

International Comparative Legal Guides



Real Estate 2020

A practical cross-border insight to real estate law

15th Edition

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ICLG.com



ISBN 978-1-83918-016-3
ISSN 1749-4745

Published by

glg global legal group

59 Tanner Street
London SE1 3PL

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Cover image

www.istockphoto.com

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Real Estate 2020

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Norton Rose Fulbright LLP

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From the Publisher

Dear Reader,

Welcome to the 15th edition of *The International Comparative Legal Guide to: Real Estate*, published by Global Legal Group.

This publication provides corporate counsel and international practitioners with comprehensive jurisdiction-by-jurisdiction guidance to real estate laws and regulations around the world, and is also available at www.iclg.com.

This year, one expert chapter focuses on the use of technology and artificial intelligence in real estate legal services.

The question and answer chapters, which in this edition cover 28 jurisdictions, provide detailed answers to common questions raised by professionals dealing with real estate laws and regulations.

As always, this publication has been written by leading real estate lawyers and industry specialists, for whose invaluable contributions the editors and publishers are extremely grateful.

Global Legal Group would also like to extend special thanks to contributing editor Dan Wagerfield of Norton Rose Fulbright LLP for his leadership, support and expertise in bringing this project to fruition.

Rory Smith
Group Publisher
Global Legal Group

Preface

It is a great pleasure to have been asked to be contributing editor of this, the 15th edition of *The International Comparative Guide to: Real Estate 2020*.

Can I start this short introduction to the Guide by thanking Iain Morpeth of Ropes & Gray LLP for his years as contributing editor, his insightful articles and his team's contributions to the chapters on England and Wales. It is clear I have some big shoes to fill.

Today's real estate investment market is an increasingly international one. As investors look beyond their domestic markets, they must grapple with a range of issues, including property market transparency risk, political risk and currency risk. Central to their success in any given jurisdiction, however, is an understanding of local real estate laws and how real estate transactions are structured. The aim of the Guide is to provide that understanding.

Covering 28 countries, we hope you find the Guide a useful reference point when considering cross-border real estate transactions and we encourage you to contact us with any suggestions you may have as to how we might improve future editions.

Dan Wagerfield
Partner & Global Co-Head of Real Estate
Norton Rose Fulbright LLP

Ukraine



Taras Burhan



Zvenyslava Kit

Taras Burhan Law Office LLC

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.

The main laws that govern real estate in Ukraine include the following:

- Civil Code of Ukraine;
- Commercial Code of Ukraine;
- Land Code of Ukraine;
- Law of Ukraine “On the Lease of Land”; and
- Law of Ukraine “On State Registration of Property Rights to Real Estate and their Encumbrances”.

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

Ukraine is a civil law country and the impact of local common law is therefore relevant only for the interpretation and application of the statutory law.

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

In Ukraine, real estate is mostly governed by local law. However, Ukraine is a party to a number of international treaties and bilateral agreements that may have an impact on real estate transactions involving foreign nationals, in particular, bilateral investment treaties that provide protection for real estate ownership rights against unlawful actions by governmental agencies such as unjustified expropriation, as well as treaties on avoidance of double taxation that may prescribe more a favourable taxation regime in contrast to 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)?

Foreign ownership of agricultural land is prohibited in Ukraine.

Foreign ownership of non-agricultural land is limited. The below table demonstrates the conditions when non-resident persons may own non-agricultural land in Ukraine. Such conditions depend on whether land is located within or beyond the boundaries of a settlement (*i.e. city or village*).

	Within the boundaries of a city/village	Beyond the boundaries of a city/village
Foreign individuals	Yes, may own (no restrictions apply).	Only if they own real estate objects (<i>i.e. buildings or structures</i>) located on such land.
Foreign legal entities	Only for construction purposes, or if they purchase real estate objects (<i>i.e. buildings or structures</i>) located on such land.	Only if they purchase real estate objects (<i>i.e. buildings or structures</i>) located on such land.

State or municipal land may be sold to a foreign legal entity only if its permanent establishment (with a right to carry out commercial activity on the territory of Ukraine) has been registered. Such condition does not apply to purchase of private land.

It is worth mentioning that the Land Code of Ukraine does not specifically allow Ukrainian legal entities with 100% foreign ownership to own any land in Ukraine. In practice, due to this limitation, two-tier corporate structures are often used by foreign investors to hold property in Ukraine (*i.e. foreign parent – Ukrainian subsidiary – Ukrainian property holding company*); alternatively, a Ukrainian partner (with a minimum participation share/interest) can be involved in order to convert a fully owned subsidiary into a joint venture (to which the abovementioned limitation does not apply).

