

# FIRM NEWSLETTER



## COURT PRACTICE ON THE RESTITUTION INSTITUTE IN FINANCIAL LEASING

## FIRM NEWSLETTER

December 2018

KPD Consulting Law Firm has made positive changes in court practice regarding the legal position on the correct application of the restitution institute in disputes on the invalidity of financial leasing contracts due to non-compliance with the form of the transaction as to the failure to notarize the said contracts.

We remind that by 2015 courts adhered to position that notarization of a financial leasing contract is not mandatory, as the law on financial leasing stipulates simple written form of contract. However, in spite of the lack of legislative changes, in December 2015 the Supreme Court of Ukraine radically changed position regarding the mandatory notarization of a financial leasing contract in case of its conclusion with an individual.

Such a legal conclusion and precedent as a whole have led to an increase in abuses by unfair lessees who, on the above grounds, apply to court for recognition of such contracts invalid. In its turn, the result of recognition of the contract invalid is a bilateral restitution, which consists in returning the leased object to the lessor and paid lease payments to the lessee, that is, it leads to the actual free use by the lessees of the leased object.

KPD Consulting team of attorneys and lawyers, headed by Igor Kalitventsev (the Managing Partner of KPD Consulting, Head of Dispute Resolution Practice) during the support of cases of this category, has provided significant arguments and proper evidences that bilateral restitution in such disputes is an inappropriate way of protecting rights

and interests of the parties to the contract, and lease payments are not subject to return as they are the funds that the lessee had to pay for all the time of using the leasing subject. Thus, in case of using the leased object without paying lease payments - the lessee is obliged to pay the lessor funds for actual use in accordance with Article 1212 of the Civil Code of Ukraine.

Such a legal position was well received both by courts of the first instance and the court of appeal, and was reflected in court decision of the Civil Cassation Court at the Supreme Court in the case No. 755/14931/16-ц.

The Managing partner of KPD Consulting Law Firm Igor Kalitventsev has mentioned: "Controversial court practice has resulted in an increased number of abuses by unfair participants to the transaction with the financial leasing object. However, the Supreme Court has made a sound decision that equally protects the rights of all parties to the controversial legal relationship, which greatly contributes to the growth of confidence in these legal relationships of business entities and citizens, as well as the development of financial leasing in Ukraine as a whole!"

**KPD Consulting Law Firm** is a Ukrainian independent full-service law firm established in 2007 for the purpose of rendering cost and time efficient high-quality services. We are focused on the business needs of the corporate Clients – leading local and multinational companies operating in Ukraine from various industries. As the full-service law firm we are especially strong in corporate law, M&A, banking & finance,

## FIRM NEWSLETTER

December 2018

tax law, real estate and construction matters, intellectual property, white-collar crimes and dispute resolutions. More information is at [www.kpdconsulting.com.ua](http://www.kpdconsulting.com.ua).



Managing Partner

KPD Consulting

Igor Kalitventsev

Should you have any questions with respect to above or require any additional information, please do not hesitate to contact Mr. Igor Kalitventsev ([i.kalitventsev@kpdconsulting.com.ua](mailto:i.kalitventsev@kpdconsulting.com.ua)). We will be pleased to assist You.