

# Ukraine Legal Market News

September 2008

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## *Superficies Agreement (the right to construct on the other person's land)*

In its letter No. 14-25-7/7030 dated July 2, 2008 (published in September 2008) the State Committee of Ukraine for Land Resources provided the guidance as to execution of superficies agreements. A superficies enables a person which concluded a superficies agreement with an owner of a land plot to construct the building on such land plot.

The State Committee of Ukraine for Land Resources clarified that (i) the feasibility studies and allocation plan for the land plot subject to the superficies shall be prepared under the procedure the same to the procedure applicable for lease of land plot, and (ii) the superficies agreement should be registered with the local subsidiary of State Land Cadastre; (iii) it is highly recommended to notarize the superficies agreement (however it is not required mandatory); (iv) the right to execute the superficies agreement may be sold through public auction.

Clarifications of the State Committee for Land Resources are of positive influence on the Ukrainian real estate market as certain background for implementation of new legal phenomena i.e. 'superficies' (right to construct on the land plot owned by other person), into Ukrainian legal practice was provided.

## *Amendments to the Instruction on Enforcement Proceedings*

According to the Order of the Ministry of Justice No.1507/5 dated September 05, 2008 the amendments to the Instruction on Enforcement Proceedings adopted by the Order of the Ministry of Justice dated December 15, 1999 (registration No.865/4158) were introduced.

Pursuant to the mentioned amendments, procedure of preparation of the distrained property for its realization by the state executor was defined in more details. In particular, procedure of notifying the debtor about the distrained property's valuation was simplified. Henceforth notification is effected by sending of a notice containing the respective valuation by registered mail to address mentioned in an enforcement document.

According to the amendments a list of documents to be prepared by a state executor for realization of distrained property as well as procedure of reconciliation of such documents with the Department of State Executive Service and local department of justice are specified in more details.

It should be also noted that the procedure of passing resolutions on determination of a specialized organization for realization of the distrained property by a tender committee was amended.

The amendments to the Instruction on Enforcement Proceedings are effective since September 22, 2008.

## *Banking and Finance Law News*

Pursuant to the National Bank of Ukraine Regulation No.214 dated July 25, 2008 (hereinafter the "Regulation") amendments to the Instruction on the Procedure of Granting Individual Permits on Making Investments Overseas were introduced. The National Bank of Ukraine (hereinafter the "NBU") by this document slightly simplified procedure of individual permits' obtaining.

In particular a list of documents required from an applicant was reduced. Henceforth the following documents are necessary for obtaining of a permit: application on granting a permit; originals or notarized copies of documents which are a ground for making investment overseas; originals or notarized copies of documents on registration of an investment object and its constituent documents overseas. A bank, apart from the mentioned above documents, shall provide the NBU with a copy of minutes of the bank's authorized body on making an investment.

Furthermore, a term for examination of documents by the NBU was shortened. The NBU shall examine the documents and pass its respective resolution within 25 business days upon receipt of the documents.

The Regulation is effective since September 1, 2008.

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## *Unfriendly Mergers' Prevention*

Verkhovna Rada of Ukraine has enacted the Law "On Amendments to Certain Laws of Ukraine Regarding Prevention of Unfriendly Take-over of Enterprises, Institutions and Organizations" No. 540-VI, dated September 18, 2008. Pursuant to the law the State Enforcement Service may engage only officers of Ministry for Internal Affairs for enforcement of courts decisions on changing of a company's managing bodies or its members. Engagement of other individuals or entities is forbidden.

The law is effective since October 7, 2008.

## *Small Business*

Pursuant to the Law of Ukraine "On Amendments to Certain Laws of Ukraine Regarding Entrepreneurial Activity" No. 523-VI, dated September 18, 2008 (the "Law") the amendments to Commercial Code of Ukraine and the Law of Ukraine "On Supporting of Small Business" were introduced.

According to the Law a company (regardless the type of ownership), with an average number of employees less than 50 during a financial year and gross income for this period less than UAH 70,000,000 is considered as a small enterprise, a company with an average number of employees more than 250 during a financial year and gross income for this period more than UAH 100,000,000 is considered as a large enterprise. Other companies are deemed to be middle enterprises.

The law is effective since October 7, 2008.

## *The KPD Law Firm News*

On September 24, 2008 Vladislav Kysil and Mykola Dolenko, partners at "KPD Consulting" Law Firm, jointly with Salans Law Firm's associate Mykola Zhovner, on invitation of Business Garant Company ([www.bizgarant.com](http://www.bizgarant.com)) acted as visiting professors of training "Loans from Non-Residents of Ukraine". Training was prepared for representatives of the Ukrainian banks.

