

## How agricultural companies in Ukraine can control cultivated land

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

Related article: Land Market Opening in Ukraine

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### 1. Purchase of leased land by loyal buyers

As a matter of practice, agricultural companies in Ukraine, although they do not acquire ownership of the land they lease, establish control over it. To do so, they encourage the purchase of leased land by loyal buyers. Loyalty, in this case, is that the land purchased by individuals will be immediately and for a long time (more than 10 years) transferred to the use of the agricultural company.

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

long-term lease.

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

## **2. Establishing control over leased land**

In general, the process of entering into the purchase and sale agreements of land leased by the agricultural company is as follows:

### **1) Search for potential sellers**

Unlike the general procedure, when buyers search for sellers through ads or realtors, in a controlled process, the agricultural company performs this search itself. In this regard not only a complete database of leased landowners are used but also other tools. Authorized field representatives, heads of local production units usually know about the intentions of Ukrainian lessors and can personally announce the intention of the agricultural company to organize the purchase of land, make targeted announcements.

### **2) Search for potential buyers**

The agricultural company searches for potential buyers in two main ways:

A) Agricultural company's trusted employees' involvement,

B) Third parties involvement.

In this case, the involvement of third parties is also carried out in a special manner. The main goal of the agricultural company in this process is to form a pool of loyal lessors. As for third parties, the main strategy for attracting them is to position the purchase of land as a tool for reliable investments, the profitability of which is ensured not only by rising land prices but also by regular rent payments. In this regard, the Ukrainian agricultural company undertakes to find a seller, organize the process of the land purchase and sale and, most importantly, transfer the preemptive right to purchase the leased land to a potential buyer.

### **3) Preparation for entering into the land purchase and sale agreement**

The peculiarity of this stage is that the agricultural company in Ukraine independently prepares for the conclusion of such an agreement, and usually pays all costs of the seller and (sometimes, for example, in the case of selling the plot to employees of the agricultural company) costs of the buyer. This includes the costs of expert assessment, notary services, assignment of a cadastral number to the land (if it wasn't assigned before), registration of ownership (if the record of such registration in the Unified Register of Real Property Rights is missing).

The agricultural company can also carry out a preliminary verification of the buyer (their authority, centralization of land in one pair of hands, the presence of an entry in the register of debtors to the parties, etc.). This allows to prepare an agreement avoiding a situation where a lot of time is spent on preparation, and when the buyer and seller came to the notary at the location of the plot, and the notary reveals circumstances that make the conclusion of the agreement impossible.

Related article: [How to buy an agricultural company in Ukraine](#)

In addition, it is necessary to prepare draft documents competently (on the transfer of the agricultural company's preemptive right to purchase the leased land, land lease agreement with the new owner) and check the availability of bank accounts for settlements between the parties.

#### **4) Entering into the land purchase and sale agreement**

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

#### **5) Registration of the Buyer's property right**

#### **6) Entering into a long-term land lease agreement**

#### **7) Rental rights registration**

The last four stages should be performed simultaneously or at short intervals. The agricultural company is interested in concluding a lease agreement with the new owner immediately after the registration of the purchased land ownership. Usually, in such a procedure, the conclusion of sales contracts is accompanied by representatives of the agricultural company.

Planning and structuring the above procedure within the agricultural company is essential. This is because hundreds (or thousands) of agreements and related documents must be prepared, concluded, and registered. Each of these agreements is a separate complicated

procedure.

To do this, agricultural companies in Ukraine need to:

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

### 3. Ensuring the preemptive right of the lessor

Taking into account the peculiarities of land purchase and sale in Ukraine, the control of the lease rights of the agricultural company should, first of all, relate to the following information:

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Peculiarities of land purchase and sale agreements	Information to be under control
Verification of documents certifying the right of ownership, namely: a state act of the ownership right (if the ownership right was registered in 1992-2012) an extract (certificate) from the State Register of Real Rights (to confirm the entry of data on land in the State Land Cadastre) an extract from the cadastre (if the ownership right was registered in 2013-2015) an extract from the State Register of Real Property Rights (if the ownership right was registered after 2016)	Absence of legal paperwork defects (compliance with the details of the owner, etc.), The presence of the land cadastral number, The presence of the land property rights registration.

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The absence of any of these conditions may raise a query about the lessor's preemptive right and, accordingly, throw out of whack the sale of the leased land.

