

# Doing agricultural business in Ukraine





# Making Law Work for You in Ukraine

# Table of Contents

<b>1</b>	<b>Setting up agribusiness in Ukraine</b>	<b>7</b>
1.1.	General overview .....	7
1.2.	Agribusiness assets peculiarities .....	8
1.3.	Choosing the way to start agribusiness .....	8
1.4.	Buying an agricultural company .....	9
1.5.	Privatization of state-owned agricultural assets.....	10
1.6.	Agro peculiarities of antimonopoly regulation .....	10
1.7.	Establishing a new agricultural company.....	11
1.8.	Martial law peculiarities.....	12
<b>2</b>	<b>Taxation of agribusiness</b>	<b>13</b>
2.1.	Choice of taxation system .....	13
2.2.	Peculiarities of special tax regime for agricompanies.....	13
2.3.	Value added tax .....	16
2.4.	Withholding tax.....	17
2.5.	Personal income tax.....	17
2.6.	Staff salary taxation .....	17
2.7.	Land tax.....	17
2.8.	Environmental tax.....	18
2.9.	Fee for use of water.....	18
2.10.	Martial law peculiarities.....	18

<b>3</b>	<b>Financing of agribusiness</b>	<b>19</b>
	3.1. General overview .....	19
	3.2. Direct funding .....	19
	3.3. Bank loans .....	20
	3.4. Leasing.....	22
	3.5. Promissory notes.....	22
	3.6. Agricultural receipts.....	22
	3.7. Issue of securities.....	23
	3.8. Martial law peculiarities.....	24
<b>4</b>	<b>Foreign investment regulation</b>	<b>25</b>
	4.1. Foreign direct investment policies.....	25
	4.2. Support of large investors.....	26
	4.3. State support of agricultural producers .....	29
	4.4. Protection of foreign investments.....	30
<b>5</b>	<b>Acquiring and holding agricultural land</b>	<b>32</b>
	5.1. General overview .....	32
	5.2. Acquiring and holding agricultural land.....	33
	5.3. Control over cultivated land.....	33
<b>6</b>	<b>Storage and transportation of agricultural products</b>	<b>37</b>
	6.1. Storage.....	37
	6.2. Overseas transportation.....	38
	6.3. Cargo transportation by rail .....	40
	6.4. Road transportation.....	40
<b>7</b>	<b>Environmental and water control</b>	<b>42</b>
	7.1. Pesticides and agrochemicals use.....	42
	7.2. Emissions.....	44
	7.3. Waste.....	44
	7.4. Control over water use.....	45
	7.5. Martial law peculiarities.....	46

<b>8</b>	<b>Labour relations</b>	<b>47</b>
8.1.	Hiring and probation.....	47
8.2.	Working hours .....	47
8.3.	Remuneration .....	47
8.4.	Labour relations termination.....	48
8.5.	Employment of foreigners .....	49
8.6.	Employment of seasonal workers .....	49
8.7.	Trade unions and collective agreements.....	50

<b>9</b>	<b>Visa and stay in Ukraine</b>	<b>51</b>
9.1.	Visa and entry issuance .....	51
9.2.	Temporary residence permit .....	51
9.3.	Permanent residence permit .....	52
9.4.	Martial law peculiarities.....	53

<b>10</b>	<b>Courts and jurisdiction</b>	<b>54</b>
10.1.	Judicial system.....	54
10.2.	Courts of arbitration.....	54
10.3.	The recognition of foreign courts decisions in Ukraine .....	55

<b>11</b>	<b>Force majeure in agreements during the war</b>	<b>56</b>
11.1.	How to fulfil agreements in war conditions .....	56
11.2.	What can be done when it is impossible to fulfil an agreement?.....	56
11.3.	Protection against unjustified non-performance of an agreement .....	58
11.4.	How to formulate force majeure clauses in agreements .....	58

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# Introduction

Ukraine is one of the world's leading exporters of agricultural products. The geographical location, climatic conditions, and soil properties create very favourable conditions for crop production. In addition, lasting tradition of farming, qualified personnel, and agronomic schools allow the agricultural business in Ukraine to grow rapidly and increase its investment potential.

At the same time, Ukrainian agribusiness has some peculiarities due primarily to the initial conditions of its development. Being one of the post-Soviet countries, Ukraine at the very beginning of the formation of its independent economy faced the incompatibility of the legal system in particular, and the architecture of the agricultural economy as a whole with market relations.

For almost thirty years, the state remained the principal owner of agricultural land. Land was divided up into millions of parcels and handed over to the former participants of the Soviet agricultural enterprises (kolkhozes). Agricultural infrastructure and production assets were also parcelled out.

Historically, this situation has greatly hindered the formation of an efficient agricultural industry. But over time, and through reforms, Ukraine has developed a competitive agribusiness that has been able to leverage land resources and production assets, as well as to attract investment and enhance its own production and technological capacity.

In 2021, the process of transferring agricultural land to private ownership started. Despite significant restrictions, this process has established additional instruments of control over land assets and created new investment opportunities in Ukraine. Today, Ukraine's agricultural business is a unique ecosystem that is one of the most profitable sectors of the economy. However, it has a number of peculiarities that need to be considered in order to do business effectively in Ukraine. This brochure reflects such peculiarities in the context of building and running an agribusiness in Ukraine.

On 24 February 2022, the Russian Federation invaded Ukraine, opening one of the most difficult and tragic pages of our country's history. Martial law was introduced in Ukraine. Nevertheless, Ukraine's agricultural sector continued to function under such difficult conditions. Considering the current situation, this brochure has been supplemented with peculiarities of wartime legal regulation.

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*Igor Dykunsyy, LL.M.*  
*Partner*

*Iurii Dynys*  
*Counsel*

# Setting up agribusiness in Ukraine

## 1.1. General overview

In Ukraine, the traditional legal forms for conducting agribusiness are:

- limited liability company (LLC);
- joint stock company (JSC);
- private enterprise (PE);
- farming household (FH);
- agrarian cooperatives (AC).

LLC is the most widespread legal form for all kinds of agribusiness. It has a short term for registration, a simple management system and no limitation for participation of foreigners, number of shareholders, and size of authorized capital. Foreigners or foreign companies can own up to 100% of shares and be appointed as directors.

JSC is more common for privatized elevators, plants, and processing business. JSC has a more complicated process of registration, management, and reporting. This form is not so popular for agribusiness as LLC.

PE is an archaic form of legal entity from the early 2000s. This form is not illegal, but it is poorly regulated with contemporary Ukrainian legislation. However, lot of agricultural companies, established before and in the early 2000s are still functioning in this form. PE is available for buying, but not suitable for establishing.

FH is available only to Ukrainian citizens. FH could be established by one person or several persons, who are relatives. FH cannot be bought or invested as a legal entity with share participation.

AC is a legal entity established by agricultural producers. However, an extremely complicated management system, decision making procedures, and ownership status, as well as a huge

number of members (as a rule) make this form unable to meet today's agribusiness challenges. AC cannot be bought but can be invested through participation in it.

## 1.2. Agribusiness assets peculiarities

Before establishing or buying an agribusiness in Ukraine it is worth considering the following features inherent in the Ukrainian agricultural assets:

- the typical structure of a Ukrainian agricultural asset usually includes a land operator company and an elevator operator company;
- the major share of industrial real estate and infrastructure of Ukrainian agricultural companies was obtained by them in the process of privatization and division of state and collective property;
- the vast majority of agricultural companies do not own land, but use it on a lease basis;
- the vast majority of agricultural companies in Ukraine rent not large plots of land but thousands of small patches of land (from 1 to 8 hectares) from thousands of owners-individuals;
- the vast majority of agricultural companies that own agricultural production assets and land use rights, have quite a long and often improperly documented corporate history;
- different taxation regimes may apply to companies within the same production group (e.g., the simplified taxation system applies to the land operator company, and the general taxation system applies to the elevator operator company);
- a newly established agricultural company cannot use the preferential agricultural tax regime from the very beginning.

## 1.3. Choosing the way to start agribusiness

The acquisition of agricultural companies is the most effective way for foreign investors to start growing crops in Ukraine. First of all, this is due to the peculiarities of the accumulation of productive land areas.

It is also important to take into account the extremely conservative mentality of the rural population in Ukraine. Owners are unlikely to enter into a land lease agreement (even on better terms) with a new unknown company when they are already accustomed to a local farmer or a local agricultural company, personally know the heads of local farms and relatively trust them.

The next point to be considered is that a newly established agricompany cannot use the preferential agricultural tax regime from the moment of its establishing.