Finally, even with respect to Ukrainian residents, the turnover of agricultural land is subject to a moratorium until a specialised law regulating such turnover becomes effective (*no bill has been adopted; various drafts have been discussed for years*).

The said moratorium means that, save for a few exceptions (*inheritance, land swap or production-sharing purposes*), there is a ban on:

- (i) sale of all state- and municipally-owned agricultural land plots; and

- (ii) sale or other alienation, contribution to charter capital of legal entities and/or changes to permitted use for certain parts of privately-owned agricultural land, namely: (a) agricultural commodity land; (b) individual household land allocated in kind to the owners of land shares; and (c) land shares.

The newly elected Ukrainian president, new government and recently elected parliament (in its majority) are all keen on lifting of the moratorium on land sales. Opening of the land market will most likely happen on October 1, 2020.

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:

- (i) ownership (private, municipal, state);
- (ii) use (term or perpetual);
- (iii) mortgage; and
- (iv) trust ownership.

Save for a few exceptions (*law, court order, will/inheritance*), rights of term use are purely contractual between the parties. Such rights include:

- *Lease (sub-lease)*, i.e. a temporary contractual use a right on chargeable basis.
- *Servitude*, i.e. a right to use a land plot belonging to another person for a specific purpose (for instance, passing by foot or by vehicle, installing utilities and communications, collecting water, locating building equipment, etc.).
- *Emphyteusis*, i.e. a right to use a land plot belonging to another person for farming.
- *Superficies*, i.e. a right to use a land plot belonging to another person for construction.

Right of mortgage and trust ownership can also be classified as purely contractual.

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

One of the principles of Ukrainian property law is that rights to land should follow the right to a building constructed thereon. As illustrated under the Land Code, in case of acquiring the ownership right to real estate (*i.e. buildings or structures*), ownership right with respect to the land plot under such real estate terminates and the new owner of the real estate acquires the ownership right to such land plot.

However, in practice, there is a great number of privately owned buildings and other real estate objects located on state or municipal land (*where rights to land are documented as lease, permanent use, or not yet documented at all – so-called “actual use”*). Since there is no mandatory buy-out (privatisation) of state or municipal land plots under privately owned buildings, split in ownership for buildings and underlying land between different persons is likely to continue. The same refers to buildings and other real estate objects that have been lawfully constructed on private land plots leased for the purpose of construction (or used on terms of superficies).

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 to real estate in the Ukrainian legal system. The legal and beneficial owner is one person who is registered in the State Register of Property Rights to Real Estate (hereinafter – the “Rights Register”).

We are not aware of any proposals to change this.

However, in 2019, the Civil Code and the Land Code were amended and a new concept of trust ownership was introduced to the Ukrainian legal system as an alternative to collateral. Under agreements of trust ownership, collateral property legally belongs to the creditor until loan repayment.

4 System of Registration

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

All land in Ukraine is required to be registered. Land plots should be registered with the State Land Cadastre. Rights to land plots should be registered with the Rights Register.

In reality, however, a great number of land plots in Ukraine remain unregistered. Mostly, these are land plots acquired prior to launching mandatory registration procedures (*i.e. prior to January 1, 2013*). Rights to such land plots are recognised despite the absence of registration. However, any further legal transaction with such unregistered land plot requires prior registration of both land plot and rights thereto.

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

One of the principles of the state registration of rights in Ukraine, as illustrated by the Law of Ukraine “On State Registration of Property Rights to Real Estate and their Encumbrances”, is guaranteeing by the state of objectivity, authenticity and completeness of data on registered rights with respect to real estate and encumbrances thereof. It is not clear if expression of such principle in the law on its own is sufficient to conclude that there is a state guarantee of title in Ukraine. No relevant court practice exists yet.

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

All rights to land are subject to mandatory state registration. The consequence of non-registration is that the rights do not become effective.

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

Only rights that validly arose prior to January 1, 2013 are not required to be registered in the Rights Register.

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.

There is neither a probationary period following the first registration, nor different classes or qualities of title on the first registration.

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

The title (ownership) transfers from the seller to the buyer at the moment of state registration of such transfer (right) in the Rights Register.

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

Earlier registered rights defeat later rights (in practice, this is mostly relevant to the rights of a mortgagee).

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.

Currently, there are two relevant registers operating in Ukraine, namely: (i) the State Land Cadastre; and (ii) the Rights Register.

