2011 REAL ESTATE MARKET: REFORMS OF THE LEGAL SYSTEM WERE INITIATED

Quite a lot of legislative acts which considerably amended the rules and procedures in the field of land, construction and real estate were adopted in 2011. More detailed you can read in the article of Alexey Kot, Managing Partner of Antika Law Firm, PhD (Law), and Alexander Burtovoy, Associated Partner of Antika Law Firm.

Alexey Kot, Alexander Burtovoy

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Alexey Kot, Managing Partner of Antika Law Firm, PhD (Law)

First of all, it is necessary to analyze the provisions of the Law of Ukraine "On Urban Planning and Development" (№3038-VI) dated February 17, 2011 and came into force on March 12, 2011 (hereinafter referred to as the Law "On Urban Planning and Development" or the Law).

Pursuant to the Law the procedure of land plot development shall be provisionally divided into three stages:

1. **Registration of title to a land plot.** This stage was not clearly defined by the Law, but the procedure for development may not be commenced without a properly registered title to a land plot or use thereof with a building leasehold.
2. **Designing.** Subject to Part 5, Article 26 of the Law the stage of designing a construction object comprises three sub-stages: (a) obtaining Basic Data; (b) developing design documentation (including, if applicable, design expertise); (c) approving design documentation.
3. **Construction** (including commissioning and registration of title to constructed facilities).

The main components of Basic Data are: urban-planning conditions and restrictions of a land plot development (hereinafter referred to as the UPCR) and task order for design works. The procedure for the UPCR issue, as well as a list of objects which are not subject to the UPCR issue were defined by certain procedures approved by the Order №109 of the Ministry of Regional Development and Construction of Ukraine, dated July 07, 2011.

Procedure for development, expertise and approval of design documentation (hereinafter referred to as the DD) is established by the Article 31 of the Law "On Urban Planning and Development", the Article 7 of the Law of Ukraine "On Architectural Activity, Procedure for Approval of Construction Projects and Expertise" thereof as approved by the Resolution №560 of the Cabinet of Ministers of Ukraine, dated May 11, 2011, Procedure for Development of Design Documentation for Construction Objects as approved by the Order №45 of the Ministry of Regional Development and Construction of Ukraine, dated May 16, 2011; other legislative acts, including the State Construction Standards (hereinafter referred to as the SCS).

The key criteria for defining quantity of stages, content and structure is to estimate properly Levels of complexity the construction object should be assigned to. According to Part 1 of Article 32 of the Law all construction objects shall be assigned to I, II, III, IV and V Levels of complexity, depending on the complexity of architectural and construction concept and/or engineering equipment.

Pursuant to Parts 2 and 3 of Article 32 of the Law the Level of complexity of an object difficulty shall be defined by customer and designer in accordance with the SCS and GOST subject to the class of consequences (responsibility) of buildings and/or structures. The Cabinet of Ministers of Ukraine has the authority to approve the procedure for assigning buildings to Levels of complexity IV and V (at present, the Resolution №557 of the Cabinet of Ministers of Ukraine as of April 27, 2011 On Approval of the Procedure for Assigning Buildings to Levels of complexity IV and V is in force).

B.1.2-14-2009 SCS provide for buildings and structures the following three classes of consequences (responsibility): CC1, CC2 and CC3. The objects which CC1 is defined only by single sign, except for such a characteristic as "dangerous for people's life" should be rated as I category of difficulty. II category of difficulty should embrace the objects of CC1 consequences class, if this class has been established according to two and more signs of possible consequences. The objects of CC2 consequences class not rated as IV category of difficulty should be referred to III category of difficulty.

The design documentation, as developed by the designer, must be approved by the customer and in individual cases is subject to expertise and approval. According to Article 1 of the Law of Ukraine "On Responsibility of Enterprises, their Associations, Institutions and Organizations for Offences in Urban

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Development" as of October 14, 1994 the execution of construction works without the approved design documentation entails penalty at the rate of fifty percent of the value of works.

The designs of the construction objects of I-III categories of difficulty, unlike the objects of the IV-V categories of difficulty, shall not be subject to obligatory expertise. Moreover, the customer is entitled to decide upon voluntary expertise of the design documentation.

The design documentation shall be examined by the expert organizations, notwithstanding the form of ownership which comply with the criteria as approved by the Ministry of Regional Development and Construction.

The expertise shall be carried out on behalf of the customer on the basis of the agreement with an expert organization. The procedure for approval of the design documentation provides for deadline with regard to expertise.

On September 6, 2011 the Procedure for Holding Competitive Tenders for the Right to Lease State Property, as approved by Resolution №906 of the Cabinet of Ministers of Ukraine, dated August 31, 2011, came into force.

The Cabinet of Ministers of Ukraine adopted Resolution №559 On Urban Development Cadastre, dated May 25, 2011.

