



# Doing agribusiness in Ukraine: **Legal Guidance** for Foreign Investors



Dear colleagues, on behalf of the Ministry of agricultural policy and food of Ukraine I am happy to present you the result of our joined work, which, I am sure, will be very useful for your business.

Modern Ukraine is a unique country with great opportunities for the bilateral cooperation with foreign partners and realization of different investment projects. Ukrainian agriculture today is one of the most attractive sectors of the economy to work and to invest in, which can provide the entire range of interesting sub-sectors from IT technologies and smart farming to the green tourism and organic agriculture.

As of 5 months of the 2017 year, export of Ukrainian agricultural and food products exceeded \$ 7,513 billion. The main markets for our agricultural exports for this period have become: Asia - 41,1%, EU countries – 30 % and Africa - 19,3%.

Our companies are already globally successful in exports of such products as grains, sunflower oil, corn, soy, sugar, poultry, chocolate, and others. But we have got a lot of unrealized possibilities yet. That is why today our Ministry's team actively

work within the goals of the national export development strategy, trying to pursue the diversification in 3D format. 3D means here three key priorities: an opening of new geographical markets for Ukrainian exporters, diversification of Ukrainian agriexport structure with the more processed and value-added products in it, as well as more active involvement of agricultural SMEs in international trade. All these tasks can be achieved only based on a strong and systematic development of the investment framework both for Ukrainian and foreign investors in the agricultural sector.

That is why, together with representatives of UCAB and Vasil Kisil and Partners, we have created this very practical and very concise manual "Doing agribusiness in Ukraine: Legal Guidance for Foreign Investors". It includes a lot of important information for the potential investors, who would like to know more about the general legal framework for investments in Ukraine and some specific details on doing investments in Ukrainian agriculture.

We can assure you that we are open for the new partnerships, for the new business ideas and we are as a Ministry of agricultural policy and food of Ukraine strongly support all foreign companies who are keen to be the part of Ukrainian agribusiness.

So, please enjoy our guidelines, and we hope to see you soon in Ukraine!

**Olga Trofimtseva,**

Deputy Minister of Agrarian Policy and Food  
of Ukraine on European Integration

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In 44 BC, Marcus Tullius Cicero, Roman politician and lawyer, wrote in his treatise On Duties: "of all the occupations by which gain is secured, none is better than agriculture, none more profitable, none more delightful, none more becoming to a free man."

For Ukrainians – both – farming and freedom have exceptional meaning. Being gifted with outstanding fertile lands and favorable natural conditions for farming, Ukraine is a solid player on the world's commodities market. The Ukrainian Government ambition is now not only to enhance the export volume but also to increase the added value in the exported goods. Foreign investments and modern technologies are valuable allies for this goal.

We in Vasil Kisil & Partners, for so long as 25 years, support foreign investors who come to Ukraine and do business here. Inspired by our successful experience, we firmly believe that responsible foreign business can make a significant contribution to effectiveness and sustainable development of the agricultural sector in Ukraine. For this reason, we decided, in partnership with Association "Ukrainian Agribusiness Club" and the Ministry of Agrarian Policy and Food of Ukraine, to share our legal knowledge and experience on legal matters of doing agribusiness in Ukraine in this guidance.

We hope that this guidance would be helpful for foreign investors who consider doing agribusiness in Ukraine.

Wishing you success and good harvest,

**Volodymyr Igonin,**  
Counsel, attorney-at-law,  
Vasil Kisil & Partners



Today agriculture is considered to be one of the most dynamically developing and promising sectors of Ukrainian economy. Effectiveness is increasing, investments are growing, and modern technologies are becoming an important part of the industry.

In a situation of rapid development, presence of a public organization, which is able to provide the full range of instruments for doing successful and profitable agribusiness, is one of the key factors for looking confidently into the future. Ukrainian Agribusiness Club (UCAB) as an association of large and medium-sized companies of the agri-food sector, representing their interests and acting on their behalf, is indeed such an organization.

UCAB is willing to support agribusiness and necessary reforms at all levels. Association joins all reform processes and takes part in all forms of cooperation.

It is a great pleasure for us to contribute to the "Doing agribusiness in Ukraine: Legal Guidance for Foreign Investors" together with the Ministry of Agrarian Policy and Food of Ukraine and our partner — Vasil Kisil & Partners. We have always been a link between business and the government and serve as a platform for a dialogue between investors, producers and processors.

Wish you a successful year, high yields and sizable investments.

**Taras Vysotskyi,**  
General Director,  
Association "Ukrainian Agribusiness Club"

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## I. UKRAINIAN AGRICULTURAL SECTOR AT A GLANCE

Ukrainian agriculture is one of most attractive investment opportunities in the world. The Ukrainian government encourages foreign investors to invest into agricultural business in Ukraine.

Referring to the statistics of the previous years, Ukrainian agriculture has been securing approximately 11-14% of national GDP within the last few years. Approximately 17% of working population is employed in agriculture.

Ukraine has 42.2 m ha of agricultural land, which comprises 70% of the country's total area. Among them: 76% - arable land (32,5 million hectares), 13% - pastures (5,4 million hectares), 6% - grasslands (2,4 million hectares), 2% - perennial plants (0,9 million hectares). Ukraine has favourable climate for large-scale agriculture, rich agricultural soils and access to abundant land and water resources.

The agricultural GDP (as of 2016) – was 9,8 billion USD. The basis of agriculture is crop production – 72,8% of the total agricultural production, animal production states 27,2%.

The main crops sowed in Ukraine (as of 2016) are wheat 6,2 million hectares (19% of arable land), sunflower – 6,1 million hectares (19% of arable land), corn – 4,2 million hectares (13% of arable land), barley – 2,9 million hectares (9% of arable land), soybean – 1,9 million hectares (6% of arable land), and rape - 0,5 million hectares (2% of arable land). These crops occupy 68% of arable land in Ukraine.

Animal production is an underappreciated branch in the Ukraine's agriculture sector. Currently, the production of pork and beef declined compared to the previous period due to the reduction of meat consumption these animals. However, for the expansion of markets, Ukrainian producers of pork and beef in 2016 initiated the procedure for recognition of their production to high standards of the EU. Now this process has already begun and is expected in the near future Ukrainian producers access to the markets of the European Union and the Middle East. On the other hand, the poultry sector demonstrates a positive tendency. Promoting of Ukrainian products on international markets and requirements to comply with the HACCP system since 2017 will help in reaching new markets.

Ukrainian farming business has to look for new business development locations, markets and instruments. Obviously, value adding niches of fruits, veggies and organics foods are most promising on the global food market. European Union, Middle East, Asia and Oceania are markets to consider for trade development. Processed and dried products with customized service for each local market is a high margin niche in mentioned regions for major number of Ukrainian farming businesses, which may contribute impressive results through strategic investments and steady quality improvement.

Ukraine has a strong position in practically all stages of the food supply chain, in particular, with regard to raw material, production, processing, wholesale and retail trade, consumption, export. The export process is supported by the strong infrastructure.

Overall volume of agricultural export in 2016 amounted to 15,3 billion USD. In 2016, agricultural exports increased by 5% (or 0,7 billion USD) comparing to 2015. Imports of agricultural products in 2016 rose by +11,7% compared to the 2015 and reached 3,9 billion USD, representing 10% of total imports of Ukraine. The main products that are exported are sunflower oil - 24% of agricultural export value, wheat - 18%, corn - 17%. In addition, soybeans, sunflower meal, barley and poultry meat. Imports - tobacco raw materials, frozen fish, sunflower seeds and citrus.

Geography of export: Asia - 48% of agricultural export value, the EU - 27%, Africa - 16%, CIS countries - 7% and others.

Geography of imports: the EU - 44% of agricultural import value, Asia - 24%, America - 16%, Africa - 5%, CIS countries - 4% and others.

## II. BUSINESS ENTITIES

### 1. GENERAL INFORMATION ON BUSINESS ENTITIES

Ukrainian law offers investors the following forms of business entities: joint stock companies (JSCs), limited liability companies (LLCs), additional liability companies, etc. More than 90% of legal entities in Ukraine are LLCs or JSCs. JSCs, in turn, are public (PJSC) or private (PrJSC), depending on whether the stocks were publicly or privately offered. Many agricultural enterprises privatized from soviet state enterprises and collective farms ("kolkhoz" in Ukrainian) historically operate as JSCs as this form allowed their privatization.

In addition to the above forms of legal entities, the Economic Code of Ukraine provides for less popular forms of business entities, such as private enterprise, enterprise with foreign investments, foreign enterprise, subsidiary enterprise, etc. In the absence of elaborated corporate legislation governing the said business entities, they conduct activities under general provisions of law and their own by-laws.

Apart from the above universal forms of legal entities, only Ukrainian citizens who are one family may establish a farm enterprise, the activities of which are regulated by the specific law.

Since 2014, all Ukrainian companies must disclose their ultimate beneficial owners, who control more than 25% of the shareholding in a company, in course of incorporation and then regularly update this information in the public state register of companies.

### 2. COMPARISON OF THE MAIN TYPES OF BUSINESS ENTITIES

Most businesses in Ukraine operate as limited liability companies or joint-stock companies. Groups of companies may combine these forms. The table below outlines their main features.