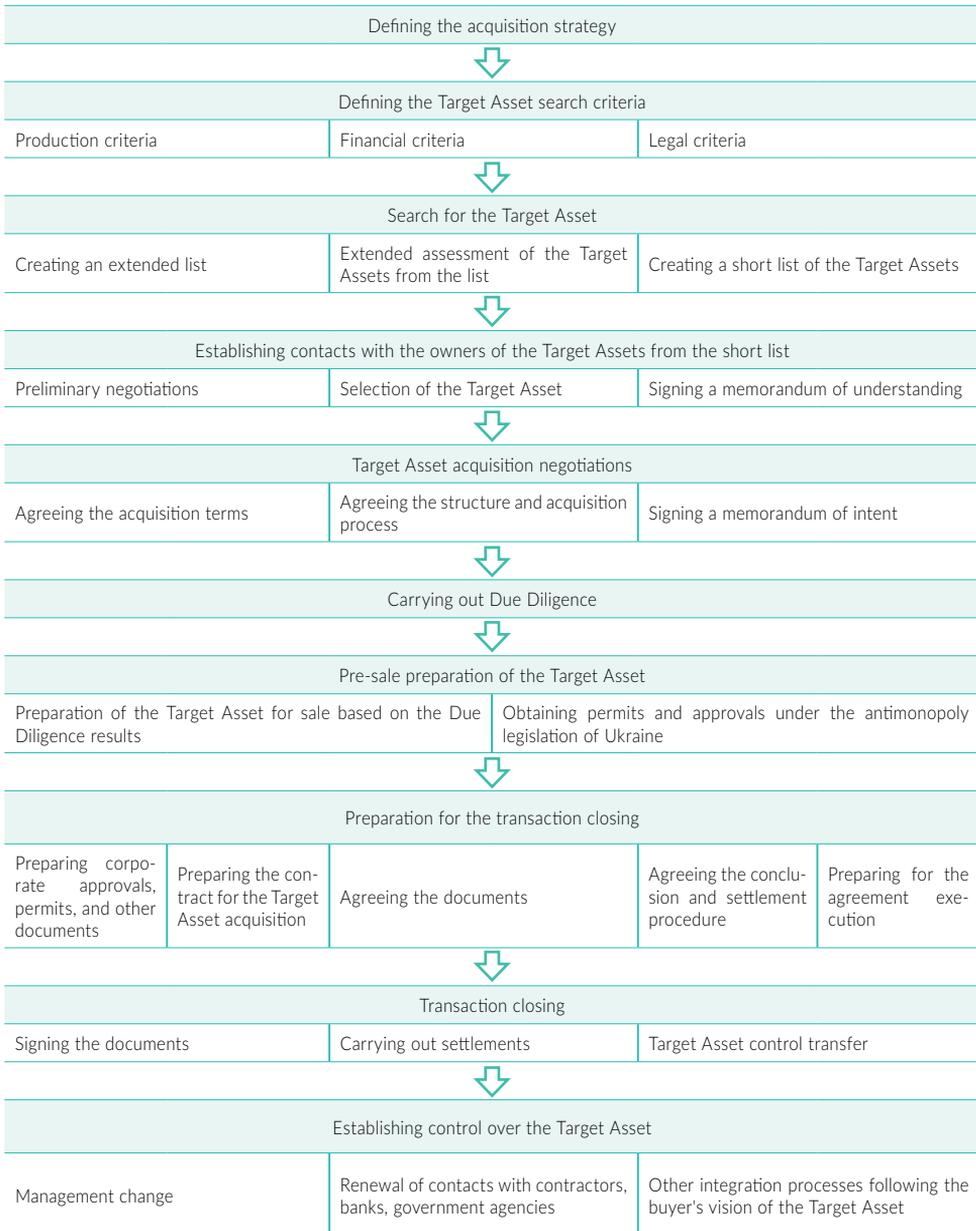
Starting an agricultural business from scratch can be justified when it comes to building elevators, livestock, poultry. However, in the case of growing agricultural products, it is

certainly more cost-effective to acquire a basic agricultural asset – an agricultural company that already operates a land bank.

## 1.4. Buying an agricultural company

The procedure for acquiring an agricultural company in Ukraine generally has a typical M&A structure, but it is important to consider regional specifics. If they are not considered, the acquisition of agricultural companies in Ukraine can be long, costly, and quite risky.

### Procedure for acquiring agricultural companies in Ukraine





## How to buy an agricultural company in Ukraine

This article outlines the legal framework and process management of agricultural company acquisitions in Ukraine, including legal due diligence, deal planning, and peculiarities of M&A in agribusiness.

[Learn more](#)



## Legal due diligence of Ukrainian agricultural assets

This article deals with the peculiarities of legal due diligence of Ukrainian agricultural companies and agricultural assets, including process management and the legal aspects of M&A in Ukrainian agribusiness.

[Learn more](#)

## 1.5. Privatization of state-owned agricultural assets

There are generally no requirements for a special prior government approval for buying state-owned agricultural assets by foreign investors. But all such acquisition must be carried out under a special procedure – privatization.

Privatization is the most common way for acquisition of grain storages, infrastructure objects, and production assets.

## 1.6. Agro peculiarities of anti-monopoly regulation

The issues of compliance of agricultural assets transactions to the Ukrainian antimonopoly legislation have certain peculiarities. Usually, when it comes to small groups of companies that do not have a significant market share, such issues may be given insufficient attention. Still, it should be borne in mind that even small agricultural companies in the market sense



## Merger Control in Ukraine 2021: The Law Reviews

This publication deals with the legal framework for merger and antitrust clearance of Ukrainian companies' acquisition, including merger clearance in connection with Joint Ventures establishment, as well as transactions subject to merger control, the notification procedure and review process, etc.

[Learn more](#)

can have a significant asset value and sales volumes. This is primarily due to the specifics of agricultural business in general – large volumes of sales of agricultural products in Ukraine.

Moreover, many of such companies have on their balance sheet a great number of illiquid or even non-existent property obtained in the process of division or privatization (currents, open granaries, silos, social facilities, old equipment, etc.). The companies whose real value as a business is low, may have sufficient assets value and sales volume to trigger the requirements for obtaining a permit from the Antimonopoly Committee of Ukraine (AMCU) at the time of their acquisition by the owner of the target asset.

Generally, mergers and equity/share purchases that would give a company a controlling interest in a Ukrainian company (including agricultural companies) are subject to merger control by the AMCU.

### 1.7. Establishing a new agricultural company

If you are to start an agribusiness, not involving land use (grain storage, logistics, consulting, production), you can establish a new agricultural company. An LLC is the most popular, flexible, and suitable legal vehicle for conducting agribusiness in Ukraine.

The main peculiarity of establishing an LLC for agribusiness purposes is the list of specific agricultural activities in its charter. Besides, it is important to take into account, that the preferential agricultural tax regime will be available for a new agricultural LLC from the next year after its registration. Before applying for the 4th Group of single tax payers, a newly established LLC must have a share of at least 75% in agricultural commodity production in the previous period.



## Registration of an LLC in Ukraine: Frequently Asked Questions

This publication is intended to provide general answers to common questions we receive from our clients in connection with LLC registration in Ukraine.

[Learn more](#)

## 1.8. Martial law peculiarities

From 24 February 2022, registration activities with respect to legal entities are partially restricted (it remains possible to create charitable organizations and public formations and change the data on them, to appoint a new chief of the company if the previous one died, to change the company location, etc.). There is also a moratorium on registration activities in some regions of Ukraine where there is an active combat zone.

State registration is carried out regardless of the location of a legal entity.

The registration procedure remains to be subject to the provision of documents on an ultimate beneficiary if it is associated with the Russian Federation.

Joint-stock companies which are unable to hold general meetings may hold them remotely or within 90 days after the end of martial law. At the same time, if the powers of the joint stock company's governing bodies are terminated during martial law, such powers are deemed to be extended until the date of termination of martial law.

During martial law, the Antimonopoly Committee of Ukraine has suspended a number of actions, in particular,

- processing of applications for breach of legislation on protection of economic competition and against unfair competition;
- consideration of applications and cases on granting clearance for concentration and concerted actions (regardless of their stage of processing), as well as applications for preliminary conclusions as to the necessity to obtain such clearance;
- progress of deadlines for the delivery of information on requests and other inquiries of the AMCU's authorized state officials.

Meanwhile, this does not exempt concentration participants from the obligation to submit applications for approval of concentrations.



# Taxation of agribusiness

## 2.1. Choice of taxation system

The tax legislation of Ukraine allows agricultural companies to choose the system of taxation. The choice of the taxation system depends on the scale of business and type of an agricompany's activity.

## 2.2. Peculiarities of special tax regime for agricompanies

Advantages of the 4th Group of single tax payers tax regime for agricultural companies in Ukraine include:

- a simplified system of income and expense accounting;
- exemption from land tax and rent payments for water use;
- incentives for landowners to lease their land. If a Ukrainian agricultural company in the 4th Group of single tax payers uses leased land, the landowner is exempt from land tax for the duration of the lease;
- income tax exemption for dividend payments in certain cases;
- the tax payers of the 4th Group are not subject to transfer pricing control.

In certain circumstances an agricultural company is compelled to opt for the general system of taxation, for example when a new agricultural company is established in Ukraine. In this case, the status of the 4th Group of single tax payers can be obtained only from the beginning of the new accounting year. Until then, the agricultural company, although subject to the general taxation system, should operate in accordance with the requirements for the 4th Group of single tax payers (having land in use or ownership, share of agricultural production amounting to 75% of total production, not having tax debts, etc.).

## Limitations and peculiarities of taxation of agricompanies depending on the chosen taxation system

	General tax system (corporate income tax)	Group 3 (single tax 3rd Group)	Group 4 (single tax 4th Group)
<b>Agricompanies eligible to choose the system</b>	Any agricompany	Agricompany with income during the calendar year not exceeding 7,585,500 UAH (approx. USD 259,300) Note: The amount may be revised annually	Agricompanies with agricultural production accounting for at least 75% of their total production
<b>Tax rate</b>	18%	3% of income (VAT excluded) or 5% of income (VAT included)	Depending on the category (type) of land, its location and area – in per cent of the tax base, but not less than the minimum tax obligation
<b>What is subject to tax?</b>	Profit (financial result) determined in the accounting records	Income, received during the accounting period. Income is not reduced by expenses	The area of arable land or lands of water fund owned or used by an agricultural company
<b>Taxable base</b>	Profit	Income	Indexed normative monetary evaluation of 1 hectare of arable land or water funds land owned or used by the company
<b>Applicable tax exemptions</b>		<ul style="list-style-type: none"> <li>• corporate income tax;</li> <li>• VAT (for single tax payers at the rate of 5%);</li> <li>• land tax</li> </ul>	<ul style="list-style-type: none"> <li>• income tax;</li> <li>• land tax;</li> <li>• rent payment for water use</li> </ul>
<b>When is the tax paid?</b>	Annually	Quarterly	Quarterly
<b>Reporting period</b>	Calendar year or annual tax period from 1 July of the previous reporting year to 30 June of the current reporting year	Calendar quarter	Calendar year

Agricompanies in Ukraine may be payers of the 4th Group of single tax if the share of agricultural commodity production in the previous tax year equalled or exceeded 75%.

Agricultural companies cannot be payers of the 4th Group of single tax if:

- although they comply with the 75% requirement, more than half of the 75% is income from the sale of decorative plants (except for cut flowers), wild animals and birds, furs and fur products (except for raw fur);
- they raise poultry, breed and raise quail and ostrich and produce poultry meat;
- they produce excisable goods (alcohol, tobacco products, fuel, electricity, beer). However, it should be noted that single tax payers may produce grape wine and wine from their own (not purchased) wine materials, as well as electricity from qualified cogeneration plants or from renewable energy sources. The latter exception is allowed if the income from the sale of such energy does not exceed 25% of the total income from the sale of goods, works, and services;
- they have a tax debt at the beginning of the reporting year. There is also an exception to this rule: uncollectible tax debt resulting from force majeure.

