

Doing Agribusiness in Ukraine: Legal Guidance for Foreign Investors



Ministry of
Agrarian Policy and
Food of Ukraine





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Roman Leshchenko,
Minister of Agrarian Policy
and Food of Ukraine

On behalf of the Ministry of Agrarian Policy and Food of Ukraine, I have the honor to present our latest developments to you. I hope that they will help you understand the state of the Ukrainian agricultural sector and get an insight of how your business can be done in Ukraine.

Presently, our State is experiencing landmark historical events. We have launched a large-scale work to transform the entire agricultural sector, at the heart of which lies a land reform. We are drastically changing land relations in Ukraine for all participants, and for foreign investors in particular. We have adopted the Law on State Support of Investment Projects with Significant Investments in Ukraine. All necessary subordinate legislation is underway. Therefore, we expect that the first investment agreements will be signed as early as Q3 of 2021. From now on, a foreign company that implements an investment project on Ukrainian lands will have the right to promptly receive a state-owned or municipal land plot for implementing its project in a simplified manner.

We have launched numerous processes as part of the land reform. They include, among other things, the implementation of a publicly available Geoportal of all land data. I believe that this will be an important tool for maintaining the transparency of government decisions and will trigger investment and economic growth.

We are also renovating an irrigation and drainage system. We will rebuild and expand reclamation systems with both public and private capital. These are the projects where funds will be invested not just in infrastructure. They will have an immediate tangible effect as they will immediately create added value, increase crop yields and jobs, and return degraded lands to agricultural use. This project paves the way for investment in land reclamation.

We are conscious of the importance of the Ukrainian agricultural sector for international trade. We understand what role it plays in ensuring stable food supply chains. This role has become particularly relevant amid the pandemic and the accompanying economic crisis. That is why we strive to confirm the status of a stable and predictable partner always committed to implementing agreements.

The revived Ministry of Agrarian Policy looks forward to a constructive dialogue with investors and is ready to fully support those who will decide to become part of agribusiness in our country.

Welcome to Ukraine!



Volodymyr Igonin,
Partner, Vasil Kisil & Partners

Being gifted with great fertile lands and favourable natural conditions for farming, Ukraine is a solid player in the world's commodities market. Ukrainian economic potential naturally attracts foreign investors from various regions. Nevertheless, Ukraine remains underinvested. Among the reasons for this, there is a lack of law enforcement predictability. On the other hand, Ukraine offers business-friendly procedures for opening companies, favourable taxation, including specific regime for agricultural manufacturers, open state registers, long-awaited farming land market started in July 2021.

Vasil Kisil & Partners, for almost 30 years, supports foreign investors who come to Ukraine and do business here. Inspired by our successful experience, we believe that foreign partners can make a significant contribution to the effectiveness and sustainable development of the Ukraine's agricultural sector.

For this reason, we decided to share, in partnership with the Ministry of Agrarian Policy and Food of Ukraine and Ukrainian Agribusiness Club Association our knowledge and experience on legal matters of doing agribusiness in Ukraine. This is the second, updated edition of our legal guide.

We hope that this guidance would be helpful for foreign investors who consider doing agribusiness in Ukraine.

Wishing you success and good harvest!



Roman Slaston,
General Director, Ukrainian
Agribusiness Club

The opening of the agricultural land market will be the biggest driving force of agriculture in Ukraine this year. First of all, in a limited land market, we can talk not about the expected economic effects, but about the rule of law. Landowners will finally be able to sell land freely, and land users, especially agribusiness, will be able to acquire ownership of the land they manage.

Ukrainian Agribusiness Club (UCAB) as an association of large and medium-sized companies in the agri-food sector, representing their interests. UCAB defended the interests of agribusiness in developing a model of the land market. We have established appropriate mechanisms to protect land rights and exercise the preemptive right of tenants to purchase land. The Association will continue its work to protect the interests of agribusiness and implement reforms in Ukraine.

We are very pleased to contribute to "Doing Agribusiness in Ukraine: Legal Guidelines for Foreign Investors" together with the Ministry of Agrarian Policy and Food of Ukraine and our partner - the law firm "Vasil Kisil and Partners".

UCAB has always been a link between business and government, and we serve as a platform for dialogue between investors and agribusiness.

Wish you success in the coming year!

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Ukrainian agricultural sector at a glance

Ukrainian agriculture is an attractive investment opportunity. The Ukrainian government encourages foreign investors to invest in the agricultural business in Ukraine. In 2020, this sector secured approximately 9% of the national GDP, with 18% of the working population being employed in it.

Ukraine has 41.3 million ha of agricultural land, which is equal to 68.4% of the country's total area. Among agricultural land, 79% is arable land (32.8 million ha), 13% is pastures (5.2 million ha), 6% is hayfields (2.3 million ha) and 2% is perennials (0.8 million ha). Ukraine has a favourable climate for large-scale agriculture, rich agricultural soils and access to abundant land and water resources.

The agricultural GDP as of 2020 was USD 14.4B. The basis of agriculture is crop production which is equal to 76% of the total agricultural production. Animal production is equal to 24%.

The main crops sowed in Ukraine in 2020 are:

- wheat – 6.6 million ha (20% of arable land);
- sunflower – 6.5 million ha (20%);
- corn – 5.4 million ha (17%);
- barley – 2.4 million ha (7%);
- soybean – 1.3 million ha (4%);
- rape – 1.2 million ha (2%).

Animal production is an underappreciated branch in Ukraine's agricultural sector. The average annual growth rate of animal production for the last 10 years is extremely low – 0.4%. The growth rate of crop production, in contrast, is 4.8%. The production of beef has been declining through previous years due to the price increase and reduction of meat consumption. The spread of coronavirus disease had a detrimental effect on the meat export throughout the world. Global demand for red meat hit its lowest level in a decade due to the collapse of the catering industry and the reduction of household income. On the other hand, the poultry sector demonstrates a positive tendency. Promotion of Ukrainian products on international markets and requirements to comply with the HACCP system since 2017 help to reach new markets.

Ukrainian farming businesses look for new locations, markets and instruments for business development. Value-added niches of fruits, veggies and organic food are the most promising on the global food market. The EU, Middle East and Asia are markets to consider for trade development. Processed and dried products with customised service for each local market are high-margin niches in the regions mentioned for a major number of Ukrainian farming businesses, which may contribute impressive results through strategic investments and steady quality improvement.

