Technical Area (Sectoral) Profile
LAND MANAGEMENT
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LAND MANAGEMENT

ASSOCIATION OF UKRAINIAN CITIES
DIALOGUE Project

Kyiv – 2012
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I. Brief Description of the Sector

According to the Constitution the land is owned by the Ukrainian people. Central and local self-government agencies act as owners of land on behalf of the Ukrainian people.

The land in Ukraine can belong to the private, state and communal ownership. Village, town and city councils manage communally-owned lands. However, the delineation of boundaries between state-owned and communally-owned lands is not over yet. Before the delineation is over, the authority to manage lands located within the boundaries of the populated areas is vested to village, town and city councils, while local state administrations manage lands located beyond the boundaries of populated areas. At the same time, payments for the land use go to the corresponding local budgets.

Decisions to manage land parcels and to distribute them, including for investment projects, as well as to withdraw lands are approved exclusively by plenary sessions of local village, town and city councils in compliance with urban development documentation – mater plans of populated areas, zoning and detailed plans of territories. The organisational structures of most local governments include land resources departments or at least land surveyors.

The main tasks for local governments in the area of land relations include the following:

1) commissioning and funding works to determine and demarcate the boundaries between the corresponding populated areas;
2) inventory and register of lands;
3) economic valuation of lands;
4) control over the use and protection of communally-owned lands;
5) meeting needs of physical and legal persons in land parcels; and
6) resolution of land disputes.

The responsibility to maintain the State Land Cadastre is given to the central executive agency for land resources and its territorial offices. Only the Kyiv City Land Cadastre is maintained by the Kyiv City State Administration, the Kyiv City Council executive agency.
II. Current legal framework for local government activities in the technical area of Land Management

*Laws of Ukraine:*


*Laws of Ukraine from other sectors related to land management*


Resolutions of the Constitutional Court of Ukraine


**Resolutions of the Cabinet of Ministers of Ukraine**


2. Resolution of the Cabinet of Ministers of Ukraine # 118 of January 24, 2000 “On the Procedures for Buying out Land Plots by Citizens (in excess of the norm to be privatised for free) for Farm Enterprises or for Personal Subsidiary Plots”.


9. Resolution of the Cabinet of Ministers of Ukraine # 381 of April 29, 2009 “for Payment by Installments for Purchases of State-Owned or Communal Land Plots”.


1. Order of the State Committee on Land Resources # 376 of May 18, 2010 “On Approving the Instructions on Establishing (restoring) in Kind (on the ground) Boundaries of Land Plots and Securing Them by Landmarks”.

2. Order of the Ministry of Justice # 615/5 of March 26, 2010 “On Streamlining Relations on Issuing Excerpts from the Registry of Immovable Property Rights and Preparing Certificates for Immovable Property Rights on Special Forms” (on the right of Technical Inventory Bureaus and local governments to receive immovable property right certificate forms).


4. Methodological recommendations to prepare land management documents for establishing or changing boundaries of settlements, approved by Order of the State Committee on Land Resources # 165 of July 10, 2008.


7. Order of the State Committee on Land Resources # 114 of July 10, 2002 “On Approving the Instruction on General Requirements for Preparation of a Technical Passport of a Land Plot to Be Put on Land Auction”.

8. Instruction of the Ministry of Regional Development, Construction, Housing and Utilities #244 of October 21, 2011 “On Approving the Mechanism for Placing Temporary Facilities for Entrepreneurial Activities”.

Regulatory documents of state executive agencies
### III. Key problem issues in the sector and potential ways to resolve them