The rates of the 4th Group of single tax payers tax regime are indicated within the range of 0.19-50 per cent per hectare of the indexed normative monetary evaluation of 1 hectare of arable land or water funds land owned or used by the company, depending on the category (type) of land and its location.

The object of taxation for single tax payers of the 4th Group of single tax payers is the area of agricultural land or lands of water fund owned or leased by the Ukrainian agricultural company.

The base for taxation is the normative monetary evaluation of 1 hectare of such land.

Regardless of the tax amount calculated at the said rates, agricultural companies in the 4th Group of single tax payers shall pay tax in the amount not less than the total minimum tax liability.

The minimum tax liability in Ukraine is the minimum amount of tax calculated in accordance with the legislation. The amount of minimum tax liability is determined for each land plot leased or owned by an agricultural company.

The 4th Group of single tax payers shall pay the single tax quarterly in the following amount:

- Quarter I – 10% of the annual tax amount;
- Quarter II – 10% of the annual tax amount;
- Quarter III – 50% of the annual tax amount;
- Quarter IV – 30% of the annual tax amount.

## 2.3. Value added tax

In Ukraine, the value-added tax (VAT) is levied. The list of operations that are subject to VAT includes:

- supply of goods in the custom territory of Ukraine. They also include a number of operations in which the goods are transferred free of charge (transfer of pledged property to the creditor, transfer of goods on the terms of the commodity credit, financial leasing);
- supply of services in the custom territory of Ukraine;
- import of goods into the customs territory of Ukraine;
- export of goods outside the customs territory of Ukraine;
- supply of international transport services.

The VAT base is determined depending on the specific transactions performed by a taxpayer. As a general rule, the VAT base in Ukraine is determined on the basis of the contractual price of the supplied goods or services.

The basic VAT rate in Ukraine is 20%. Some transactions are taxed at 0% rate (under customs regime of export of goods, certain types of re-export, duty-free trade, etc.).

For agricultural companies, VAT rate of 14% is applied to transactions for supply of wheat and rye (meslin), barley, corn, soybeans, rapeseed or colza, sunflower.

Tax legislation of Ukraine also establishes a list of transactions that are not subject to VAT.

Registration of an agricultural company in Ukraine as a VAT payer is voluntary. However, if an agricultural company has performed in the previous 12 months transactions for a total amount of more than UAH 1,000,000 (approx. USD 34,200), such a company is obliged to register as a VAT payer.



### Taxes in Ukraine

This brochure deals with general information about tax rates, objects and bases of taxation in Ukraine, as well as peculiarities of taxation of certain categories of taxpayers. Taxation of non-residents is considered in detail.

[Learn more](#)

## 2.4. Withholding tax

Payments from Ukrainian company to a non-resident legal entity (e.g., dividends to a foreign shareholder) are subject to a withholding tax at the rate of 15% unless a tax treaty between Ukraine and a relevant country sets another rate.

## 2.5. Personal income tax

In Ukraine, an individual pays a personal income tax regardless of his or her residency from any income such as salary, an income from the sale of property, royalty, capital gains, gifts, dividends. Foreigners are subject to taxation only in terms of their Ukrainian income.

The basic personal income tax rate is 18%, 5% – for dividends, if they are paid by Ukrainian corporate income tax payers, 9% – for dividends, if they are paid by the payers of a single tax, foreign companies or Ukrainian corporate investment funds.

All income, which is subject to the personal income tax, is also subject to a military duty at the rate of 1.5%.

For tax purposes, if a foreigner has significant personal or business ties with Ukraine or stays in Ukraine for at least 183 days, he or she is considered a resident of Ukraine.

## 2.6. Staff salary taxation

Salaries are subject to a personal income tax at the rate of 18% and a military duty at 1.5% rate. An employer must withhold taxes when paying salaries to employees.

Additionally, employers must pay social security contributions for each employee at the rate of 22% of the amount of an employee's gross salary. The salary on which the social security contribution is levied is capped with the amount of approx. USD 3,300.

## 2.7. Land tax

Land tax is levied on the valuation rate of a land plot. For agricultural land, the tax rate must be set between 0.3% and 1% of the valuation rate.

Land tax is not levied on land under gardens, berry farms, and vineyards not in fruiting stage, hybrid plants, gene pools and seedbeds of perennials.

The 4th Group of single tax payers is exempt from land tax for the land where they produce agricultural commodities.

## 2.8. Environmental tax

If an agricompany or a grain storage facility dumps waste into air or water or disposes of waste on land, it must pay environmental tax. The tax rate depends on the amount of the dumped waste.

## 2.9. Fee for use of water

The use of water for drinking, firefighting, or hygienic needs (e.g., water supply in water closets) of a company or its personnel is exempt from the fee.

A fee for using water reservoirs is paid if an agricompany uses water for commercial needs such as fish farming or transportation.

The 4th Group of single tax payers do not pay the fee for use of water.

## 2.10. Martial law peculiarities

Starting from 1 April 2022, payers of a single tax of the 3rd Group may switch to the tax system which provides for payment of the single tax in the amount of 2% of the annual income and the maximum annual income limit is up to UAH 10 billion (approx. USD 341,823,100). At the same time, such taxpayers are exempt from the obligation to accrue and pay value added tax on the transactions for the delivery of goods, works, and services, when the place of their delivery is located in the customs territory of Ukraine, as well as on the import of goods to the customs territory of Ukraine.

Agricultural companies should switch to the 3rd Group of single tax payers in order to use these taxation features.

On termination or cancellation of martial law, such single tax payers lose the right to use these taxation features and automatically revert to the previous taxation system.



# Financing of agribusiness

## 3.1. General overview

The most accessible sources of financing in Ukraine are:

- direct funding;
- bank loans;
- leasing;
- promissory notes;
- agricultural receipts;
- issue of securities.

## 3.2. Direct funding

Direct funding is the simplest way to finance agribusiness in Ukraine. It is mainly carried out in the form of:

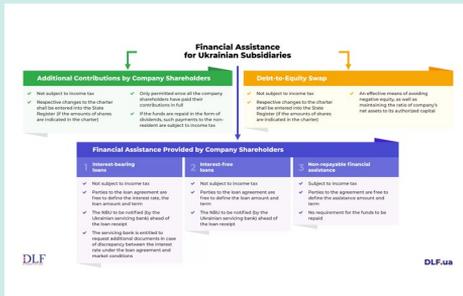
- contributing own funds or assets to the authorized capital of an agricultural company;
- providing an agricultural company with repayable financial assistance;
- sale of a share in the authorized capital of an agricultural company to an investor.

The contribution of a shareholder to the authorized capital may be in cash, securities, or other property (i.e., necessary equipment, tractors, tillers, dryers, etc.). An in-kind contribution must have a monetary value approved by a unanimous decision of the members' general meeting. Such contribution increases the share of the contributor in the authorized capital (and the size of the authorized capital) of the agricultural company.

## Financial assistance for Ukrainian subsidiaries in times of crisis

This article outlines the tools Ukrainian subsidiaries of foreign companies can use to receive financial assistance, including via additional contributions by company shareholders, financial assistance provided by company shareholders, and debt-to-equity swap.

[Learn more](#)



Owners (shareholders or third persons) can also provide their company with repayable financial assistance. In practice, the provision of financial assistance by the owner is also used to withdraw invested funds faster when there is no more need for them. If the funds are invested in the authorized capital, their withdrawal is accompanied by complex legal procedures (reduction of authorized capital, etc.).

Of course, selling a share of an agricultural company to a new investor is the least attractive way to get financing. Yet this form exists and is often used not to cover current needs, but to develop the agricultural company. As a general rule, direct investment in this case gives the investor an opportunity to control the activities of the Ukrainian agricultural company.