Ukraine has a strong position in practically all stages of the food supply chain, including raw material, production, processing,



Ukrainian agricultural sector at a glance

wholesale and retail trade, consumption, export. The strong infrastructure supports the export process.

The overall volume of agricultural export in 2020 was USD 22.2 billion (45.1% of overall exports). The main products for export were cereal grains (42.4%), animal and plant fats and oils (25.9%), oilseeds and fruits (8.2%), meat (2.8%).

During the same period, the main imported products were the following: fish – 10.8%, tobacco – 8.3%, fruits and nuts – 12.5%, cocoa beans and chocolate – 5.8%, coffee and tea – 4.1%. The volume of import was USD 6.4 billion which is 11% higher than in 2020.

In the world, Ukraine ranks first in the export of sunflower oil (USD 5.3 billion) and sunflower meal (USD 1.1 billion), the second in the export of rapeseed (USD 1 billion) and millet (USD 29 million), and the fourth in the export of corn (USD 4.9 billion) and barley (USD 0.88 billion) exports.

The main export destinations are China (USD 7.1 billion), India (USD 1.9 billion), the Netherlands (USD 1.8 billion) and Egypt (USD 1.6 billion).



1. Business entities

1. Business entities

1.1. Forms of business entities

Ukrainian law offers investors various forms of business entities such as a limited liability company (LLC), a joint-stock company (JSC), an additional liability company, a private enterprise, etc. LLCs and private enterprises are the most widespread forms of business in the agricultural sector. Most private enterprises were incorporated on the verge of the 21st century, while new companies are incorporated mainly as LLCs. JSCs also operate in Ukraine, but it is not common to start a business using this type of company as it is regulated more thoroughly than an LLC.

Foreign companies may carry out business in Ukraine through representative offices. A representative office is not a legal entity and is treated as a subdivision of a foreign company.

Apart from these forms for doing business, specific forms available for agricultural business, eg cooperatives, farming enterprises, agricultural households. However, they are not suitable for the general conduct of business and their use is limited to specific circumstances – for example, agricultural production for own household purposes only.

Corporate investment funds may serve as a holding company in a group of companies. The income of a corporate investment fund is in most cases exempt from corporate income tax.

Ukrainian companies must keep the information about their ultimate beneficial owners in the companies register up-to-date and disclose their full corporate structures.

Frequently asked questions about setting up a company in Ukraine are available here:

<https://vkp.ua/en/publication/faqs-re-setting-up-a-new-company-in-ukraine>.

1.2. LLC as the most widespread type of company

Incorporation

Most businesses in Ukraine operate as LLCs. There are more than 700,000 LLCs in Ukraine.

An LLC is registered within a day upon submission of all necessary documents to a state registrar or a notary.

For LLCs with foreign shareholders, documents from a shareholder's country of incorporation are necessary such as excerpts from the local companies register, UBO's identification, and a power of attorney for procedures necessary for setting up a company.

An LLC may have any number of shareholders.

An LLC must have a director, who can be a local individual, or a foreigner with a work permit (see section 4.2).

1. Business entities

Registered capital

The LLC's registered capital may be of any amount. There is no minimum amount required.

A shareholder can contribute any type of property to the LLC's capital such as money, shares, real estate, equipment, and any other assets except for those in the state or municipal ownership. An LLC may also use its profits to increase the registered capital (dividends reinvestment).

Conversion of debt to equity is also allowed. Thus, a creditor may convert its monetary claim to a Ukrainian LLC into a share in the company subject to shareholders' consent.

Liability of shareholders and directors

An LLC is not liable for the debts of its shareholders.

Shareholders are generally not liable for the LLC's debts and merely risk losing their investments. If a shareholder does not pay a contribution to capital in full, that shareholder is liable for the LLC's debts in the outstanding amount of the contribution.

Directors owe fiduciary duties to an LLC and may be held liable for damages caused by a breach of their duties.

If a shareholder or a director causes the LLC's bankruptcy, he/she/it may be held liable for the LLC's debts.

A shareholder and a director may be held criminally liable for severe violations such as asset misappropriation, tax evasion, deliberate bankruptcy, corruption, etc.

Corporate governance

An LLC must have at least one director and convene a shareholders meeting annually. A shareholders' meeting is the highest governing body of an LLC and may resolve any matters. A director is responsible for an LLC's ordinary course of business and must implement resolutions of shareholders. The director's powers are limited to the extent established by shareholders. There are some important matters which require shareholders' resolution such as capital increase, company liquidation or payment of dividends.

An LLC may have a board of executive directors instead of the sole executive director. In addition, an LLC may create a supervisory board that is appointed by shareholders and directs and controls an executive director or a board of executive directors. Having a board of executive directors and a supervisory board is not very common in Ukraine now. Most companies have the sole executive director under the direct control of the shareholder(s).

In recent years, the Ukrainian company law has become more flexible and allowed shareholders to adjust corporate governance to their needs. Shareholders may enter into a shareholders' agreement to ensure better corporate governance and secure their obligations related to a business.

1. Business entities

1.3. Business financing

There are two main ways to finance a business: contributions to capital (equity) and loans. In the first scenario, profit is distributed as dividends. In the second one, profit is distributed as loan interest, or a creditor (whether a shareholder or not) may otherwise convert its loan into a share in the Ukrainian company.

The currency control regulations do not set thresholds for the amount of financing and profit distribution. In the case of a loan, a bank must ensure that the interest rate is on market terms to avoid Ukrainian tax base erosion.

1.4. Reorganisation and liquidation of a company

A foreign investor may dissolve a company in Ukraine by reorganising it into another entity (merger, demerger, amalgamation, etc.) or by liquidating it. Reorganisation or liquidation of a company is usually initiated by a resolution of shareholders. In a limited number of cases, a state authority may initiate reorganisation or liquidation of a company.

A liquidator appointed by shareholders is responsible for carrying out reorganisation or liquidation, eg collecting receivables, closing accounts, dismissing employees, etc.

In reorganisation and liquidation, a company must notify its creditors. Creditors without security may request early repayment of debts or security for them. In the case of liquidation, a company's assets are used to settle creditors' claims and then the remaining assets are distributed between shareholders. After reorganisation, a company's assets and liabilities pass to a succeeding company which becomes liable to creditors.

