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Articles

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Highlights

An Examination of Kazakhstan's Financial Prospects For Funding Hydrocarbon Investments

Overall, Kazakhstan's impressive hydrocarbon sector growth prospects offer great potential for future investments, although expansion and construction of future export and alternative routes remain a key area of uncertainty, which could ultimately delay the sector's further growth.
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A Look at Recent VAT Rulings in Russia and the Impact on Processing Operations

Due to recent rulings, companies and organizations, who provide processing operations as a service need to review the current rulings so as to remain compliant with tax regulations. Despite the decisions received in recent rulings, there is still some ambiguity surrounding the application of the 0% VAT rate, so taypayers should look into their eligibility to apply this VAT rate to their processing operations activities before applying the rate.
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A Look at Real Estate Investments and Transactions in Ukraine

Due to the fact that real estate prices are constantly going up and fraudulent practices are common, investors should take precautions to protect their real estate investments in Ukraine. Some of the most important precautions to take are to establish identity of the true owner(s) and to make sure that all background documentation, which establishes ownership, has been properly reviewed.
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New Law Adopted in Russia Sets Out Harsh Penalties For Migration Violations

There are now stricter regulations in place to govern migration violations and the penalties for violations are much harsher than before, including a new provision that violators are now liable for administrative punishment for a much longer time than before and greatly increased fines will be imposed on people working illegally in Russia and their employers, too.
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Commercial and Residential Real Estate

By Alex Frishberg
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Introduction

Ever since 1991, foreigners have routinely purchased all kinds of real estate. Some acquired large communal apartments for personal use while others converted them for office use. Still others purchased free-standing buildings and have obtained that coveted "free and permanent use of land" thereunder. In other words, the real estate market in Kiev has been active for a long time.

In the early years of 1991-1996, only three Western-quality residential and commercial properties existed: Maculan, Regina Center and Kiev-Donbass. Each charged near-extortionate fees ranging from $65 to $85 per square meter per month, and used their monopoly positions to lock up multi-national companies in leases for up to 5 years. Competitors quickly followed in their steps, often demanding an up-front 6-month rent payment, typically wired to an offshore company. Then the regional economy crashed, rather abruptly, in early August of 1998. Many foreign lessees, including those unfortunate multi-national companies who locked in early at unreasonably inflated rents, tried to renegotiate their rent rates, and many succeeded.

Today, despite increased availability of quality residential and commercial properties, the prices continue to rise for both commercial and residential property. Another thing, which has remained consistent in the ever-changing Ukrainian real estate market, is legislation, which expressly allows foreigners to purchase real estate. Below we discuss the fundamental issues involved in acquiring real property in Ukraine.

Documents Confirming Property Title and Lessor's/ Seller's Identity

In all cases involving real estate (purchase or lease), questions of security in the property's title and ownership rights predominate the agenda, frequently causing a great deal of confusion and distrust. The reason is quite simple: fraudulent transactions are abound and, as a consequence, all issues connected with title transfer and the identity of the true owner must be flushed out before the actual execution of a sale-purchase (or lease) agreement in front of the relevant officials (notary public or commodity exchange).

In the past, gullible companies incurred significant financial losses after effectuating substantial pre-payment (up to 6 months of the lease price) to false lessors only to find that their newly-leased premises actually belonged to an innocent third party. Other cases involved premature termination of poorly drafted lease agreements (often following repairs at the lessee's expense). Of course, recourse to the law has minimal, if any, effect on reimbursement of the expenses or provisions for alternative office space.

To avoid the various pitfalls, any potential purchaser or lessee must insist on reviewing the background documentation, which serves as the ultimate proof of ownership. The various documents include:

1. sale-purchase agreement, gift agreement or privatization certificate for the property;
2. the "technical characteristic" certificate from the Kiev City Bureau of Technical Inventory; and
3. a certificate from the Kiev City Notary Public that the property is not secured by collateral or subject to encumbrances (i.e., it has no liens or arrests placed on it).

Other documents may be necessary, such as a waiver of a spouse's or children's rights to the property. In case the alleged owner is a legal entity, the seller's foundation documents, among other documents, are most helpful. Of course, if the alleged owner is a natural person (individual), his or her passport must be verified.

Various excuses, such as lost documents necessary to confirm ownership rights, or that a particular document original is somehow inaccessible, is an indication of a potential problem. Contrary to a popular misperception, property ownership records are kept in meticulous order somewhere in the state archives.

All of the above documents should contain the relevant seals of the state authorities, and should be collected within 3 months from the date of their presentation for professional review. Based on these documents, a legal opinion will be drafted, confirming or rejecting the ownership rights to any given property.

A title search, however, is only a part of the chain of legal dilemmas surrounding procurement of property. The supporting legislation concerning currency regulations and taxation can also play a large role in deciding the best way to structure real estate transactions and secure long-term possession and quiet enjoyment of premises.

Procedure for Purchasing Real Property

Procedurally, Article 657 of the Civil Code of Ukraine states that real estate transactions must be executed before a notary public in written form and are subject to state registration. Alternatively, the Law "On Commodity Exchanges" permits certain commodity exchanges to execute real property sale-purchase agreements.

In the past, purchasers had significant difficulties with state-employed notary publics and, because an alternative existed, 99% of all property transactions were executed at commodity exchanges. Since then, Ukraine has introduced a system of "private notaries" to undertake this role, with varying degrees of success. Currently, sale-purchase agreements are executed either before a state notary public or before a private notary. Below we review both alternatives.

Closing Before a State Notary Public

With reference to real estate, the Ukrainian government is represented by various entities, such as notary publics (state and private), the Kiev City Bureau of Technical Inventory and the local ZHEK (literally translated as "Residential Exploitation Committee"). These state bodies attest to the Ukrainian seller's ownership and occupancy rights to any property.

State notary publics are usually state officials and, as a rule, use their own standard forms for most transactions. In the context of real property transfers, the standard 2-page notary form for sale-purchase agreements recites only the most fundamental information concerning the property transfer, such as the names of the parties, the property's address, etc., and bears the parties' signatures and the notary's seal. Negotiated provisions, including representations and warranties, are viewed as irrelevant.

To encourage sellers and purchasers to state realistic sales price in their sale-purchase agreements (instead of a fraction of such value, as was the long-standing practice to avoid property tax), in the spring of 2000, the government decreased the state fee for notarization of agreements on the alienation of immovable property from 5% to 1% of the amount of the transaction (i.e., the total amount indicated in the sale-purchase agreement).

Private Notary Public

Ukrainian legislation generously permits the existence of private notary publics. Once licensed, their powers are equal to those of state notary publics without the drawbacks of the bureaucracy. By law, private notary publics cannot charge less than the current state fee to notarize real estate sale-purchase agreements. Although private notaries are permitted to take a higher percentage, most private notary publics do not charge higher than the state notary publics due to the tight competition between private notary publics these days.

In all cases, however, follow-up registrations must take place with the Kiev City Bureau of Technical Inventory (establishing the new owner's identity), the notary public (central and rayon) and ZHEK.

Conclusion

Today, due to the abundance of privately owned, Western-quality property in Kiev, foreign investors can easily purchase (or lease) virtually any real estate object. Reviewing ownership documents, drafting (and executing) the sale-purchase agreement, and registering the property at the Bureau of Technical Inventory are the necessary technical details that accompany any transfer of property rights. And, unlike old times, such follow-up registrations have become routine and quite easy to perform. All you need is lots of money.

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