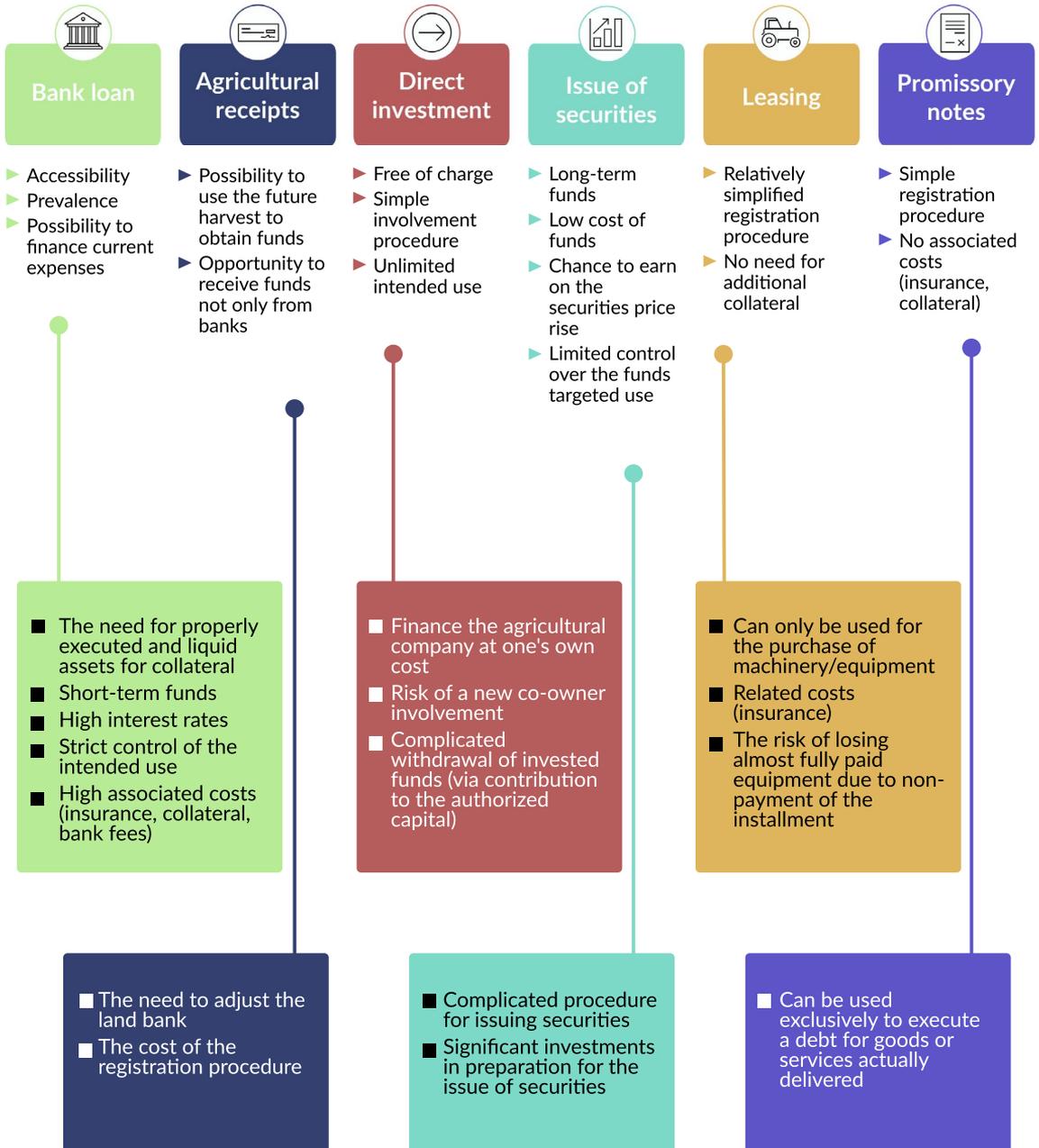
### 3.3. Bank loans

Bank financing is the most common form of agribusiness financing. Mostly, banks issue loans to replenish working capital and cover urgent financial needs: the purchase of plant protection products, seeds, current needs. Typically, such loans are issued in the form of credit lines or overdrafts, less often in the form of loans. Bank loans are also traditionally used for implementing infrastructure projects (development of storage, construction) or the purchase of machinery and equipment.

Ukrainian banks trust mostly the collateral of real estate and equipment. Agricultural companies that do not yet have a serious credit history can usually get a loan in the amount corresponding the collateral of their real estate, or a smaller amount if they cover it with other types of collateral.

Very often most of the old-fashioned agricultural companies' assets are either illiquid and poorly formalized (tractor crews, elevators, warehouses, granaries, equity), or quickly depreciated (machinery is used extremely intensively), or consumable (plant protection products, grain, seeds). For this reason, it is important to analyse the assets in terms of interaction with banks when buying an agricultural company in Ukraine.

# Financing agricultural companies in Ukraine



When using credit funds, the borrower, as a rule, must not only regularly pay interest on the loan but also provide financial statements to a relevant Ukrainian bank, allow the bank to verify the intended use of credit funds and collateral's condition, use accounts of the bank providing the loan for settlement. The bank may also impose other restrictions and requirements on the agricultural company's activities during the period of credit funds use.

### 3.4. Leasing

Leasing is one of the most popular sources of financing the purchase of machinery and equipment by agricultural companies in Ukraine. Unlike bank loans, leasing is much more flexible, does not require additional collateral, excellent credit history, and long registration.

The disadvantage of this source of financing is its specialization: leasing financing can be obtained only for the purchase of machinery and equipment. Leasing does not solve problems with financing the agricultural company's current needs.

It should also be noted that an agricultural company can only use leased property and cannot sell or pledge it. In addition, in case of a lease payment delay for more than 30 days, the lessor has the right to withdraw from the lease agreement and demand the return of the leased asset from the lessee. It is very unpleasant to lose almost fully paid equipment due to temporary financial problems.

### 3.5. Promissory notes

Promissory notes can be issued only for the execution of a monetary debt for the goods delivered (works performed or services rendered). At the time of a promissory note issuance, the promissory note's payer (e.g., a Ukrainian agricultural company) must have an obligation to a seller (e.g., a seller of plant protection products) in the amount not lesser than the amount of the promissory note.

The main advantage of a promissory note is that it provides for deferred payment for the period specified in the promissory note. Interest on a promissory note is not a mandatory condition – a promissory note can be issued without interest.

Promissory notes allow Ukrainian agricultural companies to wait for higher prices for their products. Usually, during the harvest period, prices fall, and costs increase. By postponing debt repayment, the agricultural company can make funds available for timely harvesting, drying, and storage, and make more profit due to possible price rallies. In addition, by timely promissory notes' payment, the agricultural company forms a positive credit history, which makes getting a bank loan easier.

### 3.6. Agricultural receipts

Agricultural receipts are a relatively new tool for financing agricultural producers. But it is agricultural receipts that allow agricultural companies to break the vicious circle of «no collateral – no credit – no possibility to buy a property that can be pledged.» In fact, the future harvest is pledged through agricultural receipts.

The main difference (as well as the advantage) of agricultural receipts is that funds provided under the contract can be obtained not only from a bank but from any person. Moreover, Ukrainian agricultural companies can use their main assets – crops as collateral.

At the same time, agricultural receipts require very effective management of the land bank: control over the registration of leased land plots, management of lease relations. This is because during the registration of the agricultural receipt it is necessary to provide the notary with the documents confirming the agricultural company's right to cultivate the land for crops. In addition, the obligation of notarization makes the procedure for raising funds through agricultural receipts more expensive.

It is important to remember that if the debtor fails to comply with the terms of an agricultural receipt, the creditor does not need to apply to court. The agricultural receipt has the status of an enforcement document. The creditor may apply directly to the enforcement authorities, in particular to private enforcement agents.



## Usage, benefits and risks of agricultural receipts in Ukraine

This article discusses the basic elements of transactions involving agricultural receipts in Ukraine, their risks and advantages for agricompanies, including legal aspects of risk management in transactions with agricultural receipts and ways to avoid such risks.

[Learn more](#)

## 3.7. Issue of securities

Issue of securities is economically the most profitable source of financing for an agricultural company. However, the process of such financing is complex and expensive.

Fund-raising in financial markets through the placement of securities requires meticulous structuring of assets, involvement of advisers and relevant institutions, reporting arrangement and significant investment in human resources. In addition, successful fund-raising in financial markets requires a certain history of success and truly convincing prospects. This source of funding is available primarily to large and well-structured agricultural companies.

The issue of securities for the Ukrainian market is mostly not very justified. This is due to the rather sluggish securities market of Ukraine. In most cases, Ukrainian agricultural companies raise funds this way in the markets of Western Europe.

## 3.8. Martial law peculiarities

The National Bank of Ukraine imposed restrictions on the purchase of foreign currency and cross-border transfers, except for:

- currency transactions with international financial organisations (the EBRD, the IFC, the EIB and others) for the purpose of settlements with such organisations;
- import transactions by the residents of Ukraine for the purchase of critical imported goods;
- transactions based on individual approvals (decisions) of the NBU.

Banks are prohibited from carrying out any currency transactions in which a participant is a legal entity or an individual with a location (registration/permanent residence) in the Russian Federation or the Republic of Belarus.

Agricultural producers have an opportunity to get a loan of up to UAH 60 million (approx. USD 2,050,900) under 0% for the period of martial law under the «5-7-9%» programme. The term of a loan under the «5-7-9%» programme will depend on the special purpose of the funds. For an investment project and debt refinancing, loans shall be given for the maximum of 5 years; while for financing the working capital they are provided for 3 years. Such loans are granted exclusively for the purchase of fixed assets and to cover any expenses related to agricultural activities.

Due to the active fighting in some regions, it is not always possible to make notarisation of agricultural receipts.

The planned state support for agricultural companies is subject to the following conditions:

- provided exclusively to small and medium-sized agricultural producers with an annual turnover not exceeding EUR 20 million, which is the equivalent of an enterprise cultivating up to 10,000 ha;
- an interest rate compensation on loans raised;
- the maximum loan amount to which interest rate compensation is applied is UAH 50 million (approx. USD 1,709,100);
- loans are granted for agricultural activities (sowing) during the martial law period;
- in order to obtain a loan, a business entity must also be an agricultural producer;
- the loan term is 6 months;
- the maximum amount of the state guarantee for portfolio loans is 80%.

# 4

## Foreign investment regulation

### 4.1. Foreign direct investment policies

The attraction of foreign direct investments is a priority of the Ukrainian government. Since the Euromaidan in 2014, the government has founded several institutions which should facilitate this development, such as:

- National Investment Council (consulting on policy in economic issues; members: foreign large-scale businesses);
- Business Ombudsman Council (support for foreign and domestic companies in disputes with governmental authorities);
- UkraineInvest (investment promotion body).

Foreign and domestic companies are of equal status in Ukraine. There are restrictions for foreign investors only in terms of owning agricultural land, publishing industry, and critical infrastructure objects.



### Ukraine: Investment Guide

The Investment Guide focuses on the general regulations in the most commonly referred areas of the Ukrainian law, including foreign investment protection, M&A, corporate law, customs regulations, labour law, real estate, taxes, IP protection, dispute resolution, etc.

[Learn more](#)

## 4.2. Support of large investors

On 13 February 2021, the Law «On State Support of Investment Projects with Significant Investments» (hereinafter referred to as the Law On Large Investors) came into force. A new type of investor has been distinguished – an investor with significant investments, as well as an investment project with significant investments. The Law On Large Investors provides a number of benefits for such investors and defines forms (tools) for providing state support to investment projects with significant investments.



### Law on support of large investors in Ukraine adopted

This article provides an overview of the so-called Law On large Investors, in particular, the legal regulation of investment project criteria, forms of investor support, peculiarities of special investment contracts and investors' eligibility for support under this Law.

[Learn more](#)

State support will be provided for implementation, inter alia, in the sectors of processing industry, waste management, transportation, warehousing, logistics, science, research and development, etc.

The investment projects with significant investments must create at least 80 new jobs, their amount of contribution in investment objects must exceed the equivalent of EUR 20 million and the project must include construction, modernization, technical and/or technological re-equipment of investment objects, purchase of the necessary equipment and its components.

The implementation period of investment projects with significant investments should not exceed 5 years.

