



DOING AGRICULTURAL
BUSINESS IN UKRAINE:
LEGAL ASPECTS

2016



INTRODUCTION

Agriculture is one of the most attractive sectors of the Ukrainian economy. According to the Ministry of Agrarian Policy and Food of Ukraine, agriculture provides 14% of the total GDP of Ukraine. Exports of agricultural sector in 2015 amounted to USD 14.6 billion, representing the unprecedented 38.2% of Ukraine's total exports. Last year the agricultural sector attracted over one billion USD of investment. There are over 3 million people employed in agricultural industry, which constitutes more than 17% of all employed persons in Ukraine.

Given the importance of this sector to the state, there were significant changes in legislation regulating economic activity in the agricultural industry in 2015. The primary objective of these changes was to simplify doing business in the agricultural sector.

In particular, more than twenty licensing procedures were cancelled and some other mandatory licenses and permits were revised in agriculture (including in the areas of veterinary, agro-chemicals, livestock, food products, fisheries, use of natural resources), powers of certain state authorities were limited, risks of corruption were reduced, simplification of registration procedures for water use, as well as turnover of fertilizers and plant protection products were implemented, etc.

In this brochure, we provide an overview of the legal regulations applicable to agribusiness, including legislative framework for sale and purchase and lease of agricultural land, various aspects of employment relations and taxation regime, etc. Our publication will be helpful for potential agriculture investors, agriculture-oriented producing and processing enterprises and other persons interested in the Ukrainian agriculture sector.

Truly yours,
DLF attorneys-at-law

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1. SALE AND PURCHASE OF AGRICULTURAL LAND

1.1. Agricultural lands

Agricultural lands are lands available for agricultural production, implementation of agricultural research and training activities, placing of relevant production infrastructure, including infrastructure of wholesale markets for agricultural products, or designed for such purposes.

Agricultural lands comprise of:

- a) agricultural areas (arable lands, perennial plants, hayfields, pastures and fallows);
- b) non-agricultural areas (farm roads and trails, shelter belts and other protective plantings, except those classified as land for forestry purposes, land under farm buildings and yards, land under the infrastructure of wholesale markets for agricultural products, temporary land conservation, etc.).

The state recognizes the priority of agricultural land. Land suitable for agriculture must be available primarily for agricultural use.

1.2. Transfer of agricultural land

Agricultural land is transferred into ownership or for use to:

- a) citizens - for individual farming, gardening, mowing and grazing, agricultural commodity production;
- b) agricultural enterprises - for agricultural commodity production;
- c) agricultural research institutions and educational establishments, rural vocational schools and secondary schools - for research and educational purposes, propagation of the best practices in agriculture;
- d) non-agricultural enterprises, institutions and organizations, religious organizations and associations of citizens - for subsidiary farming;
- e) the wholesale markets for agricultural products - for accommodation of their own infrastructure.

Agricultural land shall not be transferred into ownership to foreigners, stateless persons, foreign legal entities and foreign states.

Foreigners and stateless persons may acquire ownership of non-agricultural land plots within settlements, as well as non-agricultural land plots outside settlements, on which immovable property owned by them is located in case of:

- a) acquisition by way of sale and purchase agreement, lease, gift, barter, or other agreements;
- b) purchase of land plots, on which their own immovable property is located;
- c) inheritance.

However, agricultural land inherited by foreigners and stateless persons is subject to alienation within one year from the time of inheritance.

1.3. Moratorium on sale of agricultural land

The moratorium on sale of agricultural land in Ukraine has been introduced in 2002. In November 2015 the effect of the moratorium was prolonged until 1 January 2017.

The law stipulates that until the law regulating turnover of agricultural land comes into force, but in any event not earlier than 1 January 2017, it is prohibited to:

- sell state-owned and municipal land plots designated for agricultural use, except for the withdrawal (buy-out) of such land plots for public needs;
- sell and purchase or otherwise alienate agricultural land plots or change the designation of agricultural land plots owned by individuals or legal entities for agricultural commodity production, for individual farming, except for inheritance, for barter one land plot to another and for withdrawal (buy-out) of such land plots for public needs, and other than changing the designation of land for the purpose of providing to investors-participants of the production sharing agreements for activities under such agreements.