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<th>Problem Issue</th>
<th>Ways to Resolve It</th>
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<td><strong>Problems of legal nature</strong></td>
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<td>Absence of regulations (corresponding law), which would regulate the procedure of holding land sales (auctions).</td>
<td>Pass the Law of Ukraine “On Land Sales (auctions)” (currently, several draft laws have been prepared) or “On Land Market”.</td>
<td>The opinion was reflected in Draft Law # 9001-1 “On Land Market”</td>
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<td>No possibility to conduct land auction if only one buyer is present.</td>
<td>Make amendments to the Land Code of Ukraine to envision a possibility of holding land sales if only one buyer is present (Article 138).</td>
<td>The opinion was reflected in Draft Law # 9001-1 “On Land Market”</td>
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<td>Mandatory requirement of selling land plots at land sales (auctions) in case there is no demand for such land plots (for example, in rural areas).</td>
<td>Make amendments to the Land Code of Ukraine in the part dealing with allocation of land plots in rural areas without holding land auctions (Article 134)</td>
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<td>Time consuming and complicated procedure of allocation of land plots.</td>
<td>Simplify the procedure for allocation of land plots through making amendments to the land relations and urban development legislation (transfer the authority to granting land plots without the allocation procedure in case the corresponding urban development documents have been prepared to executive committees of village, town and city councils)</td>
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<td>Delegation of the authority to administer lands beyond the boundaries of settlements to state executive agencies, thus limiting the territorial authority of local councils.</td>
<td>Make amendments to the Land Code to give the authority to concur the decisions on allocation of land plots beyond the boundaries of settlements.</td>
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<td>The local state administration decision-making process is less transparent and is more difficult to exercise external control.</td>
<td>Make amendments to the Land Code to give the authority to concur the decisions on allocation of land plots beyond the boundaries of settlements.</td>
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<td>Transfer of lands of the Ministry of Defence, which are not used, to the land reserve of local councils.</td>
<td>Proposals: have the legislation envision the inventory of lands of the Ministry of Defense and introduce a mechanism to transfer the unused lands to the reserve of the local council (approve the corresponding resolution of the Cabinet of Ministers). This issue is also of the organisational nature.</td>
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<td>State privatisation bodies try to keep their own interests in administering lands (change of designation of land plots, allocation and withdrawal) where state enterprises and companies whose statutory funds have state shares (stocks, shares), unfinished construction objects and preserved objects are located.</td>
<td>The problem can be resolved through the passage of the draft law “On Amending Certain Ukrainian Legislation on Issues Related to Privatisation and Land Relations” (Registration # 7328 of November 03, 2010). The draft law provides for an opportunity for to give privatisation offices (State Property Fund of Ukraine) to administer land plots (change of designation, withdrawal, allocation) under privatised objects. Suggestions: Ignore the draft law because it limits to the local government authority.</td>
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<td>Lack of correlation between the notion of the “Subject of land servitude” in the Resolution of the Cabinet of Ministers # 982 of August 26, 2009 “On Approving the Procedures for Placement of Small Architectural Forms for Commercial Purposes” and the Land Code of Ukraine. (Interpretation of the land lease right as the land servitude right in case of placement of small architectural forms for commercial purposes.)</td>
<td>Paragraph 4 of the Procedures envisions the possibility for placement of small architectural constructions using the personal land servitude right. At the same time, the Resolution ignores the requirements of Part One of Article 98 of the Land Code of Ukraine, whereby only the “owner or user of the land plot” and not any other person can be the object of the land servitude right. Besides, the Resolution ignore the requirements of Part Three of this article determining the main difference between the land servitude right and other types of land use: “establishing the land servitude right does not lead to the deprivation of the right of the owner of the servitude land to own, use and administer the land plot”. At the same time, in case this provision is implemented, the state will, in fact, be deprived of the right to own and administer the servitude land plot. Therefore, in this case the land servitude right, in fact, substitutes the land lease right. Suggestions: Option 1. Annul the corresponding resolution. Option 2. Make amendments to the Land Code to determine the notion of the “land servitude right” through including in Chapter 16 of the Land Code the right of local government bodies to establish servitudes for general use lands and reserve lands of the corresponding territorial community; Option 3: Make no changes (presently, this is the only way to grant land plots for placement of small architectural constructions without land auctions).</td>
<td>The problem issue was resolved and the Resolution was abolished, however the issue related to the use of land plots under temporary buildings for commercial purposes has not been regulated.</td>
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<td>Appointment of heads of territorial offices of the State Committee on Land Resources in oblast significance cities without taking into consideration the interests of the territorial community.</td>
<td>The suggestion is to appoint heads of territorial offices of the State Committee on Land Resources in oblast significance cities by the corresponding city councils.</td>
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<td>The necessity to open in rayon significance cities city departments (offices) for land resources with a status of a legal person apart from the existing rayon departments (offices) for land resources of the State Committee on Land Resources.</td>
<td>This issue is related to the implementation of Sub-Paragraph «д» of Paragraph 4 of Closing Provisions of the Land Code of Ukraine. It can be resolved through the approval of the corresponding resolution of the Cabinet of Ministers. The chances for such implementation are minimal because of the administrative and territorial reform and decrease of administrative staff.</td>