State support of investment projects with significant investments may be provided in the following forms:

- exemption from income tax for 5 years, as well as from payment of VAT and duties on import of new equipment;

# Requirements to investment projects

## INDUSTRIES



### Processing industry

except for tobacco products, alcohol



### Mineral extraction for further processing or enrichment

except for coal and lignite, crude oil, and natural gas



### Transportation, warehousing, postal and courier operations, logistics



### Education, science, R&D



### Healthcare, resorts and recreation



### Arts, culture, sports, tourism



### Waste management

#### Salary

at least 15% higher than the comparable average salary in the region

#### Jobs

≥ 80 new jobs

#### Investment amount

> EUR 20 million

#### REQUIRED

construction, modernization, technical and/or technological re-equipment of investment objects, purchase of necessary equipment and its components



#### Implementation period

up to 5 years

# State support of large investors



## Tax benefits:

1. Exemption from income tax (for 5 years)
2. Full/partial exemption from payment of land rent and land tax
3. Exemption from payment of duties on import of new equipment
4. Exemption from import VAT



**Construction, restoration, major overhaul of related infrastructure at the expense of the state, local budgets, etc.**



**Support for the investor during the project design and implementation**



**Preemptive right to use (and potentially, acquire ownership of) a land plot**



**State guarantees of stable conditions for conducting business**

Tax benefits + Infrastructure construction/overhaul  
=  
**up to 30% of the investment amount**

[More information](#)



- granting the preemptive right to use a state or municipal land plot for implementation of the investment project. Furthermore, the investor may be granted the preemptive right to acquire ownership of the land plot after expiration of the special investment agreement;
- provision of construction, reconstruction, restoration, major overhaul of related infrastructure (highways, communication lines, heat, gas, water, and electricity supply facilities, utilities, etc.) required for the implementation of the investment project at the expense of the state, local budgets, and other legal sources.

Special investment contracts are concluded for a period agreed by the parties, but not more than for 15 years.

### 4.3. State support of agricultural producers

In Ukraine, the state can provide budget support to agricultural producers in the following areas:

- state support for the development of livestock breeding and processing of agricultural products;
- partial compensation of the cost of the agricultural machinery and equipment produced in Ukraine;
- financial support of measures in the agro-industrial complex through cheapening of loans;
- financial support for the development of horticulture, wine growing, and hop growing;
- state support for insurance of agricultural products;
- compensation for agricultural crop losses caused by emergency anthropogenic and natural disasters;
- state support of agricultural producers who use a reclaimed land;
- state support of organic agricultural products producers;
- state support of potato producers;
- state support of agricultural producers by allocating budget subsidies per unit of cultivated land;
- a special budget subsidy for available bee colony;
- partial reimbursement of the cost of breeding animals, bees, sperm, and embryos;
- partial reimbursement of the cost of construction and/or reconstruction of livestock farms and complexes, fish farms, milking parlours, and agricultural product processing enterprises;
- partial reimbursement of the construction and value of livestock farms and com-

plexes, milking parlours, enterprises for processing of agricultural products in terms of costs, financed without VAT based on bank loans;

- partial reimbursement of the construction and reconstruction cost of the grain storage and processing enterprises;
- a special budget subsidy for the maintenance of does, kids, ewes, and ewe lamb.



### Partial loan guarantee fund for the Ukrainian agriculture

This article deals with the process of obtaining loans under the guarantees of the partial loan guarantee fund for agricultural companies in Ukraine, including the eligibility criteria and access of the banks to the programmes of financial support of agricompanies.

[Learn more](#)

## 4.4. Protection of foreign investments

The key types of guarantees that Ukraine offers to foreign investors are the following:

- state guarantees against changes in legislation – in case the guarantees on foreign investment protection are subject to change, the state guarantees shall be used to protect foreign investment at the request of a foreign investor within 10 years from the date of entry into force of such a legislation;
- guarantees against seizure and unlawful acts of state bodies and state officials – state bodies may not seize foreign investments, with the exception of emergency measures in the event of natural disasters, accidents, epidemics or epizootics. Decisions about the seizure of foreign investments and the compensation terms and conditions can be appealed in court. The legislation provides for compensation related to the seizure of foreign investments;
- compensation and reimbursement of losses incurred by foreign investors due to the acts of state bodies and state officials – foreign investors shall be entitled to receive compensation of their losses, including lost profit and moral damage incurred as a result of acts, inaction or improper fulfilment by the state bodies of Ukraine or their officials of the responsibilities in relation to foreign investors

or entities with foreign investment as provided by the legislation of Ukraine;

- guarantees in the event of investment activity termination – a foreign investor shall be entitled within 6 months following the day of termination of such an activity to recoup any investment in kind or in the currency of investment in the amount of the actual contribution without payment of duty, along with profits from those investments in monetary form or in goods at the actual market value at the time of investment activity termination;
- guarantees for the remittance of profits and other sums resulted from foreign investments – upon payment of taxes, duties, and other mandatory payments, foreign investors shall be guaranteed unimpeded and prompt remittance abroad of their profits and other sums in foreign currency obtained legally as a result of foreign investments.

Additional guarantees provided by international agreements, ratified by Ukraine, include:

- opportunity to use the mechanisms of investment protection provided by the Convention on the Investment Disputes Settlement between States and Nationals of Other States. Investors may address the International Centre for Settlement of Investment Disputes with regards to the protection of their rights in connection with the confiscation of their property, unequal treatment in terms of domestic and foreign investors;
- recognition and enforcement of foreign awards in Ukraine;
- more than 65 bilateral investment treaties;
- 75 effective bilateral taxation treaties;
- 16 free trade agreements (FTAs) covering 46 countries;
- Multilateral Convention to Implement Tax Treaty-Related Measures to Prevent Base Erosion and Profit Shifting (MLI). Application of the MLI law combats abuse in bilateral tax treaties in a synchronized and efficient way by amending approximately 40 of Ukraine's bilateral tax treaties.

# 5 Acquiring and holding agricultural land

## 5.1. General overview

From 1 July 2021, it is legally allowed to acquire agricultural land in private ownership in Ukraine. However, for agricultural companies, who are the main users of such land, it will remain impossible to purchase land until 1 January 2024. For foreigners and Ukrainian companies owned by foreigners, agricultural land will be available only after an all-Ukrainian referendum on this issue.

For now, most agricultural companies, regardless of their shareholders' residency (Ukrainian or foreign), lease agricultural land for agribusiness from individual landowners.



### Land market opening in Ukraine

This article covers the key stages of the land market opening in Ukraine, providing the opportunity for individuals and business entities to acquire agricultural land, land prices, as well as certain restrictions on purchasing of such land.

[Learn more](#)

## 5.2. Acquiring and holding agricultural land

There are following peculiarities of acquiring and holding agricultural land in Ukraine:

- the vast majority of agricultural land in Ukraine is divided in plots with average size from 1.1 to 8.8 hectares;
- to rent large massifs of agricultural land, agricultural companies have to conclude a large number of land lease agreements;
- there are no restrictions for foreign citizens or companies to lease agricultural land;
- the lease term may not exceed 50 years, nor be less than 7 years (or 25 years for land plots on which agricultural companies are engaged in horticulture or viticulture, or 10 years for ameliorated land plots);
- the lessor has to reimburse the lessee if the contract is terminated at the initiative of the former;
- the right to use land is subject to registration in the Real Estate Register and effective from the moment of such registration;
- the lessee has the preemptive right to purchase the land plot, if this provision is fixed in the lease agreement;
- the rent can be paid in cash or in kind.

## 5.3. Control over cultivated land

The effective control over the cultivated land can be achieved without the immediate purchase of land.



### How agricultural companies in Ukraine can control cultivated land

This article outlines the best practices exercised by agricultural companies in Ukraine to establish control over cultivated land when purchasing the land is not possible, as well as effective preparation for the acquisition of agricultural land, once the restrictions are lifted.

[Learn more](#)



## Use of agricultural land during the war in Ukraine

This article focuses on the special regulations on the use of agricultural land under martial law in Ukraine, including automatic renewal of land lease agreements, conditions for the lease of state and communally owned agricultural land and other restrictions and relaxations in land regulation.

[Learn more](#)

The main tool that allows agricultural companies to control the process of repurchasing the land they lease is the preemptive right to purchase it. This means that agricultural companies in Ukraine may choose a potential owner of the land and, in fact, establish the most important condition for themselves – the immediate transfer of the acquired land by the new owner to the agricultural company for a long-term lease.

To effectively exercise their preemptive right and, accordingly, to control the sale of leased land, agricultural companies in Ukraine must effectively organize the process of entering into the land purchase and sale agreements, lease agreements, and managing information about their land rights.

To effectively control hundreds (or thousands) of leased land plots, a huge number of agreements and related documents must be prepared, concluded, and registered. Agricultural companies in Ukraine need to:

- effectively control the current state of land rights (in the vast majority of cases the lease rights);
- have a clearly structured and standard documentation procedure provided with staff, budget, and instructions, for organizing the preparation and the conclusion of the land sale agreements.

The advantages of such control are obvious:

- the number of landowners is reduced (large parcels of land are accumulated in the same hands);
- the duration of the lease increases;
- the lessor is more business-oriented (especially in the case of attracting buyers who invest in the land and expect to receive rental income);

- it is possible to establish control over the cultivated land even without sufficient funds for its acquisition;
- it is possible to stretch the process of actual buy-out (once the legal restrictions are lifted) over several years, investing the available funds in the acquisition of the Ukrainian land, without the risk of production stoppage.

For the prospective land buy-out, the control over cultivated land is important because of effective ensuring of the preemptive right of the lessor for land buy-out. With this right, the lessor will be first in queue for purchasing agricultural land after it is allowed in Ukraine.

# Establishing control over leased land in Ukraine

## Search for potential sellers

- Ads in the settlements where most landowners live
- Personal work of the agricultural companies' authorized personnel
- Ads in the press

## Search for potential buyers

- Agricultural companies' employees involvement
- Third parties involvement



## Preparation for entering into land purchase and sale agreement

- Verification of documents certifying the ownership right
- Land plot verification
- Verification of the Seller
- Verification of the Buyer
- Preparation of documents for the transfer of the preemptive right to the Buyer
- Preparation of a draft lease agreement with the new owner
- Opening accounts for the Seller and the Buyer

## Entering into land purchase and sale agreement

- Provision of the documents to the Notary
- Verifications performed by the Notary
- Entering into the land purchase and sale agreement

## Registration of the Buyer's property right

## Rental rights registration

## Entering into a long-term land lease agreement



# Storage and transportation of agricultural products

## 6.1. Storage

In Ukraine, grain is stored in grain warehouses. Grain owners may store grain in their own grain warehouses. Grain warehouses have to accept grain for storage from any person. On accepting grain for storage, grain warehouses are obliged to analyse its quality.