FEATURE	LIMITED LIABILITY COMPANY	JOINT STOCK COMPANY
Minimum capital	not set by the law; may be any amount	1,250 minimum wages <sup>1</sup>
Number of participants (shareholders)	up to 100 participants. One person cannot be a <u>sole</u> participant of more than one LLC	unlimited
Forms of contribution	Allowed contributions: money, securities, other property or property rights, any other alienable rights with monetary value. Prohibited contributions: budget finance, finance obtained as loan or obtained against security, etc.	The same as for LLCs. Contributions to the capital are made through purchase of shares.
Liabilities	A shareholder is not liable for duties of LLC and LLC is not liable for duties of the shareholder. A shareholder who systematically neglects its duties or takes actions to prevent LLC from attaining its aims may be expelled from LLC	JSC is liable for its duties with all its property. A shareholder is not liable for duties of JSC, and bears the risk of losses associated with JSC's activities to the extent of the value of its shares. JSC's managers and shareholders may be

<sup>1</sup> In April 2017, amounted to UAH 4,000,000.00, equal to approx. USD 150,376.00.

FEATURE	LIMITED LIABILITY COMPANY	JOINT STOCK COMPANY
	<p>by 50% or more votes of its shareholders.</p> <p>Company officers are subject to civil liability for losses they caused to LLC in case of abuse of power, failure to perform his duties, etc.</p> <p>LLC's managers and shareholders may be also liable under the Criminal Code of Ukraine for some severe violations, e.g. misappropriation of property by abuse of power, tax avoidance, contentious insolvency, etc.</p>	<p>also liable under the Criminal Code of Ukraine in the same manner as the managers and shareholders of LLC.</p>
Transferability of shares	<p>Shares (participatory interest) in LLC may be freely transferred by and between residents as well as non-residents of Ukraine.</p> <p>Shares transfers for LLCs are not subject to any specific requirements, other than right of first refusal of the other shareholders granted by the law.</p> <p>Since shares are registered in the charter and the public companies register, transfer of shares involves re-registration of charter and amending the company register.</p>	<p>Shares can be freely transferred to a company as such, to other shareholder in a company or to any other person including foreigners.</p> <p>In PrJSCs shareholders may have pre-emptive rights to purchase the offered shares.</p> <p>Since shares are registered with the National Depository the depository or custodian partake in share transfer.</p>
Governing bodies	<ul style="list-style-type: none"> <li>• general meeting of shareholders;</li> <li>• executive body (board of directors or a sole director);</li> <li>• board of auditors as a controlling body;</li> <li>• other management or controlling bodies if set out in the charter of LLC</li> </ul>	<ul style="list-style-type: none"> <li>• general meeting of shareholders;</li> <li>• executive body (board of directors or a sole director);</li> <li>• supervisory board (mandatory for JSCs with 10 and more shareholders);</li> <li>• board of auditors</li> </ul>
Registration process	<ul style="list-style-type: none"> <li>• founders' (establishing) meeting; and</li> <li>• registration of the company with the registration authorities</li> </ul>	<ul style="list-style-type: none"> <li>• stock offering;</li> <li>• founders' (establishing) meeting; and</li> <li>• registration of the company with the registration authorities</li> </ul>
Authorities in charge	<ul style="list-style-type: none"> <li>• for registration of a company – executive bodies of local municipalities and notaries</li> </ul>	<ul style="list-style-type: none"> <li>• for shares registration – National Securities and Stock Market Commission;</li> <li>• for registration of a company – executive bodies of local municipalities and notaries</li> </ul>
Documents to establish a company	<ul style="list-style-type: none"> <li>• minutes of founders' meeting;</li> <li>• charter;</li> <li>• founders' documents (extract from the companies', bank, court or other relevant register) if founders are foreign entities</li> </ul>	
Submission	<p>an applicant may submit documents either in hard copies or in electronic form</p>	



FEATURE	LIMITED LIABILITY COMPANY	JOINT STOCK COMPANY
Time to register a company	<ul style="list-style-type: none"> <li>• 24 hours – registration with the State registrar;</li> <li>• 2-5 business days – the whole registration procedure, including registration with fiscal authorities, opening of a bank account etc.</li> </ul>	<ul style="list-style-type: none"> <li>• 24 hours – registration with the State registrar;</li> <li>• up to 2-3 months - the whole registration procedure, including registration of the shares issuance with the National Securities and Exchange Commission, registration with fiscal authorities, opening of bank account etc.</li> </ul>
Fees for establishment	<ul style="list-style-type: none"> <li>• registration fee - free of charge;</li> <li>• expenses for the notary certification of the signatures on the establishing documents vary but usually do not exceed a few hundred of US dollars (USD)</li> </ul>	<ul style="list-style-type: none"> <li>• same as for LLCs; <i>plus</i></li> <li>• shares emission – 0,1% of the issued shares' nominal value but not more than 50 living wages<sup>2</sup></li> </ul>
Reporting requirements	Regular tax reporting on monthly, quarterly or annual basis, depending on the used tax system	<ul style="list-style-type: none"> <li>• same as for LLCs; <i>plus</i></li> <li>• JSCs provide regular and special information to the National Securities and Exchange Commission which is publicly available</li> </ul>

### 3. OTHER FORMS FOR DOING AGRIBUSINESS IN UKRAINE

Foreign investors may also enter and act on the Ukrainian market without registration of a business entity through one of the following options:

- agency and commission agreements;
  - joint venture with a Ukrainian partner; or
  - registration of a representative office in Ukraine which may be commercial or non-commercial.
- *Agency and commission agreements*

Agency and commission agreements allow foreign companies to carry out activities in Ukraine without incorporation of business entities, employing personnel, complying with local accounting, reporting and other rules, as well as bearing the associated costs and risks.

- *Joint venture with a Ukrainian partner*

A joint venture presents another comfortable option for structuring business in Ukraine, especially at the first stage. Ukrainian laws allow a foreign investor to establish a joint venture with a Ukrainian partner without registration of a business entity. Such joint venture normally exists in the form of the so-called "*joint activity agreement*" between foreign investor and its Ukrainian partner. Such agreement is subject to registration with the state fiscal service of Ukraine.

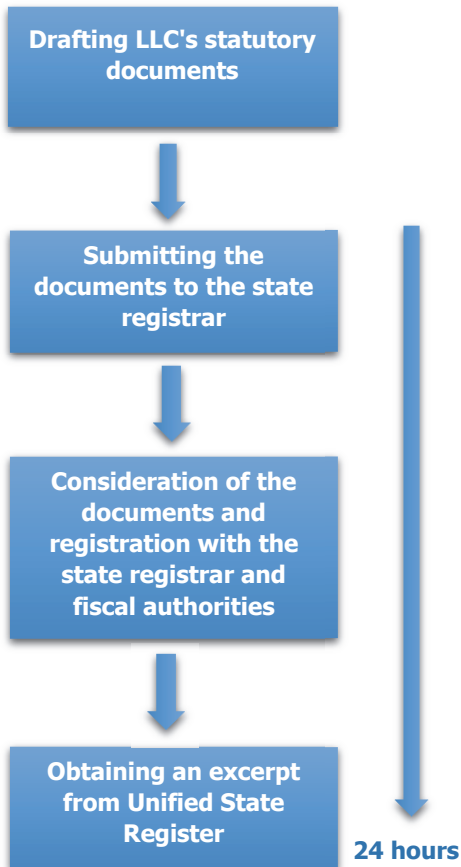
- *Representative office*

Foreign companies may also carry out their activities in Ukraine through their representative offices. A representative office is not a legal entity. Instead, it is treated as a mere subdivision of a foreign

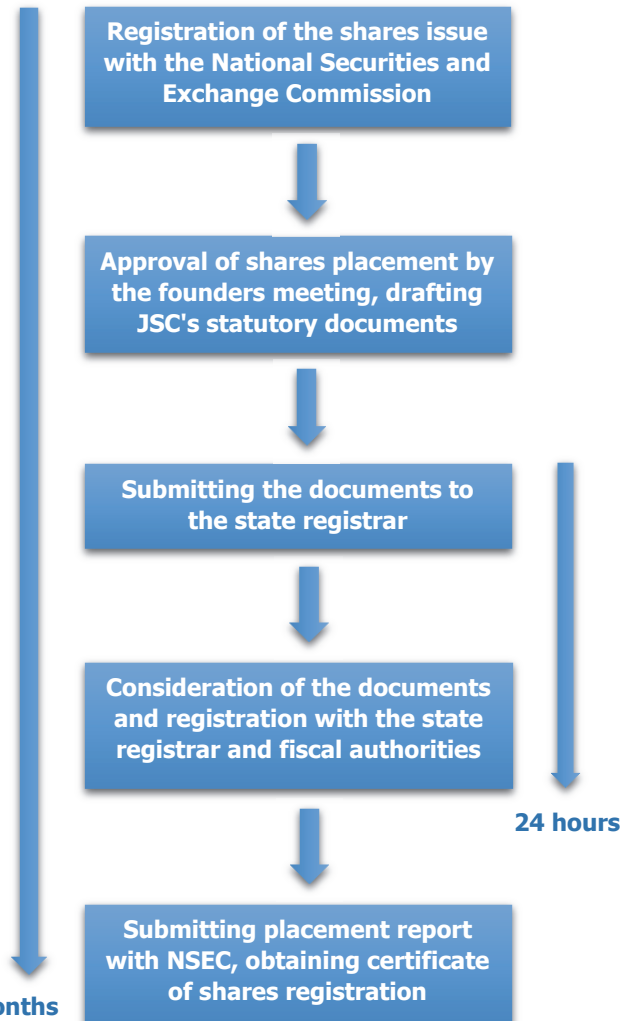
<sup>2</sup> In April 2017, amounted to approx. UAH 80,000.00, equal to approx. USD 3,000.00.

company. The Ministry of Economic Development and Trade of Ukraine registers a foreign company's representative office in Ukraine in the form of a commercial (permanent) or a non-commercial establishment. Such registration takes up to 30 business days following submission of all the necessary documents and payment of state duties (approximately USD 2,500). A representative office that conducts commercial activities in Ukraine initiates the permanent establishment of a foreign company in Ukraine for tax purposes. However, if the relevant double taxation treaty is in place between Ukraine and the jurisdiction of the foreign company's tax residence, only a portion of the company's profit attributable to the representative office is taxed in Ukraine.

