

SIGNIFICANT DEREGULATION DEVELOPMENTS IN UKRAINE'S LEGAL FRAMEWORK

Significant developments have occurred in Ukraine in various fields aimed at facilitating business. On 5 April 2015 the Law of Ukraine "On the Introduction of Amendments to Certain Legislative Acts of Ukraine on the Simplification of Conditions for the Conduct of Business (Deregulation)" No. 191 dated 12 February 2015 (the "Law") came into force. The Law improves regulation of the status of agricultural land, administrative procedures, seizure of electronic media in the course of criminal proceedings, etc.

The table below briefly summarizes major legislative improvements introduced by the Law as well as their comparison to the situation that existed/exists prior to enactment of the Law:

PRIOR TO ENACTMENT OF THE LAW

AFTER ENACTMENT OF THE LAW

AGRICULTURAL LAND

1. The right of legal entities to use personal farming land plots was not clearly provided for in the earlier reading of *the Land Code of Ukraine*. This created considerable uncertainty and apprehension for businesses involved in this field, since a large percentage of land used for commercial agricultural purposes is personal farming land leased from individuals.

According to the amendments to *the Land Code of Ukraine* No. 2768 dated 25 October 2001 and the Law of Ukraine "On Personal Farming" No. 742 dated 15 May 2003, individuals may transfer their personal farming land plots to legal entities for the purposes of commercial agricultural production without the change of their designated purpose.

This amendment confirms the rights of entities active in the business of agricultural production in Ukraine to a large amount of agricultural land they already cultivate and encourages them to enlarge their land banks. It is therefore very important for smooth operation of commercial agriculture actors in Ukraine.

2. The previous reading of the Law of Ukraine "On the Lease of Land" provided for the following:

- 1) Land lease agreements should have contained 11 mandatory provisions

The following amendments were introduced into the Law of Ukraine "On the Lease of Land" No. 161 dated 16 October 1998:

(including the following: conditions for preservation of a land plot, conditions for transfer of the land plot to the lessee, conditions for pledging a land plot or contributing it into a charter capital, etc.) and a total of 5 mandatory annexes. The requirement to include a large number of (sometimes utterly unnecessary and confusing) essential provisions and mandatory annexes into land lease agreements often resulted in a lot of disorder due to different interpretations by various official bodies and conflicting provisions of lower-level legislative provisions.

- 2) Land plots were considered to be transferred at the moment agreed between parties of land lease agreements. However, the agreements were still to undergo mandatory state registration (usually a lengthy procedure) in order to become effective.

For the above reason, lessees usually started working on land plots that have already been transferred but not yet registered (i.e. without acquiring proper lease rights). This put their investments at significant risk in case state registration of leases was subsequently denied.

3. The minimum term of lease for land plots to be used for commercial agricultural production was not provided for in the Ukrainian legislation prior to adoption of the Law. The majority of land lease agreements were usually concluded for short periods of time (around 1 to 3 years) with individuals owning tiny land slots, which required investment of immense resources into repeated re-executions of agreements upon their expiration.

- 1) There are now only three material provisions envisaged for land lease agreements: (i) details of the land plot, (ii) term of lease and (iii) rent amount and rent payment arrangements. No mandatory annexes are provided for.

Absence of at least one of the essential provisions is no longer explicitly stated as a ground for denial of state registration of the lease agreement or its invalidation.

- 2) A land plot is considered to be transferred at the moment of state registration of the relevant land lease agreement.

This new provision removes much of the legal conflict that existed previously. The lessees now have greater degree of confidence that land plots that they obtain into lease have been transferred to them on the basis of already fully effective land lease agreements.

One of the amendments to *the Land Code of Ukraine* and the Law of Ukraine "On the Lease of Land" provides that the term of lease of agricultural land plots for, inter alia, commercial agricultural production should be at least 7 years.

This development is expected to result in significant reduction in the amount of resources expended by businesses on execution of a land lease agreement with land owners.

FRANCHISING AGREEMENTS

4. Until the Law was enacted franchising agreements had had to be registered with the state registrar of companies in order to become effective. This requirement could not have been complied with by businesses due to absence of the officially enacted procedure for such registration. This resulted in the fact that the concluded franchising agreements had no clear and definite status.

The Civil Code of Ukraine No. 435 dated 16 January 2003 was amended to provide that franchising agreements between legal entities are not subject to state registration in Ukraine.

This amendment is due to encourage businesses to use franchising more actively as a viable business tool.

SEIZURE OF ELECTRONIC MEDIA

5. Under the previous reading of the *Criminal Procedure Code of Ukraine* electronic data storage could have been (and often indiscriminately was) easily seized if law enforcement officials revealed relevant information thereon in the course of criminal proceedings.

The Criminal Procedure Code of Ukraine No. 4651 dated 13 April 2012 was amended to provide that electronic data storage devices (hard drives, etc.) may be seized in the course of criminal proceedings **only** if such individual devices are clearly identified in the relevant court ruling. Otherwise information contained thereon may only be copied by authorized law enforcement officers.

It is expected that this amendment will make life safer and easier for companies doing their business in Ukraine, and will eradicate the practices of seizing hardware that have been widely employed by the police.

INCORPORATION OF BUSINESSES

6. Prior to enactment of the Law:
- 1) Services in the area of state registration of legal entities and individual entrepreneurs were rendered only by state registrars. It was often difficult to access state registrars due to long lines at their offices and short working hours.
 - 2) Excerpts and extracts from the Unified State Register of Legal Entities and Individual

The Law of Ukraine "*On State Registration of Legal Entities and Individual Entrepreneurs*" No. 755 dated 15 May 2003 was significantly amended to streamline the process of incorporation of businesses:

- 1) Services in the area of state registration of legal entities and individual entrepreneurs may now be also provided by officials of the "centers for provision of administrative services" – local offices where the majority of administrative

Entrepreneurs were available only in paper form and could be obtained only directly from the state registrar within a certain period of time (up to 5 business days).

- 3) Previously, it took up to 3 business days to register a legal entity.

services (obtaining permits/licenses, registering declarations, etc.) are available. This will hopefully eliminate lines that one had sometimes to endure in order to file documents with the registrar.

- 2) Excerpts and extracts from the Register containing the majority of information stored therein may now be obtained instantaneously in electronic form. They have the same legal force as those issued in paper form.
- 3) Businesses should now be registered on the same day the relevant documents are filed by an applicant.

ADMINISTRATIVE SERVICES

7. Prior to enactment of the Law in the field of administrative services (i.e. until 4 October 2015):

- 1) Permits, licenses and administrative approvals may be obtained only through local Permit Centers. This process is reported to be burdensome and poorly managed.
- 2) Ukrainian legislation contains only basic provisions regarding online access to the Portal of Administrative Services. The Portal itself has not become fully operational and does not enable users to obtain permits or licenses online.

Amendments to the Law of Ukraine "On the Administrative Services" (No. 5203 dated 06 September 2012) and the Law of Ukraine "Regulatory Approval System" (No. 2806 dated 06 September 2005) will be enacted starting from 4 October 2015 and provide for:

- 1) Harmonization of the system of provision of permits – starting from October 2015 permits and licenses to businesses will no longer be issued by the Permit Center but may be obtained either at (i) the Centers for Provision of Administrative Services, where the majority of the administrative services available in Ukraine may be obtained, or (ii) directly at the authorized state bodies;
- 2) Improved and more detailed regulation of the procedure for online access to administrative services through the Portal of Administrative Services. It should be possible to file applications and obtain permits and licenses online once the Cabinet of Minister of Ukraine adopts the relevant procedure.

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