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<td>There is no opportunity to tax land plots in the course of transferring the property right and re-drafting land titles.</td>
<td>This problem issue can be partially resolved through legal means through making amendments to the Tax Code or passing the corresponding local ordinances, namely: concluding agreements to compensate losses for under-collections of funds for actual use of land.</td>
<td>This problem issue is also of the organisational nature.</td>
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| 2  | Problems with providing local government bodies with complete and trustworthy information from the State Land Cadastre (maintained by the State Committee on Land Resources) and from the State Registry of Property Rights and Their Limitations (will be under the Ministry of Justice since January 01, 2012). | 1. The Law of Ukraine “On the State Land cadastre” should envision a possibility of transferring the authority of maintaining the State Land Cadastre to local government bodies (at the level of oblast significance cities). Village and town councils may delegate such authority to state executive agencies (departments of the State Committee on Land Resources). Regional level: State Committee of Land Resources shall control the maintenance of the State Land Cadastre at the local level, whereas the State Land Cadastre Archives Service maintains the archives.  
2. The Law of Ukraine “On the State Land cadastre” should envision a permanent access of local government bodies to the State Land Cadastre database (on-line or through the Internet), which is maintained by territorial offices of the State Committee on Land Resources (this is the most suitable option).  
3. The Law of Ukraine “On the State Land cadastre” should envision a possibility for information exchange between the territorial offices of the State Committee on Land Resources and local government bodies.  
4. Prepare the procedures for the information exchange on property owners between state offices for property right registration and local government bodies. |                                                                      |
| 3  | Absence of a form for the State Act for Communally Owned Lands. This is a barrier for the delineation of boundaries of state-owned and communal lands. | Option 1. Approve the corresponding resolution of the Cabinet of Ministers on establishing the format of the State Act.  
Option 2. Exclude the provisions of Article 14 Law of Ukraine “On Delineation of State-Owned and Communal Lands”. By doing so, the format of the State Act on Land Plot Ownership will cover communally owned lands as well.  
Option 3. Abolish the institute of state act forms in view of the implementation of the institute of registration of land plot ownership rights (this is a more acceptable option). |                                                                      |
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<td>Local governments have no authority to issue excerpts from normative land pecuniary valuation documents in settlements. At the same time, these documents are prepared with local budget funds.</td>
<td>Make amendments to Article 23 Law of Ukraine “On Land Valuation” and envision such authority for local government bodies.</td>
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<td>The legislation does not provide for local government control over the use and protection of lands. The powers of local government inspectors are not clear.</td>
<td>Pass the Law “On Local Government Control over the Use and Protection of Lands”.</td>
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<td>17</td>
<td>No possibility to introduce the land fee at the level of the lease fee for owners of non-residential premises in apartment blocks. In compliance with Article 287,8 of the Tax Code, they pay only the land fee.</td>
<td>Make amendments of the corresponding article of the Tax Code.</td>
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<td>18</td>
<td>Too low rate (0.25) for the land fee set in accordance with Article 276.4 of the Tax Code (for the railway company using designated lands along railways).</td>
<td>Make amendments to the Tax Code.</td>
<td>Appeal of the Zhmerynka City Council</td>
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<td>Problems of the financial nature</td>
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<td>19</td>
<td>Improper financial support from the State Budget for the works related to the delineation of state-owned and communal lands.</td>
<td>Envision the financial support for the works related to the delineation of state-owned and communal lands from the State Budget. From the legal standpoint, the problem can be resolved through the introduction of “automatic delineation” of state-owned and communal lands in settlements in view of the simple nature of such approach. In our opinion, the concept of the “automatic delineation of publicly owned lands” has been included in the text of the Land Code for many years, in particular, in its Articles 83-84 describing the presence of certain land plots in the ownership of territorial communities and other lands in the state ownership.</td>
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<td>20</td>
<td>Improper financial support of the works related to issuing State Acts to citizens as envisioned by Resolution of the Cabinet of Ministers # 844 of August 05, 2009 “On Some Issues of Implementation of the Land Ownership Right by the Citizens of Ukraine”.</td>
<td>Option 1: Abolish the corresponding resolution, whereby citizens get State Acts for free. The corresponding works will be performed at the expense of citizens. Option 2: Envision corresponding 100% financial support of the works from the State Budget.</td>
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<td>21</td>
<td>Leaseholders refuse to re-register land lease agreements associated with the change of the land fee specified in the legislation or with the introduction of the new normative and pecuniary valuation of lands.</td>
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<td>Submitted in January of 2012</td>
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IV. Target Audience

I. Entities involved in legislation drafting in the area of land relations, members of parliament and subjects of the legislative initiative including:
   1. Staff of the Secretariat of the Verkhovna Rada of Ukraine Agrarian Policy Committee and other Verkhovna Rada of Ukraine committees.
   3. Employees of the corresponding structural departments of the Administration of the President of Ukraine and Secretariat of the Cabinet of Ministers of Ukraine.
   4. Staff of the Ministry of Agrarian Policy, State Agency of Lands.
   5. Other entities of legislation initiative and authors of draft laws.

II. Persons interested in land management:
   1. Local government officials.
   2. Members of local councils.
   3. Scientists
   4. Members and employees of non-governmental organizations engaged in land management.
   5. Journalists.