However, the main legislative act in the field of construction, as adopted in 2011, is the Law "On Urban Planning and Development." Moreover, provisions of Section V "Final Provisions" thereof provide for the amendments to be made into more than twenty Laws of Ukraine (including such as Law of Ukraine "On the Principles for Urban Planning and Development", "On Architectural Activity", "On State Construction Standards", "On Local Government in Ukraine", "On Land Development", "On Investment Activity", "On Financial and Credit Tools and Property Management in Housing Construction and Real Estate Activities", "On Land Lease", etc.).

First of all it is worth noting, that as of the beginning of 2012 the construction reform has not been completed. Successful implementation of all provisions of this Law requires adoption of the subordinate legislation. Numerous legislative acts require amending or replacing for by the new ones.

In addition, the provisions of the already effective legislative acts should be coordinated. In particular, according to the Law of Ukraine "On Construction Standards" the SCS are acts of the subordinate legislation of technical nature as approved by controlling entities and containing statutory requirements in the field of urban development, construction, architecture. The SCS are mandatory when designing and constructing objects. Meanwhile, a number of SCS remain in old wording.

Still current problem is not only the absence of specific legislative acts, but also the quality of the already adopted ones. The use of contradictory terms in various documents, "adjustment and amendments" of certain norms of the Law by the subordinate legislation, availability of reference rules therein are only few defects abundant in the adopted documents.

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Revision of the Ukrainian legislation in the field of registration of rights to real estate is very important.

A new wording of the Law of Ukraine "On State Registration of Proprietary Rights to Real Estate and Restrictions of these Rights", dated July 01, 2004 (amended and restated Law was adopted on February 02, 2010 and then on December 09, 2011) (hereinafter referred to as the "Law On Registration") cardinally changes the existing order and establishes a new system of registration of proprietary rights to real estate and restrictions thereof.

The key aspect of reform consists in creating of the Uniform State Register of Rights to Real Estate and Encumbrances thereon, and appointing of the Uniform State Registrar.

According to the Article 6 of the Law "On Registration" the holder of the State Register of Rights is a specifically authorized central executive authority on the matters of state registration of rights – the Ministry of Justice of Ukraine which shall ensure implementation of the Law. The President of Ukraine approved by his Decree №401/2011 dated April 06, 2011 the Regulation for State Registration Service of Ukraine vested, inter alia, with all functions of the state registration authority of the rights to real estate. Also the Decree №1141 of the Cabinet of Ministers of Ukraine On Approval of Order for Keeping State Register of Proprietary Rights to Real Estate, dated October 26, 2011 (hereinafter referred to as Order №1141) was included on November 09, 2011 into Register of Legislative Acts of Ukraine. Order №1141 defines the procedure for keeping the State Register of Proprietary Rights to Real Estate. It came into force as of January 01, 2012.

On December 31, 2011 the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine to Ensure Exercise of the Rights to Real Estate and Encumbrances thereon in the Course of State Registration", as adopted by the Verkhovna Rada of Ukraine on December 09, 2011, came into force. This Law has prolonged the term for enactment of the Law "On Registration" till January 01, 2013.

From a practical point of view the Law "On Registration" contains a number of positive amendments for the entities of real estate market, in particular: simplification of the procedure for examination of rights and existing encumbrances in process or preparation for entering into deeds with the real estate objects; in case of acquisition of the titles to land plots and facilities located thereon those rights shall be registered with the uniform register, etc.

However, the procedure for assignment of rights and duties with regard to the registration of rights to real estate from the Bureau of Technical Inventory and territorial authorities of land resources to State Registration Service remains still unregulated; the Law does not contain a clear list of documents necessary to register any rights to real estate. Regulation of the above aspects shall be referred to the competence of the Cabinet of Ministers of Ukraine.

Problem of the date of arising, assignment and termination of rights to real estate is not less vital. On the one hand, according to provisions of Article 2 of the Law, the state registration of the rights to real estate shall be interpreted exclusively as an official acknowledge and approval thereof by the State by entering respective record into the State Register of Rights. Moreover, Part 3, Article 3 of the Law provides for that the rights to real estate subject to state registration arise from the date thereof. In other words, there is a time interval between the dates of agreement and creation of title.

The land relations also are not fully regulated, in particular, in respect of delimiting the state-owned and municipal lands. According to clause 12 of Transitional Provisions of the Land Code of Ukraine the powers related to disposal of lands (except those as transferred in private ownership) within the population areas shall be exercised by respective village, community, municipal councils, and beyond the population areas – by respective executive authorities.

On August 02, 2011 the President of Ukraine signed Law of Ukraine №3613-VI "On State Land Cadastre" adopted in the second reading on July 07, 2011 by the Verkhovna Rada of Ukraine. The above Law, except certain its provisions, should come into force as of January 01, 2012. However, the date of enactment of this Law has been rescheduled for January 01, 2013 by the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine to Ensure Exercise of the Rights to Real Estate and Encumbrances thereon in the Course of State Registration."