Any agreements (including powers of attorney) concluded under the effective prohibition in the part of sale, purchase or other alienation of agricultural land plots and similarly in the part of transfer of the rights for future alienation of these land plots shall be null and void from the time of conclusion thereof.

It should be noted that the said prohibition shall not apply to land plots, which at the time of their transfer into private ownership were designated other than “for agricultural commodity production”. In particular, such designations include for subsidiary farming, for gardening, for mowing and grazing, for research and educational purposes, for propagation of the best practices in agriculture, for accommodation of infrastructure of wholesale markets for agricultural products, for other agricultural purposes. There are no restrictions on sale or purchase or other alienation of the abovementioned land plots and changes into their designation.

2. LEASE OF LAND

2.1. Agreement on lease of land

The right to lease a land plot is formalized by way of execution of the agreement on lease of land.

The agreement on lease of land is executed in writing and at the request of one party may be certified by a notary. The Model Land Lease Agreement was adopted by the Cabinet of Ministers of Ukraine. The right to lease a land plot is subject to state registration.

The citizens are entitled to lease land plots designated for individual farming to legal entities of Ukraine. Legal entities may use such land plots for agricultural commodity production, as well as farming without change of designation of a land plot.

2.2. Essential terms of the agreement on lease of land

The essential terms of the agreement on lease of land are:

- object of lease (cadastral number, location and size of a land plot);
- duration of the lease agreement;
- rent payment with specification of its amount, indexation, methods and conditions of payment, terms, procedure for payment of rent and its revision, as well as liability for failure to pay.

The parties may agree to include any other terms and conditions.

We note that until February 2015 the agreement on lease of land had to contain eleven mandatory terms and five additions (plan or scheme of a land plot, act on determining the boundaries of the land in kind, act on acceptance and transfer of the object of lease, etc.). Absence of only one of the essential terms or additions of the agreement on lease of land could be the ground for refusal for its registration or serve as a basis for declaring it as void. However, despite changes in legislation, the Model Land Lease Agreement still contains old extended list of essential terms. Therefore, until the Model Land Lease Agreement is amended in line with the current legislation, we recommend specifying all essential terms as provided by the Model Land Lease Agreement.

If the agreement on lease of land provides for measures on improvement and safety of the object of the lease agreement, the agreement on reimbursement of expenses incurred by the lessee shall be attached.

2.3. Duration of the lease agreement

Duration of the agreement on lease of land is determined by the parties, but shall not exceed 50 years.

For lease of agricultural land for agricultural commodity production, individual or subsidiary farming, duration of the agreement on lease of land shall not be less than 7 years.

2.4. Rent

Amount, conditions and terms for payment of rent for lease of land shall be established by the parties (except for terms of payment of rent for lease of land plots of state and municipal ownership, which is established by the Tax Code of Ukraine).

The rent is paid in monetary form. Settlements of lease payments may be carried out in kind upon agreement of the parties, which shall correspond to the monetary equivalent of market value of goods as of the date of payment of rent. Rent for lease of state and municipal land plots is paid exclusively in monetary form.

2.5. Rights and obligations of the parties

The risk of accidental destruction or damage of the object of lease lies with the lessor, unless otherwise provided by the agreement on lease of land.

The lessor is entitled to demand from the lessee, *inter alia*, to use the land plot according to its designated purpose, to comply with the ecological safety of land use and preservation of soil fertility, government standards, rules and regulations, water protection zones, coastal strips, sanitary protection zones, buffer zones, zones of special regime of land use and areas, which are especially protected.

The lessee, *inter alia*, is entitled to independently farm his/her land under the conditions of the lease of land; build residential, industrial, cultural and other buildings and structures and lay the plantations upon the lessor's written consent.