### LLC registration process



### JSC registration process



For further information regarding the activities of legal entities please see links below:

Ministry of Justice of Ukraine - <https://minjust.gov.ua/en>

Unified State Register - <https://usr.minjust.gov.ua/ua/home>

State Fiscal Service of Ukraine - <http://sfs.gov.ua/>

Law of Ukraine "On state registration of legal entities, private entrepreneurs and public associations" - <http://zakon3.rada.gov.ua/laws/show/755-15>

### **III. TERMINATION OF BUSINESS / BANKRUPTCY**

#### **1. GENERAL INFORMATION OF TERMINATION**

A foreign investor may terminate its legal entities in Ukraine through reorganization (merger, division, etc.) or liquidation. In case of reorganization all the entity's assets, rights and obligations are passed on to its successors. A legal entity is terminated from the day of registering such termination in the Unified State Register of Legal Entities, Private Entrepreneurs and Public Formations.

The decision to terminate a legal entity may be taken by either shareholders or court. After taking such a decision, shareholders or a court should within 3 days notify in writing the state registrar. In case of termination, participants or court shall appoint a reorganization or liquidation commission, its chairman or liquidator and shall establish procedure and terms for filing creditors' claims, which cannot be less than 2 and more than 6 months from the day of publication about the termination. From the day of appointment, the commission manages all legal entity's business and affairs.

#### **2. MERGER, DIVISION, REORGANISATION**

Merger, division or other reorganisation of a legal entity is made upon the decision of its shareholders or courts. After the expiration of term for filing creditors' claims with their further satisfaction or rejection, the commission shall draw up transfer protocol (in case of merger or division) or spin-off balance (in case of spin-off) to be duly approved by shareholders. The surviving entity will be liable for the terminated legal entity's obligations.

#### **3. LIQUIDATION**

A legal entity may be liquidated upon the decision of its participants or a court. From the day of notifying the decision of legal entity's liquidation to the state register, the liquidation commission (liquidator) must take all measures for debt collection, notify each debtor, shareholders or the court of its participation in other entities and provide information about subsidiaries or agencies. The liquidation commission (liquidator) also closes all financial accounts, except for one used for settlements with creditors, reviews all assets of legal entity being liquidated and its subsidiaries or agencies, closes all subsidiaries and agencies, dismisses the entity's employees, returns to relevant state institutions licenses, seals, stamps, permits and other documents, provides all necessary reports to state institutions, and, where necessary, provides to the state registrar documents, necessary to register the entity termination. After making payments to creditors, the liquidation commission (liquidator) draws up a liquidating balance for its further approval by the entity's shareholders or the court that have adopted a decision to terminate the entity.

#### **4. BANKRUPTCY**

A legal entity may be recognized as bankrupt by commercial court, with jurisdiction over the area of the entity. The commercial court initiates a bankruptcy procedure if the undisputable creditors' claims to the debtor collectively amount to three hundred minimum wages<sup>3</sup> or more, and the entity-debtor has not settled these claims within three months after respective deadline. Both a debtor and creditor(s) may file a bankruptcy application. The court establishes an asset management procedure to ensure the conservation, efficient use of the debtor's property assets, analysis of its financial

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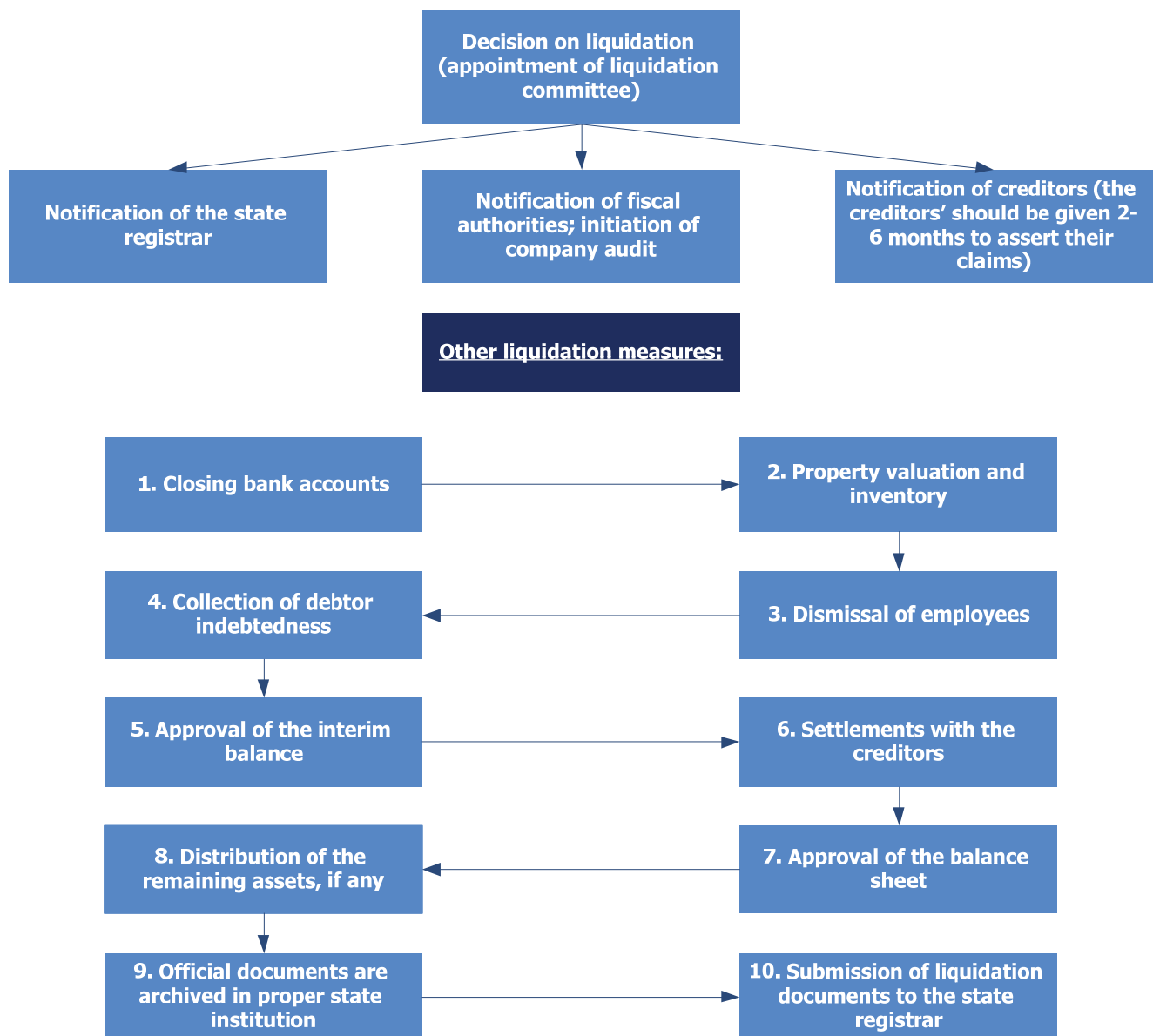
<sup>3</sup> In April 2017, amounted to UAH 960,000.00, equals to approx. USD 36,090.00.

situation, and to determine the next optimal procedure (rehabilitation, settlement or liquidation) to satisfy creditors' claims.

In case the entity is recognized as bankrupt, the liquidation procedure lasts 12 months. In its ruling of recognizing the debtor bankrupt the court appoints liquidator from among insolvency practitioners and may, upon the liquidator's motion, appoint members of liquidation commission. The liquidator shall perform its functions until the registration of bankrupt's termination in the Unified State Register of Legal Entities, Private Entrepreneurs and Public Formations.

All the bankrupt's assets are the liquidation estate. After asset inventory and evaluation, the liquidator sells the bankrupt's assets either through auctions or directly to other legal entities or individuals. If after the liquidation procedure nothing remains from the bankrupt estate, the commercial court decides whether to liquidate the bankrupt- estate.

### Company liquidation process<sup>4</sup>



<sup>4</sup> Here the liquidation upon the decision of its participants is described. A company may be also liquidated by the court decision.

## IV. TAX SYSTEM

### 1. Tax reports and liabilities

A payer of income tax together with the relevant tax declaration quarterly or annually submits a financial statement, except for small businesses. Legal entities, foreign companies' permanent representative offices and individual taxpayers as well as their legal or authorized representatives, and tax agents bear responsibility for the failure, the violation of procedure for filling the tax accounting documents etc.