The State Land Cadastre contains information on formed land plots. A land plot is deemed to be formed once a cadastral number has been assigned to it. Forming a land plot involves determining its area and boundaries and entering certain other details about the land plot in the State Land Cadastre. A land plot can be the subject of civil law transactions only when it is formed.

The Rights Register contains information about ownership and other rights over real estate, including land plots. Encumbrances and other property rights to a land plot may be registered only after the registration of the ownership rights to such land plot.

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

Typically, the owners of registered real estate prove their title by two documents: (i) an information certificate from the Rights Register; and (ii) a relevant title document (i.e. sale-purchase contract, gift granting agreement, property swap agreement, inheritance certificate, privatisation/registration certificate, ownership certificate, etc. as the case may be).

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?

Theoretically, transactions that do not require notarisation (such

as, for instance, land lease or sub-lease, servitude, emphyteusis, superficies, or real estate lease for a term up to three years), can be completed electronically (provided that the parties have electronic digital signatures). However, we have never seen this in practice yet, and all real estate transactions are in paper form.

Transactions that require notarisation (sale, mortgage, long-term (three-plus years) lease of real estate) cannot be completed electronically at present.

The following documents must be provided for purposes of registration of the ownership right with the Rights Register:

- (i) application;
- (ii) applicant's ID (i.e. passport);
- (iii) applicant's tax identification number;
- (iv) document serving as a ground for origination, transfer or termination of title (i.e. sale-purchase agreement, property swap agreement, gift granting agreement, court order, etc.);
- (v) extract from the State Land Cadastre (in case other documents do not contain reference to the cadastre number of the land plot); and
- (vi) payment confirmations (administrative fee).

Information on ownership of registered real estate can be accessed electronically (see question 5.5).

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

Compensation from the registries if they make a mistake can be claimed on general civil law grounds governing liability in case of infliction of damages/harm. No specific liability provision exists at present.

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?

Any person having an electronic digital signature may request and receive information from the Rights Register online (<https://kap.minjust.gov.ua/login/index/>) by the following search criteria:

- address;
- registration number of a real estate object;
- cadastre number of a land plot;
- identification data of a physical person; and
- identification data of a legal entity.

In order to obtain online access, it is necessary to be registered as an online user of the search service (i.e. to obtain a login and password) and to possess an electronic digital signature; in practice, this might not be possible for non-residents of Ukraine until they receive a Ukrainian tax identification number. Alternatively, searches can be carried out through the registrars (including private or state notaries).

Typically, real estate transactions involve not only a search of the Rights Register, but also a review of the original title documents and other underlying documents that served as grounds for registration of encumbrances and other rights affecting real estate.

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.

The following parties are normally involved in real estate transactions in Ukraine:

- *Notary* – verifies the compliance of the transaction document with the requirements of the law, checks the validity of the seller's title and encumbrances, verifies capacity of the parties to enter into transaction, certifies the contract, registers ownership change in the Rights Register and issues an information certificate from the register naming the buyer as a new owner of the real estate.
- *Real estate appraiser (not always mandatory)* – issues a valuation report that serves as a ground for application of state duty and other mandatory payments related to the transaction.
- *Real estate agent (optional)* – helps the parties to find a good deal.
- *Parties' lawyers (optional)* – structures transactions, conducts legal due diligence and other relevant checks, assists parties with signing and closing of the transaction.
- *Interpreter* – is involved in transactions with non-resident parties, provides written and/or oral translation of transaction documents and other materials to the parties that do not speak Ukrainian.

6.2 How and on what basis are these persons remunerated?

- *Notary* – public notaries charge a state duty in the amount of 1% of the contract price; fees of private notaries are negotiable, but, in practice, are very close to what public notaries charge, i.e. 1%.
- *Real estate appraiser* – fixed fee depending on the size of the object (typically in the range of EUR 50–5,000 per object).
- *Real estate agent* – success fee (typically in the range of 2–5% depending on the type and size of the object).
- *Parties' lawyers (optional)* – hourly rate (typically EUR 50–500 per hour, depending on the type, size and complexity of the deal; quite often the fees are capped).
- *Interpreter* – hourly rate (typically EUR 10–50 per hour, depending on the language of the parties/documents).

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?

We do not observe any significant change in the sources or the availability of capital to finance real estate transactions in Ukraine. The availability of bank financing is still very limited.

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.

There is an appetite for high quality residential objects with good location, as well as good quality office premises. Investment in the construction of new hotels also attracts investors' interests.

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.

It seems that an appetite for low quality (budget) housing and residential objects in unattractive locations is declining.

