

GLN AgroGuide

Ukraine 2009



GLN

Gide Loyrette Nouel

International Law Firm

The purpose of this guide is to give general information and assistance to investors and business people interested in operating in Ukraine. The guide establishes general principles and gives neither a detailed comment on Ukrainian law nor a professional opinion of Gide Loyrette Nouel.

The material herein was compiled by the Gide Loyrette Nouel Kyiv Office's employees on the basis of information available as of January 2009. The readers should be aware that the information contained herein may change at short notice.

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FOREWORD

In the midst of the global economic turmoil which seems to be hitting Ukraine hard, agriculture appears to be the country's soundest and most exciting prospect. Once the bread basket of Europe (before World War II), and then the USSR's granary (after World War II), Ukraine now appears to be seeking to regain its position as an agricultural powerhouse. Government targets the production of over 80 millions tons of grain in the near future and some experts even consider the 100 million ton mark as a realistic target.

Much has been said about the country's *chornozem* - which spread over 60% of Ukraine's soils - and their potential, as well as on the derelict state of Ukraine's agricultural infrastructure. But the raw facts are that with 15 million Ukrainians being rural inhabitants and an agricultural sector weighing 17% of the country's GDP, Ukraine can expect further exponential development in this field.

Ukraine's agriculture is one of the country's most valuable assets. The country's recent accession to the WTO is also a token of Ukraine's willingness to compete with the rest of the world and to do so with greater transparency according to international rules and standards.

We truly hope the present guide will be useful to you and give you a first insight as to how to navigate through the meanders of Ukraine's land legislation.

Sincerely,

A handwritten signature in black ink, consisting of several fluid, overlapping strokes that form a stylized representation of the name Karl Hepp de Sevelinges.

Karl Hepp de Sevelinges
Managing Partner – Gide Loyrette Nouel Kiev

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1. WHAT ARE THE BEST OPTIONS TO STRUCTURE AN AGRICULTURAL INVESTMENT IN UKRAINE?

Investors in the agricultural business may structure their investments by a) establishing of a legal entity; b) implementing a specific form of production organization; or c) enforcing certain types of commercial agreements.

While considering the available options, a potential investor should take into account the restrictions applicable to foreigners with regard to the acquisition of land, the participation in certain forms of production organization, as well as tax and other related aspects.

Please note that in reason of the moratorium on alienation of agricultural land and other restrictions applicable to foreign companies in this regard, land lease is often the only option available to potential foreign investors. However, the importance of this obstacle is diminished by the fact that the leasehold may be granted for a long period of time, which therefore ensures additional stability for the investor in conducting his business. After all, the country's most important agro holdings which spread over hundreds of thousands of hectares, lease the major part of the land they exploit, which shows that leasing land is a profitable option provided that organization of production is efficient.

Moreover, some of the restrictions applicable to foreign investors, related for instance to licensing or acquisition of non-agricultural land, may be overcome by establishing a first or second level subsidiary in Ukraine (provided the entity holding 100% of the subsidiary's shares is not itself 100% controlled by another entity – under a general rule of Ukrainian corporate law). It is likely that most of these restrictions will remain in force in the near future as they provide for the taxation of such investors under Ukrainian law.

Restrictions applied to foreign entities seeking to obtain titles of ownership are a major factor determining the structure of an investment of this field, as do some types of commercial agreements described further below.

2. WHICH TYPES OF COMPANIES ARE AVAILABLE TO AGRIBUSINESS INVESTORS?

By and large, in order to invest into the agricultural sector, an investor may establish a legal entity in the form of his choosing, at his own discretion. As of the date hereof, the following types of companies are available to foreign investors in Ukraine:

- (a) Traditional business companies:
 - limited liability companies;
 - joint stock companies;
 - additional liability companies;
 - general partnerships;
 - limited partnerships;
- (b) Foreign enterprise
- (c) Subsidiary ('daughter enterprise'). It must be underlined that a subsidiary of a foreign company may be registered as a "company with foreign investments", which is a status granting such a subsidiary with State guarantees against nationalization and unfavorable legislative changes. However, all restrictions applicable to foreign companies with regard to land acquisitions will apply;
- (d) Private enterprise. The major advantage of this form of legal entity is the absence of explicit legislative regulation and of a minimum amount for the company's Charter capital.