In reorganisation and liquidation, a company is subject to audit by the tax authority.

The total term of reorganisation or liquidation varies depending on company-specific circumstances, in particular on the term of tax audit and settlements with creditors. In a good scenario, the procedure may take between a half and a whole year.

1.5. Bankruptcy

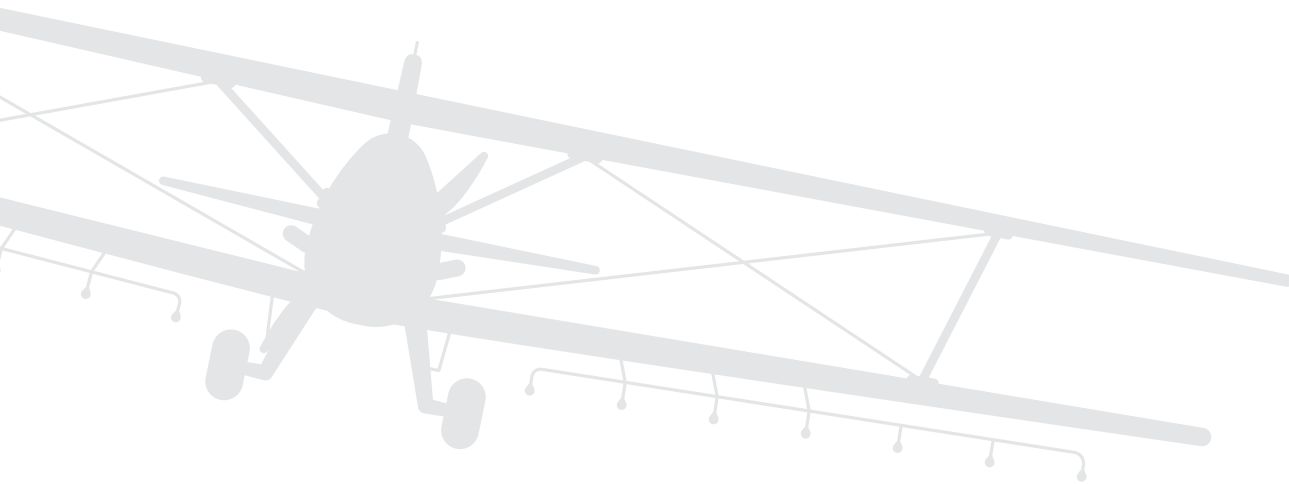
A court may declare a company bankrupt. A creditor may initiate a bankruptcy proceeding regardless of the amount of creditors' claims but must prove that there are risks for the solvency of a company. If a company's director reveals such risks, he or she must initiate bankruptcy. Otherwise, a company and its director are jointly liable for creditors' claims. The court determines if a company needs to be rehabilitated or liquidated to protect its creditors.

If a court orders a company to be liquidated, all its assets comprise liquidation estate. After inventorying and evaluating

1. Business entities

the assets, a liquidator appointed by the court sells the bankrupt's assets through an auction. The sale of assets directly to third parties is generally not allowed, with a few exceptions such as the sale of perishable or low-value goods. If in the course of liquidation all creditors' claims are satisfied and there remain assets, a company may continue its business unless the court decides that the assets are not sufficient for that purpose.

If a shareholder or a director causes a company's bankruptcy, that shareholder or director may be held liable for the company's debts if the company's assets do not allow repaying the debts in full.



2.

Taxation

2. Taxation

2.1. Corporate income tax

The basic rate of corporate income tax (CIT) is 18%. Payers of CIT are Ukrainian legal entities and permanent establishments of foreign entities.

CIT is levied on a company's net profit, ie turnover less total expenses according to a company's accounts.

CIT reporting period is usually a quarter. An annual reporting period is for new companies, agricultural producers and companies with an annual turnover of less than UAH 40 million (about USD 1.45 million)

If a company pays dividends (except for dividends to individuals) and they exceed the taxable income for the dividend period, it must pay an advance CIT at 18% levied on the excess amount.

2.2. Preferential corporate taxation for agribusiness

The Ukrainian tax law provides benefits for agricultural producers. They may register as payers of single tax of the fourth group (**ST4**) if a share of agricultural commodities in the previous year was 75% or more.

Payers of ST4 do not pay CIT, land tax for the land where they produce agricultural commodities (see section 2.8), and fee for use of water reservoirs (see section 2.10).

ST4 is charged on the valuation rate of land which a company owns or uses. For value calculation, municipalities approve the rates for different types of land. The rates are indexed by the inflation rate and multipliers set out in the Tax Code depending on the type of land.

ST4 is paid quarterly and divided into portions of 10%, 10%, 50% and 30%. If the total area of land changes, a taxpayer must reassess the sum of ST4.

2.3. Value-added tax

Value-added tax (VAT) is levied at 20% on the transfer of goods and services in Ukraine and on the import of goods. VAT for the export of goods is 0%, which is not equal to tax exemption. In the case of a 0% rate, a company has to report to the tax authority but pays no tax. In the case of exemption, a company has neither reporting nor payment obligations. 0% rate reduces an exporter's net liability for VAT.

Some transfers of goods or services are exempt from VAT such as lease or the transfer of assets in a reorganisation of a company.

Registration of a company as a VAT taxpayer may be voluntary or compulsory. It is compulsory if a company's transactions for the transfer of goods and services in the past 12 months exceed

2. Taxation

UAH 1 million (approx. USD 36,000).

VAT is reported monthly.

Net VAT liability is VAT accrued on goods and services sold less VAT accrued on goods and services purchased. If the resulting amount is positive, it is paid as a tax. If it is negative, it is reconciled to the VAT debt for previous periods. If there is no such debt, a taxpayer may claim a refund from tax authorities, or the negative amount may be deferred to future reporting periods.

2.4. Transfer pricing

Arm's length principle applies to controlled transactions of a CIT payer. A controlled transaction is deemed to be at arm's length if its terms do not differ from those in a non-controlled transaction (ie a transaction on market terms).

Controlled transactions include:

- transactions with non-resident related parties;
- cross-border sale of goods or services through non-resident agents;
- transactions with residents of jurisdictions with favourable tax conditions, as listed by the Ukrainian government;
- transactions with non-residents who do not pay CIT in their jurisdictions or are not tax residents of the countries of their incorporation;
- transactions between a non-resident and its permanent establishment in Ukraine.