Pursuant to Ukrainian legislation, the lessee is provided with protection of his/her rights to the leased land on par with the protection of the rights of ownership of the land. In particular, the lessee is entitled to demand the leased land from any illegal possession and use, removing of any barriers to use, reimbursement of damages caused to land by third parties.

2.6. Termination of agreement

The agreement on lease of land is terminated on the following grounds:

- expiration of the term of agreement;
- purchase of the land plot for public purposes or alienation of the land plot for the reasons of public necessity pursuant to the law;

- combination of lessor and lessee in one person;
- death of the lessee, his/her conviction to imprisonment or his/her refusal to implement the agreement on lease of land;
- liquidation of the legal entity which is the lessee;
- selling the right of lease by the mortgagee;
- obtainment of ownership of a house or building located on the land plot leased by the other person.

3. EMPLOYMENT RELATIONS

The Labour Code of Ukraine is the main document which regulates employment relations in Ukraine. It was adopted in 1971 and does not meet the basic principles of a market economy. In addition, protection of rights of employees is the core leitmotif of this code: the grounds for dismissal of the employee are limited, whereas the employee benefits from a significant number of social guarantees. During the last decade the adoption of a new Labour Code that would meet the realities of today's labour market has been actively discussed in Ukraine. As of February 2016, the draft of the new Labour Code was preliminary approved by the parliament.

3.1. Employment agreement

Employment agreement is the basis for the employment relationships. Employment agreement shall include the following terms and conditions:

- place of work, including separate unit or branch;
- labour function of the employee;
- start date of employment;
- conditions relating to wages, bonuses or allowances;
- working conditions;
- work time and holiday time;
- guarantees and compensation for work in hazardous or dangerous conditions.

The special form of the employment agreement is the employment contract in which its validity period, rights, liabilities and responsibilities of the parties (including material ones), conditions of material security and organization of employee's work, conditions of termination of the contract, including cases of early termination, may be determined as agreed upon by the parties. Scope of the contract is specified by the laws of Ukraine. Thus, in particular, the employment contract might be executed with the director of the entity.

The employment agreement is usually made in writing and may be:

- 1) termless that is entered into for indefinite period of time;
- 2) entered into for definite period of time as agreed upon by the parties;
- 3) entered into for the period of performance of certain work.

Termed employment agreement shall be entered into in cases when labour relations may not be established for indefinite period of time due to the nature of subsequent work, or conditions of its performance, or employee's interests, and in other cases prescribed by legislative acts.

In addition, the special type of termed employment agreement, namely the seasonal employment agreement, might be used in agriculture. Seasonal works are such works, which due to natural and climate conditions cannot be performed during the whole year, but only within the certain period (season), which lasts for less than six months. In agriculture such works include: works in vegetable production, horticulture, viticulture, sugar beet production, works in growing and harvesting potatoes, tobacco, feed, cucurbitaceous crops, medicinal herbs, as well as works at poultry incubator stations and inter-farm poultry incubator stations. Any works, which are not specified above, are not deemed to be seasonal, even if such works last for less than six months.

One of the special features of the seasonal employment agreement is that the employees involved in the seasonal works are entitled to terminate the seasonal employment agreement upon a written notification to the employer within three days prior to the intended date of termination (not within two weeks, as for other types of employment agreements).

3.2. Employee probation

When entering into the employment agreement, the parties may agree upon probation with the purpose of verification of relevance of the employee to the job entrusted thereto. Probation shall not be established in case of employment of: persons under eighteen years old; young employees upon graduation from vocational schools; young specialists upon graduation from higher educational institutions; persons retired from military or alternative (non-military) service; disabled persons directed to work according to recommendations of medical and social expert examination. Probation shall not be established also in case of employment in other locality and in case of transfer to work at other enterprise, in institution or organization, as well as in other cases as prescribed by legislation. In addition, the employees under the seasonal employment agreement shall not be subject to probation.

Unless otherwise established by legislation of Ukraine, the probation period may not exceed three months, and in certain cases, as agreed upon with respective elective body of primary trade union organization, six months.

Probation period at employment of workers shall not exceed one month.