Besides, a foreign company may also establish a representative office in Ukraine. However, please note that with a view to conducting agricultural business activities subject to licensing as well as to avoid certain restrictions applicable to the acquisition of land by foreign companies, it is advisable to establish a Ukrainian legal entity instead of a representative office.

The most popular forms of legal entities (including for conducting agricultural business) are joint stock companies and limited liability companies.

3. WHICH OTHER FORMS OF PRODUCTION ORGANIZATION EXIST?

There are also certain specific forms of production organization in agriculture, and namely: cooperative agricultural companies, private farms and personal agricultural households. These forms of production organization are based on the personal labor input of its members, and are therefore implemented as business models by small businesses.

Please note the following restrictions are applicable to the abovementioned forms of production organization:

- neither foreign individuals nor legal entities may participate in a private farm;
- regardless of his/her contribution, each member of the cooperative agricultural company has one vote;
- the members of a personal agricultural household shall be individuals, which are related and reside together.

Therefore, these forms of production organization are either not applicable or not adapted to foreign investments.

4. ARE THERE ANY RESTRICTIONS APPLICABLE TO FOREIGNERS WITH REGARD TO LAND ACQUISITION IN UKRAINE?

Pursuant to Article 82 of the Land Code of Ukraine, foreign legal entities and joint ventures with participation of foreign citizens or foreign entities may acquire ownership rights to non-agricultural land under the following conditions:

- Land plot located within the boundaries of inhabited areas: in the case of acquisition of buildings or structures or for the purpose of construction of a real estate object for carrying out their business activities in Ukraine;
- Land plot located outside the boundaries of inhabited areas: in the case of acquisition of buildings or constructions thereupon.

The procedure governing the purchase of State or municipal land by foreign legal entities is very strenuous and requires an approval from the Parliament or the Cabinet of Ministers. Moreover, the steps to be followed as well as the timeframes are not provided by law.

On the other hand, when a foreign company acquires the shares of a Ukrainian company owning a land plot, the aforementioned conditions are not applicable. Therefore, many foreign companies prefer to obtain rights to a land plot by purchasing shares in a Ukrainian company which holds rights over a land plot.

Moreover, foreign individuals, foreign legal entities and joint ventures established by Ukrainian and foreign individuals or legal entities are prohibited to acquire a title of ownership to agricultural land. Agricultural land plots received as inheritance by foreign individuals or legal entities must be alienated within one year. It is advisable to establish a second level subsidiary (which is not considered as a foreign legal entity for the purpose of land legislation), in order for the foreign investor to avoid these restrictions.

Agricultural land, however, may be leased by foreign entities or individuals.

5. DOES THE MORATORIUM ON SALE OF AGRICULTURAL LAND STILL APPLY?

Since 2001, a temporary prohibition (moratorium) on the alienation of agricultural land has been imposed. The moratorium concerns both residents and non-residents of Ukraine with regard to the following agricultural land transactions:

- (a) purchase and sale, contributions to an authorized share capital, transfers of rights to purchase and deeds on the possible alienation of farm land or agricultural land for personal farming use (pai land);
- (b) The purchase and sale of the State and municipal agricultural land;
- (c) Reclassification of privately-owned agricultural land for any non-agricultural use.

The moratorium shall remain in force until the adoption of the laws on State land cadastre and the land market. These laws are not adopted as of today mostly due to the lack of financing required for the technical inventory of all the lands in the country and for the creation of a unified electronic State cadastral register.

6. WHICH LAND PLOTS ARE SUITABLE FOR AGRICULTURAL BUSINESS?

All land in Ukraine is divided into 9 categories, two of which are usually used in agribusiness: agricultural land (for growing plants, location of animal breeding facilities, etc.) and industrial land (for location of processing and maintenance activities and other buildings and structure). Within each category, a specific functional designation purpose is usually defined.

The category of land plot and its functional designation strictly limit the type of activity which the investor may conduct thereupon. For instance, it is common in the field of vegetable cultivation and processing for the potential investors to seek land of the agricultural category with the respective functional designation for growing vegetables, as well as land for location of storage and processing facilities, with a functional designation allowing construction on this land. Please note that failure to comply with land category requirements entails the termination of a land lease, the impossibility to conduct construction and some fines and penalties in the amount of less than EUR 35.

Therefore, the answer to this question depends on the nature of the contemplated activities. It is thus highly recommendable to examine carefully both the category and the functional designation purpose of a target land plot before engaging into any works on the land plot.