Transfer pricing rules apply if a taxpayer's annual income exceeds (without indirect taxes) UAH 150 million (approx. USD 5.43 million) and if the aggregate sum of transactions between a taxpayer and a relevant counterparty exceeds (without indirect taxes) UAH 10 million (approx. USD 0.36 million) throughout a year. For transactions between a non-resident and its permanent establishment in Ukraine, only the second figure applies.

Transfer pricing rules do not apply to payers of single tax (see section 2.2).

2.5. Withholding tax

If a Ukrainian company makes a payment to a non-resident legal entity, eg dividends to a foreign shareholder, it has to pay withholding tax at 15% unless a tax treaty between Ukraine and a relevant country sets another rate.

A sale of a business that gains most of its value from Ukrainian real estate is subject to withholding tax of 15% in Ukraine, even if the parties are not tax residents of Ukraine. The value which the

2. Taxation

business gains from real estate is calculated based on a company's accounts. Ukrainian agribusiness gaining most of its value from leased land is usually not subject to this tax.

Ukraine has a broad tax treaties network following the OECD model. In general, the treaties allow for double taxation relief and reduced income tax rates. To benefit from an applicable treaty relief, a non-resident must have a tax residency certificate issued by the tax authority of its country of residence.

2.6. Personal income taxation

Personal income tax (PIT) is levied on any income such as salary, income from the sale of property, royalty, capital gains, gifts, dividends. Some income is deductible for PIT purposes, eg loans or dividends reinvested.

An individual pays PIT regardless of his or her residency. Residents of Ukraine pay PIT on their worldwide income, while non-residents are taxed only on their Ukrainian income. If a Ukrainian company makes a payment to a non-resident individual, it has to withhold PIT from such payment.

A foreign citizen is a resident of Ukraine for tax purposes if he or she has significant personal or business ties with Ukraine or stays in Ukraine for at least 183 days.

The basic PIT rate is 18%. For dividends, PIT is 5% if they are paid by Ukrainian corporate income tax payers and 9% if they are paid by payers of single tax (see section 2.2), foreign companies or Ukrainian corporate investment funds.

Anything that is taxed with PIT is also taxed with military tax at 1.5%. Therefore, personal income is taxed at 19.5% (or 6.5% or 10.5% in the case of dividends).

Starting from 2022, Ukrainian residents must report to the Ukrainian tax authority on foreign companies controlled by them (CFC rules) and tax income of those companies with PIT and military tax. Ukrainian residents are exempt from this tax if the total income of all foreign companies does not exceed EUR 2 million or a company receives income mainly from production or trading (as opposed to passive income typical for holding companies).

2.7. Payroll taxes

Salaries are taxed with PIT at 18% and military tax at 1.5% (see section 2.6). An employer must withhold taxes when it pays salaries to employees.

In addition to this, Ukrainian employers pay social security contributions for each employee at the rate of 22% of the amount of his or her gross salary. The salary on which the social security contribution is levied is capped with the amount of 15 monthly minimum salaries (approx. USD 3,200).

2. Taxation

The total withholdings on a salary for an employer are about half of its net amount.

An employee may claim tax relief for certain expenses such as charity donations, Ukrainian tuition fees and life insurance payments.

2.8. Property taxes

Land tax

Land tax is levied on the valuation rate of a land plot or, if not valued, on its area. Municipalities set the tax and valuation rates for the land located in their territory. For agricultural land, the tax rate must be set between 0.3% and 1% of the valuation rate. If it is not valued, the tax is between 0.3% and 5% of the valuation rate for arable land located in the same region.

The land under gardens, berry farms and vineyards not in fruiting stage, hybrid plants, gene pools and seedbeds of perennials is exempt from land tax.

Payers of single tax (see section 2.2) are exempt from land tax for the land where they produce agricultural commodities.

Real estate tax

The real estate tax rates are set by municipalities and cannot exceed 1.5% of the minimum salary per square meter of real estate (approx. USD 3). The taxable area of real estate starts from 60 square meters for apartments, 120 square meters for houses and 180 square meters for non-residential property. Only meters exceeding that minimum area are taxable. The whole area is taxable if it is five times larger than the minimum taxable area.

Agricultural premises such as dairy facilities, poultry farms, grain elevators and greenhouses are exempt from real estate tax.

Vehicle tax

Car owners pay vehicle tax on cars less than 5 years old and with the average market price exceeding 375 minimum salaries (approx. USD 81,500). The vehicle tax rate is a fixed sum of UAH 25,000 (approx. USD 905) and is paid annually.

2.9. Excise tax

Companies and permanent establishments of foreign companies producing or importing excisable goods pay excise tax. Excisable goods include ethanol, alcohol distillates, alcoholic drinks, tobacco and tobacco products, fuel, certain vehicles, and electric power.

Excise tax is levied on the price or volume of excisable goods. Depending on the type of goods, the rate is a fixed sum of money or a percent of the price of goods.

2. Taxation

Export of excisable goods and reimport of goods due to their defects are exempt from excise tax. Reimported goods exempt from excise tax cannot be sold in Ukraine.

2.10. Taxation of use of natural resources

Environmental tax

If a company dumps waste (eg pesticides, manure) into air or water or disposes of waste on land, it must pay environmental tax. The tax rate varies depending on the amount of waste dumped by a company. A multiplier of 3 applies to a tax rate for waste dumped within a settlement or closer than 3 km from it.

Fee for use of water reservoirs

Companies must pay fees for extracting water from water reservoirs for commercial needs such as fish farming or transportation. The use of water for drinking, firefighting or hygienic needs (eg water supply in water closets) of a company or its personnel is exempt from the fee.

The fee is levied on the volume of water used by a company. The tax base for use of water for transportation purposes is the amount of time spent on transportation by water.

Payers of single tax (see section 2.2) do not pay the fee for use of water.

3. Land

3. Land

3.1. Ownership

Agricultural land

Most of the agricultural land of the total area of around 42 million ha is owned by citizens of Ukraine. Since 2001, there has been a moratorium prohibiting transfers of a major part of agricultural land. Therefore, most agricultural companies, regardless of their shareholders' residency (Ukrainian or foreign), do not own agricultural land and instead lease it for agribusiness from individual landowners.

