

6.4 VAT and Excise Taxes

Please refer to Sections 4.6 and 4.10 above for a discussion of VAT and excise taxes payable in Ukraine. Currently no VAT is charged on goods exported outside Ukraine (*i.e.*, the rate is 0%).

6.5 Customs Fees

In addition to customs duties, customs fees for carrying out the customs clearance of goods are currently levied on all goods, the value of which exceeds US\$100.

A customs fee of US\$5 is levied on goods valued between US\$100 and US\$1,000; for goods valued over US\$1,000 customs fees are levied at the rate of 0.2% of the customs value of such goods, but not more than US\$1,000.

6.6 Export Regulations

Goods exported outside the territory of Ukraine may be subject to: licensing and quotas; export taxes (export duties, customs fees, export VAT); pricing restrictions; and/or contract registrations.

7. PROPERTY RIGHTS

7.1 General

In contrast to the former system of state and collective ownership of property of the Soviet era, the *Civil Code of Ukraine*, dated 16 January 2003, specifically recognized and honored private ownership and listed individuals and legal entities to own property in Ukraine.

Under Article 26 of the *Constitution*, foreign citizens enjoy the same rights and freedoms and bear the same responsibilities as Ukrainian citizens, including property rights. According to the *Civil Code of Ukraine*, foreign citizens and legal entities are entitled to own property in Ukraine, unless otherwise provided for in the international treaties of Ukraine or other Ukrainian laws. The Ukrainian courts ensure protection of property rights in accordance with the applicable Ukrainian laws.

Property rights to real estate property (ownership, lease rights, servitudes, *etc.*) are subject to state registration according to the procedure established by the *Law of Ukraine “On State Registration of Rights to Real Estate Property and their Encumbrances”*, dated 1 July 2004. The above Law provides for the establishment of a single unified information register of rights to land plots and buildings (capital structures) as well as their encumbrances. Once enforced, it will replace the numerous property rights registers that currently exist.

7.2 Lease of Real Estate Objects

The lease of real estate (with the exception of land) in Ukraine is governed by the *Civil Code of Ukraine*, the *Law of Ukraine “On Financial Leasing”* (the *Leasing Law*), dated 16 December 1997, the *Law of Ukraine “On the Lease of State and Municipal Property”* (the *State Property Lease Law*), dated 10 April 1992, as amended, as well as other laws and regulations.

The *Civil Code* contains general provisions governing the lease of movable and immovable property. In particular, according to Article 793 of the *Civil Code*, the lease of a building (or other capital structure) or part thereof must be concluded in writing, and must be notarized and registered by the state if entered into for a period of three years or longer.

According to the Decree of the Cabinet of Ministers of Ukraine “*On State Duty*”, parties to a lease agreement must pay a state duty for the notarization of a lease agreement to the amount of 0.01% of the contract price of a lease agreement for a building or other capital structure (instead of the formerly applied 1%) which is capped at 50 “*non-taxable minimums*” of individuals’ income (currently, UAH850 or approximately USD110), and 0.01% of the land appraisal for a land lease agreement.

The *Leasing Law* governs in detail various issues of financial leasing and defines the essential elements of a leasing agreement. Under the *Leasing Law*, land and other natural resources, as well as unified property complexes of companies and their separate divisions (workshops) may not be the object of leasing.

The *State Property Lease Law* primarily governs the lease of state and municipal property. However, the provisions of the *State Property Lease Law* may also apply to the lease of private property, unless otherwise expressly provided for by a lease agreement or by applicable laws.

7.3 Land Ownership

The *Constitution of Ukraine* has established two forms of land ownership: public and private. Public property consists of state property and municipal property. The principal law governing land issues in Ukraine is the *Land Code of Ukraine* (the *Land Code*), which entered into force on 1 January 2002. The *Land Code* applies to all types of land in Ukraine; it governs the legal relations of Ukrainian and foreign individuals and legal entities, state-owned companies, Ukrainian state and municipal authorities, and foreign states and international organizations, in the area of the ownership, use and disposition of land in Ukraine. The *Land Code* clearly distinguishes between agricultural and non-agricultural land, and establishes specific legal treatment for each type of land.

The *Land Code* provides for the following types of rights to land in Ukraine: ownership; perpetual/indefinite use; short-term lease; long-term lease; servitudes (easements); superficies; and emphyteusis.

The *Land Code* expressly states that there are three types of land ownership in Ukraine: private, municipal, and state. Subject to certain limitations, Ukrainian individuals and legal entities are no longer restricted in the ownership, use, or disposition of land. According to the *Land Code*, state or municipal land must be sold to individuals and legal entities exclusively on a competitive basis (auction), except when the purchaser of the land plot is the owner of the construction located on this land plot and some other cases.

Foreign individuals, legal entities and foreign states are allowed to own, use and dispose of certain non-agricultural land in Ukraine, but are explicitly prohibited from owning agricultural land. Foreign legal entities may own only non-agricultural land: within the city limits, if they purchase buildings or structures or land plots for construction purposes; and beyond the city limits, if they purchase buildings or structures. State or municipal land may, however, be sold to a foreign legal entity if it establishes and registers its permanent establishment in the form of a commercial representative office in Ukraine. The sale of state owned non-agricultural land to a foreign legal entity may be made by the Cabinet of Ministers of Ukraine, subject to the prior approval of such sale by the Verkhovna Rada of Ukraine (Supreme Council of Ukraine). And municipal non-agricultural land may be sold to a foreign legal entity by the relevant municipal authorities, subject to the prior approval of such sale by the Cabinet of Ministers of Ukraine.