The grain storage is based on the contract of bailment, which is public, under a form approved by the Ukrainian government. The contract conclusion is accompanied by the issuance of a storage document.

According to Ukrainian legislation, there are several types of warehouse documents. They have different purposes, still, all of them confirm the acceptance of grain by the warehouse.

Types of warehouse documents are as follows:

- a double warehouse certificate;
- a simple warehouse certificate;
- a warehouse receipt.

A double warehouse certificate consists of two parts, namely, a warehouse certificate and a pledge warrant, which can be separated from each other. Double warehouse certificates are mainly used in the event of grain lending. The holder of a pledge warrant has the right to demand repayment from the person who has obtained a credit, as well as a pledge on the grain the value of which corresponds to the amount owed.

A warehouse certificate and a pledge warrant can be transferred together or separately by endorsements.

A simple warehouse certificate shall be issued to a bearer. A holder of a warehouse deposit certificate has the right to dispose of the grain stored at the grain warehouse. The transfer of the simple warehouse certificate shall be equivalent to the grain transfer.

If a grain warehouse accepts grain for storage without issuing a simple or double warehouse certificate, it shall issue a warehouse receipt to confirm the acceptance of the grain for storage.

Grain warehouses shall keep a special register of grain warehouse documents and also enter information into the register of grain obtained for storage.

Damage caused to a bailor by loss, shortage, or damage to grain shall be compensated by the grain warehouse as follows:

- for the loss and shortage of grain – in the amount of the value of the lost or missing grain;
- for damage to the grain – in the amount by which its value has been reduced.

## 6.2. Overseas transportation

In Ukraine, overseas transportation is regulated by the special legislation, i.e., the Merchant Shipping Code, as well as the legislation governing transport and commercial relations in general.

Besides, international overseas transportation of agricultural products from Ukraine is regulated by the rules of several multilateral international treaties, such as the International Convention for the Unification of Certain Rules of Law relating to Bills of Lading (The Hague Rules of 1924), the Protocol to Amend the International Convention for the Unification of Certain Rules of Law relating to Bills of Lading of 1924 (The Visby Rules), the United Nations Convention on the Carriage of Goods by Sea of 1978.

Disputes relating to overseas shipping are heard by the Maritime Arbitration Commission at the Ukrainian Chamber of Commerce and Industry (Maritime Arbitration Commission). If a foreign legal entity or an individual is involved in a dispute, the dispute may be referred to a foreign court or arbitration.

The basic document regulating relations on the overseas transportation of goods is a contract of carriage by sea. Such a contract must be concluded in writing.

The documents confirming the existence and the subject matter of the contract of carriage by sea include the voyage charter (if the contract stipulates the provision of the whole vessel, a part of it, or an individual ship's premises for carriage) and the bill of lading.

Ukrainian legislation does not clearly distinguish between the regulation of the charter of a ship and cargo transportation. Therefore, to avoid disputes it is important to formulate the subject of the contract when concluding the contract.

Loading and unloading operations in Ukrainian seaports are carried out by port and terminal operators. Their activity is regulated by separate rules for services in Ukrainian seaports.

The following operations to be carried out by port operators are referred to by Ukrainian legislation as the loading and unloading operations:

- loading and unloading cargo;
- cleaning the holds of ships, wagons after unloading cargo;
- cargo movement;
- fastening of cargo, special fastening of cargo;
- stowage;
- weighing, marking, and sorting (breaking of bulk);
- bringing cargo to transportable condition;
- other works and services.

To receive or dispatch cargo, the port facilities customer shall prove their authority with a transport document or a shipper's/consignee's power of attorney, depending on the terms of cargo delivery.

On transporting grain by sea, the parties to the agreement are usually governed by GAFTA (Grains and Feed Trade Association) proformas. The forms of transportation (freight or carriage) are established depending on the provisions of the chosen GAFTA contract.

In the case of grain sales on CIF or derivative terms, a seller shall conclude a charter party. Such contracts are mostly concluded based on standard proformas, which depend both on the export region and the type of cargo transported. Synacomex (Continent Grain Charter Party) is the most popular proforma for shipments from Ukraine.

A grain carrying vessel shall have an authorization document following the International Grain Code. At the same time, for grain transportation, the shipowner is obliged to ensure that the hold is clean, dry, and ready for loading and that the grain is maintained at appropriate temperatures and moisture levels.



## Peculiarities of GAFTA contracting in Ukraine

This article deals with the peculiarities of standard GAFTA contracts negotiation and conclusion in Ukraine, including verification of the representatives' credentials, dispute resolution, and practical insights on causes of errors made while concluding such contracts via emails and in written form.

[Learn more](#)

Grain fumigation is a prerequisite for grain supply contracts. When grain is shipped under GAFTA contracts, fumigation is carried out by an accredited company under GAFTA 132 fumigation regulations.

In addition, the state sanitary rules for Ukrainian maritime vessels stipulate several requirements for vessels transporting grain cargo related to the safety of fumigation.

## 6.3. Cargo transportation by rail

In Ukraine, grain is mostly transported in bulk in specially equipped wagons. In some cases, grain owners must obtain special permission to transport it by rail before handing it over.

Legislation, in particular, the Charter of the JSC “Ukrainian Railways” (Ukrzaliznytsia), and several specialized rules of law establish separate requirements for transportation, depending on the type of grain being transported and its characteristics.

For example, rye, wheat, oats, barley, buckwheat, millet, corn in grain, oilseeds and pulse crops, unhulled rice bran and grain by-products, sharp, compound feed, dried pulp, oil cake, protein meal, are transported in bulk in specialized grain wagons (hereinafter, grain wagons), as well as in covered wagons with door barriers (shields). Grain with moisture content exceeding 16% and millet with moisture content exceeding 15% can be transported only on special terms under separate contracts with Ukrzaliznytsia.

In case of grain contamination by pests, plant diseases, or weeds, disinfestation of the wagons after transportation of the contaminated grain is performed by the means and at the expense of the recipients.

International rail transportation is carried out following the Agreement on the Use of Freight Wagons in International Traffic and the Regulations annexed thereto. In particular, these rules regulate the procedures for moving wagons from the wider tracks of the Ukrainian railways to narrower tracks of the EU railways, define a list of shifting points and other rules to be considered when exporting Ukrainian agricultural products by railways.

## 6.4. Road transportation

Road transportation of agricultural products in Ukraine is regulated by special rules that vary depending on the type of transported agricultural products.

### *Grain transportation*

in Ukraine, grain can be transported by road in containers or unretained. At the same time, transportation in containers is forbidden for grain with a moisture content exceeding 15%, in a state of self-heating, infected by pests, waterlogged, grain without proper shipping marks on the sacks, in a non-standard or a defective container, grain without quality certificates.

The main container for grain cargo may be dry, not mouldy close texture bags, not infected by pests, and without foreign odours.

Grain is received and transferred by shipping carriers based on its weight.

### ***Vegetables transportation***

When transporting potatoes and other vegetables, carriers, consignors, and consignees are obliged to take measures to protect them from mechanical damage as well as from precipitation and exposure to low and high temperatures.

Receipt from a consignor and delivery of potatoes and vegetables to a consignee is performed by shipping carriers based on their weight by consignment notes.

### ***Sugar beet transportation***

Contracts for the carriage of sugar beet by road shall provide for the possibility of using the same vehicles for the carriage of pulp in the reverse direction.

Road transportation of sugar beet is carried out on an hourly schedule.

Sugar beet is transported by flat cars and dump trucks without loading it into bags or other containers.

Shipping carriers accept sugar beet from growers and transfer it to pick-up sections based on its weight.

### ***Fresh fruit transportation***

Fruit, berries, grapes, and cucurbits are transported in refrigerated trucks, isothermal vehicles, vans, or flat cars (truck trains).

### ***Cattle, poultry, bees transportation***

Carriers, consignors, and consignees shall comply with applicable veterinary and sanitary regulations when transporting cattle and poultry.

Shipping carriers shall provide vehicles specially equipped for the transportation of cattle and poultry. It is prohibited to transport cattle and poultry by dump trucks, as well as by vehicles used for transportation of toxic substances and chemicals without prior sanitary treatment of the rolling stock.

When transporting cattle and poultry, a consignor shall issue a veterinary certificate of the established form to a carrier (a shipping agent), and, if necessary, a permit from a quarantine authority. The consignor shall appoint a shipping agent to accompany cattle and poultry. Driver may act as shipping agents.

If the duration of cattle and poultry transportation exceeds 6 hours, the consignor is obliged to provide them with fodder.

Carriers are not liable for the mortality of cattle and poultry during its transportation due to disease, improper placement, or inadequate air temperature for transportation of certain types of cattle and poultry.

Bees can only be transported during the summer or the transitional periods.

# Environmental and water control

## 7.1. Pesticides and agrochemicals use

In Ukraine, pesticides are defined as toxic substances, their compounds and mixtures of substances of chemical or biological origin, intended to destroy, regulate and stop the development of pests.

Agrochemicals are organic, mineral, and bacterial fertilizers, chemical ameliorants, plant growth regulators and other substances intended to increase soil fertility, crop yields, and improve the quality of crop products.

The list of pesticides and agrochemicals that may be used in Ukraine is determined based on the State Register of Pesticides and Agrochemicals Permitted for Use in Ukraine. This Register is open, up-to-date, and available on the website of the Ministry of Environmental Protection and Natural Resources of Ukraine.



### Legal regulation of pesticide and agrochemical use in Ukraine

This article discusses the use of pesticides and agrochemicals in Ukraine, in particular, state registration, the transportation and storage requirements, labour safety rules, waste management issues, and liability for the violation of the established rules and regulations.

[Learn more](#)



## Aerial pesticide treatment in Ukraine: legal aspects

This article looks into the requirements for performing aerial pesticide treatment, including for the treatment site, weather conditions, time, etc., notification of local residents, liability for the violation of the said requirements, and compensation for damages caused.

[Learn more](#)

All pesticide and agrochemical formulations must be registered in this Register. Until their state registration, use, import into Ukraine, production, trade, and advertising of pesticides and agrochemicals are prohibited.

Some types of agrochemicals may be used without registration. Such types are included in a special list contained in the appendix to the relevant law «On pesticides and agrochemicals».

Ukrainian legislation classifies pesticides as dangerous goods, so their transportation is carried out under special conditions.

