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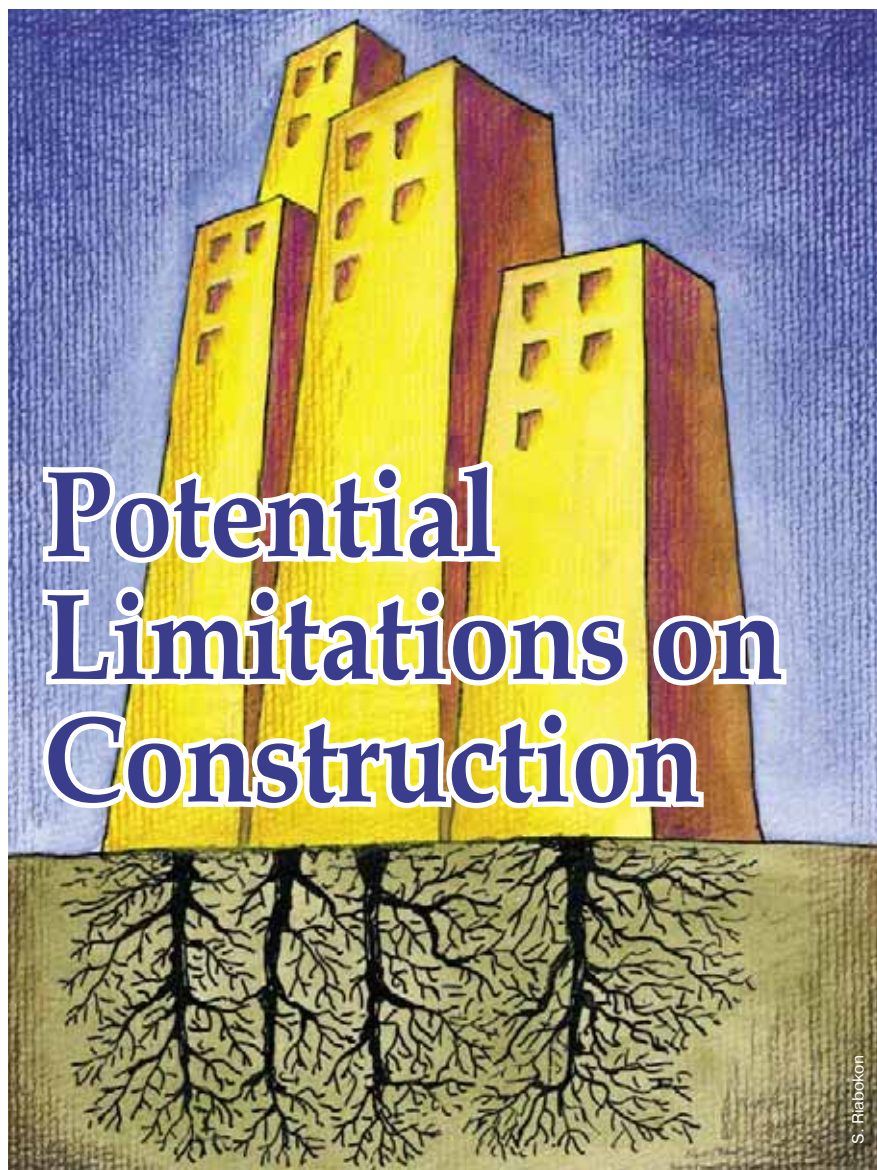
This article is based on the expertise of the legal department of the PricewaterhouseCoopers office in Kiev. This department has had experience in the real estate industry of a range of practices which may reduce the investment attractiveness of a plot of land having the status of a recreational, historical and/or cultural site in the city of Kiev. This brief review is not intended to represent fully fledged research on the issue in question.

Penetration into the land market

Construction has been one of the most attractive areas of investment in recent years. Some companies, specializing in the allocation of plots of land for construction, are inclined to focus on rapid market penetration, aimed at obtaining titles to the maximum number of plots of land. The urgency with which these land plots tend to be acquired can lead to scant regard for formalities, including legislation requirements.

It should be considered at this stage that circumstances which may restrict the investor's right to construct, or which might bring about additional risks relating to construction, are generally of a hidden type. This means that risks may exist irrespective of an impeccable legal lease agreement or with regard to the State Act on ownership rights if the process of approving the allocation of a land plot, or the actual decision on such an allocation, was flawed in any way. To give some

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examples: flaws such as an unacceptable designated purpose for the plot of land, the introduction of a special regime regulating the use of the land, failure to provide a full set of documents relating to the allocation project, or conflicting opinions between the authorities approving the land allocation may lead to subsequent lease agreements or ownership rights becoming void. Such drawbacks not only reduce the investment attractiveness of a plot of land, but may also affect the value of the completed construction project.

Issues which should be given special attention

Depending on proposed use, land in Ukraine is divided into nine categories.

The category of land predetermines the conditions of its management and use, and any subsequent restrictions are governed by this.

The category of the plot of land in question is one of the decisive factors determining the possibility of a construction project. Under Ukrainian legislation "land for housing and public construction" is the principal category of land intended for construction. Use of other land categories for construction is either restricted or prohibited.