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?

The minimum formalities for the sale and purchase of real estate in Ukraine are as follows:

- validity of seller's ownership should be confirmed (relevant checks are done at the Rights Register);
- sale-purchase agreement must be notarised and registered; and
- title change (i.e. ownership of the buyer) must be duly registered in the Rights Register.

Non-resident buyers may also need to complete some preliminary steps such as translating foreign documents into Ukrainian (this may also involve legalisation or apostilisation, depending on the country of the documents' origin), obtaining a Ukrainian tax identification number (in case of individuals), opening an investment or other type of account at local banks, etc.

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

The seller's duty of disclosure is rather limited in Ukraine. The seller must disclose all existing third party rights to the property.

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

Ukrainian law does not prescribe/recognise the concept of contractual representations. However, under the general principles of the Civil Code, a transaction can be invalidated by a court in case one party purposely deceives the other party with regard to circumstances that are of significant importance.

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?

Title "guarantee" is usually not given in Ukraine. Nevertheless, it is a common practice to include in the texts of sale-purchase contracts certain statements of the seller given to the buyer that are similar to contractual warranties. Typically, they cover the following:

- seller's capacity to enter into the contract;
- due title to the property;
- absence of encumbrances and other third-party rights (or disclosure thereof); and
- absence of technical defects (or disclosure thereof).

The main function of such statements is to give information. Such statements do not act as a substitute for the buyer carrying out his own due diligence.

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

The seller does not retain any liabilities in respect of the property post-sale, except for situations when transfer of title and transfer of property does not happen simultaneously (i.e. the seller is given a right to use the property for some time after the sale and to physically transfer it to the buyer at a later date). In such a case, the seller is under an obligation to continue paying for utilities and can also be held liable for accidental loss of the property.

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

In addition to paying the sale price, the buyer pays a 1% contribution to the State Pension Fund of Ukraine (if applicable). Unless otherwise agreed by the parties, the buyer will also pay the fees of the notary (including 1% state duty), and remuneration of the realtor.

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?

Formally, lending of money to finance real estate falls within the definition of a financial service and, therefore, can be carried out by banks and financial institutions. At the same time, the Civil Code of Ukraine also allows for loans to be granted by individuals and legal entities, and despite a few attempts by the regulator to limit application of this rule (by obtaining a special permit or other authorisation), the application of the Civil Code prevails.

The rules with respect to residents and non-residents differ. Loans from non-residents are subject to notification to the National Bank of Ukraine (hereinafter – the “NBU”) prior to any amount of the loan being disbursed; also, payment of interest and other payments under cross-border loans are subject to monitoring, analysis and control by servicing banks of the Ukrainian borrowers to make sure that the amounts of such payments correspond with the market conditions.

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

The most commonly used collateral is mortgage, as well as, to a lesser extent, sureties and bank guarantees. Pledge of shares/participatory interest in the project company, pledge of rights to funds at bank accounts, pledge of rights under leases, etc. are used as supplementary security instruments for more complex/sophisticated deals.

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?

The common proceedings for realisation of mortgaged property include the following steps:

- sending a 30-day notice (optional for court proceedings);
- obtaining an enforcement document (notarial writ or court judgment);
- engaging a bailiff (public or private);
- seizure of mortgaged property;
- evaluation (if applicable) and sale of collateral on public auction; and
- transfer of money to a creditor.

The Law of Ukraine “On Mortgage” provides for out-of-court (extrajudicial) proceedings, namely:

- sale of mortgaged property by the mortgagee; or
- conveyance/transfer of ownership over the mortgaged property to the mortgagee.

Such proceedings can be applied in case they are envisaged in the respective mortgage agreement or in a separate agreement on satisfaction of the mortgagee’s claims.

8.4 What minimum formalities are required for real estate lending?

The minimum formalities required for real estate lending include:

- signing a loan agreement (in a simple written form, unless one of the parties requests notarisation);
- notifying the NBU about the loan agreement (in case of cross-border loans, no notification is needed for domestic loans);
- signing and notarising a mortgage agreement; and
- registering the mortgage as an encumbrance of the real estate with the Rights Register.

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

A real estate lender as mortgagee has priority in satisfying its claims from the mortgaged property. If, in addition to the mortgage, the real estate lender keeps pledges over movable property (including property rights), the lender has priority in satisfying its claims from the pledge property, provided that the relevant pledges have been registered with the Register of Encumbrances over Movable Property (hereinafter – the “Encumbrance Register”) with a ranking higher than the encumbrances of other creditors.

