: (i) delays payment for six months or more; (ii) damages the premises; (iii) uses the property contrary to its designation; or (iv) systematically violates the rights and interests of neighbours. The landlord may also demand termination if he is planning to use the premises for his own purposes.

12 Public Law Permits and Obligations

12.1 What are the main laws which govern zoning/permitting and related matters concerning the use, development and occupation of land? Please briefly describe them and include environmental laws.

The law “On Regulation of Urban-Planning Activity” sets the principal framework for planning and development in Ukraine.

The legal framework for environmental protection in the context of construction is provided in the Law “On Environmental Protection” and the Law “On Environmental Impact Assessment”, which has been adopted considering EU directives.

All land in Ukraine is zoned into the following categories: agricultural, residential, and non-residential lands; lands of nature reserve and other environmental protection purposes; lands of health and recreational purpose; lands of historic and cultural purpose; forest lands and water lands; and lands of industrial, transportation, communications, energy, defence, and other related purposes.

Any construction may take place on the land if the intended construction corresponds to the land category and urban-planning documentation. The principal decisions regarding the long-term development within settlements are regulated in the master or zoning plans, while the development of the territories outside of settlements is regulated by the comprehensive plans for the spatial territory development (if such documentation is absent, until 1 January 2025 it is regulated by a detailed plan of the territory). Specific requirements for development are provided in the detailed plans of a territory, which must correspond with the master or zoning plan. Change of the land category is possible only upon development and approval by the municipality of the respective detailed plan of a territory or changes thereto.

The environmental impact assessment is typically required for industrial activity (i.e., oil and gas plants, chemical production, construction of industrial parks, etc.). It is also required if the agricultural land is changed for the purpose, which in turn requires environment impact assessment.

12.2 Can the state force land owners to sell land to it? If so please briefly describe including price/compensation mechanism.

In Ukraine, the state or municipal authorities can force

landowners to sell land to them if there is: (i) purchase for public needs; or (ii) seizure for public necessity, which apply in exceptional cases (for instance, for ensuring national security; infrastructure projects). These procedures are governed by the Land Code and the Law “On Alienation of Privately Owned Land Plots and Other Immovable Property Located on them for Public Needs or Public Necessity”. Purchase for public needs depends on cooperation with the owner and his consent to sell. The purchase price includes the value of the properties, which must be based on an expert appraisal, as well as reimbursement of losses caused. If the owner refuses to sell, the only way to push the owner is to obtain a respective court decision; hence, as long as court proceedings are pending, no forced sale can take place.

12.3 Which bodies control land/building use and/or occupation and environmental regulation? How do buyers obtain reliable information on these matters?

The control on land allocation and further use/occupation is carried out by the relevant state authorities (StateGeoCadastre of Ukraine). The construction-related matters and their compliance with the land and urban-planning documentation are controlled by the State Inspection for Architecture and Urban Planning of Ukraine (“SIAUP”). The land and environmental protection are the responsibility of the Ministry of Environmental Protection and Natural Resources of Ukraine and its local subdivisions.

Typically, a buyer can obtain reliable information from the public registers, in particular, the land cadaster and the register of construction permits. The environmental assessments are also kept in a separate register. However, during the stare of marital law the access to the most public registers is restricted, and information can be obtained under written request.

12.4 What main permits or licences are required for building works and/or the use of real estate?

Permit documentation varies depending on the class of consequences of the construction, namely: CC1 (minor); CC2 (medium); and CC3 (significant). The construction of a building with CC2/CC3 class of consequences requires:

- internal data (urban-planning conditions and limitations and utility conditions);
- expert’s report on the design documentation;
- report on environmental impact assessment (required usually for certain industrial activities);
- permit for construction works; and
- commissioning compliance certificate.

Minor constructions (CC1) can be built following the submission of a construction declaration and used following commissioning declaration.

12.5 Are building/use permits and licences commonly obtained in your jurisdiction? Can implied permission be obtained in any way (e.g. by long use)?

Once the building has been commissioned in accordance with regulations, it can be used without any further usage permits.

12.6 What is the typical cost of building/use permits and the time involved in obtaining them?

Obtaining permits on construction is free of charge. The state

duty for the commissioning of buildings (CC2/CC3) will cost 4.6–5.2% of the living wage (approximately EUR 330–372). The timeframe for obtaining permits necessary for the commencement of construction varies from two to six months depending on complexity, whilst commissioning can take one to two months.

12.7 Are there any regulations on the protection of historic monuments in your jurisdiction? If any, when and how are they likely to affect the transfer of rights in real estate or development/change of use?