The procedure for organizing the preparation and conclusion of land purchase and sale agreements should be formalized. This requires the development of appropriate policies, instructions, and checklists. The need for formalization is due to a large number of operations and documents that make up the procedure. Moreover, such formalization will allow determining the responsible persons, the criteria for their motivation, the implemented agreements reporting, and plan the budget.

#### 4. Relevance of control over leased land

It should be noted that the procedure described above is relevant not only during the period of legal restrictions on the acquisition of agricultural land by Ukrainian legal entities and foreigners. There are also economic, organizational, and social factors that determine the duration and complexity of the land acquisition process by agricultural producers in Ukraine (especially large producers) also after the removal of legislative restrictions.

Even at this stage, when sufficient market dynamics have not yet been formed to set land prices, the price of one hectare is high enough to make the simultaneous acquisition of the land bank used by the agricultural company financially burdensome. And with the beginning of the mass purchase of land by Ukrainian agricultural companies, land prices are likely to rise drastically, especially in regions where large agricultural holdings will fight for land.

In Ukraine, there are no sufficiently long-term and cheap financial resources, which agricultural companies could attract to acquire land. Raising capital in foreign markets is usually available to companies which are structured with the participation of non-residents and may be subject to restrictions on the land acquisition by foreigners. Of course, there is always the option of financing the purchase of land with shadow capital. Most likely, this type of capital will become the main means for the simultaneous purchase of large chunks of land. Yet, in most cases, the buying-up process for the majority of agricultural companies in Ukraine will become a routine, continuous activity stretched out over many years.

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Another factor that greatly complicates the rapid purchase of land is organizational. Agricultural land in Ukraine is divided into millions of small plots owned by millions of individuals. Even these small plots continue to be fragmented, since the primary land owners are mostly elderly, and after their death their land is divided among several heirs.

Under such conditions, Ukrainian agricultural companies will have to carry out hundreds and thousands of land acquisitions. For example, depending on the region, the purchase of 1,000 hectares of land in Ukraine translates into 150 to 500 purchase and sale deals. Each of these is a separate process accompanied by conciliation, registration, notarization, and expert actions. Each of the mentioned actions has its own executors, deadlines, and costs the agricultural companies have no control over.

The social factor has always been and will remain important in all matters relating to the conduct of agribusiness in Ukraine. The millions of owners of Ukrainian land have certain expectations of the price, which are often unreasonable. This is due to the current information field, pressuring expectations for a dramatic increase in agricultural land prices, and the nature of the land as an asset.

For most citizens land is not a turnover asset, but rather an asset of the "last resort". In practice, land is mostly sold by those who need the money, do not fully understand the value of the land they own, are often socially unstable individuals, or live far away from the land they own and, hence, do not need it. It is these individuals who have been generating the land purchase and sale statistics since 1 July 2021. But after 1 January 2024, when agricultural companies in Ukraine will have the right to acquire agricultural land, land plots will immediately become "lucky tickets" for each of the owners, an opportunity to earn once and for all. In such conditions one can hardly talk about fair prices.

It is necessary to remember that the main purpose of determining the status of a company's cultivated land is not just the mere fact of owning it. The business realities dictate trivial goals:

- to exert consistent control over the asset underlying production;
- to reduce the cost of maintaining such an asset (absence of rent payments);
- to be able to obtain financing for the land (including not only lending secured by land, but also increasing the capitalization of the agricultural company and raising funds on the financial markets).

In view of the above-mentioned factors, the latter two objectives are rather long-term. To begin with, currently, the cost of credit resources in Ukraine is higher than the rent rate, so an immediate reduction in the cost of maintaining the land as an asset is out of question. And if an agricultural company attracts credit resources to buy land, it will have to pledge the land purchased, and therefore, most agricultural producers will not be able to use the land to obtain new financing.

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As for the establishment of lasting control over land, this can be achieved without the immediate purchase of land. The advantages of such control are obvious:

- the number of landowners is reduced (large parcels of land are accumulated in the same hands),
- the duration of the lease increases,
- the lessor is more business-oriented (especially in the case of attracting buyers who invest in the land and expect to receive rental income),
- it is possible to establish control over the cultivated land even without sufficient funds for its acquisition,
- it is possible to stretch the process of actual buy-out (once the legal restrictions are lifted) over several years, investing the available funds in the acquisition of the Ukrainian land, without the risk of production stoppages.

To sum up, the land market opening in Ukraine, although it does not entitle agricultural companies to acquire land thus far, provides opportunities to apply the practices of establishing control over cultivated land and effectively prepare for the acquisition of agricultural land in the future.