Pesticides can be stored only in specially equipped warehouses that meet the established state standards and undergo annual certification. Ukrainian legislation sets the size of sanitary protection zones depending on the amount of pesticides stored in a particular warehouse.

As a general rule, the use of chemicals should be mechanized with the help of special equipment and techniques: sprayers, atomizers, etc.

Ukrainian legislation sets restrictions on terms of use of pesticides in fieldwork, in particular, on weather conditions and time of day when they can be applied. The use of pesticides in fieldwork by aerial spraying is regulated separately.

Ukrainian legislation prohibits to engage persons who are not allowed to work with pesticides and agrochemicals, persons under the age of 18 and several other categories of employees in the work with pesticides and agrochemicals.

Pesticide containers should be disposed of by manufacturers or specialized enterprises granted the appropriate license. Most large manufacturers and importers make advance payments for the disposal of containers. Therefore, in most cases, Ukrainian agricultural companies return containers to the manufacturer or transfer them to the appropriate licensed company for disposal.

Paper and wooden containers should be disposed of by licensed companies as well, but most farmers or agricultural companies simply burn them.

In Ukraine, violations of the law on pesticides and agrochemicals entail civil, disciplinary, administrative, or criminal liability.

## 7.2 Emissions

Emissions of pollutants into the atmospheric air may only be made by an enterprise that has received a permit to emit pollutants into the atmospheric air by the stationary sources. In the agricultural sector, such enterprises include, e.g., grain elevators operating grain dryers.

A permit for the emission of pollutants must be obtained by all grain elevators that intend to operate grain dryers. The permit can be granted by the Department of Ecology and Natural Resources of the Regional State Administration. The permit is issued free of charge within 30 days from the date of receipt of the application.

## 7.3 Waste

Waste management in the agricultural sector is mainly regulated by the general environmental regulations. In Ukraine, the waste management legislation imposes the following obligations on the agricultural companies:

- to prevent and reduce the generation of waste;
- to ensure receiving and eliminating the used packaging materials and containers with agricultural products;
- to keep records and determine the composition and properties of the agricultural waste generated as a result of a company's business activity;



### Ukrainian national waste management strategy

This article provides an overview of the National Waste Management Strategy in Ukraine, including the general waste management strategy, management of household, industrial, hazardous, and agricultural waste, as well as specific types of waste and waste sorting.

[Learn more](#)

- to ensure disposable collection, proper storage and avoidance of waste disposal and spoilage subjected to an appropriate technology existing in Ukraine;
- to participate in the construction of waste management facilities;
- to ensure waste recycling or disposal;
- not to allow waste storage or disposal in unauthorized places or facilities;
- to monitor the condition of disposal places or facilities for waste generated as a result of a company's business activity;
- to pay fees for the waste disposal in a timely manner, etc.

A separate regulation is established for the management of waste associated with the use of pesticides and agrochemicals, as well as animal waste (dead animals, waste generated as a result of the manufacture of animal-based products).

Animal waste shall be disposed of by specialised companies.

## 7.4. Control over water use

In Ukraine, water use may be general or special.

General water use is carried out by citizens for their needs through waterbodies without using building structures or technical devices as well as through wells free of charge, without assigning waterbodies to individuals and without granting relevant permits.

Special water use implies water withdrawal from the water bodies with the use of building structures or technical devices, water use and dumping of pollutants into the water bodies. Water use of up to 5 m<sup>3</sup> per day is not considered special water use.

A rental fee is charged only for special water use. The rent amount depends on the source of water supply (surface water or groundwater) as well as the region where the source is located.

Agricultural holdings that pay taxes under the 4th Group of single tax payers are exempt from rent for special water use. Agricultural holdings that use water solely for drinking, sanitation, and hygiene purposes are also exempt from rental payments.

In addition to the exemption from rental payments for special water use, the agricultural producers in Ukraine who meet the criteria for the 4th Group of single tax payers have the right to use water from wells without a special permit for subsurface use.

In order to carry out special water use, a special permit shall be received from the State Water Agency. The most common cases when a Ukrainian agricultural producer has to obtain a permit for special water use, concern withdrawal of water from the surface or underground sources and its use for irrigation, for the company needs or for transfer to third parties, as well as the use of water bodies for fish farming.

It should also be taken into account that in some cases when the law exempts an agricultural company from obtaining a permit for special water use or a rental fee for special water use,

there is still a necessity to obtain permits for other activities. E.g., if a Ukrainian agricultural company supplies water to citizens through centralised networks, it shall obtain a license for the centralised water supply.

While irrigating the lands, agricultural companies in Ukraine are obliged to take measures to prevent waterlogging, swamping, salinisation and contamination of these lands. The use of the wastewaters for irrigation requires a separate permit and approval from the relevant state authorities related to the sanitary and veterinary policy in Ukraine.

## **7.5. Martial law peculiarities**

The conditions for the road transportation of pesticides and agrochemicals were simplified. The term of validity of permits for the work related to transportation, storage, application, and trade with pesticides and agrochemicals was also extended. This provision applies to the period of martial law in Ukraine and within 90 days after its termination or cancellation.

# 8

## Labour relations

### 8.1. Hiring and probation

In Ukraine, relations between the employee and the enterprise are regulated by a labour agreement or a labour contract. The labour contract is a special form of the labour agreement for several groups of employees (e.g., company directors).

An employer and an employee may agree on a probation period. If the employee refuses to undergo the probation, the labour agreement shall not be deemed as concluded. Within the probation period, the employee is required to perform all work duties assigned to him/her by law and the labour agreement, and on the other hand, the probation does not entail any restrictions of labour rights, including salaries. The probation period may not exceed three months, and in certain cases, as agreed upon with the respective body of a trade union organization, six months.

### 8.2. Working hours

Employees' normal working hours may not exceed 40 hours per week. This being the case, working hours may not exceed the established periods for certain categories of employees.

A five-day working week with two days-off shall be established for employees as a rule. In exceptional cases where the introduction of a five-day working week is impractical, a six-day working week with one day-off may be established.

### 8.3. Remuneration

The remuneration that the employer shall pay the employee for the performed work is determined by the labour agreement parties. This remuneration may not be lower than the minimum salary.

Salaries in Ukraine are paid in the Ukrainian currency. Salaries shall be paid regularly on working days, at least twice a month.



## Salary payments during martial law in Ukraine

This article deals with the peculiarities of salary payments during martial law, including legal consequences of employees' conscription/enlistment, the guarantees for the members of territorial volunteer units, salary payments to the non-conscripted employees, etc.

[Learn more](#)



## Managing labour relations under martial law in Ukraine

This article discusses the changes in the legal regulation of the labour relations during martial law in Ukraine, namely, in the conclusion of labour agreements, transfer, change of essential working conditions, termination and suspension of labour agreements, remuneration, leaves, etc.

[Learn more](#)

## 8.4. Labour relations termination

An employee shall be entitled to terminate the labour agreement entered into for an indefinite period of time by sending a two-week notice to the employer in writing, or, in some cases, within the period requested by the employee.

The dismissal on the initiative of the employer is strictly defined by legislation, and includes, among others, the following:

- changes in production and labour organization, including liquidation, reorganization, bankruptcy or conversion of an enterprise, reduction of the number or staff of employees;

- revealed inconsistency of an employee with the job or with the work performed;
- unexcused absence from work without reasons;
- revealed inconsistency of an employee with the position he/she was employed for or with the work performed during a probation period.

Dismissal on the employer's initiative shall not be allowed within the period of the employee's temporary disablement, as well as within the period of his/her staying on leave. This rule shall not apply to cases of full liquidation of an enterprise.

## 8.5. Employment of foreigners

A foreign employee shall obtain a work permit in Ukraine. Getting a work permit is required also for employees of foreign companies sent to Ukraine to perform certain work or provide services under contracts with Ukrainian companies.

An employer (company) has to apply for a work permit. A work permit is issued to a particular person for a particular position (workplace).

A work permit is valid for the period specified in the labour agreement (the contract), but not more than for one year (up to three years for special categories of foreigners).

Ukrainian laws do not set a limit on the number of work permits in Ukraine.



### Work permit in Ukraine: 20 common questions

This publication contains answers to the most common questions we receive from our clients in connection with obtaining a work permit in Ukraine.

[Learn more](#)

## 8.6. Employment of seasonal workers

In Ukraine, agricultural companies can hire workers for seasonal work.

Seasonal work means work that, due to natural and climatic conditions, is not performed all year round, but during a certain period (a season) not exceeding six months. The list of the

types of seasonal work is established by the law.

Employment contracts with seasonal employees are fixed-term employment contracts concluded for:

- a period of performance of certain work;
- a fixed term, established by an agreement of the parties.

An employment contract for seasonal work may be concluded for a period not exceeding the duration of a season and not exceeding six months.

When legalizing the employment relationship with a seasonal worker, an employer shall inform the latter of a seasonal nature of the work, which shall be stated in the employee's application form and in a hiring order. Violation of this requirement means that the employment contract with the employee is concluded for an indefinite term.

A probationary period is not allowed for seasonal work. Seasonal workers are subject to all terms and conditions of employment and remuneration applicable to other workers. Seasonal workers are entitled to a holiday pay and a sick pay.

On the completion of the work (end of a season) and the end of the duration of the employment contract, seasonal workers shall be dismissed without a notice to the employer for their subsequent dismissal. No consent of the trade union committee is required.

A seasonal employment contract may be terminated before the expiry of the term at the request of an employee, in particular, in the case of his/her illness or disability preventing the performance of work under the contract, breach of labour law, a collective agreement or a labour contract by an employer.

In the event of early termination of an employment contract at the initiative of an employee, the employee shall notify the employer in writing 3 days in advance.

If, after the expiry of a seasonal employment contract, an employee actually continues to work and neither party requests the termination of the employment contract, it is considered to be extended for an indefinite period.

## **8.7. Trade unions and collective agreements**

Trade unions may be established by a company at a local, regional, or national level. At companies where a trade union has not been formed, the general meetings of employees have representative powers.

Collective agreements are entered into between an employer and employee representatives (either a trade union or a representative elected at the general meeting of the employees).

Collective agreements may cover a great range of issues that are more or less closely related to employment. Any provisions of a collective agreement that worsen the employee's rights and guarantees in comparison to those granted by law are considered invalid.