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

Clawback in bankruptcy may be relevant: there are a number of grounds on which transactions entered into by a Ukrainian debtor up to three years before commencement of the bankruptcy may be challenged; *inter alia*, such challenges can be made where the debtor pledged its property to secure the fulfilment of pecuniary claims.

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

In practice, in order to frustrate enforcement actions by a lender, quite often borrowers bring a court claim for invalidation of the loan agreement and/or the mortgage agreement. Generally speaking, in case of properly executed contracts, this is more like delay tactics, not a winning path. However, we have seen situations where debtors managed to delay enforcement for five years.

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

Simultaneously with the opening of proceedings in a bankruptcy case, a moratorium on satisfaction of creditor's claims is imposed, freezing all enforcement activities. A real estate lender will not be allowed to enforce the mortgage (granted by the insolvent debtor) other than as part of the insolvency case. However, if relationships between a real estate lender and an insolvent debtor were structured as a trust ownership (instead of mortgage or pledge), the moratorium shall not extend to the actions of the real estate lender who is a beneficial owner with respect to the object of a trust ownership established by the debtor.

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?

The process of enforcing security (pledge) over movable assets, including shares, typically involves the following steps:

- registering information on enforcement in the Encumbrance Register;
- sending a 30-day notice (optional for court proceedings);
- obtaining an enforcement document (notarial writ (if pledge was notarised) or court judgment);
- engaging a bailiff (public or private);
- seizure of pledged property (shares);
- evaluation and sale of collateral (shares) on public auction; and
- transfer of money to a creditor.

The Law of Ukraine on Securing Creditors Claims and Registration of Encumbrances allows for out-of-court enforcement of pledges of movable assets, including by way of transfer of ownership of the collateral (shares) to the pledgee.

Herewith, the shares can be appropriated when the borrower has entered into insolvency proceedings, since the moratorium on satisfaction of creditors' claims (mentioned in question 8.8) does not extend to shares in the debtor.

9 Tax

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

Transfers of real estate in Ukraine are not subject to a transfer tax. However, according to the Tax Code of Ukraine, other taxes apply, depending on the identity of the seller and/or buyer, and depending on the type of the property (residential or non-residential).

9.2 When is the transfer tax paid?

As mentioned above, transfer tax is not envisaged by Ukrainian law.

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

Yes, transfers of real estate by individuals are subject to personal income tax at the following rates:

- 5% of the property value – in case of sale by residents of Ukraine; or
- 18% – in case of sale by non-resident persons.

For residential property, the law provides exemption from the abovementioned tax: *0% – if the property has been owned for more than three years and this is the first sale in the calendar year.*

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

Transfers of real estate are subject to VAT if the seller is a VAT-payer.

VAT is charged at the rate of 20% on the transfer value.

VAT is collected from the buyer and is payable to the state budget by the seller.

Sale/transfer of land plots and land shares (except for land plots located under VAT-able real estate and included into the sale value of such real estate) are exempted from VAT.

In real life, not all sellers are VAT-payers, which also makes transactions VAT-exempt. For instance, the following categories of persons may not be or may not necessarily opt to be VAT-payers:

- individuals – never;
- users of a simplified tax system (private entrepreneurs or resident legal entities) if they opt so; and
- users of the general tax system (private entrepreneurs or legal entities) – until the threshold for mandatory VAT registration is met.

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

For corporate sellers, proceeds from the sale of a property are subject to corporate income tax at the rate of 18% (or, if they opted to be users of a simplified tax system – 3% or 5%, as the case may be, of the sale revenues).

Individual sellers pay so-called “military contribution” at the amount of 1.5% of the transfer value (however, it is waived if an exemption for payment of personal income tax applies – see question 9.3 above).

Individual buyers of real property (other than land) pay a 1% contribution to the State Pension Fund of Ukraine.

Finally, although it is not a plain tax, 1% of the transfer value is payable as state duty (or its equivalent). This payment is negotiable in the sense that it can be split between the buyer and seller.

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

Yes, taxation is different if ownership of a company (or other entity) owning real estate is transferred (in particular – VAT,

pension fund contribution and state duty may not apply, tax rates (exemptions) and/or rules for calculating tax base for purposes of personal income tax and corporate tax also differ).

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

It is always worth checking if there are no indebtedness for payment of land and/or property tax by the seller. Also, with respect to residential property, it is advisable to verify at the early stage of price negotiations if the property has been owned for more than three years and if this is the first property sale by the seller during the calendar year – this will give an indication if the relevant tax exemption would be applicable to the seller as this may affect the final sale price.