The *Land Code* appears not to grant the right to own any land in Ukraine to Ukrainian companies with 100% foreign investment. It stipulates that only those Ukrainian legal entities which have been founded by Ukrainian individuals or legal entities and joint ventures may own land in Ukraine. However, the *Land Code* does not contain any similar restrictions with respect to the lease of land by Ukrainian legal entities with 100% foreign investment (for more details please see 7.4 below). Since this discrepancy appears to be an anomaly, it is expected that respective amendments to the *Land Code* will be adopted to rectify this defect.

The right to perpetual use of land may now be granted only to (i) state- and municipally-owned companies, (ii) public organizations of disabled people, their legal entities, unions, institutions and organizations, and (iii) to the religious organizations (only for construction and maintenance of religious and auxiliary facilities).

Individuals or their heirs who owned land plots in Ukraine before 15 May 1992 (the date on which the previous version of the *Land Code* took effect) have no right to receive such land plots back into their ownership. Therefore, no restitution of land ownership will be carried out, based on historical land use rights.

The *Land Code* contains a number of transitional provisions which postpone or limit the application of certain its provisions until a future date (the Transitional Provisions). One of the most important of these states that until the laws “*On the Land Market*” and “*On the State Land Cadastre*” enter into force, agricultural land may not be re-sold, alienated, or otherwise disposed of (unless such alienation occurs as a result of inheritance or withdrawal of land for public purposes); individuals or legal entities may not contribute the right to a land share to the charter capital of a legal entity; and the designated use of such land may not be changed. This moratorium may be overridden by the Constitutional Court of Ukraine upon submission of the President of Ukraine. The *Land Code* does not contain any similar restrictions with respect to non-agricultural land.

It is anticipated that the new law “*On the Land Market*” will establish a detailed procedure of alienation of private, state and municipal lands. According to the existing draft law, such alienation should, as a rule, be carried out through tender. The above draft law also sets forth tender procedures, requirements for the terms and conditions of sale and purchase agreements, etc. The future law “*On State Land Cadastre*” will be

aimed at providing legal ground for, and improvement of, the system of the state land cadastre containing information on the size and designated use of land plots, their owners, encumbrances, as well as other features of land plots.

7.4 Land Leases

The *Land Code* contains a number of general provisions with respect to land leases. In particular, it provides that a land lease is the contractual, limited-in-time possession and use of a land plot for a lessee's commercial and other activities, which is granted for compensation. All Ukrainian and foreign individuals and legal entities, foreign states, and international organizations may lease land in Ukraine. The Land Code provides for the two types of land lease: short-term (up to five years) and long-term (up to 50 years). The *Land Code* establishes the right of a lessee to sublease a land plot, subject to the lessor's consent. The term "lessors of land plots" is defined to include only land owners or their authorized representatives.

More specifically land lease relations are governed by the *Law of Ukraine "On Land Lease"* (the *Land Lease Law*), dated 6 October 1998, which in more detail governs the issues of land lease agreements and land rent payments.

According to the *Land Lease Law*, land lease agreements must be executed in writing, must contain a set of essential terms and must be supplemented by several mandatory annexes, *inter alia*, the plan (scheme) of the land plot. The essential terms of any land lease agreement are the following: the subject matter of the lease (its location and size); the term of the agreement; the amount of the rent and terms and means of payment; the purposes of the lease and designated purpose of the land plot; the terms of maintenance of the leased object; the terms and conditions for the transfer of a land plot by the lessor to the lessee; the terms for the return of the land plot by the lessee to the lessor; all existing restrictions and encumbrances; the risk of damage or loss; the terms on pledge of the leasehold rights and their contribution to the charter capital of a legal entity and liability. A land lease agreement should be registered with the state authorities.

The procedure for the lease of state and municipal lands is set forth in the *Land Code* and the *Land Lease Law*. Currently, state or municipal lands can be leased out pursuant to the decision of the respective local council and exclusively on a competitive basis (auction), except when the lessee of the land plot is the owner of the construction located on this land plot and in some other cases. Recently passed *Law of Ukraine "On*

Prevention of Negative Impact of the Global Financial Crisis” foresees the possibility of waiver of the auction requirement in cases of lease of the land plots for developing of affordable residential construction. The procedure of holding the auctions has been adopted by the Cabinet of Ministers, but was immediately terminated by the President and submitted for consideration to the Constitutional Court. As a result, there is no effective procedure today and auctions on land lease rights mostly are not performed.

7.5 Third Party Rights

The *Land Code* recognizes certain rights of third parties over a land plot within the concepts of “servitudes” (easements) and “good-neighborliness”. The *Land Code* contains detailed descriptions of various types of servitudes, their application, and the procedures for their establishment and termination.

Under the concept of “good-neighborliness,” land owners and land users are obliged to use the land in a manner that will cause the least possible inconvenience and discomfort to the landowners and land users of neighboring land plots (in particular, in terms of shading, smoke, odor nuisances and noise pollution).

8. PRIVATIZATION

8.1 General Background

In 1992, Ukraine embarked on a mass privatization program which combined both voucher privatization by citizens and limited cash privatization. In March 1992, the Verkhovna Rada enacted two major pieces of legislation on privatization, one covering large scale privatization, *i.e.*, the Law “*On the Privatization of the Property of State Owned Enterprises*” (the *Privatization Law*), and the other covering the privatization of small-scale enterprises, the Law “*On the Privatization of the Property of Small State-Owned Enterprises*” (the *Law on Small Privatization*). These two laws established the basic principles of privatization: the possible objects of and participants in privatization; the role of the state authorities in the privatization of state property; the general characteristics of the methods and procedures for privatization; and various other principles.