3.3. Termination of employment agreement

The Labour Code specifies the non-exhaustive list of grounds for termination of employment agreement. The list is as follows:

- 1) agreement of the parties;
- 2) expiration of validity period, except for the cases when labour relations are actually continuing, and neither party demands termination thereof;
- 3) call or entry of the employee to military service, appointment to alternative (non-military) service, except for cases when employment is preserved for the employee;

- 4) termination of the employment agreement on the initiative of the employee, on the initiative of the owner or body authorized by him/her, or at the request of trade union or other representative body;
- 5) transfer of the employee by his/her consent to another enterprise, institution or organization, or transfer to the elective office;
- 6) refusal of the employee to transfer to another job in other locality together with enterprise, institution or organization, as well as refusal to continue working in connection with changes in essential working conditions;
- 7) entry of court judgment into legal force condemning the employee (except for the cases of indemnification from servicing punishment with probation) to imprisonment or to other punishment, which excludes possibility to continue this work;
- 8) grounds prescribed by the employment contract.

Employment agreement entered into for indefinite period of time, as well as termed employment agreement prior to expiration of its validity period may be terminated by the owner or body authorized by him/her only in the following cases:

- 1) changes in production and labour organization, including liquidation, reorganization, bankruptcy or conversion of enterprise, institution, organization, reduction of number or staff of employees;
- 2) revealed inconsistency of the employee with job or with work performed as the result of insufficient qualification or state of health, which prevent continuing this work, as well as in case of cancellation of access to state secret, if fulfilment of obligations imposed on him/her requires an access to state secret;
- 3) systematic failure of the employee without good reasons to fulfil obligations imposed on him/her under labour contract or internal regulations, if disciplinary or civil sanctions have been previously applied thereto;
- 4) absence from work (including absence from work for over three hours during the working day) without good reasons;
- 5) absence from work within more than four successive months as the result of temporary disability, except for maternity leave, unless longer period of workplace (office) preservation at particular disease is established by legislation. Employees, who lost capability in connection with labour injury or occupational disease, shall retain their workplace (office) until rehabilitation or establishment of disability;
- 6) reinstatement of the employee, who had been previously performing this work;
- 7) showing up for work intoxicated with alcohol, narcotics or other toxic substances;
- 8) on-the-job embezzlement (including petty one) of owner's property established by a court judgment that became effective, or by resolution of the body, which competence includes imposing administrative sanctions or taking measures of social influence;
- 9) call of the individual employer to military service or his/her mobilization during the special period.

Also, one should remember that in certain cases in order to terminate the employment agreement on the initiative of the owner or body authorized by him/her, it is necessary to obtain previous consent of the elective body (trade union representative), if there is such at the entity.

3.4. Employment of foreigners

The Constitution of Ukraine provides that foreigners that legally stay in Ukraine have the same volume of rights and freedoms and bear the same responsibilities as the citizens of Ukraine. This provision is also applicable to the employment activities of foreigners.

The employers in Ukraine are entitled to employ a foreigner provided that the State Employment Service of Ukraine has issued a work permit for employment of a particular foreigner. The law provides that a work permit shall be issued, if one of the following conditions is applicable:

- there are no qualified Ukrainian employees or the necessity of a foreigner's employment is duly substantiated;
- a foreigner seconded by a foreign business entity to Ukraine under agreements between a Ukrainian and foreign business entity (the number of foreigners hired shall not exceed half of the total number of employees of respective Ukrainian business entity);
- a foreigner has been seconded to Ukraine as intra-corporate transferee;
- a foreigner has applied for the refugee status.

A Ukrainian employer shall notify the State Employment Service on available vacant positions not later than 15 days prior to submission of documents for acquiring of a work permit. This is due to the fact that the preference in employment is given to Ukrainian citizens, who are qualified and able to perform such type of work. Then a set of documents is submitted, including copies of education and qualification documents of the foreigner, a sealed and signed certificate certifying that the position offered to the foreigner does not require the employee to be a Ukrainian citizen and does not require the provision of access to state secrets, a non-conviction certificate issued in Ukraine or home country supplemented with an apostille stamp and certified translation into Ukrainian, if issued abroad, along with some other documents.