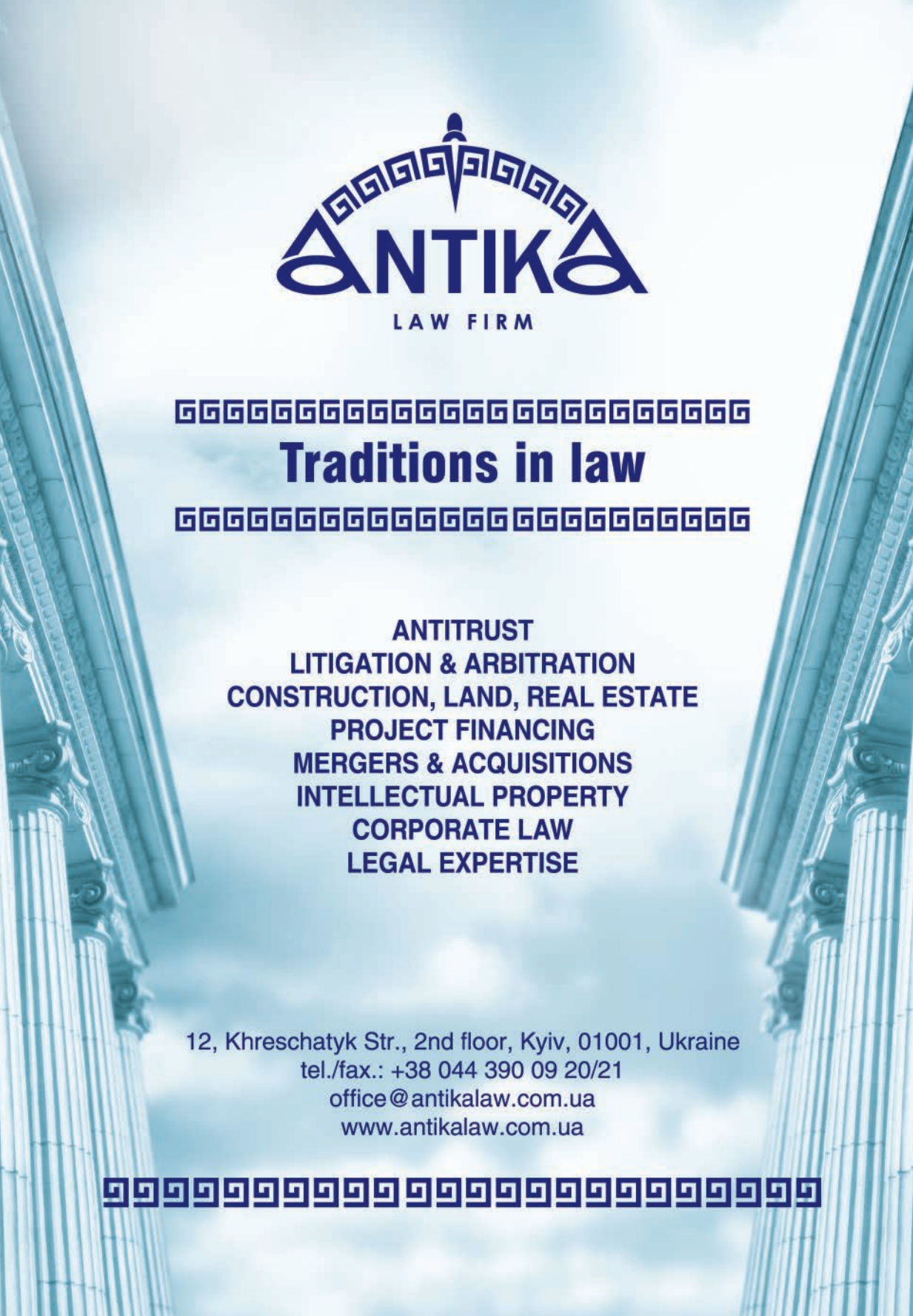
Adoption of this Law is a very important step to develop Ukrainian market economy, in particular, for transparent functioning of Ukrainian land market. Provisions of the Article 126 of the Land Code of Ukraine in respect of the documents certifying the ownership to land will be amended as of January 01, 2013: titles to, and use of land plot will be registered pursuant to the Law of Ukraine On State Registration of Proprietary Rights to Real Estate and Encumbrances thereon.

At the moment the Draft Law "On Land Market", taken as a basis, is under consideration of the Verkhovna Rada. It has been proposed to prolong the moratorium for alienation of certain categories of agricultural lands until January 01, 2013.

The Draft Law also contains an offer to restrict the total area of agricultural land plots for commercial farming which may be leased by a single person, taking into account related persons and the persons connected with him/her by relations of control at the level of not more than 6,000 hectares of agricultural lands on the area of one district and not more than 5 percent of the area of agricultural lands in region.

It might be concluded from the analysis of clauses 14 and 15 of the Transitional Provisions of the Land Code of Ukraine that adoption of the Law of Ukraine "On State Land Cadastre" and the Law of Ukraine "On Land Market" was a basis for cancellation of moratorium on agricultural lands.

Therefore, reforming of land relationships, as well as in the field of construction and real estate has not been still completed.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