10 Leases of Business Premises

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

The laws that regulate leases of business premises include:

- Civil Code of Ukraine;
- Commercial Code of Ukraine;
- Law of Ukraine “On Lease of State and Municipal Property”; and
- Law of Ukraine “On State Registration of Property Rights to Real Estate and their Encumbrances”.

10.2 What types of business lease exist?

In practice, various types of business leases exist, such as fixed-term leases or leases that last for an indefinite period of time. It is worth mentioning that long-term leases (i.e. for three years and more) require notarisation and state registration in the Rights Register.

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?

- (a) Length of term: either one year with automatic extension or five to seven years;
- (b) rent increases: typically, rent is expressed with reference to the equivalent in hard currencies such as USD or EUR; however, if expressed in local currency (UAH), parties often agree on monthly indexation by the official inflation rate;
- (c) tenant’s right to sell or sub-lease: typically subject to prior written consent of the landlord;
- (d) insurance: practice is not uniform, quite often tenants are not under an obligation to insure property or provide liability insurance;
- (e) (i) change of control of the tenant: in principle, change of control does not affect the commercial lease agreement; and
(ii) transfer of lease as a result of a corporate restructuring (e.g. merger): typically, corporate restructuring (merger) also does not affect the commercial lease agreement; and

- (f) repairs: generally speaking, and as a basic rule, the landlord is responsible for major (capital) repairs; however, this approach is sometimes modified by the parties if the lease term is more than five years.

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

If opted for VAT (i.e. if the landlord is a VAT-payer), the rent to be paid for business leases is subject to VAT (20%).

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?

Depending on the circumstances of the case at hand, business leases may indeed be terminated at expiry, on default, or by either party giving notice. If a tenant uses the premises after the lease expiration and the landlord has no objection, the lease agreement is deemed renewed for the same term and on the same 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?

The general principles of the Civil Code and Commercial Code allow for the conclusion that the landlord and/or the tenant remain liable to each other in respect of pre-sale non-compliance, even after the sale of their interest (i.e. sale of property in case of landlord, and assignment of lease right in case of tenant).

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).

In Ukraine, there are normally no such provisions in lease agreements yet.

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.

Shared short-term working spaces (co-working) are gaining popularity in Ukraine in recent years, especially in the IT and consulting industries.

11 Leases of Residential Premises

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

The laws that regulate leases of residential premises include:

- Civil Code of Ukraine;
- Housing Code of Ukraine; and
- Law of Ukraine “On State Registration of Property Rights to Real Estate and their Encumbrances”.

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

No, they do not.

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?

- (a) length of term: one year or for an indefinite period (which basically means that the agreement is entered into for five years);
- (b) rent increases/controls: typically, rent is expressed with reference to the equivalent in hard currencies such as USD or EUR;
- (c) the tenant’s right to remain in the premises at the end of the term: the tenant has a pre-emptive right for entry into the lease agreement for another term; if, not later than three months prior to expiry of the lease agreement, the landlord did not notify the tenant about his/her rejection to enter into the new lease agreement, and the tenant uses the premises after the lease’s expiration, the lease agreement is deemed renewed for the same term and on the same conditions; if the landlord has rejected to enter into a new lease agreement with the tenant, but, within one year enters into a lease agreement with another person, the tenant has a right to demand the rights under such new agreement be assigned/transferred to him, or demand compensation of damages; and
- (d) the tenant’s contribution/obligation to the property “costs”: in most of the cases, the tenant’s contribution is limited by payment/compensation of costs of utilities only.

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?

A landlord has a right to terminate a residential lease under the following circumstances:

- (i) non-payment of rent for six months (or, in case of a shorter term lease, twice); and
- (ii) damage of premises by the tenant (or by other persons for whom the tenant is responsible).

The lease agreement can also be terminated, subject to a two-month notice, in case the owner needs the premises (part of a house, flat or room (part thereof)) for his own living and living of his family members.

The required steps to achieve vacant possession may include: giving notice; obtaining court judgment on termination of a residential lease agreement and eviction of the tenant; and enforcement through the bailiffs.

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 main laws governing zoning/permitting and related matters concerning the use, development and occupation of land in Ukraine are:

- Civil Code of Ukraine;
- Land Code of Ukraine;
- Law of Ukraine “On Regulation of Town-Planning Activity”;
- Law of Ukraine “On Lease of Land”;
- Law of Ukraine “On Land Management”;
- Law of Ukraine “On State Control over Use and Protection of Lands”; and
- Law of Ukraine “On Environmental Protection”.