Moreover, in relation to certain categories of foreigners, whose employment is considered to be duly substantiated, an expedient procedure is established for consideration of their application. In particular, such expedient procedure applies to:

- foreigners applying for positions of managers in entities, institutions or organizations wherein such foreigners possess shareholding or are founders or co-founders;
- foreigners applying for positions of managers or IT-specialists in an entity in the software development area;

- foreigners applying for positions wherein the main tasks are creating the objects of copyright and/or related intellectual property rights;
- foreigners holding a higher education diploma from an educational institution within one of Top 100 higher education institutions listed in the Times Higher Education, Academic Ranking of World Universities by the Center for World-Class Universities at Shanghai Jiao Tong University, QS World University Rankings by Faculty, Webometrics Ranking of World Universities as of the current year, the last or the year before the last.

The submitted documents are considered by the State Employment Service within seven business days following receipt of all required documents.

The fee for submission of application for work permit is established in the amount of four minimum wages (one minimum wage amounts to UAH 1378.00 or approx. USD 55.00-60.00 as of February 2016).

The work permit is usually issued for a term of validity of the employment contract, but not more than one year, and may be prolonged for unlimited number of times for the same period.

3.5. Residence permit

The right to legally stay in Ukraine is certified by the residence permit. There are two types of Ukrainian residence permit: a temporary residence permit, which allows staying in Ukraine for up to a year, and a permanent residence permit, which allows staying in Ukraine for indefinite period. Both temporary and permanent residence permits are issued by the State Immigration Service of Ukraine.

Application for a temporary residence permit requires a set of standard documents along with documents, which confirm the purpose of stay in Ukraine, *i.e.* for work (a work permit), for studies (a document confirming enrolment in Ukrainian university), for a family reunification (a document confirming marriage to a citizen of Ukraine), etc.

The application for obtaining a temporary residence permit is considered within 15 business days following receipt of all required documents.

Application for a permanent residence permit also requires submission of the immigration permit. The latter is obtained from the State Immigration Service of Ukraine within the quota established by the Cabinet of Ministers or out of quota in certain cases. The State Immigration Service of Ukraine considers application for the immigration permit within one year following receipt of all required documents.

3.6. Leave

Annual basic leave shall be given to employees for the period of at least 24 calendar days per calendar year worked to be calculated from the date of entering into the employment agreement.

On the ground of medical opinion, women shall be granted a paid maternity leave for 70 calendar days prior to childbirth and 56 calendar days (70 calendar days in case of birth of two and more children and in case of birth difficulty) as from the day of birth.

Maternity leave period shall be calculated as aggregate and constitute 126 calendar days (140 calendar days in case of birth of two and more children and in case of birth difficulty). It shall be granted to women in full irrespective of number of days actually used prior to birth.

3.7. Minimum wage

Minimum wage is the statutory amount of salary for a simple, unskilled labour performed on a monthly basis, and the hourly labour rate (amount of work). As of February 2016 the minimum wage in Ukraine is UAH 1378.00 (approximately USD 55.00-60.00). The amount of minimum wage is established in the state budget of Ukraine for the respective year.

The wage is subject to indexation pursuant to legislation. Wage is regularly paid to employees during business days within terms specified in collective agreement or regulation act of employer, but not less than twice per month after time interval that does not exceed 16 calendar days and not later than seven days after the expiration of period, during which the payment is made.

4. TAXATION IN AGRICULTURE

The main provisions of the Ukrainian legislation governing taxation in agriculture are embodied in the Tax Code of Ukraine, which regulates the special tax regime in the agricultural sector. Ukraine's tax law provides certain tax benefits for agricultural producers.

4.1. Terms for single tax application

Agricultural producers, subject to certain conditions, may become taxpayers of a single tax of the fourth group.