### 2. CORPORATE PROFIT TAX

The basic tax rate of Corporate Profit Tax (CPT) is 18%.

2016	Argentina	Brazil	Italy	Russia	Kazakhstan	Ukraine	Belarus	Poland
CPT	35%	34%	27,9%	20%	20%	<b>18%</b>	18%	19/15%

### 3. SPECIAL TAXATION FOR AGRICULTURE

Ukrainian tax law provides certain benefits for agricultural producers, who enjoy the so-called special tax regime in the agricultural sector. An agricultural producer may become taxpayer of a single tax of the fourth group, provided that:

- (i) its share of the agricultural commodity production in the previous year amounted to 75% or more; and
- (ii) the taxpayer uses its own or leased agricultural land.

The single tax of the fourth group is charged on the area of farmland or land of water fund in the agricultural producer's ownership or use. Thus, the tax base is the regulatory monetary value of one hectare of agricultural land subject to indexation.

Certain rates of the single tax of the fourth group depend on the category of land, its location, and amounts to (as a percent of the tax base), as follows:

- for arable land, hayfields and pastures – 0.95 (arable land ~10,8 USD per 1 ha; hayfields ~2,5 USD per 1 ha; pastures ~1,9 USD per 1 ha)\*;
- for arable land, hayfields and pastures located in mountainous and marshy wooden areas – 0.57 (arable land ~6,48 USD per 1 ha; hayfields ~1,51 USD per 1 ha; pastures ~1,18 USD per 1 ha)\*;
- for perennial plantations – 0.57 (~11,28 USD per 1 ha)\*;
- for perennial plantations located in mountainous and marshy wooden areas – 0.19 (~3,76 USD per 1 ha)\*; and
- for plantation of protected ground – 6.33 (~72 USD per 1 ha)\*.

\* forecast average annual hryvnia exchange rate in 2017, in the budget of Ukraine



#### 4. **EXCISE AND CONSUMPTION TAX**

Primarily, taxpayers of excise tax are producers of excise goods within Ukraine or import excise goods into Ukraine. Excise goods comprise ethyl alcohol and other alcohol distillates, alcoholic beverages, beer; tobacco products, tobacco and industrial tobacco alternatives; oil products; and electrical power. Accordingly, the following transactions are subject to excise tax:

- sale of excise goods produced in Ukraine;
- sale (transfer) of excise goods for own consumption, industrial processing, capital contributions, and to own personnel;
- import of excise goods (products) into the customs territory of Ukraine;
- sale of seized, excisable goods whose ownership cannot be established and goods transferred into the state;
- reconfiguration of a vehicle imported into Ukraine into a motor car;
- wholesale supply of electrical power; and
- sale of fuel.

Excise tax is not levied on export of excise goods and return of previously exported goods with defects hindering sale of such goods.

#### 5. **PERSONAL INCOME TAX**

A natural person pays personal income tax (PIT), irrespective of his/her residency. While residents have their worldwide income taxed, non-residents are taxed only on their Ukraine-source income.

Taxable income includes:

- salary paid by Ukrainian or a foreign company, rewards and other benefits accrued under the civil law contract;
- income from sales of property and non-property right objects;
- interest received from a bank and dividend received from the Ukrainian entity; etc.

Certain types of income are tax exempt. They include state and social financial aid, state aid in the form of targeted funding, etc.

In 2017<sup>5</sup>, the following tax rates apply to PIT payers:

- 18% on income in the form of salary, incentive, compensatory or other payments and rewards accrued under a labour and a civil law contract;
- 5% on dividend income calculated by corporate income tax payers;
- 18% on other passive income.

Since 2014, salaries and other forms of individuals' income are subject to the temporary military tax at the rate of 1.5% introduced due to Russian aggression.

#### 6. **VAT**

A 20% value added tax (VAT) is levied on supply of goods and services within the customs territory of Ukraine and on import-export of goods.

The registration as a VAT taxpayer is only compulsory for a person whose aggregate amount of transactions for supply of goods and services within the past 12 calendar months exceeds UAH

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<sup>5</sup> As on 1 April 2017.

1,000,000.00 (excluding VAT). Entities may also opt for a voluntary registration, irrespective of the volume of taxable supplies.

## 7. **SOCIAL SECURITY**

In addition to the duties outlined in the Tax Code, Ukrainian taxpayers pay obligatory Unified Social Security Contributions. Such contribution is payable at the time when the remuneration is paid at a rate of 22% of the gross income or the cap, which is equal to 25 monthly living wages<sup>6</sup>.

## 8. **LOCAL TAXES**

Local taxes and duties include property tax, unified tax, and parking duty. The property tax comprises immovable property tax, transport tax, and land fee. The immovable property tax rate is set by the respective local municipality, but may not exceed 1,5% of minimum wage<sup>7</sup> per one square meter of tax base. The transport tax applies to owners of cars which are not more than 5 years old and whose average market value exceeds 375 times the minimum wage<sup>8</sup>.

## 9. **The benefits of the tax system Ukraine**

The Ukrainian tax policy sees as its main activities further reforming of the State Fiscal Service of Ukraine (DFS), in particular ensuring that the DFS complies to the legal and corporate standards; as well as simplification of tax administration through providing electronic services. So, in 2015 an electronic administration of the value added tax was introduced, moreover, a services called "Tax payer's electronic cabinet" is already functioning and allows interacting remotely with tax authorities in real time. Also in 2016, an improved system of personalized tax consulting services was put in place; consulting is provided by the DFS authorities on tax payers' demands.

Pursuing an aim of business development the government of Ukraine has founded an office of large taxpayers in the structure of State Fiscal Service of Ukraine. The office of large taxpayers foreseen to simplify bureaucratic procedures via implementation of digital services, implementation of an audit digitalized procedure in in-line regime, implementation of updated risk oriented system and abandonment of control revisions.

In aspect of corporate income taxation the government and the parliament have adopted tax rates cuts, thus CIT cut from 23% in 2011 to 18% in January 2014. The system of digital VAT tax administration was implemented.

Adopted in January 2011 unified social tax (a mandatory fee to the system of national public social insurance) has replaced four different fees which simplified administration. A rate of unified social tax cut significantly from 36% to 22%.

<sup>6</sup> In April 2017, amounted to UAH 40,000.00, equal to approx. USD 1,500.00.

<sup>7</sup> In April 2017, maximum rate was UAH 48.00 per 1 square meter which was equal to approx. USD 1.80.

<sup>8</sup> In April 2017, the amount of the minimum wage was UAH 3,200.00, which was equal to approx. USD 120.30.

## **V. TARIFF REGULATION**

### **1. TARIFF REGULATIONS OF TRADE BETWEEN EU AND UKRAINE**

The EU and Ukraine have provisionally applied their Deep and Comprehensive Free Trade Agreement ("DCFTA") since 1 January 2016. This agreement means that both sides mutually open their markets for goods and services based on predictable and enforceable rules.

The DCFTA aims to boost trade in goods and services between the EU and Ukraine by gradually cutting tariffs and bringing Ukraine's rules in line with the EU's in certain industrial sectors and agricultural products.

The annexes to the EU-Ukraine Association Agreement contain full and comprehensive description of the tariff regulations in trade between EU and Ukraine. Each product has its basic rate of the import duty and the transitional period during which the basic rate shall be reduced or eliminated. For some products the duties have been already cancelled from 1 January 2016. For the rest the transitional period, it has been introduced for the purpose of the gradual adaptation with the free trade zone.

### **2. TRQ AND SYSTEM OF CUSTOMS REGULATION IN CASE OF TRQ RUNOVER**

The DCFTA foresees the so-called "*tariff rate quotas*" (TRQ). It means Ukrainian exporters can export duty free up a certain quota. Therefore, even if this quota indeed represents a limit, it introduces an opening of the market for such goods, - not more restrictions. Moreover, TRQ entails no restrictions on the overall quantity of an exported products because above the quotas. Exports are still possible, but duties must then be paid. TRQs have been introduced for 36 products categories.

### **3. ENTRY PRICE**

All the fruits, vegetables, natural juices and wines from the states outside the EU are cleared through customs under the unified procedure, according to which the prices are defined on the local market and all additional customs duties are calculated on the basis of these prices. According to this system, the duty includes the basic rate and additional customs payment, the amount of which depends on the difference between the good's price and the EU's indicated rate. Ukrainian goods have a preference and are exempted from the basic duty.

For further information about trade in frames of DCFTA please see links below:

[State support of Ukrainian exports – http://www.ukrexport.gov.ua/eng/](http://www.ukrexport.gov.ua/eng/)

[B2B platform for exporters and importers – https://www.go4worldbusiness.com/support](https://www.go4worldbusiness.com/support)

## **VI. REPATRIATION OF PROFITS**

### **1. CURRENCY CONTROL**

Ukraine has a system of currency control rules to prevent unrestrained currency extraction from the country. The EU-Ukraine Association Agreement provides for implementing the principle of free movement of capital.

Following the IMF's recommendation, the National Bank of Ukraine temporarily restricts certain operations with dividends, capital gains, loan interests, etc. The National Bank is gradually liberalizing these restrictions. It is expected that they will be totally cancelled with stabilisation of markets and a balance of foreign trade in Ukraine.