7. IS IT POSSIBLE TO LEASE STATE OR MUNICIPAL LAND?

Recent amendments to the Land Code of Ukraine include a requirement for local or state authorities to hold a public auction for granting lease rights or titles of ownership over State or municipally-owned land. The Land Code provides for a number of exceptions to the land auction procedure, including when a building is located on the land plot held in ownership.

The major risk related to the auction procedure is related to the legal requirement which prescribes a land auction to be held by a licensed person or legal entity. As of now, the relevant licensing conditions have not been enacted into law. Therefore, the legal grounds for invalidating a land auction held without the due fulfilment of the abovementioned requirements exist. Nevertheless, in practice, numerous land auctions for the lease and sale of municipal land have been held in Ukraine over the past year.

Please note that the Land Code expressly prohibits the lessee of a land plot to alienate, contribute to the share capital or mortgage his right to lease State or municipally-owned lands. An exception exists where the leasehold follows the transfer of a title of ownership over the buildings located on the land.

8. WHAT IS PAI LAND?

Pai is a parcel of land (usually about 1-1,5 hectares) that was granted by the State to each employee and retired worker of the *kolkhoz* during the privatization of the country's *kolkhozy*. However, in order to obtain a full legal title to such land, its owner had to physically define the boundaries of the parcel and elaborate the special technical land documentation. As these proceedings are rather expensive and time consuming, the process of privatization of *kolkhoz* land has therefore not been fully accomplished yet. It is also one of the reasons for the enactment of the land moratorium mentioned above.

Any investor wishing to purchase or lease a pai land should take into account the following:

- The moratorium on alienation of agricultural land specifically forbids any deals with pai land, including its reclassification.
- A lease agreement for a pai land for which the Certificate of Ownership and the technical land documentation were not issued is invalid.
- The lease of large land plots consisting of an assemblage of pai parcels is usually complicated to perform due to the necessity to manage numerous lease agreements for all pai land plots.

9. LICENSING OF AGRICULTURAL ACTIVITIES – HOW DOES IT WORK?

In Ukraine, in order to be able to conduct certain types of activities, the investor shall obtain a special permit from the State in the form of a license.

The list of agriculture-related business activities subject to licensing is exhaustive and includes:

- Production, wholesale and retail of pesticides and agricultural chemicals (only those directly impacting plant growth);
- Cultivation of plants, included into the list of drugs and psychotropic substances;
- Wholesale of seeds;
- Production, storage and sale of breeding (genetic) resources and genetic expertise of animals and animal anomalies.

In order to obtain a license, the licensee shall make a formal request to the competent authority determined by the law (Ministry of Agriculture, Ministry of Industry, State Committee on Drug Regulation, State Forest Committee, Oblast and City State Administrations, etc.) to that end. The competent authority shall adopt a decision on the issuance of the license within 10 days upon submission of the required documents by the licensee. The list of such documents is exhaustive and is established by the Cabinet of Ministers for each activity. Therefore, the competent authorities have no discretion to require from the potential licensee any additional documents.

The license is valid for no less than 3 years, but is usually delivered for an overall period of 5 years. The license fees are about EUR 25-35.

The licensee may not transfer the license to another legal entity (including its mother company or subsidiary). The license shall be reissued should the name of the company or its address be changed. Please be advised that the competent state bodies control the compliance of licensing conditions and requirements with the respective legislation on a regular basis. Breaches in this field are subject to fines in the amount of EUR 35-170, and to the seizure of the produced goods, production equipment and materials.

10. WHAT KIND OF COMMERCIAL AGREEMENTS MAY BE CONCLUDED?

10.1 Leasing

Leasing agreements are usually used in agribusiness, in order to lease agricultural equipment. Under lease agreements, the owner of the equipment transfers such equipment to the lessee for a determined period of time in exchange for lease payments. The parties may agree that the lessee will obtain the ownership rights to the equipment once he pays off the full price. Should the lessor purchase the equipment upon request of the lessee, the lessor and the seller of the equipment will be jointly liable to the lessee for the quality, quantity and fulfillment of the requirements to the equipment demanded by the seller.

The legislation foresees a simplified procedure for terminating lease agreements and returning the property to the lessor in case the lessee defaults on lease payments in excess of a period of 30 days.

Please note that leasing is not applicable to land, as the latter is regulated separately by land lease legislation.

