

## **LEGAL ISSUES CONCERNING LAND USE PATTERNS WHEN FOREIGNERS MANAGE AGRIBUSINESS IN UKRAINE**

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Ukraine is a real agrarian heart of Europe, and its potential in this field is endless. Ukrainian land has always attracted interest from foreign investors as a means of production and investment. However, despite the interest of foreign investors in agricultural land, Ukraine cannot fully use its significant potential for the moment due to the lack of a basic element of land legal relations – the emerging liberalized agricultural land market. The existence of a moratorium on the alienation of agricultural land is provided for in paragraphs 14, 15 of Section X of the «Transitional Provisions» of the Land Code of Ukraine. Therefore, at the present stage, the market of agricultural land is realized through lease, which is one of the types of market transactions with land.

The right to lease land is the right to own and use land for specified purposes under certain conditions. The essential conditions of the land lease contract are: the object of lease (cadastral number, location and size of land); term of the lease agreement; a rent with an indication of its size, indexation, method and terms of calculations, terms, the order of its introduction and review, and responsibility for its non-payment. In the land lease agreement other conditions may be indicated upon agreement of the parties.

However, it can be stated that in Ukraine the state restricts the economic freedom of the lessor and the lessee regarding the forms and sizes of the rent, the types of contract and its essential conditions, the mandatory state registration of rental rights, etc. That is why agribusiness constantly searches for new, alternative forms of use of agricultural lands appointment, including the right of emphyteusis.

The agreement of emphyteusis has certain advantages over lease agreements. They can foresee the alienation and the transfer of the right to use a foreign land for agricultural needs. Unlike a lease agreement, under which the maximum term of an agreement must not exceed 49 years, the emphyteusis has an unlimited period of validity. Consequently, the agreement of emphyteusis brings together unique opportunities for the possession and use of agricultural land over a significant period of time, which is an effective alternative to the lease agreement. For example, you can get the right to use an agricultural land for more than 100 years, having made one single payment, without the need for further accounting of landlords, rent, to organize the implementation of periodic calculations, which undoubtedly for many enterprises will be a decisive factor in choosing between the lease and emphyteusis.

In addition, unlike the land lease agreement, the essential terms of the agreement on the emphyteusis are not defined by law. Consequently, the parties are obliged to agree on the terms and conditions that they consider essential in the

agreement of emphyteusis. This gives the parties much more freedom and allows them to adjust only those conditions that are important to them, which is especially important for foreign investors.

An important aspect that shows the benefit of emphyteusis is that the permanent registration of lease agreements when changing ownership, inheritance and other civil-law agreements involves significant costs for notarial services, which in turn entails a burden on agricultural enterprises.

Consequently, the agreement on emphyteusis is an interesting alternative to the lease of agricultural land and has proven to be more effective in terms of land use rights, financial relations of the parties, administration.

It should be noted, however, that not only the lease or the emphyteusis can be used to obtain land plots. The agreement on joint activity is another way to form a land bank. In modern conditions, the use of the institute of joint activity, including in agriculture, is often based on an agreement, according to which the contribution of one participant in such activity becomes the right to use the land owned by him, and the contribution of another – material, technical, labor and financial resources for the organization agricultural production. Such agreement causes the disappearance of the classical construction of the «creditor-debtor» in the relations between the parties, and each partner within the framework of the joint activity has an equivalent list of rights and obligations, since both the creditor and the debtor play a role simultaneously. At the same time, the owner (user) of the land does not lose ownership and use of it, but in fact its use may be carried out by another participant in the joint activity.

By its nature, an agreement on joint activities is an agreement between partners on joint actions and the transfer of property in a joint activity in order to obtain a single effect. The main feature of such obligations is the joint activity of individuals for the achievement of any general purpose, which does not contradict the law (Article 1130 of the Civil Code of Ukraine). These obligations very often combine more than two participants, each of them being simultaneously a debtor and creditor. But neither party may require for themselves, nor must fulfill obligations immediately to another party. Mutual rights and obligations of participants are mediated by the need to achieve a common goal.

Unlike such types of obligations as sale-purchase, gift, delivery, etc., where the transfer of property from one owner to another occurs, in joint-venture obligations, property is often combined into a joint property.

Another characteristic feature of the obligations under the joint activity is the presence of parties of general interest, in contrast to, in particular, the obligations of sale and purchase, lease, in which the interests of the parties are opposite: one person seeks to convey (sell, give in lease) property and receive a certain amount for it, and the other – to acquire property in ownership or possession and use. Joint activities to achieve a common goal require participants to clear organization. Consequently, the relevant commitments are clearly organizational. An important feature of these legal relationships is that the essence of joint activities usually involves some external implementation, in other words, requires the parties to enter into re-

lations with third parties. Obligations for joint activities often have a long-standing character, indicating or not. Another feature of commitments for joint activities is their personal character.

Due to the specificity of the joint activity as a partnership, it should be considered as the most flexible and adapted to the modern needs of the economy model of interaction of a wide range of participants in the agrarian sector. Without forming a legal entity, the parties to the joint activity agreement are able to combine their own efforts and property, including land, to achieve a single goal. Such agreement makes it possible to avoid a number of legalization procedures, in particular the registration of rights to use land, targeting the interests of the public and private sectors in one direction.

Joint activity, however, requires special tax administration, and is more suitable for dealing with legal entities or entrepreneurs with a substantial land bank, however, in many cases, is a good solution for those who cannot arrange the rights to land, in particular, its lease, in accordance with the legislation in force.

## **ЕВТАНАЗІЯ: ЗАРУБІЖНИЙ ДОСВІД ТА ПЕРСПЕКТИВИ ЗАПРОВАДЖЕННЯ В УКРАЇНІ**

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