The National Bank of Ukraine continues to liberalize temporary foreign exchange restrictions. The liberalization was approved by Regulation No.30 of the Board of the National Bank of Ukraine dated April 4, 2017 "On amendments to the Regulation of the Board of the National Bank of Ukraine No.410 dated December, 13 2016". The amendments became effective on April 5, 2017.

According to the Regulation, requirements for mandatory sale of foreign exchange earnings for exporters were liberalized. As of today, legal entities are required to sell 50% (not 65%) of their foreign exchange revenues. First of all, this step is aimed at further export promotion for Ukrainian companies, which require imports to produce commodities for export. Liberalization of restrictions will reduce foreign exchange risks and expedite international trade transactions for such companies. At the same time, liberalization will not lead to a reduction in the interbank currency supply, because, as for now, companies are selling foreign exchange earnings above the constraints (more than 90%).

The National Bank also continues to significantly liberalize restrictions on sale of foreign cash. Starting from April 5, 2017, Ukrainians can buy foreign currency at the banks' cash desks in an amount not exceeding UAH 150,000 per one person in one day (approx. USD 5,500). Thus, the National Bank increased the maximum amount of foreign currency purchase to the amount over which financial transactions with cash are subject to mandatory financial monitoring.

Liberalization is of phased nature, and aimed at the business climate enhancement and financial system's stability. According to the NBU forecast, foreign exchange restrictions liberalization will not have a destabilizing effect on the interbank and foreign cash market, but rather it will deepen lawful foreign cash market and boost its liquidity.

Definitely, unification of trade regulations in legal and illegal segment (limits increase and elimination of customer identification requirements) will foster convergence of quotations in both segments and spread tightening. Even now, the USD buy/sell spread in many banks does not exceed UAH 0.2 (less than 1%). Furthermore, liberalization of restrictions will affect positively market liquidity and reduce the gap between cash and non-cash markets.

At the same time, the foreign cash market will continue to be in the wake of the interbank, whose volumes constantly expand in 2017. Spread in the foreign cash market will remain tight, and the market will not be volatile, while interbank can be influenced by high payouts of VAT refunds.

### **2. WITHHOLDING TAX**

A resident or a permanent establishment of a non-resident which pays Ukraine-source income to a non-resident must withhold tax (WHT) at a rate of 15%, unless the relevant treaty between the countries provides otherwise. The taxable income includes interest, dividends, royalties, freight, capital gains etc. Withholding tax is not charged on income obtained for the supply of goods and services.

### 3. **DOUBLE TAX TREATIES**

Ukraine has a broad tax treaty network, with most countries following the OECD model<sup>9</sup>. Such treaties generally: (1) provide relief from double taxation on all types of income, (2) limit the taxation by one state of companies with residency in the other, (3) protect companies with residence in one country from discriminatory provisions taxation in the other.

To benefit from applicable treaty relief, a non-resident should provide the Ukrainian taxpayer with a tax residence certificate issued annually by the tax authorities of the recipient's country of residence.

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<sup>9</sup> The list of double tax treaties to which Ukraine is a party is available at the official web-site of the State Fiscal Service of Ukraine at the following link: <http://sfs.gov.ua/en/sts-activity/international-tax-relations/>



## **VII. PROPERTY LAW**

### **1. REGISTRATION OF TITLE TO REAL ESTATE AND LAND**

Under the law, rights and encumbrances to real property including land plots come into effect from the moment of their state registration.

State registrars and notaries register proprietary rights and encumbrances to real property. They must take a decision to register:

- a right or to refuse registration – within five (5) business days from the date of submission of the relevant package of documents to the registration authority;
- on registration of encumbrances, including mortgage – within two (2) business days;
- on registration of mortgage – within 1 business day.

### **2. REGISTRATION OF LAND PLOT IN STATE CADASTRE**

To register a proprietary right or an encumbrance to a land plot with the State Register of Proprietary Rights the relevant land plot must be registered with the State Land Cadastre. Registration of the title to the land plot follows two procedures, namely: (i) registration of the land plot itself in the State Land Cadastre (if the land plot is not registered therein): and then (ii) title registration within the State Register of Proprietary Rights.

### **3. RESTRICTIONS ON OWNERSHIP FOR FOREIGNERS**

No restrictions exist in respect of ownership to non-land real estate – buildings, structures, facilities, office premises, apartments, etc.

However, foreigners (including foreign individuals and companies, stateless persons and foreign states) cannot directly own agricultural land plots due to restrictions of the Land Code of Ukraine. Foreigners and stateless persons who inherit agricultural land must dispose of it within one year.

Concerning non-agricultural lands, foreign legal entities and joint ventures founded with foreign participation may acquire ownership title to non-agricultural land plots within the boundaries of settlements. This applies to the purchase of real estate objects (other than land plots) or construction of real estate objects on such plots connected with business activity in Ukraine and outside settlements in case of a purchase of real estate objects (other than land plots).

Foreign purchase, if it is allowed subject to the above restrictions, does not differ from the general rule. Land plots of state and municipal ownership may be acquired only through land auctions except for a few particular cases mainly related to future use of the land being acquired.

### **4. AGRICULTURAL PROPERTY TRANSACTIONS, LAND MORATORIUM, PERSPECTIVES OF ITS LIFTING**

The core legal act governing land relations in Ukraine is the Land Code (2001). Various aspects of land matters are also regulated by the other important legal acts, as follows:

- the Land Lease Law;
- the Law on State Land Cadastre;
- the Law on Land Evaluation;
- the Law on Land Planning;
- the Law on Land Protection;

- the Law on Land Melioration; and
- other laws and subordinate legislation.

Under the Land Code, agricultural land is a land used for agricultural production, carrying out agricultural research, and allocation of production infrastructure, including infrastructure for wholesale markets for agricultural products.

Agricultural land includes:

- agricultural areas (arable lands, perennial plants, hayfields, pastures and fallows); and
- non-agricultural areas (farm roads and trails, field shelter belts and other protective plantings except those part of the forest fund, lands under farm buildings and yards, land under the infrastructure of wholesale markets for agricultural products, temporary out-of-use land, etc.).

It is strictly prohibited to use agricultural land plots in contradiction with their intended use, which is specified in land allotment documentation.

Agricultural companies may own and use agricultural land for agricultural commodity production only.

Transactions involving agricultural land are currently restricted due to the so called "*moratorium*" on the sale of agricultural land introduced in 2002. The measure remains in effect until Parliament adopts a new law to govern the agricultural land market. So far – until the end of the moratorium – the following transactions are prohibited:

- state-owned and municipal agricultural land cannot be sold unless to satisfy public need subject to the specific procedure;
- private agricultural land plots for agricultural commodity production or farming cannot be alienated, except in cases of inheritance, exchanged for another land plot or bought for public need;
- the intended use of private agricultural land plots for agricultural commodity production or farming can be changed only for further allocation of the relevant land plot to an investor to carry out activities under the production sharing agreements.

Several draft laws have registered in recent months in the Parliament, which may lift the moratorium, if adopted.

## VIII. IMMIGRATION REQUIREMENTS

### 1. ENTRY PERMITS

There are three types of documents which allow legal stay in Ukraine:

- visas;
- temporary residence permit; and
- permanent residence permit.

Systems for issuing visas, work permits and residence permits are independent as they fall under jurisdictions of different state authorities. The Ministry of Foreign Affairs with embassies and consulates are responsible for visas. The State Employment Service, through its local State Employment Centres, issues work permits. The State Migration Service through its local departments issues residence permits.

Individuals who arrived to Ukraine to work and obtained work permit may receive a temporary residence permit. They should apply to the local department of the State Migration Service and after obtaining the temporary residence permit should register their place of residence.

Obtaining permanent residence permits is not common practice, however. Only a few categories of foreigners may obtain permanent residence permit in Ukraine, namely:

- descendent of Ukrainian nationals;
- individuals, who invested into Ukraine at least USD 100,000.00 or equivalent;
- scientists and cultural workers, whose immigration is in line with interests of Ukraine;
- specialists and workers with high qualification, who are acutely needed for the economy of Ukraine; and
- some other specific categories.

Foreigners must obtain an immigration permit before applying for a permanent residence permit. The application for this permit should be submitted to embassies and consulates of Ukraine or to the State Migration Service by those foreigners who stay in Ukraine on a legal basis. The time for consideration of an application may not exceed one year. Foreigners must apply to the State Migration Service for a permanent residence permit within five working days after their arrival to Ukraine. The State Migration Service issues a permanent residence permit within one week of receipt of the application.

### 2. VISA REQUIREMENTS. APPLICATION FOR THE VISA

Foreign citizens need a visa to enter Ukraine, unless they have the diplomatic and service passports. There are two main visa types:

- visa 'C' – for short-term, single, double or multiple entries, issued for up to 90 days within a 180-days period;
- visa 'D' – for long-term stays issued for up to 90 days with the purpose of processing documents that give the holder right to stay or reside in Ukraine.

EU, Swiss, US, Canada and citizens from some other states do not need a visa for a short-term stay in Ukraine (up to 90 days within a 180-days period).

The application process requires a personal visit to the Consular Office of the Embassy of Ukraine in respective state for completing an application and submitting hard-copy application materials.

