

Partial Loan Guarantee Fund for the Ukrainian agriculture

Introduction

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On 24 November 2021, the Law of Ukraine "On the Partial Loan Guarantee Fund for Agriculture" (the "Law") came into force. The Law provides a number of opportunities that can be useful for agricultural producers, as well as for investors and financial institutions.

For agricultural producers, the main advantage of the Law lies in the possibility to obtain a loan from a financial institution under the guarantees of the Partial Loan Guarantee Fund for agriculture. This allows for a more efficient attraction of credit resources into the activities of Ukrainian agricultural companies and farmers, even if their own property is insufficient to secure the loan obligations.

1. Who is eligible for loans guaranteed by the Fund?

Not all Ukrainian agricultural producers are eligible for loans guaranteed by the Partial Loan Guarantee Fund for agriculture. This right may be exercised only by legal entities and individual entrepreneurs:

- whose main activity is the production of agricultural products;
- owning up to 500 ha of land;
- the book value of whose assets does not exceed EUR 20,000,000;
- with a net income from sales not exceeding EUR 40,000,000;
- with the number of employees not exceeding 250 people.

The law also establishes other restrictions, among which special attention should be paid to those limiting the abuse of the right to guarantee obligations under loan agreements. In particular, a producer cannot exercise this right, even if it meets the criteria established by the Law, if:

- its participant or ultimate beneficiary is simultaneously a participant or ultimate beneficiary of other Ukrainian legal entities engaged in agricultural activities;
- the producer is an individual and simultaneously acts as a participant or ultimate beneficiary of legal entities carrying out activities in the field of agriculture;
- persons related to the producer own land, the total area of which, together with the area of the producer, exceeds 500 hectares.

For example: if a Ukrainian agricultural company owns 300 ha of land, has assets amounting to EUR 1,000,000, income of EUR 3,000,000 and 100 employees, but its owner is also the founder of another agricultural company or his/her relatives own over 200 ha of land – such agricultural company is not eligible for the

guarantee of obligations under loan agreements pursuant to the Law.

It is also important to note that the list of criteria for Ukrainian producers that may exercise the right to a guarantee is not exhaustive and may be expanded by a decision of the Fund.

The guarantees, which may be issued under the Law, are only available for loans granted by financial institutions. At that, the guarantees may be granted for up to 50% of the outstanding principal amount and for no more than 10 years.

2. Other provisions

The Law also gives investors the opportunity to invest directly in the Fund and to receive dividends from its activities. The Fund does not have the status of a state trust fund, but at least 51% of its authorized capital must be owned by the state. The remaining part may be owned by international financial organizations and legal entities of private law.

The Law opens perspectives for banks, above all, to increase lending to the Ukrainian agricultural sector. However, some uncertainty is added by the fact that it is still unknown how the guarantees provided by the Fund will be taken into account when calculating bank reserves and other indicators related to the risk level of lending operations. Also, the specific eligibility criteria of financial institutions, liabilities to which may be guaranteed by the Fund, are unknown.

The banks, however, should already consider the following:

- A bank will not be entitled to receive further guarantees from the Fund for the obligations of its borrowers if, for any 12 consecutive months, the bank requires the Fund to pay an amount for a borrower that exceeds 20% of the aggregate of all existing guarantees received by the bank;
- The Fund may also establish a period for which the issuance of new bank guarantees shall be suspended, if the bank received from the Fund less than 10 guarantees and requires the payment for the breach of Ukrainian borrower's obligations in an amount that exceeds 20% of the aggregate of all the active guarantees received by the bank.

The Law prescribes that the Cabinet of Ministers of Ukraine shall establish the Fund and adopt regulations stipulated by the Law within three months (from 24 November 2021), and within six months bring its regulations into compliance with the Law. The National Bank of Ukraine must settle the issues related to the activities of the Fund by 24 August 2022. Taking this into account, one should expect the Fund to be operating effectively and reliably not earlier than in the autumn of 2022.