Historic monuments are under protection and governed by the Law “On Protection of Cultural Heritage”. The construction, restoration, sale, and transfer into lease of such property requires approval by state or local authorities depending on their importance (state or local). Their owners are obliged to enter into protection agreements regulating the main commitments of the owners for their protection.

12.8 How can, e.g., a potential buyer obtain reliable information on contamination and pollution of real estate? Is there a public register of contaminated land in your jurisdiction?

No, there is no public document. Before construction, the buyer usually conducts private surveys.

12.9 In what circumstances (if any) is environmental clean-up ever mandatory?

Under Ukrainian law, a person (owner, entrepreneur in the course of its commercial activity, etc.) who causes the pollution of natural resources (water, land, forests, etc.) will be obliged to reimburse damages and/or carry out effective measures for their elimination, as well as pay penalties.

12.10 Please briefly outline any regulatory requirements for the assessment and management of the energy performance of buildings in your jurisdiction.

Under the Law “On Energy Efficiency of Buildings”, a certificate of energy efficiency must be obtained prior to the new construction/reconstruction/capital improvement of certain types of buildings (i.e., CC2/CC3 class consequences buildings, state-owned buildings with a heated area of more than 250m², etc.).

13 Climate Change

13.1 Please briefly explain the nature and extent of any regulatory measures for reducing carbon dioxide emissions (including any mandatory emissions trading scheme).

Following the Paris Agreement and European Green Deal, in July 2021, the Government of Ukraine has updated its climate

change objectives in the Nationally Determined Contribution (“NDC2”). According to the plan, Ukraine shall reduce its greenhouse gas emissions by 35% by 2030, compared with 1990 levels (CO₂ emissions should be reduced by 65%). In addition, Ukraine aims to achieve climate neutrality by 2060.

The Government is in the process of establishing regulations for issuing and trading certificates of origin for reduced carbon emissions.

Among the main measures to achieve these objectives in the next 10 years are the modernisation of energy and industrial enterprises, development of renewable energy sector, thermal modernisation of buildings, etc.

Also, operators dealing with emissions of pollutants are obliged to obtain respective permits/licences and pay environmental tax.

13.2 Are there any national greenhouse gas emissions reduction targets?

Please refer to question 13.1 above.

13.3 Are there any other regulatory measures (not already mentioned) which aim to improve the sustainability of both newly constructed and existing buildings?

One of such measures is energy efficiency certification which is mandatory for certain type of new constructions (including reconstruction and capital improvements) (see details in question 12.10 above).

14 COVID-19

14.1 Please detail any laws that govern real estate in your jurisdiction which were introduced in response to the effect of the Coronavirus (COVID-19) pandemic and which remain in place.

To help decrease financial pressure on businesses suffering due to the restrictions in operating during the pandemic, amendments were made to the Civil Code of Ukraine. Under such changes, the tenants that cannot use their leased property are released from the rent (save for real estate taxes and utility charges). In addition, an increase of loan interest was prohibited.



Dr. Oleksiy Feliv is a recognised legal practitioner with 18 years of experience in consulting mainly foreign business in Ukraine. He specialises in large-scale projects in energy/renewables, real estate, construction and infrastructure, involving foreign investment and related project financing. Since summer 2022, Oleksiy has acted as an expert advisor in the Rehousing Ukraine Initiative. Initiated by the Affordable Housing Institute (USA) and supported by INTEGRITES, the initiative aims to help Ukraine readdress the housing and urban redevelopment challenge. Oleksiy is a member of the rehousing policy advisory group to the Ministry for Communities and Territories Development of Ukraine.

Dr. Feliv is ranked as a Leading Individual for Energy, Real Estate and Construction (*The Legal 500 EMEA 2022*), as a Global Leader in Energy – Power/Electricity, Renewables (*Who's Who Legal 2022*) and as a Notable Practitioner for Project Development (*IFLR1000 2021*). He is also recognised for Construction, Energy, Natural Resources, Litigation and Oil & Gas (*Best Lawyers 2022*).

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Tetiana Storozhuk joined INTEGRITES in autumn 2022 as Senior Associate in the Real Estate and Construction practice. She is a real estate law practitioner with 15 years of experience. Her practice has been focused on development, construction and leases across a broad range of areas, including commercial real estate, infrastructure, retail, agribusiness, and others.

Prior to pursuing her path with domestic law firms, Tetiana has obtained multi-faceted experience in the corporate sector. Her career includes managing the Real Estate legal division of one of the largest European grocery retail chains and serving as Head of Legal of a development company based in western Ukraine. Tetiana Storozhuk was admitted to the Ukrainian National Bar Association in 2012.

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