Once the application is filed, the visa is issued within 15 calendar days. This timeframe may be extended to 30 days if an additional check is required. It is advisable to apply for a visa not less than

one month prior to your prospective departure date.

The consulate fees for issuing visas vary from USD 85.00 to USD 200.00 depending on the visa type.

### 3. **WORK PERMIT**

The work permit is issued to the employer, and not an employee, willing to hire a foreign national. The name of the employee is on the work permit. The employer must first apply to the State Employment Centre to obtain the work permit, which constitutes grounds for obtaining a visa and a temporary residence permit by the employee.

The work permit is issued for the term of an employment agreement, but for no longer than one year, with the option of unlimited extensions, subject to the employer's consent. The fee for issuing the work permit is approx. USD 240.00, but extensions are free of charge.

The documents to be submitted to the State Employment Centre, when the employer applies for the work permit, include, among others:

- employee's notarised and apostilled educational documents (e.g. diplomas and certificates) with a sworn Ukrainian translation;
- medical certificate showing the employee is cleared of addictions or infectious diseases;
- criminal record certificate issued by the Ministry of Internal Affairs of Ukraine, if the employee is in Ukraine when the work permit is issued, or a notarised and apostilled criminal record certificate issued by an authorised body of the employee's country of residence, if the employee is abroad when the work permit is issued, with a sworn Ukrainian translation, etc.

Employees of certain categories are deemed as having well-founded grounds to be employed in Ukraine without a search for Ukrainian candidates:

- candidates for managerial positions at an organisation holding a participation interest, i.e. shareholders;
- candidates for positions where creating objects for copyright and related rights is the main labour duty;
- candidates for managers', software developers' and technical programmers' positions in organisations registered as programming industry entities, i.e. IT companies;
- graduates of the top 100 world universities according to any of the three most recent annual editions of Times Higher Education, Academic Ranking of World Universities by Shanghai Jiao Tong University, QS World University Rankings by Faculty, or Webometrics Ranking of World Universities.

The procedure for candidates with well-founded grounds for employment is similar to the general procedure.

## IX. EMPLOYMENT LAW

### 1. EMPLOYMENT AGREEMENT

The employment agreement can be either in written or in verbal form. The Labour Code of Ukraine requires written employment agreement in the following cases:

- organized recruitment of employees;
- employment in regions with specific geographic or geological conditions and health-threatening conditions;
- employment contract as a specific type of employment agreement;
- employment by private proprietor;
- employment of minors,
- upon an employee's request;
- some other cases.

Employment contract constitutes a special type of employment agreement which is always concluded for a specific term and allows parties to deviate from particular labour regulations, for example, by introducing additional grounds for termination. Such contracts may be concluded only in cases specified by law.

As a rule, employment agreements are made for indefinite period of time. Fixed-term agreements are allowed only if the nature of work, the term of work, and employee's interests require that.

### 2. EMPLOYEE'S RIGHTS DURING EMPLOYMENT

- *Working time*

The usual working schedule is eight working hours per day, five working days per week. The maximum length of working week is 40 hours.

Over-time work is allowed in extraordinary situations prescribed by law and with prior consent of a trade union. Such work shall be double paid. The total amount of overtime work shall not exceed 120 hours per year and four hours during two days in row.

- *Minimum wage*

Minimum wage is determined by the Budget Law for a particular year. Since 1 January 2017 the rate is UAH 3,200.00, which is approximately USD 118.30 under the official exchange rate set by the National Bank of Ukraine.

- *Part-time work*

Work may be part-time upon mutual consent between employer and employee. In some circumstances, employers are obliged to agree on part time work, e. g. upon request of a pregnant woman, a woman with a child under 14 or a disabled child, and women who nurse sick family members. In this situation, work is paid in the amount proportional to the work hours.

- *Discrimination*

The Constitution of Ukraine prohibits all forms of discrimination. Labor legislation specifically stresses the illegality of refusal to hire women or reduce salary because of pregnancy and bringing up a child under 14 years old or a disabled child.

There are quotas for employing disabled persons. For companies with the number of employees

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ranging from eight to 25 the quota is one position. If the number exceeds 25 employees, the quota is four percent of the workforce.

Some people (unemployed persons, single parents, etc.) may be employed under the quotas for subsidised categories of employees. The quota in this case is five per cent of the workforce for companies with 20 or more employees.

- *Vacation*

The minimum length of annual paid vacation is 24 days per year, excluding days of sickness and official holidays. Particular categories of employees are entitled to additional days of vacation.

- *Sick and maternity leave*

Employees have a right to receive sickness period compensation. The amount of compensation ranges from 50 to 100 percent of salary depending on seniority and duration of employment. The first five days' compensation is covered by employers while the rest is covered by the state social security fund.

As a rule, paid maternity leave lasts 126 days. Non-paid maternity leave may be taken by mother or another relative until the child becomes three years old (six years old in some cases).

### 3. **TERMINATION**

Termination grounds are the following: employer's initiative, employee's initiative, mutual agreement, transfer of an employee to another company, end of term in case of term-fixed agreement, etc.

Notice on termination is obligatory only at redundancy. It shall be presented to employees two months prior to termination. Failure to provide such notice may result in the court's decision to change the date of termination, not in reinstatement.

If an employee initiates the employment agreement termination, the employee should give two weeks prior notice.

### 4. **MASS LAY-OFFS**

Special procedure applies in case of collective dismissals, namely dismissals of ten or more employees from an organization with 20 to 100 employees, ten per cent of employees from an organization with 101 to 300 employees during one month. The same rules apply to dismissal of 20 per cent of employees during three months irrespective of the total number of employees.

In the afore situations, employers are obliged to report to the state authorities and start consultation with a trade union, if any, no later than three months prior to the reduction.

### 5. **SEVERANCE PAYMENT**

All payments shall be made at the date of dismissal. This includes salary and payment for non-used days of vacation.

One month's average salary shall be paid if an employee is dismissed because of redundancy, incompetence, reinstatement of the employee previously occupying the position, refusal to transfer to another location or refusal to continue work under fundamentally changed conditions.

Three months average salary is paid when termination is conducted due to employer's breach of

labour law.

A CEO is entitled six months average salary in case of his/her dismissal.

## **6. TRADE UNIONS**

Under the Ukrainian Constitution, citizens have the right to participate in trade unions with the aim of defending their labor and socio-economic rights and interests. The right to join the trade unions includes such employees' rights as to join and leave them according to the terms and procedures determined by their statutory documents. They also include the right to elect their representatives to defend the interests of the trade union members, to participate in the internal organization life, the right to realize freely their trade union activity without any state bodies permission. This right is legally secured in the Law of Ukraine on the Trade Unions, Their Activity Rights and Guarantees.

Trade unions are registered by the local justice authorities within 15 business days after submission of the respective documents.

## **7. COLLECTIVE RIGHTS**

Employees may organize trade unions or other representative bodies to represent their rights. Employers must recognize representative bodies. Such bodies have powers prescribed by law and collective agreements of particular companies. In particular, they participate in establishment of labor standards, salary rates, vacation schedules, internal regulations, approval of dismissal, etc.

Collective disputes may be resolved only by means of reconciliation-arbitration procedure. No collective lawsuits can be filed.

## **X. IP**

### **1. NATURE OF THE RIGHT**

Intellectual property rights are the rights given to persons over the creations of their minds. They usually give the creators exclusive rights to use their creation for a certain period of time.

### **2. WHO CAN BE THE HOLDER**

Material (economic) intellectual property rights may belong to legal entities as well as to private individuals. Non-material rights always belong to the original author, i. e. private individual.

### **3. PATENTS**

There are three types of patentable objects under Ukrainian legislation: inventions, utility models and industrial designs. Patents may be obtained for products and processes.

A person who intends to obtain a trademark certificate should file an application in Ukrainian to the Ukrainian Institute of Intellectual Property (PTO). Overseas applicants should have an application filed by the Ukrainian patent attorney only. The average time to obtain a patent in Ukraine is approximately 24 months, however the fast-track procedure, which may reduce the time to three–four months, is available.

The term of patent protection is 20 years for inventions, ten years for utility models and 15 for industrial designs.

### **4. TRADEMARKS**

Any symbol or combination of symbols can serve as a trademark, i. e. words, including names, letters, numbers, graphical elements, colours and combinations of colours, and any combination of such a symbols.

A person who intends to obtain a trademark certificate should file an application in Ukrainian to the PTO. The non-residents of Ukraine should have an application filed by the Ukrainian patent attorney only. The average time to obtain a trademark certificate in Ukraine is approximately 14 months. The fast-track procedure available for additional fee may reduce time to five or nine months.

The period of validity for a trademark certificate is ten years. It can be renewed for consecutive ten years periods.

### **5. COPYRIGHT & RELATED RIGHTS**

Copyright or author's right constitutes the rights that creators have to their literary and artistic works. Works covered by copyright range from books, music, paintings, sculpture, and films, to computer programs, databases etc.

Copyright & related rights registration is not mandatory in Ukraine.

The term of protection is lifetime and 70 years after the author's death for copyright and 50 years for related rights.

Regardless the intellectual property item, Ukrainian legislation specifies three types of licenses:

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exclusive, non-exclusive and individual. Also, intellectual property rights can be transferred, and almost any item may be created under labour agreement, services agreements etc.