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

Yes, the state can force landowners to sell land to it for social needs (such as construction of transport and energy infrastructure, extraction of minerals, creation of city parks, to name a few). Landowners who disagree with the alienation of their land plots for public needs can be forced to sell the land by court order. The land plot price is determined based on the monetary valuation of the land plot calculated in accordance with methodology approved by the government. In practice, the price so determined quite often is lower than the market price. If the landowner disagrees with the proposed land plot price, the matter should be decided by the court.

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

The following bodies can be listed as such that have certain authority to control or influence land/building use and/or occupation and environmental compliance:

- Ministry for Development of Communities and Territories;
- State Architectural-Construction Inspection of Ukraine;
- State Service of Geodesy, Cartography and Cadastre of Ukraine;
- local self-government authorities; and
- public prosecution authorities.

In order to get reliable information on these matters, the respective authorities have to be contacted. More and more information is available online.

Useful online resources:

- <http://map.land.gov.ua/kadastrova-karta> – public cadastre map of Ukraine that contains information on formed land plots;
- <https://dabi.gov.ua/declare/list.php> – register of authorisation documents for construction; and

- websites of local self-governmental authorities (cities, villages) that may contain information on zoning, for instance in the city of Lviv – <https://map.city-adm.lviv.ua/ua/map/detal-plan>.

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

In most cases, an authorisation is needed to build, modify, demolish or change the use of the building. Depending on the complexity of the construction, such authorisation can take the form of (i) a permit for commencement of construction works issued by a competent authority (for more complex buildings), or (ii) a notification on commencement of construction works filed by the developer with a relevant authority and registered by the latter (for less complex buildings). Likewise, once the building is finished by construction, its commissioning can be evidenced by a certificate on readiness for operation (for more complex buildings), or by a registered declaration of readiness for operation (for less complex buildings).

Construction activity is subject to licensing in Ukraine. A contractor/sub-contractor hired to perform construction works must possess the relevant licence.

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)?

Authorisations for construction and use of more complex objects (industrial, commercial, residential) are usually obtained. Private developers of smaller objects (individual houses and small buildings) quite often proceed to construction without proper authorisation, expecting to have their building legalised under so-called “construction amnesty” which have been announced by the government on several occasions over the past years. However, in our opinion, such practice is on decline as the procedure for obtaining the relevant authorisations became more transparent, less complex and expensive in recent years.

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

Time and costs vary depending on the complexity of the building. For complex objects, the entire authorisation circle (including various consents for design documentation, verifications, etc.) may take up to six months (provided that the developer’s rights to land have been properly obtained and documented). The entire costs related to obtaining relevant authorisations (including official fees as well as documents production and filing expenses) may vary from several hundred to several hundred-thousand Euros.

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?

There are regulations on the protection of historical monuments in Ukraine (the Law of Ukraine “On Protection of Cultural Heritage” is the core piece of legislation in this area).

In case of sale of an object that is listed as a historical monument, prior written consent shall be obtained from the relevant cultural heritage protection authority, depending on whether the

monument is classified as one of national or local importance. Such consents are issued to the sellers; herewith, the identity of the prospective buyer must be disclosed.

Within one month upon completion of the purchase, the buyer (new owner) shall enter into a contract on the protection of the respective cultural heritage with the relevant cultural heritage protection authority, and should protect the monument in compliance with the law and the contract (for instance, to preserve the façade, wooden windows and doors, historic stoves, parquet, and to obtain all the necessary permits prior to any renovation works, etc.).

It is worth mentioning that transactions involving land plots designated for historical-cultural use (or having historical monuments located there) have a number of limitations and nuances (for instance, more strict and complex authorisation procedures).

Finally, Ukraine is a member of United Nations Educational, Scientific and Cultural Organization (UNESCO) and there are a number of Ukrainian properties inscribed on the UNESCO World Heritage List – <https://whc.unesco.org/en/statesparties/ua>. Ukraine follows Guidelines for the Implementation of the World Heritage Convention, and it shall inform the World Heritage Committee of its intention to undertake or to authorise, in an area protected under the Convention, major restorations or new constructions which may affect the outstanding universal value of the property.

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?

There is no specific public database or other register of contaminated lands or polluted properties in Ukraine. Relevant information requests may be filed with the State Ecology Inspection of Ukraine, as well as departments/units responsible for ecology and natural resources at the regional state administrations and/or local self-governmental authorities. Also, independent research (environmental due diligence) is strongly advisable before transactions of land or other real estate.

