

Preemptive right to purchase agricultural land in Ukraine

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Large-scale agriculture in Ukraine requires consolidation of land plots, ensuring their logistical accessibility, and understanding the prospects for using such land.

Before the land market was opened in Ukraine, the vast majority of land was leased by producers from hundreds of thousands of citizens. With the emergence of the opportunity (albeit rather limited at present), producers are naturally interested in converting leased land into their own property.

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At the same time, the issue of agricultural land management in Ukraine has always had its peculiarities. This is primarily due to the fact that, as a result of land parcelling, millions of citizens became landowners. In order to consolidate land, producers need to carry out a huge number of transactions and monitor them closely.

The preemptive right to purchase agricultural land is important, first and foremost, for protecting the rights of lessees who have invested in the land for years. From a practical standpoint, it will allow, for example, the removal of speculators from the relationship between producers and landowners on whose land the producers work.

1. Regulatory framework

The basic principles for exercising the preemptive right to purchase agricultural land are established in Article 130-1 of the Land Code of Ukraine.

In addition, Article 9 of the Law of Ukraine "On Land Lease" provides that a lessee who, in accordance with the law, may own a leased land plot has a preemptive right to purchase it in the event of its sale, provided that they pay the price at which it is sold or, in the event of a tender (auction), if their bid is equal to the highest bid offered by the tender (auction) participants.

Of course, the lessee is not the only party with a preemptive right to purchase land. In fact, according to the Land Code of Ukraine, the lessee is second in line after persons who have special permission to extract certain minerals (provided that, according to information obtained from the State Land Cadastre, such land plot is located within the subsoil plot granted for use to such persons, except for land plots that contain immovable property (buildings or structures) owned by the person using the land on the basis of ownership, lease, emphyteusis, or superficies, as well as land plots designated for gardening).

However, in most cases, when it comes to land plots that are technologically significant for crop production, the identity of the person holding the first-priority preemptive right to purchase agricultural land is not a critical factor.

Accordingly, a lessee of agricultural land has a preemptive right to purchase the leased land plot into ownership if:

- the plot is being sold;
- there are no persons who have the first right of purchase of such land under the law (or such persons have waived their preemptive right);
- the lessee has the right to own such land under the law;
- the lessee pays the price at which it is sold;
- in the case of sale at auction, the lessee's bid is equal to the highest bid offered by the auction participants.

The main challenge for agricultural producers is to control the procedures for exercising the preemptive right. This is primarily due to the vast number of land plots that need to be monitored in order not to lose the preemptive right to purchase.

2. Exercising the preemptive right

For agricultural companies, following the procedure for exercising the preemptive right means not only complying with the procedures established by law (in fact, most of these procedures are carried out by the landowner and a notary without the lessee's control). It is more

important to monitor the relationship with the owner of the leased land and the procedures for selling such land in general.

To successfully exercise their preemptive right, the lessee must take several preparatory steps to enable them to retain their preemptive right.

The owner of an agricultural land plot is obliged to register their intention to sell a land plot in the State Register of Real Rights to Immovable Property no later than two months before the date of conclusion of the land sale and purchase agreement.

If the sale is not carried out at a land auction, the application for state registration of the intention to sell must be submitted within the same period to the notary who will notarise the sale and purchase agreement, together with a draft agreement. In this case, the application shall be submitted to a notary within whose notarial district the land plot is located or at the registered place of residence (location) of the land plot owner.

Persons who may have a preemptive right of first order shall be determined by obtaining an extract on the land plot from the State Land Cadastre.

In order to determine the persons who may have a preemptive right of second order (in the case of agricultural companies – the lessee), it is necessary to obtain information from the State Land Cadastre and the State Register of Real Rights to Immovable Property.

A lessee who wishes to exercise their preemptive right must notify the notary by a registered letter with a description of the attachments and a delivery notice or in person against signature.

Important: the lessee may declare their intention to exercise their preemptive right only if they are eligible to acquire the land plot in principle (i.e., in the case of agricultural land, they are not a foreign citizen or have not reached the statutory limits on the total area of land plots they may own).

Within 1 month of getting this notice, the notary, with the seller's approval, has to set a date and time for signing the sale and purchase agreement.

The notary notifies the lessee who expressed their desire to use their preemptive right of the date and time of signing the agreement by a registered letter with a description of the contents and a delivery notice.

If, within one month from the date of notification by the notary of the intention to sell the land plot, the lessee does not express the desire to

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exercise the preemptive right (does not submit an application to the notary, refuses to conclude an agreement, or does not appear to conclude such an agreement on the date and time appointed by the notary), it is considered as a waiver of his/her preemptive right.

If the owner of the land plot changes the terms of sale, the entire procedure shall be performed anew.

If the owner sells the land to the lessee (and it is established that there are no other persons with preemptive rights or that they have waived their preemptive rights), there is no need for any notification procedures.

If the lessee agrees to the terms of sale, the next step is to conclude a sale and purchase agreement. The law stipulates that the parties are required to apply to a notary for its certification.

The notary, in turn, checks that all the necessary documents are available, in particular:

- a valid lease agreement;
- documents proving the seller's right of ownership;
- an extract from the State Land Cadastre;
- the consent of other co-owners (if the land plot is jointly owned);
- a document confirming that there are no outstanding rent payments.

3. Practical significance of the preemptive right for lessees

The preemptive right to purchase agricultural land is perhaps the only mechanism for preserving the land pool in the conditions of an open land market. For the lessee, it is a legal tool that allows them to secure control over the cultivated land, preventing its purchase by third parties.

With the view of the process' importance, certain rules must be followed.

Lessees of land that may potentially be put up for sale should:

- ensure that they have a valid lease agreement registered in the State Register of Real Rights to Immovable Property;
- update their contact details in state registers and directly with the landowner;
- introduce internal monitoring of land at risk of sale (e.g., plots of elderly persons, inherited land, property in enforcement proceedings);
- ensure financial readiness to exercise the right (e.g., availability of reserve funds, pre-prepared model agreements, cooperation with

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notaries).

Special attention should be paid to disputes between co-owners or heirs, as it is in such situations that the procedure for exercising preemptive rights is most often violated.

It is also necessary to ensure that the owner has duly complied with the procedures prescribed by law, namely:

- prepared and duly sent a draft sale and purchase agreement;
- informed the lessee through a notary in the manner established by law (in person or by a registered letter with a description of the contents).

If the owner failed to comply with these procedures (did not wait for a response from the lessee within 30 days and sold the land to another person), the lessee should immediately seek to protect their preemptive right (e.g., file a lawsuit to transfer the buyer's rights).