



Ukraine Legal Market News

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Features of Securities and Derivatives Fabulousness

The features of securities and derivatives fabulousness have been introduced according to the Resolution No. 1942, dated December 22, 2010 (the “**Resolution**”) of the Securities and Stock Market State Commission (the “**Commission**”).

In particular, securities and derivatives being in circulation shall be considered to have the features of fabulousness if:

- the Commission proves the fact of their issuer’s absence at the location;
- issuer does not disclose continuous information according to the laws;
- net revenues according to financial results report, submitted to the Commission as of the end of reporting period, are deficient;
- the major part of issuer’s assets consists of financial investments and/or debtor indebtedness according to issuer’s statement submitted to the Commission as of the end of reporting period;
- the amount of issuer’s employees as of the end of reporting period is less than two persons and/or issuer’s average monthly expenses on labor remuneration is less than double minimum wage rate specified by law;
- there is no accountant or accounting department headed by chief accountant as of the end of reporting period.

It should be noted that the Commission may adopt the resolution on admission of securities and/or derivatives to have the features of fabulousness in case they meet to at least any four of the above-mentioned positions simultaneously and at the same time they shall meet to the first criteria.

Securities and/or derivatives shall be considered to have the features of fabulousness from the date of the respective Commission’s resolution publication in the official Commission’s mass media.

The Resolution does not cover securities and derivatives issued by corporate investment funds, state holding companies, banks, non-bank financial institutions which perform licensing activities. The Resolution shall be applied for the purposes of individuals’ taxation only.

The Resolution is effective since March 21, 2011.

Reform of Construction Permit System

Verkhovna Rada (the Parliament) of Ukraine adopted the Law of Ukraine On Regulation of Urban Development No. 3038-VI (the “**Urban Development Law**”).

The Urban Development Law embodies several key principles of construction permit system modernization. These principles are, in particular: the transparency of information in the field of urban planning and development, introduction declarative principles in procedure of construction permits obtaining and putting into operation, the ability to transfer the right to develop the land plot from one developer to another, the principle of tacit consent in the absence of response of public agencies involved into permission procedure.

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The Urban Development Law is effective since March 12, 2011.

Release from Liability on the Grounds of Tacit Consent is Expressly Stipulated in the Law

Verkhovna Rada (the Parliament) of Ukraine introduced amendments to Code of Ukraine on Administrative Offenses regarding liability for breach of order of business activity conducting.

According to these amendments, the persons conducting business activity with proper permit or license shall be released from administrative liability in case the state agencies failed to issue the permit or license within the term stipulated by the law (so called "tacit consent principle"). Formerly this principle was introduced by the Resolution of the Cabinet of Ministers of Ukraine, dated January 27, 2010, that allowed commencing business activity without receiving an answer from state authorities within the time period established by law. However, direct reference in the Code of Ukraine on Administrative Offenses on release from liability in the above cases is established at first.

Amendments are effective since March 15, 2011.

Arbitration Court Decisions Appeal

On March 01, 2011 the Law of Ukraine On Amendments to Economic Procedural Code of Ukraine regarding Appeal of Arbitration Court Decision and Issue of Court Orders on Enforcement of Arbitration Court Decision, dated February 03, 2011 became effective.

Said Law added a new Section XIV¹ to Economic Procedural Code of Ukraine, which establishes the order of proceedings in cases regarding appeal of decisions of arbitration courts.

In particular, it was established that decisions of arbitration courts may be appealed per the procedure stipulated by Economic Procedural Code of Ukraine, regardless of dispute jurisdiction (both economic and civil cases).

Court hearings for appeals against decisions of arbitration courts shall be conducted according to the procedure stipulated by law for reviewing of cases in the first instance.

KPD Consulting Law Firm News

Vladyslav Kysil Headed the Meeting of the Ukrainian Real Estate Club's Legal Committee

On March 31, 2011 the regular meeting of the Legal Committee of the URE Club was held. During the meeting Committee's members discussed the laws regulating the following issues:

- draft Law of Ukraine On amendments to some legislative acts concerning the state registration of rights in immovable property and encumbrances prepared by the Ministry of Justice and
- the Law of Ukraine On Regulation of Urban Development.

The registration of rights to immovable property is one of the corner stone issues that directly affect the real estate market. Special importance this issue takes place considering the forthcoming transition to the title registration model, which must occur on January 01, 2012. "The existing legal regulation of the new registration system, unfortunately, does not take into account some important points. For example, the issue of title registration to objects of unfinished construction is ignored by existing title registration law, such situation can not satisfy the market demands", - said **Vladyslav Kysil, Chairman of the Legal Committee of URE Club, partner of KPD Consulting.**

Regulatory Section of the Committee was devoted to urban planning section of the Law of Ukraine On Regulation of Urban Development.

On March 22, 2011 Vladyslav Kysil partner at KPD Consulting Law Firm, Head of Real Estate Practice on invitation of the National Centre for the Training of Bank Personnel of Ukraine (www.nctbpu.org.ua) acted as visiting professors of seminar "The New Ukrainian Construction Law and Project Finance Legal Risks Identification". The training was held for business department, risk management personnel and legal advisers of Ukrainian banks.

The training covered the following issues: legal issues the novelties introduced by the Law of Ukraine On regulation of Urban Development; land law matters and construction legislation, peculiarities of collateral structures of project financing.

KPD Consulting Law Firm acts as legal advisor to **DC Aviation GmbH** regarding international unscheduled flights in the Ukraine airspace and airspace of the foreign states, and aircraft ground handling on the territory of the Ukraine.

Vitaliy Patsyuk (Partner, Head of Corporate Law and M&A Practice of KPD Consulting Law Firm) advises DC Aviation GmbH on these matters.

DC Aviation GmbH is a leading Business Jet Operator (www.dc-aviation.com) which operates the largest fleet of executive aircraft with intercontinental range in Germany. DC Aviation's business activities: Business Jet Operation; Aircraft Management; Maintenance-Organization and Consultancy in strategic and aviation-related matters.

KPD Consulting Law Firm is Ukrainian independent law firm (www.kpdconsulting.com.ua) operating in real estate, banking and finance law, corporate law, M&A, labor law and dispute resolution. KPD Consulting Law Firm is the legal partner for the Ukrainian Real Estate Club (www.ureclub.com). Kontrakty, a Ukrainian business magazine recognized **KPD Consulting Law Firm** among top tier law firms in the category of law firms focused on legal support of real estate in Ukraine for 2010.