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

Environmental clean-up is mandatory in case the soil is damaged as a result of constructions or other works.

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

In 2017, the Law of Ukraine “On Energy Efficiency of Buildings” introduced so-called energy certificates, which contain information on the energy performance of the building and recommendations for improvement. The law also sets certain minimum requirements for the energy performance of the buildings, both newly built as well as existing.

As of July 1, 2019, energy certificates became mandatory. Save for a few exceptions, an energy certificate must be obtained, *inter alia*, for any complex object of construction (so-called CC2 and CC3), be it new construction, reconstruction or capital repairs.

In case of sale or lease of property (residential or non-residential) that is subject to rules governing mandatory energy

certification, the seller/landlord must provide information on the energy certificate of the building upon the request of the buyer/tenant.

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).

Since 2004, Ukraine has been a party to the international Kyoto Protocol, which extends the 1992 United Nations Framework Convention on Climate Change. Since 2016, Ukraine has also been a party to the 2015 Paris Agreement. Accordingly, in 2016, the government of Ukraine adopted the Concept for State Policy in the Area of Climate Change for the Period till Year 2030 (hereinafter – the “Climate Change Policy Concept”), which is the first document on the state level aimed at the reduction of gas emissions. Detailed regulatory measures are yet expected to be introduced in the course of 2019–2020. One of them shall be the creation and implementation of an internal emissions trading scheme, in compliance with the European Union Directive 2003/87/EU establishing a scheme for greenhouse gas emission allowance trading within the Community.

13.2 Are there any national greenhouse gas emissions reduction targets?

Yes, according to the Climate Change Policy Concept, the current target is to achieve, by 2030, emissions that shall not exceed 60% of the base level as of 1990 (note: the total volume of

Ukraine’s emissions in 1990 was 618 million tons). In 2020, the abovementioned target shall be reviewed to take into account the level of social-economic development of the country.

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

Yes, the new legal framework recently adopted in Ukraine provides for certain incentives for the operation and development of renewable energy sources (hereinafter – the “RES”), including a so-called “green” tariff (introduced in 2009). Ukraine’s green tariff has a guaranteed “minimum floor” set in EUR and is probably one of the highest in Europe. The types of eligible RES vary; however, solar installations (roof/housetop) seem to be the most appropriate in the context of newly constructed and existing buildings. The following minimum green tariff rates (EUR cent per kWh) apply to roof/housetop solar installations (power plants):

- EUR 16.36 – if commissioned in 2017–2019;
- EUR 12.27 – if commissioned in 2020;
- EUR 11.84 – if commissioned in 2021;
- EUR 11.46 – if commissioned in 2022;
- EUR 11.03 – if commissioned in 2023–2024; and
- EUR 10.65 – if commissioned in 2025–2029.



Taras Burhan, partner, concentrates his practice in the areas of banking and real estate law. He offers over 15 years of legal experience in banking, mergers and acquisitions, real estate and litigation matters.

Taras graduated *cum laude* from the Lviv National University Law Faculty in 1997. He then expanded his education abroad. Taras holds a Master of Laws degree from the University of Cambridge and a Master of Laws degree from the Columbia University School of Law.

Originally from Lviv, Taras spent more than 10 years in Kyiv practising law as a lawyer at well-known international law firms, representing global and regional clients on a number of complex multi-million-dollar deals.

In 2012, Taras Burhan, a seasoned Ukrainian lawyer who is also admitted to practice as an attorney and counselor-at-law in the state of New York, founded his own law firm in Lviv.

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Taras Burhan Law Office LLC is a boutique law firm based in Lviv, servicing clients in Western and Central Ukraine. The firm concentrates its practice in the areas of banking, corporate and real estate law.

The firm represents:

- banks and financial institutions in lending transactions with corporate clients;
- foreign and local investors in acquisitions or disposals of existing businesses; and
- investment funds, developers, and wealthy individuals in real estate transactions.

The firm offers the following services related to real estate:

- structuring sale or leasing transactions, including off-shore structures;
- drafting and negotiating term sheets;
- conducting legal due diligence of real estate objects and their owners;
- advising clients regarding Ukrainian law requirements with respect to acquisition, maintenance, use and transfer of real estate;

- drafting and negotiating Ukrainian law governed sale-purchase/transfer/leasing agreements;
- organising signings, including notarisation;
- assisting clients with closing of transactions, including collection of conditions precedent; and
- assisting parties with recordation of real estate transactions and dealing with authorities (including local administrations, land cadastre, bureaus of technical inventory, etc.).

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