## 6. **PLANT BREEDERS' PROPERTY RIGHTS**

Under the Law on the Protection of Plant Variety Rights (1993), registration of a plant variety provides the following rights:

- personal non-property rights on plant variety;
- property rights on plant variety; and
- property rights to distribute the plant variety.

Confirmation of plant variety rights are given in the form of a certificate of the authorship of the plant variety, the patent of the plant variety and the certificate of state registration of plant variety.

If a patent is received in the territory of Ukraine, the owner has the exclusive rights to authorize or restrict the following acts in respect of the planting material:

- production or reproduction (for the purpose of propagation);
- conditioning for the purpose of propagation;
- sales;
- marketing;
- exports;
- imports; and
- storage.

The holder of the patent may also:

- transfer its property rights on the plant variety to any person under the transfer agreement;
- make a will over its property rights on the plant variety; and
- grant a license to any person who will pay the royalty for the use of the plant variety under the licensing agreement.

## **XI. JUDICIARY SYSTEM**

### **1. CHOICE OF LAW, JURISDICTION**

The Law of Ukraine on Private International Law (2005) governs issues pertaining to the conflict of laws arising in private legal disputes with a foreign element. The law envisages the legal doctrine of *lex voluntatis* that allows the parties to choose the law applicable to their legal relations. Parties may choose before, during the course of, or even after execution of, the contract. Their choice should be expressed and can only be performed in the case of the existence of a foreign element in the legal relations in question.

The judicial system of Ukraine constitutes of the Constitutional Court of Ukraine and a system of courts of general jurisdiction. New Ukrainian legislation adopted in 2016 provides for the creation of a three-tier court system in which the reformed Supreme Court will encompass the Commercial, Administrative, Civil and Criminal Courts of Cassation as its internal bodies.

The courts of general jurisdiction comprise general courts which resolve civil and criminal cases, commercial courts which deal mostly with commercial disputes between business entities and administrative courts which hear cases in which one of the parties is a public body exercising its powers. In addition, new laws stipulate the establishment of two specialized courts: the High Specialized Court on Intellectual Property and the High Specialized Anticorruption Court. However, the scope of jurisdiction of these specialized courts is yet to be defined by specific laws.

The Law on Private International Law sets forth provisions indicating the types of cases with a foreign element in which Ukrainian courts are entitled to initiate proceedings and deliver judgments. The foregoing law permits a Ukrainian court to take up a dispute with a foreign element when the parties concerned have agreed on jurisdiction of a Ukrainian court to resolve their dispute.

### **2. INTERNATIONAL JURISDICTION AND JUDGMENT ENFORCEMENT**

With a view to avoiding the conflict of jurisdictions where a case with a foreign element can potentially be tried by several courts from different countries, the Law of Ukraine on Private International Law sets forth circumstances under which disputes with a foreign element can be heard in Ukrainian courts.

The judgments of foreign courts are recognized and enforced in Ukraine on the basis of bilateral or multilateral treaties between the states in question. In the event of absence of such treaty, court judgments are recognized and enforced in accordance with the principle of reciprocity which is presumed to exist unless proven otherwise.

Ukraine is a member of the World Trade Organization (WTO) and a party to the International Center for Settlement of Investment Disputes (ICSID) Convention. Therefore, should a trade-related or investment-related dispute arise, it can be resolved via the dispute-settlement mechanism of the WTO or the ICSID arbitration procedure.

### **3. ARBITRATION**

Given that Ukraine is a party to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards and the 1961 European Convention on International Commercial Arbitration, all national legislation regarding arbitration agreements, the binding force of foreign arbitral awards and the recognition and enforcement thereof is drafted in compliance with



international standards.

The awards of the International Commercial Arbitration Court at the Ukrainian Chamber of Commerce (Kyiv) may be duly recognized and enforced under the 1958 New York Convention and 1961 European Convention.

#### 4. **AGRICULTURAL TRADING ARBITRATION**

According to established international practice, the vast majority of disputes, particularly between entities from different jurisdictions, are resolved not by the ordinary courts, but mainly by international commercial arbitration, specializing in trading commodities. These arbitrations are the Grain and Feed Trade Association (GAFTA) and the Federation of Oils, Seeds and Fats Association (FOSFA). The associations are represented in Kyiv.

#### 5. **PROTECTION AGAINST EXPROPRIATION**

Pursuant to the Law of Ukraine on Investment Activity (1991), Ukraine guarantees the protection of foreign investments and property on a non-discriminatory basis. Inter alia, foreign investments cannot be nationalized or requisitioned without a legislative act providing for an adequate and effective compensation.

## **XII. KEY LEGISLATION FOR CORE AGRICULTURAL SECTORS**

### **1. CROP HUSBANDRY (GRAIN & OILSEED ETC.)**

The regulatory coverage of grain market in Ukraine is presented by the Grain and Grain Market Act (2002) (the "Grain Act"). The Grain Act, among other things, regulates the procedure for the grain declaration, quality control issues, conditions for the grain storage, export and import of grain etc.

The grain resources of Ukraine consist of:

- grain of the state food reserve;
- grain of the state seed fund; and
- private grain resources of the market entities.

The grain volume of the state food reserve is generated by the Agrarian fund, which executes the sales agreements at the agrarian stock. The grain market entities have a right to freely distribute their grain resources, export them and participate in generation of the state grain resources.

The Grain Act requires grain producers to declare on monthly basis the grain volume stored in their own or leased storages.

The quality of grain and its derived products produced in Ukraine or imported into the customs territory of Ukraine should comply with the state standards. The quality of the export grain may be fixed in the export contract.

Grain owners may either (1) keep the grain in their own storages or (2) execute grain storage agreements with grain storages, depositing for storage their grain in return of the warehouse documents. Grain storages must examine grain's quality before accepting it for the storage.

The Grain Act regulates three types of warehouse documents:

- double storage certificate (storage and pledge certificates);
- regular storage certificate; and
- warehouse receipt.

The Law on Plants Quarantine (1993) prescribes measures to carry out in the quarantine zone in respect of the regulated objects (any plant, plant products, storage places, packages, soil etc.). The following phytosanitary measures may be held:

- inspections and phytosanitary expertise of the regulated objects;
- control of localization and liquidation of the quarantine organisms;
- prohibition to transfer regulated objects suffered from the quarantine organisms out of the quarantine zone;
- fumigation of the regulated objects in case of their transportation from the quarantine area into the area free from any quarantine organisms; and

- technical processing of the regulated objects suffered from the quarantine organisms.

## 2. **ANIMAL HUSBANDRY**

The principal acts which govern animal husbandry are as follows:

- Law of Ukraine on Principles and Requirements on Safety and Quality of Food Products (the "Food Safety Law");
- the Law on Veterinary Medicine;
- the Law on Identification and Registration of Live Animals;
- the Law on Animal By-Products Not Intended for Human Consumption; and
- the Law on the Protection of Animals from Cruelty.

The Food Safety Law (2015) introduced all basic EU standards applicable to the cycle of production, processing and distribution of agricultural food. The State Service on Safety of Foodstuffs and Consumer Protection became the only state authority that supervises and controls the market. The new Food Safety Law reduces a number of administrative procedures, cancels licensing and certain other procedures (which are absent in the EU legislation), provides detailed requirements for the procedure of state control of food products on the Ukrainian market and imported products respectively. The Food Safety Law also determines the conditions for obtaining operating permits that are mandatory only for the enterprises that produce or store food of animal origin; for other businesses a mere registration suffices.

The government ensures food safety through:

- setting up sanitary measures;
- imposing requirements for certain food safety products;
- providing state registration of sanitary objects;
- issuing and renewing operational permits;
- informing market operators and consumers as to the food safety and some other food quality indexes;
- imposing health requirements for employees involved in food production;
- providing state food safety control, etc.

Meat producers as any other producers of primary production must comply with veterinary, sanitary, phytosanitary and food safety requirements as set out in the Food Safety Law, as follows:

- to obtain an operational permit for each operational facility;
  - to register production facilities;
  - to meet hygiene requirements;
  - to obtain a veterinary certification (if applicable);
  - to obtain a quarantine certification (if applicable);
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- to meet requirements on identification of livestock (if applicable);
- from September 2017 – to provide hazard analysis and critical control points (HACCP) certification.

There are no special regulations regarding meat for domestic consumption and for export, except for special requirements set by the importing country for meat exported from Ukraine.

### 3. **LIVESTOCK SLAUGHTERING**

Livestock slaughtering in Ukraine is regulated by the following legislation:

- Law on Identification and Registration of Animals (2009) (the Livestock Law);
- Law on Veterinary Medicine (1992) and
- by-laws adopted by the Ministry of Agrarian Policy and Food of Ukraine.

The Livestock Law requires mandatory identification and registration of livestock that is due to be slaughtered in the respective state register. Registration of the livestock means inclusion of data regarding identified animals, their owners, slaughterhouses, transportation, slaughter, utilization and death of the animals into the register. The register of animals is administered by the State Veterinary and Phytosanitary Service of Ukraine.

It is prohibited to slaughter an animal that does not have an accompanying veterinary certificate attesting to its health. Sales and consumption of meat or any other slaughtered products without prior veterinary and sanitary expertise is also prohibited. Veterinary experts mark the slaughtered products and provide respective veterinary documents (veterinary certificate, veterinary letter) as to their further usage after the expertise is completed.