Thus, legal persons have the right to choose the fourth group of the single tax provided that their share of agricultural commodity production in the previous year amounted to at least 75%. This is applicable to:

- 1) all persons separately, which carry out merger or accession. In this case, it is possible to become a single tax payer in the year of creation, if share of agricultural commodity production obtained for the previous tax year by all commodity producers involved in their creation equals to or exceeds 75%;
- 2) each individual person created by split-up or spin-off. In this case, it is possible to become a single tax payer from the next year, if share of agricultural commodity production obtained for the previous tax year equals to or exceeds 75%;
- 3) person created by transformation. In this case, it is possible to become a single tax payer in the year of transformation, if share of agricultural commodity production obtained for the previous tax year equals to or exceeds 75%.

Newly created agricultural commodity producers may be single tax payers from the next year, if share of agricultural commodity production obtained for the previous tax year equals to or exceeds 75%.

The other condition for application for single tax of the fourth group is the use of own or leased agricultural land.

In addition, there are three restrictions due to which legal entities may not become single tax payers, namely:

- 50% of overall income comes from selling ornamental plants, wild animals and birds, fur products and fur (with some exemptions);
- production of excisable goods, except for the sale of wine-making materials by companies engaged in primary wine-making, takes place;
- there is tax indebtedness as of 1 January of the reporting year, except for bad tax indebtedness, which arose in the result of force majeure.

4.2. Object and tax base

The object of taxation for single tax payers of the fourth group is the area of farmland (arable land, hayfields, pastures and perennial plantations) or lands of water fund (inland waters, lakes, ponds, reservoirs), which is owned or leased by the agricultural producer.

Ownership/lease rights to land plots shall be duly registered in accordance with the law.

The tax base for single tax payers of the fourth group for the agricultural producers is the regulatory monetary value of one hectare of agricultural land subject to indexation.

4.3. Single tax rates

For single tax payers of the fourth group the rates depend on the category of land, its location and amounts to (in per cent of the tax base):

- for arable land, hayfields and pastures – 0.81;
- for arable land, hayfields and pastures located in mountainous areas and marshy woodland areas – 0.49;
- for perennial plantations – 0.49;
- for perennial plantations located in mountainous areas and marshy woodland areas – 0.16;
- for lands of water fund – 2.43;
- for arable land, hayfields and pastures on closed soil – 5.4.

4.4. Reporting period and procedure for payment of single tax

The reporting period for agricultural producers is a calendar year. The single tax is paid in each quarter within 30 calendar days following the last calendar day of the tax quarter in the following amounts:

- in I quarter – 10%;
- in II quarter – 10%;
- in III quarter – 50%;
- in IV quarter – 30%.

4.5. Procedure for registration as a single taxpayer

Pursuant to tax legislation of Ukraine, registration as a single tax payer is for indefinite time. However, agricultural producers need to confirm their status annually. In order to confirm the

status of a single tax payer of the fourth group, the agricultural producer shall submit a number of reporting documents on the activities in the previous year before 20 February of the current year.

4.6. Peculiarities of VAT

Any company operating in the field of agriculture, forestry or fishery may choose a special VAT regime.

However, it should be noted that the special VAT regime is valid only in 2016. Starting from 1 January 2017 it will be fully abolished.

VAT taxation is carried out in the following formats:

- a) under transactions with agricultural goods/services (except for grain and industrial crops, as well as livestock transactions), 50% of VAT shall be paid to the state budget and 50% of VAT shall be credited to the special VAT account of the agricultural producer;
- b) under transactions with grain and industrial crops, 85% of VAT shall be paid to the state budget and 15% of VAT shall be credited to the special VAT account of the agricultural producer;
- c) under transactions with livestock, 20% of VAT shall be paid to the state budget and 80% of VAT shall be credited to the special VAT account of the agricultural producer.

As of 1 February 2016, there are two open registers for budget refund of VAT. One register is for the applicants for automatic refund of VAT, the other is for all other applicants. The automatic VAT refund is applied if the share of export transactions in the commercial activity of the company is more than 40%.

