

Supplies to agricultural producers during the war in Ukraine

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The provision of fuel, seeds, and crop protection agents by foreign suppliers to Ukrainian agrarians is currently of paramount importance now. In general, such supplies are handled in a customary manner, yet a number of peculiarities must be taken into account.

1. Export restrictions

First of all, when drawing up contracts providing for the settlement of future crops, one should bear in mind the restrictions imposed by the Cabinet of Ministers of Ukraine. The Resolution of 5 March 2022 effectively prohibits the export of certain agricultural products from Ukraine, including:

- cattle meat,
- rye,
- oats,
- buckwheat,
- millet,
- sugar,
- wheat and meslin,
- corn,
- chicken meat and eggs,
- sunflower oil.

It should be borne in mind that these restrictions aim to ensure the country's food security. It is unlikely that they will be lifted immediately after the end of military actions in Ukraine.

2. Possible means of securing obligations

Contractual means of securing obligations cannot, of course, safeguard businesses from the objective events of war. However, business risks remain relevant and will continue to do so after hostilities are over. While accepting situational risks, suppliers are simultaneously interested in securing legal mechanisms and methods to protect transactions from unlawful acts and/or the financial insolvency of their counterparties in Ukraine.

In addition to classical legal arrangements (pledge, surety, guarantee), complex instruments (joint ventures, contractual arrangements) also serve as accessible and effective ways to ensure the fulfilment of obligations. These methods (schemes) are discussed in more detail below.

1) Agricultural receipts

Agricultural receipts are issued as a pledge on the future crop. However, they require long preparation on the part of the Ukrainian agricultural producer – registration of land plots, sorting of information about them, preparation of documents for notary certification, etc. This is due to the fact that the execution of an agricultural receipt requires the submission to the notary of documents confirming the right of the agricultural producer to cultivate the land under crops.

The advantage of this method for the supplier is that the agricultural receipt has the status of an enforcement document if the Ukrainian agricultural producer fails to fulfil the obligation. The supplier can apply directly to the enforcing authorities, including private enforcers.

2) Future crop pledge agreements

The future crop pledge agreement, unlike the agricultural receipt, does not allow for a simplified collection of debts. However, it does not require a lengthy preparation and notarisation. To conclude such an agreement, it is sufficient to conduct a special legal audit (to confirm the corporate status and authority of the Ukrainian agricultural producer, the status of land in cultivation, the availability of agricultural storage facilities, etc.). After harvesting, a double warehousing certificate may be issued by the grain custodian to ensure that the lender is able to retrieve the deposited commodity.

3) Establishment of a joint venture

The establishment of a joint venture or equity participation in a Ukrainian agricultural producer may be one of the options for ensuring systematic security of supplies. Under current circumstances such a scheme allows for the distribution of risks between the supplier and the agricultural producer and establishes the right of the parties to the proceeds from the sale of the commodity.

4) Conclusion of contractual agreements

Contractual agreements envisage allocation of resources by a supplier to a Ukrainian agricultural producer and obligation of the latter to supply the agricultural products manufactured. In Ukraine, such contracts are not regulated in sufficient detail, but the legislation allows for a flexible formulation of the terms of the agreements and the accompanying collateral obligations. The advantage of such a scheme compared to a pledge agreement lies in the comprehensiveness of the regulation of cooperation between the supplier and the Ukrainian agricultural producer.