### 4. **DIARY**

General requirements to production and circulation of milk and dairy products are provided for in the Food Safety Law. As any primary production dairy should be in line with the key requirements for veterinary, sanitary and phytosanitary control, hygienic control and food safety. Such requirements were outlined in Section 2 (Animal Husbandry) above.

The Law of Ukraine on Milk and Dairy Products provides for special requirements for dairy production, in particular:

- containers and packages for milk raw materials and dairy products should be made from materials permitted by the Ministry of Health;
- it is prohibited to separate the process of packaging of dairy products from the manufacturing cycle (except packaging of butter, cheese, dry milk products by structural subdivisions of one processing plant);
- it is prohibited to sell milk and dairy products without a document confirming epizootic animal welfare issued by the State Veterinary Service etc.

### 5. **GENETIC MODIFIED FOODS**

Subject to the Law of Ukraine "On State Biosafety System at the Stage of Development, Testing, Transportation and Use of the Genetically Modified Organisms (GMOs)" (2007) (the "GMO Law"), all

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types of GMOs require mandatory state registration before their use in Ukraine.

Subject to the terms of the GMO Law, the registration procedure takes up to 120 days from the moment of documents submission. The registered products are included into the GMO State registers. The registration is valid for five years, and the subsequent registration is required after expiration of that period.

If a food product contains GMOs or if its part in a food product exceeds 0.9% in any ingredient of a food product that contains, consists of or is produced from GMOs, the labeling of such product shall contain a 'with GMO' mark. A market operator can include a 'GMO-free' mark in the labelling at its own discretion. Thereby, the absence of GMO in a food product is subject to confirmation as per legislative requirements on safety and specific quality indexes of food products. Non-availability of data from the suppliers regarding the presence of GMOs in ingredients shall be sufficient proof for the application of such mark.

## 6. **SPIRITS AND WINERY**

Special requirements for production, export, import, wholesale and retail of alcoholic beverages are provided in the Law on State Regulation of Production and Circulation of Ethyl, Cognac and Fruit Alcohol, Alcoholic Beverages and Tobacco Products (1995) (the "Beverage Law"). According to the said Beverage Law, spirits production, their export, import, wholesale and retail are subject to licensing.

Production license may be issued to business entities only after their storage places are included into the Unified register. Furthermore, business entities intending to acquire license for production of spirits, including their production departments, laboratories, structure divisions etc., are subject to prior mandatory attestation for compliance with requirements on the protection of the human life and health, environmental protection, complete production cycle as well as for compliance with sanitary, fire safety, ecologic norms and rules.

Alcoholic beverages are subject to compliance confirmation by mean of certification. Spirits that are sold in Ukraine are subject to mandatory labelling as required under the Beverage Law.

License for the wholesale of alcoholic products is issued for the term of 5 years and the official fee for the license issuance amounts to UAH 500,000. annually, which is equal to about USD 18,504.90 as of April 3, 2017.

License for the retail of alcoholic products is issued for the term of 1 year and the official fee for the license issuance amounts to UAH 8,000 which was equal to approx. USD 296.10 as of April 3, 2017, for each electronic cash register.

## 7. **ORGANIC PRODUCTS**

Ukraine has effective legislation for organic production. Under the Law on Processing and Turnover of Organic Agricultural Products and Raw Materials (2013), organic farming may not include the use of chemicals or GMOs. The law sets common requirements on the production, processing, storage and sale of organic products. Organic production is subject to state registration and certificates of confirmation must be obtained. Agricultural companies may engage in organic production after being entered in the State Register of Organic Producers.

### **XIII. UKRAINE'S POSITIVE TRANSFORMATIONS AS REFLECTED IN GLOBAL RANKINGS**

Since the Maidan Revolution which started at the end of 2013 and culminated in an expulsion of the then-president Yanukovich, an array of important reforms has been initialized and – to various degrees – implemented. Although the results have not been as prompt as some might have hoped, positive transformations triggered by these reforms have been noticeable, as well as have been reflected in some major global rankings.

The most prominent ranking is the Doing Business, which is composed by the World Bank on a yearly basis. The Ukraine's score has been steadily increasing for the last years – from 48.87 points in 2013 up to 63.90 points in 2017. Now, Ukraine is ranked 80<sup>th</sup> among 190 economies. Doing Business is a sophisticated index that tries to evaluate a variety of different economic, financial and legal aspects. In particular, in recent years Ukraine has improved its performance in categories like *Starting a business*, *Registering property*, *Enforcing contracts*, *Getting electricity* etc.

But not only economic and financial factors contribute to an attractive investment environment. Other factors, like e.g. political stability, or maturity of civil society institutions along with many other social aspects matter as well. Because of that it is particularly important that since the Revolution Ukraine has been gradually improving its position in the Corruption Perceptions Index, which is published by the Transparency International. Its score has been slowly increasing, starting at 25 in 2013 and reaching 29 in 2016. Though corruption is still an issue in Ukraine, this positive trend indicates that Ukrainians are becoming less tolerant towards corruption.

Another international index, in which Ukraine has been showing positive dynamic, is the Index of Economic Freedom of the Heritage Foundation, an American think-tank. This index assesses 12 various economic, financial and legal aspects as well, covering categories from *property rights* to *monetary freedom*, to *investment freedom* etc. Ukraine's score on this index has decreased right after the year 2014, which might be related to the difficult conditions the country has found itself in after the annexation of Crimea by Russia and insurgencies on the Eastern borders. Nonetheless, in the recent couple of years the Ukraine's score has increased, now reaching 48.1 in comparison to 46.9 in 2015.



#### **XIV. LIST OF ABBREVIATIONS**

CEO – Chief Executive Officer

CPT – Corporate Profit Tax

DCFTA – Deep and Comprehensive Free Trade Agreement

EU – European Union

FOSFA – Federation of Oils, Seeds and Fats Association

GAFTA – Grain and Feed Trade Association

GMO – Genetically Modified Organisms

ha – hectare

ICSID – International Center for Settlement of Investment Disputes

IMF – International Monetary Fund

JSC – joint stock company

m – meter

OECD – Organization

PIT – personal income tax

PJSC – public limited liability company

PrJSC – private limited liability company

PTO – Ukrainian Institute of Intellectual Property

TRQ – tariff rate quotas

UAH – Ukrainian hryvnia

USD – United States dollar

VAT – value added tax

WHT – Withhold tax

WTO – World Trade Organization

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VASIL KISIL

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Established in 1992, Vasil Kisil and Partners is a leading Ukrainian full-service law firm.

In 25 years of successful work on the market, we have formed a team of experts and acquired a reputation of a reliable partner and a client-oriented law firm. Over the recent decade, our firm practices and lawyers have constantly been top-ranked by reputable international directories.

We regularly act as legal advisor to the leading local and global strategic players in agri sector, as well as private equity investors, production companies, crop traders and processors, and lenders and borrowers.

Understanding all concerns inherent to the agribusiness industry, our team consisting of the firm's leading practitioners in land, corporate, criminal and tax laws, real estate, intellectual property, employment and labor law, and environmental law provides a full-service support to its agriculture and food industry clients.

Our deep industry knowledge is beneficial not only to our clients but to the market as a whole. We deliver added value via our active involvement in local business and industrial associations, being a legal partner of the Association "Ukrainian Agribusiness Club" and an official legal advisor to the European Business Association, providing day-to-day comprehensive advice to its Agrochemical Committee, the Dairy Committee, and the Grain and Oilseed Committee. Being a member of the American Chamber of Commerce and the U.S.-Ukraine Business Council, our lawyers regularly contribute to developing legislative initiatives.

We strive to boost the attractiveness of agri sector as one of the backbones of the Ukrainian economy.



Ukrainian**AgribusinessClub**

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Association "Ukrainian Agribusiness Club" (UCAB) is the largest professional association of Ukrainian agri-food sector, progressive-minded and represented in most regions of the country, offering a wide range of services for agribusiness.

In 10 years of its existence, UCAB has managed to take advanced positions and has become leading association in Ukrainian agriculture. The association is using the variety of instruments to reach its goals which include efficient lobbying of the interests of agricultural producers through determination of common priorities for the sector development; discussions and initiatives to promote legislative changes; close cooperation with state authorities; provision of high-quality analyses; organization of conferences, round tables, seminars keeping an active position in mass-media concerning the advocacy of interests of local producers.

In 2017, UCAB is keeping hold of the status Association No.1, consolidating more than 100 important representatives of the industry. We unite leading Ukrainian agricultural companies, as well as agriholdings, Ukrainian and international agricultural inputs, machinery and equipment producers and suppliers, cooperate with local and foreign associations, organizations and science institutions.

Membership in UCAB gives the companies obvious benefits: from complete information and vast knowledge to support in solving many practical issues. For our members and partners UCAB has become the synonym for a coalition of people who have a common vision for further development of Ukrainian agriculture.



**Vasil Kisel & Partners**  
Phone: +380 44 581 7777  
Fax: +380 44 581 7770  
[www.vkp.ua](http://www.vkp.ua)



Ukrainian**AgribusinessClub**

**Association "Ukrainian Agribusiness Club"**  
Phone: +380 44 236 20 97  
Fax: +380 44 236 20 79  
[www.ucab.ua](http://www.ucab.ua)