On 31 March 2020, the Ukrainian Parliament passed the law to launch an agricultural land market. The law allows Ukrainian citizens to purchase agricultural land starting from 1 July 2021. Ukrainian companies owned by Ukrainian shareholders may purchase agricultural land starting from 1 January 2024. Foreigners and companies with foreign shareholders or beneficiaries cannot purchase agricultural land (whether directly or through a Ukrainian company) and will get this right only if a national referendum decides so. To incentivise bank lending, banks may acquire agricultural land in the course of enforcement of mortgages only but must sell the land within two years of its acquisition.

Tenants have preferential rights to purchase the land leased by them. If the law does not allow a tenant to purchase agricultural land (eg a tenant is a company with foreign shareholders), it may assign the preferential right to a third party.

There are some thresholds to avoid the concentration of agricultural land. Until 2024, the maximum area of newly acquired agricultural land will be 100 ha. Starting from 2024, it will be 10,000 ha. The thresholds do not apply to the agricultural land already owned by citizens as of 1 July 2021 and to the agricultural land owned by banks. If an individual is a shareholder of a company that owns agricultural land, the company's land bank is counted towards that individual's threshold proportionally to his or her share in the company.

Non-agricultural land

A Ukrainian company with foreign shareholders may acquire non-agricultural land only in these cases:

- the company acquires real estate situated on that land;
- the company is going to construct commercial real estate on that land – this condition applies only to land plots located within a settlement (city, village, etc.).

Acquisition of state and municipal land

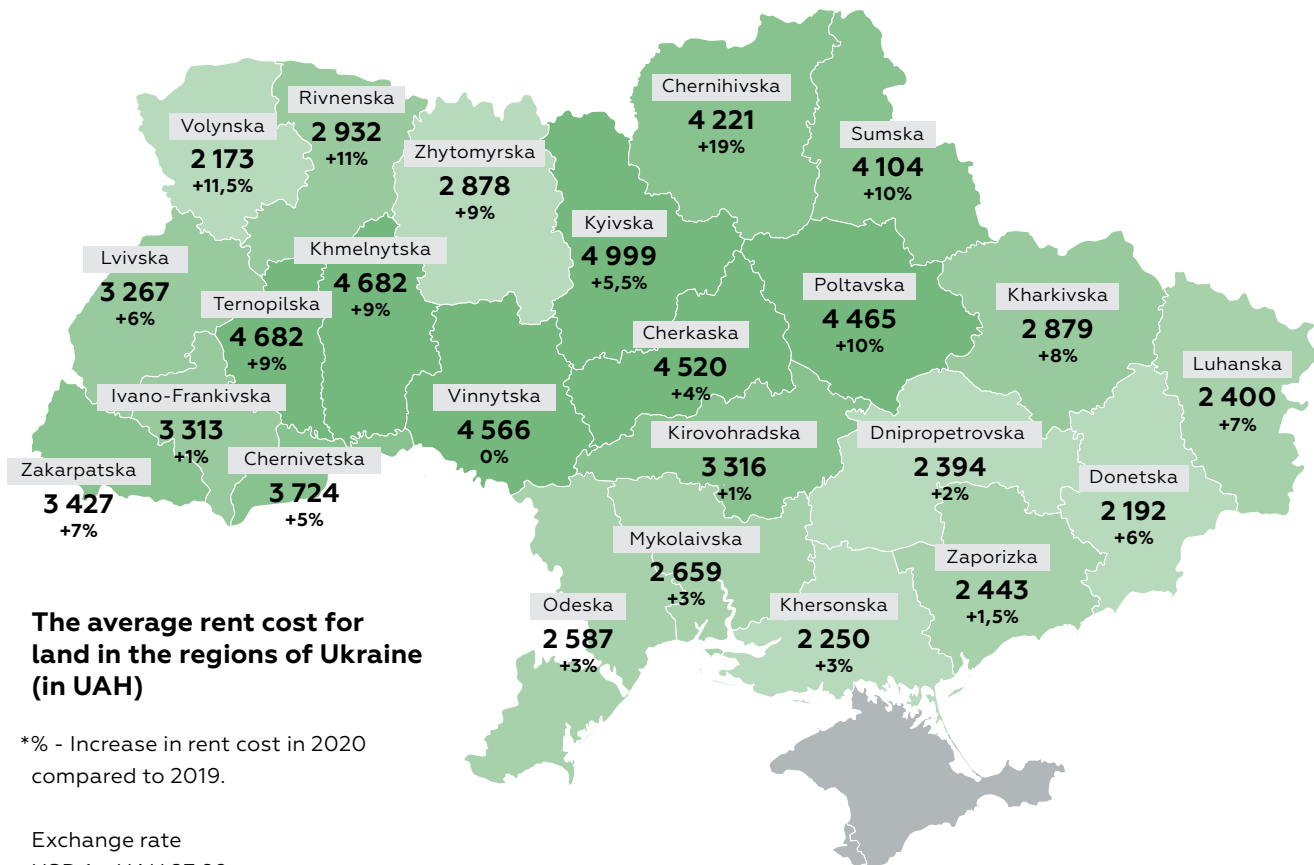
State and municipal land and lease rights to it are sold on auctions, and everyone may compete to acquire the land. In May 2021, the Ukrainian Parliament passed the law to launch real-time online auctions for the transfer of state and municipal land. Starting from July 2021, state and municipal land will be sold and leased via the internet only.



3. Land

There are some exceptions to the auction procedure. For example, one may acquire state or municipal land without an auction if he/she/it owns the real estate located on that land plot.

State and municipal agricultural land cannot be sold.



3.2. Land use

Agricultural land may be leased, subleased or used under emphyteusis under a relevant contract. The right to use land is subject to registration in the Real Estate Register.

Lease

There are no restrictions for foreign citizens or companies to lease agricultural land. The term of the lease cannot exceed 50 years, nor may it be less than 7 years to ensure crop rotation. In some cases, the term of 10 years applies, eg for land for agricultural commodities production or ameliorated land.

A private landlord and a tenant set the rent in a contract. If state or municipal land is leased, the rent must be between the land tax rate (see section 2.8) and 12% of the land valuation rate

3. Land

approved by a municipality. 12% threshold may be exceeded if the land is leased on auction. For state and municipal land under pastures located in mountainous zones, the rent cannot exceed the land tax rate.