Plots of land in the vicinity of parks, gardens or historical parts of the city are more attractive for investors. But it should be taken into account that such plots of land may be categorized as lands of historical and cultural or recreational

use¹. As such, the strict regimes governing the use of such lands may significantly reduce the possibility of construction, if not exclude it altogether.

Land of historical and cultural use

Kiev is a historical city. Hence the city centre is the home of numerous memorial parks, historical buildings, gardens and other park complexes. A major part of the city centre belongs to the State Historical and Architectural Reserve *Starodavniy Kyiv*.

These lands may be considered for construction without a change of category. However, it should be taken into account that the use of these plots may be restricted significantly.

In addition, so-called “protected zones” may be established for the purpose of preserving architectural or archaeological sites. Construction in protected zones is permitted only in exceptional circumstances.² The law does not specify how state agencies should establish what these “exceptional” criteria are, or which of the agencies should be responsible for this. Nevertheless, the significant risks relating to construction on such plots of land should certainly be taken into account.

Another example: current legislation states that the development of project documentation with regard to construction in the protected zones of historical and cultural sites should be carried out on a tender basis only³. The winner has a pre-emptive right to further develop the design specifications. The investor may be significantly restricted both in choosing the construction concept and also in contractual terms, in terms of their commitment to develop the design of the architect who won the competition.

Recreation lands

It is not uncommon for the recreational lands of Kiev and the Kiev Region to be allocated for development. According to the *Land Code*, these lands are to be used for recreation, tourism and sporting activities. It is necessary to take into account the fact that activity that prevents or may prevent this land from being used for these purposes, or affects or may affect their natural state, is prohibited. However, the law does not give guidance as to

what acceptable types of activities might be in this instance.

The *Land Code of Ukraine* envisages the construction of *static recreational objects* on such lands. In particular, the exemplary list⁴ of such objects includes recuperation centres, sanatoriums, and camp sites.

It is obvious that the construction of industrial objects and residential developments are in conflict with the legal purpose of these recreational lands. At the same time, however, the construction of summer/holiday houses for recreational purposes is permitted, according to land legislation. Decisions on the construction of other buildings, including those for rest and recreational purposes, are to be made on a case-by-case basis.

In specific cases construction is prohibited on recreational land⁵.

Special procedures for granting title or leasehold to land

Special procedures and restrictions reserved for the rendering of titles or leaseholds to recreational, historical or cultural land deserve some attention.

According to the law, land with archaeological sites⁶ is state owned, or at least should only be bought out to become the property of the State⁷. The law does not contain a direct prohibition on the transfer of such lands into private or municipal ownership. Nevertheless, the main idea of the above-mentioned norm is that such plots of land should not be in private or municipal ownership. The significant risk involved in challenging transfer of such plots of land should be given due concern.

The special procedures for withdrawing the status of recreational, historical and cultural land provide another example of potential risk to the investor. In cases where the plot of land is in permanent use, its transfer to a new user entails a withdrawal procedure. Withdrawal of separate categories of land, including recreational land, is carried out by the Cabinet of Ministers of Ukraine⁸.

Land of historical and cultural use is rated as land of a particular value and may be withdrawn only in exceptional cases and then only on the prior Resolution of the Cabinet of Ministers of Ukraine or by a decision of the respective local council, approved by the Parliament of Ukraine⁹.

Should the land be withdrawn in violation of the established procedures, a risk exists that the respective decisions of the local council (administration) regarding the allocation of these plots of land should be rendered invalid.

Minimization and prevention of risk

It is obvious that the detection of such risk by the investor requires specialized knowledge, skills, experience and an advanced understanding of the investor's requirements regarding the object of the investment.

Legal due diligence is one necessary step in making an investment decision regarding the purchase of land. In the process of legal due diligence on land titles various factors should be analysed which may potentially carry a risk for investors. As a result of the legal due diligence, the investor will receive a report containing exhaustive information on the presence or absence of risk, including hidden risk, their legal analysis and also recommendations as to their minimization and/or elimination, which will enable the investor to make an informed decision regarding the likelihood of the successful realization of the investment project. ■

¹ Such plot of lands may be rated as natural-reserved fund lands (for environmental purposes). Article 44, *Land Code of Ukraine* establishes parks that represent garden and park art, are also included in this category.

² Indicated circumstances are established by clauses 11, 14, *Procedure for Determination of Borders and Regimes for Use of Historical Areas of Population Residence, Restriction on Business Activity on the Territory of Historical Areas*, approved by the Resolution of the Cabinet of Ministers of Ukraine, dated 13 March 2002, No.318.

³ This restriction was established by Article 6 of the *On Architectural Activities Act of Ukraine*.

⁴ This list was cited in Article 51 of the *Land Code of Ukraine*.

⁵ This rule was established in clause 2.3.15. of the *Rules for construction (development) of Kiev*, approved by the Decision of Kiev City Council No.11/2587 dated 27 January 2005. Exemption from such prohibition is only made for service objects ensuring rest and recreation.

⁶ Such plots of land are the lands of historical and cultural purpose of use.

⁷ Such These restrictions were established by Article 17 of the *On the Protection of Cultural Heritage Act of Ukraine*.

⁸ The special procedure for withdrawal of lands was established by clause 9 Article 149 of the *Land Code of Ukraine*.

⁹ Article 150 of the *Land Code of Ukraine*.