However, in order to qualify for the special VAT regime, the principal activity of the company shall be supply of agricultural goods or/and services produced at its own or leased facilities, and the share of agricultural goods and/or services shall make up to at least 75% of the total value of all goods and/or services supplied during 12 preceding consecutive reporting periods (months) in aggregate.

4.7. Transfer pricing

Transfer pricing is applied to controlled transactions, provided that the total annual income of the taxpayer and/or its related parties exceeds UAH 20 million (approximately USD 830,000.00) (excluding VAT), while the volume of transactions of the taxpayer and/or its related parties with each counterparty exceeds UAH 1 million (approximately USD 41,500.00) (excluding VAT) or 3% of the taxpayer's income for the relevant tax year.

The transaction is deemed to be controlled, if it is: (1) with related non-residents; (2) on the sale of goods through the non-resident commission agents; and (3) with non-residents from offshore jurisdictions. Taxation of controlled transactions is carried out exclusively under the pricing methods prescribed in the tax legislation of Ukraine.

5. PROTECTION OF FOREIGN INVESTMENT

5.1. International agreements

One of the means for protection of foreign investment is the conclusion of international agreements on promotion and protection of investment. Thus, following ratification of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States by Ukraine in 2000, the signatories to the convention have the opportunity to address the matters in relation to protection of their investments to the International Centre for Settlement of Investment Disputes.

At the International Centre for Settlement of Investment Disputes the investors shall benefit from protection of their rights due to the confiscation of their property, unequal attitude towards national and foreign investors.

International agreements on promotion and protection of investments were signed with a number of countries, including Germany, the United Kingdom, France, Switzerland, the Netherlands, Denmark, Poland, Turkey, China, Japan, the United States of America, Canada and many countries in the Middle East.

Terms of the bilateral agreements on promotion and protection of investments are not standardized and may vary significantly.

5.2. Safeguards of Ukrainian legislation

Generally, protection of foreign investment in Ukraine is regulated by the Law of Ukraine “On Foreign Investment” and the Law of Ukraine “On Protection of Foreign Investments”. These regulatory acts define basic safeguards concerning protection of foreign investments in Ukraine.

5.3. Safeguards against change of legislation

The principle of guaranteeing the protection of foreign investments in case of changes of Ukrainian legislation stipulates that in the event of change of guarantees in relation to protection of foreign investment, the state guarantees effective at the time of investment would apply, upon request of a foreign investor, within ten years from the date of enactment of such changes to legislation.

5.4. Safeguards against confiscation and illegal actions of state authorities and their officials

This principle stipulates that the state authorities of Ukraine are not entitled to requisite foreign investments, except for emergency measures in the event of natural disasters, accidents, epidemics, epizootics. Such requisition might be made on the basis of decisions of state authorities authorized by the Cabinet of Ministers of Ukraine.

Decisions on requisition of foreign investments and compensation conditions can be appealed in court.

5.5. Compensation and reimbursement of losses to foreign investors

Foreign investors are entitled to reimbursement of losses, including lost profits and moral damage caused to them due to actions, omissions or improper performance of duties by the state authorities of Ukraine or their officials towards a foreign investor or enterprise with foreign investments, according to the legislation of Ukraine.

All expenses and losses incurred by foreign investors as a result of such actions should be reimbursed on the basis of current market prices or substantiated estimates confirmed by the audit firm. Compensation payable to foreign investor should be prompt, adequate and effective.

5.6. Safeguards in case of termination of investment activity

In case of termination of investment activities, a foreign investor has the right to return not later than six months following termination of such activities their investments in kind or in currency of investment in the amount of actual contribution, without payment of customs duties, as well as revenues out of such investments, in monetary or goods form at a real market value at the date of termination of the investment activities.

5.7. Guarantees of transfer of profits, revenues and other funds received as a result of foreign investment

Following payment of taxes, duties and other mandatory payments, the foreign investors are guaranteed unhindered and immediate transfer of their revenues, profits and other sums in foreign currency obtained legally as a result of foreign investment.

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