Sublease

A tenant may transfer a land plot or a part of it to a subtenant if a contract allows so or if there is express or tacit consent from a landlord for such transfer. The terms of the sublease cannot extend over the terms of the lease.

Emphyteusis

The emphyteusis is a right to use the land for agriculture. For privately-owned land, the term of the emphyteusis is not limited. For state and municipal land, the term cannot exceed 50 years. The emphyteusis to privately-owned land are transferable, while the rights to state and municipal land are not.

The emphyteusis is generally similar to the lease, but there are some differences. The emphyteusis may be free of charge, whereas the lease requires paying rent. A person using land under the emphyteusis is freer to transfer the emphyteusis as compared to the transfer of land from the lease into the sublease. In the case of the emphyteusis, a person may transfer the emphyteusis to a third party or a landlord, who has a preferential right to acquire the emphyteusis. Whereas the sublease is impossible if a landlord objects to that unless a contract expressly allows the sublease without a landlord's consent.

Persons using land under the emphyteusis may let that land to third parties unless the emphyteusis agreement expressly prohibits this.

3.3. Registration procedures

A right to land becomes effective from a moment of state registration of that right. Registration of title to land involves two steps that are registration of land in the Land Cadastre (if not registered) and registration of title in the Real Estate Register.

The Real Estate Register contains information about the registered rights to real estate (including land), the encumbrances on such rights and the titleholders.

The Land Cadastre contains information about land plots such as the cadastral number, location, boundaries, area, purpose of land use, valuation of land, etc.



4. Immigration and employment

4. Immigration and employment

4.1. Entry permit

Three documents allow a foreigner to stay in Ukraine:

- a visa, unless Ukraine has a visa-free regime with a relevant country;
- a temporary residence permit;
- a permanent residence permit.

Citizens of European countries, the United States of America, Canada and some other countries may stay in Ukraine without a visa for up to 90 days or, in some cases, without limitation of a term. The list of citizens eligible for a visa-free stay in Ukraine and the term of stay are available at:

<http://old.mfa.gov.ua/en/consular-affairs/entering-ukraine/visa-requirements-for-foreigners>.

If a country does not have a visa-free regime with Ukraine, citizens of that country must apply to a Ukrainian Embassy for a visa. Information about visas is available at:

<https://mfa.gov.ua/en/consular-affairs/entry-and-stay-foreigners-ukraine/visa-information>.

Foreigners who arrived in Ukraine for work and obtained a work permit may receive a temporary residence permit. They should apply to the local department of the State Migration Service and after obtaining the temporary residence permit, register their place of residence. A person must obtain a long-term visa before applying for a temporary residence permit.

Foreigners must obtain an immigration permit before applying for a permanent residence permit. Obtaining permanent residence permits is not common practice.

4.2. Work permit

If a Ukrainian employer intends to hire a foreign citizen, it must apply for a work permit for that employee. A work permit allows an employee to obtain a visa (if required) and a temporary residence permit.

The work permit is generally issued for no longer than one year, with extensions available.

An employer may obtain a work permit for an employee only if his or her remuneration exceeds 10 minimum monthly salaries (approx. USD 2,170).

Some employees have additional preferences, eg the above requirements for remuneration do not apply to them or a work permit may be issued for a longer term. These employees are:

- highly paid professionals;
- shareholders or beneficiaries of a Ukrainian legal entity;
- IT professionals;

4. Immigration and employment

- artists;
- graduates of the world's top 100 universities (Ukrainian government lists eligible rankings).

4.3. Employees' rights

Working time

The usual working schedule is eight hours per day, five days per week. The maximum length of the working week is 40 hours.

Overtime work is allowed in extraordinary situations prescribed by law and with the prior consent of a trade union. Overtime work is paid twice as regular. The total amount of overtime work must not exceed 120 hours per year and 4 hours during two days in a row.

Minimum salary

The Parliament sets minimum salary annually. In 2021, the minimum salary is UAH 6,000 (approx. USD 217).

Part-time work

Work may be part-time upon mutual consent between employer and employee. In some cases, employers are obliged to agree on part-time work, eg upon request of a pregnant woman, a woman with a child younger than 14 years old or a disabled child, or a woman who nurses sick family members. In these cases, the salary is proportional to work hours.

Non-discrimination

An employer cannot refuse to hire a woman and cannot reduce her salary if she is pregnant or brings up a child under 14 years old or a disabled child. Other forms of discrimination are also prohibited.

There are quotas for employing disabled people. For companies with a number of employees ranging from 8 to 25 employees, the quota is one position. If the number exceeds 25 employees, the quota is 4% of the workforce.

There are quotas for the employment of people such as unemployed persons, single parents, etc. The quota is 5% of the workforce for companies with 20 or more employees. There is a quota for persons who have less than 10 years before retirement – 1 employee per company having 8 to 20 employees.

Vacation

The minimum length of annual paid vacation is 24 days per year, excluding sick leave and holidays. Some employees such as disabled people or minors are entitled to additional days of vacation.

Sick and maternity leave

4. Immigration and employment

Employees have a right to receive compensation for sick leave. The compensation ranges from 50% to 100% of the salary depending on the work experience and duration of employment. The compensation for the first 5 days is covered by employers while the rest is covered by the state social security fund.

Paid maternity leave usually lasts 126 days. Any member of a family bringing up a child may take maternity leave.

4.4. Severance payment

An employer must pay all outstanding payments (salary, vacation payments) to an employee on a day of dismissal.

In the case of termination of employment, an employer must pay the average salary in the following amounts:

- the average salary for 1 month – if an employee is dismissed due to redundancy, incompetence, reinstatement of an employee previously occupying a position, employee's refusal to be assigned to another location or to continue working on fundamentally changed terms;
- the average salary for 2 months – if the employment is terminated due to military service of an employee;
- the average salary for not less than 3 months – if the employment is terminated due to a breach of labour laws by the employer;
- the average salary for 6 months – if a CEO or other officer of a company is dismissed at an employer's initiative.

4.5. Trade unions

Employees may participate in trade unions. A trade union is independent of a company and other third parties. An employer cannot dissolve a trade union at its discretion.