# 9

## Visa and stay in Ukraine

### 9.1. Visa and entry issuance

To enter and stay in Ukraine a foreigner must have:

- a visa (unless Ukraine has a visa-free regime with the relevant country);
- a temporary residence permit; or
- a permanent residence permit.

Citizens of some countries may stay in Ukraine without a visa for up to 90 days or, in some cases, without limitation of a term. If a country does not have a visa-free regime with Ukraine, citizens of such a country must apply to a Ukrainian embassy for a visa.

### 9.2. Temporary residence permit

The right to get a temporary residence permit is granted, inter alia, to foreign citizens who arrived in Ukraine:



#### Temporary residence permit in Ukraine

This article outlines the procedure and peculiarities of obtaining a temporary residence permit in Ukraine, the benefits of temporary residence, the list of necessary documents, term of issuance, and validity of a temporary residence permit.

[Learn more](#)

- with the purpose of employment;
- to work in representative offices of foreign companies;
- foreign citizens who are founders and/or members and/or beneficial owners of a legal entity registered in Ukraine. In this case, the size of the share in the authorized capital of the Ukrainian legal entity must be at least EUR 100,000 at the official exchange rate established by the NBU as of the date of the foreign investment.

When applying for a temporary residence permit, a foreign citizen must personally submit the relevant documents to the authorized Migration Service.

When applying for a temporary residence permit for the employment, one must submit a copy of the work permit in Ukraine issued by the Employment Service. Upon the issuance of such temporary residence permit, foreigners have the same legal status for the purposes of employment as the Ukrainian citizens.

A temporary residence permit is issued within 15 working days after the submission of documents.

As a general rule, a temporary residence permit is issued for a period of 1 year with the right to renew it. For the purpose of employment, a permanent residence permit is issued for the period of work in Ukraine, which is specified in the work permit (up to 3 years).

To foreigners who are founders and/or members and/or beneficial owners (controllers) of a Ukrainian legal entity, permanent residence permits are issued for 2 years.

### 9.3. Permanent residence permit

A permanent residence permit in Ukraine is issued for a period of 10 years, with its subsequent exchange for a new one valid 10 years at a low cost. Foreign citizens who have received a permanent residence permit shall have the right to reside in Ukraine without any time restrictions and limits on the number of their visits to Ukraine. In addition, such foreigners shall have the right to be employed without the need to obtain a work permit.



#### Permanent residence permit in Ukraine: frequently asked questions

This publication provides answers to common questions we receive from our clients in connection with obtaining a permanent residence permit in Ukraine.

[Learn more](#)

In order to apply for a permanent residence permit, a permit to immigrate to Ukraine must be obtained. Making a foreign investment of USD 100,000 or more can serve as a legal basis for obtaining an immigration permit.

The period for processing an application for an immigration permit shall not exceed 1 year. In practice, the Migration Service of Ukraine usually considers the application within 3-6 months.

After obtaining an immigration permit and arriving in Ukraine, a foreigner must apply for a permanent residence permit to the local office of the Migration Service of Ukraine at the place of his/her residence within 5 working days.

The period for processing an application for a permanent residence permit is 15 working days.

## 9.4. Martial law peculiarities

Under martial law, the State Migration Service of Ukraine temporarily suspended the agency's information and communication systems along with the provision of administrative services.

Inter alia, the issue of passports of citizens of Ukraine and the delivery of the prepared documents directly to territorial offices has also been suspended.

Everyone who stays in Ukraine is obliged to have identity documents on hand. For foreigners and stateless persons, one of the following documents is required:

- a permanent residence permit;
- a temporary residence permit;
- a refugee identity card;
- a certificate of a person in need of a complementary protection.

For the duration of martial law, the possibility to exchange identity documents proving Ukrainian citizenship or a special identity status is restricted.

# 10

## Courts and jurisdiction

### 10.1. Judicial system

The judicial system of Ukraine consists of the courts of general jurisdiction and the Constitutional Court of Ukraine. Courts of general jurisdiction could be general or specialised. The general courts hear civil, criminal, commercial, administrative cases, and cases of administrative offenses.

Commercial courts are of the highest importance from the perspective of foreign investors doing business in Ukraine. Enterprises, institutions, organizations, and other legal entities, including foreign ones, and private entrepreneurs are eligible to apply to a commercial court for protection of their violated or disputed rights and interests protected by the law, and for provision of measures targeted at prevention of such violations.

Court decisions can be appealed to the higher courts.

Besides resolution of disputes in courts, their resolution can be transferred to arbitration or mediation institutions, which do not belong to the judicial system of Ukraine.

### 10.2. Courts of arbitration

In order to resolve disputes arising from contractual and other civil law relations regarding implementation of foreign trade and other international economic relations, as well as disputes of enterprises with foreign investment, the parties may use the services of international commercial arbitration.

The arbitration agreement may be in the form of an arbitration clause in an agreement or in the form of a separate agreement.

Ukraine has the International Commercial Arbitration Court at the Ukrainian Chamber of Commerce and Industry. The arbitral award, irrespective of the country in which it was taken, is recognized as binding and the party relying on award or applying for its execution shall submit the original of the decision, duly certified, or a duly certified copy thereof, and the original of the arbitration agreement.

Specialised arbitration services under auspices of GAFTA and the Federation of Oils, Seeds, and Fats Association (FOSFA) are also available for Ukrainian agribusiness.

### **10.3. The recognition of foreign courts decisions in Ukraine**

Ukraine is a party to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards and therefore recognises foreign arbitral awards.

A foreign court decision is recognized and enforced in Ukraine.

The decision of a foreign court may be brought to execution in Ukraine within 3 years from the date of its entry into force, with some exceptions. Issuance of permission for compulsory execution of a foreign court decision is reviewed by the court at the debtor's residence or location. If the debtor has no domicile or residence in Ukraine or his/her residence or stay is unknown, issuance of permission for compulsory execution of a foreign court decision is reviewed by the court at the location of the debtor's property.



# Force majeure in agreements during the war

## 11.1. How to fulfil agreements in war conditions

The procedure for executing contracts during the war in Ukraine remains unchanged. However, some peculiarities due to wartime threats should be considered. Among them are the following:

- possible difficulties in communication;
- possible logistics difficulties;
- possible sanctions against the participants of the logistics or settlement chains;
- possible trade restrictions.

Considering these peculiarities will allow to:

- adjust the structure of the transaction under the contract to minimize the likelihood of circumstances that may prevent the execution of the contract;
- amend agreements with regard to force majeure events;
- identify counterparties – the participants in the logistics chains, which are necessary for the performance of the contract;
- identify contracts the fulfilment of which is already threatened or impossible.

## 11.2. What can be done when it is impossible to fulfil an agreement?

Force majeure clauses should be invoked as a tool of regulating crisis contractual relations.

Circumstances that may be considered as force majeure in conditions of war in Ukraine include:

- combat operations (hostilities);
- related security restrictions and limitations;
- trade restrictions imposed by the state;
- sanctions applied to parties to an agreement or participants of logistics and commercial chains;
- obligations to the state under martial law (mobilization of workers and equipment).

To be exempt from liability for failure to fulfil obligations, the circumstances must meet the following criteria:

- they must be unforeseeable at the time of the conclusion of the agreement;
- the occurrence of such circumstances is beyond the control of the parties to the agreement;
- the consequences or effects of such circumstances cannot be avoided or resolved;
- such circumstances must constitute force majeure under the treaty or the law;
- a causal connection must exist between the circumstances and the impossibility of performance of the agreement;
- there is a specific obligation that has to be fulfilled in the presence of such circumstances (the delivery or payment deadline has come or is due).



## Force majeure in agreements during the war in Ukraine

This article deals with the peculiarities of force majeure clauses in agreements during martial law in Ukraine, and provides practical advice on the proper formulation and application of such clauses, allowing the mitigation of risks without the hindering of business transactions.

[Learn more](#)

Circumstances related to commercial risk which cannot be considered force majeure include, inter alia:

- breach of obligations by the counterparties of the affected party;
- lack of goods on the market that are necessary to fulfil the obligations;
- the debtor's lack of necessary funds.

The party to the contract, which refers to force majeure circumstances, must prove their existence, their compliance with the criteria of force majeure circumstances, as well as the causal link between them and the non-performance of the contract.

In Ukraine, the existence of force majeure is evidenced by a certificate issued by the Chamber of Commerce and Industry of Ukraine and its authorized regional chambers of commerce and industry. It should be kept in mind that the competence of regional chambers of commerce and industry of Ukraine is limited. For instance, they cannot issue certificates for foreign economic contracts.

### **11.3. Protection against unjustified non-performance of an agreement**

The occurrence of force majeure, among other things, can be used by a dishonest counterparty to avoid the performance of obligations under the agreement. To protect yourself from such actions, it is necessary to pay attention to the following:

- confirmation of the existence of force majeure;
- the link between force majeure and the ability of the affected party to fulfil its obligations under the contract;
- observance of procedures for application of force majeure clauses.

### **11.4. How to formulate force majeure clauses in agreements**

Considering the current situation in Ukraine, when formulating the description of force majeure, it is necessary to:

- detail the definition of war as a force majeure circumstance;
- take into account the latest methods of warfare – cyberattacks, disinformation operations, and local acts of sabotage;
- specify that military actions will also be considered as force majeure if they materially affect the fulfilment of obligations on territories other than those of actual hostilities;

- exclude from the procedures of application of the force majeure clause any additional negotiations and agreements between the parties;
- simplify the channels of communication; the exchange of letters and confirmation of their receipt may be physically inaccessible to the parties in time of war;
- detail the list of force majeure circumstances arising as a result of war: sanctions, disruptions in settlement systems, trade restrictions;
- exclude from the list the circumstances that have become a new commercial reality in time of war;
- clearly define procedures for notification, postponement of performance, termination of obligations, and determination of compensation.



## GAFTA contracts in Ukraine: force majeure clauses

This article focuses on the peculiarities of formulation and usage of force majeure clauses in standard GAFTA contracts which are subject to English law, offering practical insights as to the establishment of force majeure circumstances in Ukraine.

[Learn more](#)

# Contacts

## **DLF attorneys-at-law**

IQ Business Centre  
13-15 Bolsunovska Street, 8th floor  
01014 Kyiv  
Ukraine

+380 44 384 24 54  
info@DLF.ua  
www.DLF.ua