Trade unions have powers in collective bargaining, determining terms of employees' remuneration, work schedule, investigation of accidents, labour disputes, etc. In some cases, consent of a trade union is required to dismiss an employee, eg in the case of reorganisation of a company or incompetence of an employee.

5. Key regulations in agricultural sector

5. Key regulations in agricultural sector

5.1. General food safety requirements

Recent amendments to the Law of Ukraine “On Key Principles and Requirements on Safety and Quality of Food Products” (the **“Food Safety Law”**) introduced EU standards to production, processing and distribution of food. The State Foodstuffs Safety and Consumer Protection Service is the main state authority supervising the food market.

Requirements for food safety imposed in Ukraine must be in line with international standards or, in their absence, the EU standards. Changes to such requirements, if adopted, must provide for a transition period of not less than 9 months allowing companies to ensure compliance with new standards.

The Food Safety Law allows the government to set up sanitary measures which generally must be in line with international standards. Measures that are not in line with international standards and may affect international trade must be notified to the World Trade Organisation.

Companies operating on the food market must apply the HACCP principles except for the companies involved in initial production phases such as harvesting or transportation of livestock. Companies in the food market also must ensure that they can trace their immediate counterparties in the food chain.

The companies involved in the production or storage of food of animal origin generally must have an operating permit. For other companies, registration of production or storage facilities suffices.

5.2. Plants and crops

Ukrainian phytosanitary legislation prohibits the import of plants and crops which are infected with harmful pests or organisms or may bring new organisms to Ukraine or increase their population in Ukraine. Import and transit goods must be clear of such pests and organisms and have phytosanitary certificates. Goods cannot be imported or transited if they are from a quarantine area or have been transited through a quarantine area.

There are special regulations for grain outlined in the Law “On Grain and Grain Market”. The law covers the matters such as grain declaration, quality control, grain storage conditions and grain trading.

Storage of grain in third-party storages requires the execution of warehouse documents. Grain storages are required by law to accept grain from anyone who needs storage services. Grain storages must examine the quality of grain before accepting it for storage.

Grain storages must declare monthly the volume of grain they store. Grain producers must declare monthly the volume of their grain which is stored in their own or leased storages.

5. Key regulations in agricultural sector

5.3. Animal farming

The main laws in animal farming include the Law "On Veterinary Medicine", the Law "On Animals Identification and Registration", the Law "On Animal By-Products", the Law "On Protection of Animals from Cruelty", the Law "On Milk and Milk Products", and the Law "On State Control for Compliance with Regulations on Food Products, Feed, Animal By-Products, Veterinary Medicine and Animal Welfare".

Animals imported to or transited through Ukraine must be clear of infections and have veterinary certificates. Animals cannot be imported or transited if they are from or were transited through an area where there is a disease included in the list approved by the World Organisation for Animal Health. Animals imported to Ukraine must be put on temporary quarantine to prevent diseases.

If a company imports exotic animals, ie those not common in Ukraine, it must prove that the country of origin of the animals allows their export.

Slaughter of livestock without a veterinary certificate confirming the welfare of the livestock is prohibited. Farms on which livestock is slaughtered must have operating permits. Livestock arriving at a farm must be put on temporary quarantine to prevent diseases. Bringing new livestock to a herd is permitted upon such quarantine and a permit from a veterinarian. Livestock must be identified and registered in the state register which includes information about the animals, their owners, the slaughter of animals, etc.

It is prohibited to sell milk without a veterinary certificate confirming the welfare of animals. Dairy products must be packaged at their production stage, except for packaging of butter, cheese and dry milk products carried out in different divisions of the same facility. Tanks used to transport milk cannot be used to transport other products or goods.

If a company's business includes the processing of inedible animal by-products or production of medicated feed from such by-products, the company must have an operating permit. Other companies using such by-products in production must register their facilities only, ie there is the notification procedure instead of licensing. The use of livestock skin requires testing for anthrax infection.

5.4. Genetically modified food

Genetically modified organisms (GMOs) require state registration before their use in Ukraine. The registration is valid for five years, and subsequent registration is required after that period expires.

If GMOs exceed 0.9% in any ingredient of a food product, the product must be labelled as containing GMOs. If a company confirms the absence of GMOs in a food product, it may put a GMO-free label on the product.

5. Key regulations in agricultural sector

5.5. Alcohol

Production of alcohol and trade in alcohol require licenses. Only the companies able to ensure the full production cycle of alcohol may obtain licences. Only one company, ie licensee, is allowed to use the facilities in which alcohol is produced.

Storage places of production companies must be registered in the state register. Companies intending to get a production license must be attested for compliance with the health and safety and environmental regulations. The attestation is also necessary to check that a company can ensure the full production cycle of alcohol.

Certification is required for alcohol to ensure its compliance with the Ukrainian regulations.

A fee for a production license is UAH 780 (approx. USD 28) per year. A fee for a trade license varies depending on the type of alcohol (eg ethanol, different alcoholic beverages) and may be up to UAH 500,000 (approx. USD 18,100).

5.6. Organic farming

Organic farming generally must not involve the use of chemicals, GMOs, growth stimulators, tranquilisers, etc. These items may be used in limited amounts when it is necessary for, for example, soil fertilisation, plant protection or disinfection. Organic farming requires conformity assessment, getting a certificate of conformity, and registration in the state register of organic producers.

There are special requirements for certain types of organic farming such as vine making, feed production, horticulture, fungiculture, animal husbandry, etc.



6. State support for agriculture

6. State support for agriculture

Given the important role of the agricultural sector in Ukraine, state support is available to agribusiness. State support programmes are set annually, so agribusiness should check the availability of state support for a given year in advance. The state budget for 2021 has reserved UAH 4.5 billion (approx. USD 163 million) of state support for agriculture. A single agricultural producer (including its related parties) may receive state support in the amount of up to UAH 60 million (approx. USD 2.17 million), and this threshold applies for each type of state support separately. The figures below are as of 2021 and may change over time.

6.1. Reimbursement of loan interest

The government may partially reimburse the interest paid on bank loans. The maximum interest that may be reimbursed is either a 1.5 policy interest rate of the National Bank of Ukraine or a rate set in a relevant loan agreement. In 2021, the maximum amounts for which a single borrower may be reimbursed are UAH 15 million (approx. USD 0.54 million) for borrowers engaged in animal husbandry and UAH 5 million (approx. USD 0.18 million) for other borrowers.

The law qualifies the loans eligible for state support depending on their purpose and term, eg long-term loans for purchasing fixed assets for agricultural production are eligible for state support. If a loan is used contrary to its purpose, a company loses the right to be reimbursed.

6.2. Reimbursement for machinery and equipment

The government may reimburse up to 30% of the price of agricultural machinery and equipment approved by it for reimbursement. To be eligible for reimbursement, a company must own machinery and equipment which is produced in Ukraine to a degree ranging from 40% to 60% depending on the type of machinery or equipment.

The maximum reimbursement amount for a single agricultural producer (including its related parties) is UAH 60 million (approx. USD 2.17 million).

6.3. Subsidies for animal husbandry and agricultural processing

The government may provide financial support for some sectors of animal husbandry and agricultural processing, including:

- reimbursement of up to 50% of the price of breeding animals purchased for further reproduction. Reimbursement thresholds depend on a type of animal;
- reimbursement of up to 30% of the expenses for (re)construction of livestock and poultry farms, milking rooms, processing facilities and grain elevators;

6. State support for agriculture

- subsidies for honeybee colonies of up to UAH 60,000 (approx. USD 2,170) for a single agricultural producer.

The total amount of this state support for a single agricultural producer (including its related parties) cannot exceed UAH 50 million (approx. USD 1.81 million).

6.4. Subsidies for horticulture, viticulture and hop growing

The government may partially reimburse agricultural companies doing business in horticulture, viticulture and hop growing for:

- up to 80% of the expenses on planting material;
- up to 50% of the expenses on espaliers and irrigation systems;
- up to 30% of the expenses on machinery and equipment for horticulture, viticulture and hop growing;
- up to 50% of the expenses on (re)construction of refrigerators for storage of fruits, berries, table grape varieties and hops of own production, processing and freezing facilities.

In 2021, the maximum amount of this state support for a single agricultural producer (including its related parties) is UAH 60 million (approx. USD 2.17 million).



7.

Judiciary

7. Judiciary

7.1. Jurisdiction and conflict of laws

Commercial disputes between Ukrainian residents are settled by courts of Ukraine. The parties may resort to Ukrainian arbitration institutions, but this type of dispute resolution is uncommon.

Commercial disputes between Ukrainian and foreign residents are settled in a way agreed in a contract. In some cases, the jurisdiction of Ukrainian courts is exclusive, eg if the subject matter of a dispute is real estate situated in Ukraine. It is not common for parties to cross-border contracts to be silent on dispute resolution. Usually, they expressly agree on how disputes must be resolved.

7.2. Enforcement of foreign judgments

Judgments of foreign courts are recognised and enforced in Ukraine based on treaties between the states in question. In the absence of a treaty, court judgments are recognised and enforced under the principle of reciprocity which is presumed to exist unless proven otherwise.

7.3. Arbitration

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.

The International Commercial Arbitration Court at the Ukrainian Chamber of Commerce may hear cross-border commercial disputes. Its awards may be recognised and enforced outside Ukraine under the 1958 New York Convention as well.

Ukraine is a party to the International Centre for Settlement of Investment Disputes (ICSID) Convention, and investment-related disputes can be resolved using the ICSID arbitration procedure.

Ukraine has bilateral investment treaties with many states. These treaties aim at bilateral protection of investments and provide for arbitration (usually ICSID) as a way of dispute resolution. The list of treaties is available at:

<https://icsid.worldbank.org/en/Pages/resources/Bilateral-Investment-Treaties-Database.aspx#a1>.

Specialised arbitration services under auspices of the Grain and Feed Trade Association (GAFTA) and the Federation of Oils, Seeds and Fats Association (FOSFA) are also available for Ukrainian agribusiness. GAFTA has an office in Kyiv.

7.4. Foreign investments protection

Ukraine guarantees protection of foreign investments. Foreign investments cannot be nationalised. Foreign investors may seek damages for a breach of the foreign investments protection guarantees by Ukraine.



Established in 1992, Vasil Kisel and Partners is a leading Ukrainian full-service law firm.

In almost 30 years of successful work on the market, we have formed a team of experts and acquired a reputation as a reliable partner and a client-oriented law firm. Over the recent decade, our firm practices and lawyers have constantly been top-ranked by reputable international directories.

We regularly act as legal advisor to the leading local and global strategic players in the agri sector, as well as private equity investors, production companies, crop traders and processors, and lenders and borrowers.

Understanding all concerns inherent to the agribusiness industry, our team consisting of the firm's leading practitioners in land, corporate, criminal and tax laws, real estate, intellectual property, employment and labour law, and environmental law provides full-service support to its agriculture and food industry clients.

Our deep industry knowledge is beneficial not only to our clients but to the market as a whole. We deliver added value via our active involvement in local business and industrial associations, being a legal partner of the Ukrainian Agribusiness Club Association and an official legal advisor to the European Business Association. Being a member of the American Chamber of Commerce and the U.S.-Ukraine Business Council, our lawyers regularly contribute to developing legislative initiatives.

We strive to boost the attractiveness of the agri sector as one of the backbones of the Ukrainian economy.





Ukrainian Agribusiness Club Association (UCAB) is the largest professional association of the Ukrainian agri-food sector, progressive-minded and represented in most regions of the country, offering a wide range of services for agribusiness.

In 13 years of its existence, UCAB has managed to take advanced positions and has become a leading association in Ukrainian agriculture. The association is using a variety of instruments to reach its goals which include efficient lobbying of the interests of agricultural producers through the determination of common priorities for the sector development; discussions and initiatives to promote legislative changes; close cooperation with state authorities; provision of high-quality analyses; organization of conferences, round tables, seminars keeping an active position in mass-media concerning the advocacy of interests of local producers.

In 2021, UCAB is keeping hold of the status Association No.1, consolidating more than 130 important representatives of the industry. We unite leading Ukrainian agricultural companies, as well as agro holdings, Ukrainian and international agricultural inputs, machinery and equipment producers and suppliers, cooperate with local and foreign associations, organisations and scientific institutions.

Membership in UCAB gives the companies obvious benefits: from complete information and vast knowledge to support in solving many practical issues. For our members and partners, UCAB has become the synonym for a coalition of people who have a common vision for the further development of Ukrainian agriculture



Disclaimer

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