10.2 Supply of agricultural goods

Due to the special characteristics and properties of agricultural products (seasonal growing, storage period, etc.), their supply has to be distinguished from the supply of other products. First of all, the special regulation on the supply of agricultural goods is applicable to agreements where the supplier is also the producer of the supplied products. These supply agreements shall contain, amongst others, the type of product, its particular technical conditions or relevant State standards, the maximum content of toxic and noxious substances, and the responsibilities of the counterparty (if any) to aid the supplier in the production of the goods (often by supplying some industrial goods, feed, etc.).

The liability of the parties to a contract on the supply of agricultural goods is strictly regulated by law. If the purchaser refuses to fulfill his obligations for reasons other than default of the supplier, the purchaser shall pay to the latter 100% of the value of the perishable goods to be supplied under the relevant agreement. In addition to this, the tax authorities shall charge a fine in the amount of 50% of the value of the contract, should the counterparty fail to timely pay the supplier.

10.3 Investment agreement and joint activity

As indicated in point 1, some commercial agreements may also influence the general structure of an investment into the agribusiness sector and, namely investment agreements (the “IA”) or joint activity (the “JA”) agreements. Both these agreements lay the grounds for a form of

cooperation without creating a legal entity concluded on the basis of participant's contributions.

The Ukrainian legislation provides participants of the JA and IA with a high level of freedom in drafting the terms and conditions of these agreements. In order to better protect their interests, the parties to the JA and IA shall determine the respective contributions' regime of ownership, the means of evaluating said contributions, as well as the management process and distribution of revenue. Please note that in a JA the participants bear joint and several liability in respect of all joint obligations, notwithstanding grounds for their accrual, while the liability of the participants to the IA is not determined by the law.

Hence, from a strict legal point of view, both investment schemes are equivalent, insofar as neither the JA nor the IA boast particular advantages over the other. Nevertheless, the taxation of these two forms of cooperation bear certain differences with regard to fiscal and financial accounting, VAT credit, transfer of VAT input at the end of the operational activity, etc.

Therefore, the use of these particular structures may be advisable in particular cases, depending on the intentions of the investor.

11. HOW CAN A FOREIGN INVESTOR FINANCE A SUBSIDIARY?

Structuring of investments into agricultural business in Ukraine may be performed utilizing the following instruments:

- (a) Share capital increase. A contribution to the share capital may be performed in the monetary form at the moment of a company's foundation, and also as an additional contribution upon increasing its share capital. The amounts of contributions to the share capital of a legal entity shall not be taxable, except for contributions in-kind which are taxed at a 20% VAT rate. Please note that contributions in-kind are exempt from customs duties and are widely used in practice for import of equipment.
- (b) Inter-company loan. Foreign investors may finance their Ukrainian subsidiaries by means of providing an inter-company loan. The receipt of the loan and its repayment (the principal amount) is a tax neutral event.
- (c) Non-refundable financial aid. This is an amount of cash granted to a Ukrainian subsidiary by a foreign investor. The amounts of non-refundable financial aid are taxed at a general 25% corporate profit tax rate.
- (d) Refundable financial aid. Such aid is composed of the cash granted by a foreign investor to its Ukrainian subsidiary for a limited period of time according to the agreement.

The amounts of the refundable financial aid are subject to corporate profit tax at a 25% rate if not returned by the Ukrainian company within one tax period.

12. DOES UKRAINIAN LAW PROVIDE FOR ANY VAT INCENTIVES?

Among the series of initiatives devised to address the country's current economic situation and specifically aimed at attracting foreign investments in Ukraine, a new special value added tax (VAT) regime, which has been implemented by the Ukrainian Parliament, came into effect on January 1, 2009.

According to this new regime, the supply of agricultural goods and services in Ukraine is subject to VAT at a 20% rate.

The amounts of VAT charged on the value of agricultural goods and services supplied by agricultural companies should not be remitted to the Ukrainian government. Such VAT amounts should be used by the agricultural company to reimburse the amounts of VAT paid to suppliers or used for other productive purposes.

It is worth mentioning that any positive difference between the amounts of VAT charged by agricultural companies on the supply of agricultural goods or services and the amounts of VAT paid to the suppliers for productive purposes must be considered as taxable income such agricultural companies will have to subject to the corporate profit tax.

Only Ukrainian residents whose core business activity is (i) the supply of agricultural goods and services and (ii) whose activities, which pro rata value of agricultural goods and services is not lower than 75% of the value of all goods and services supplied within the last 12 calendar months, can apply for this special VAT regime.

All activities which fall within the special VAT regime are indicated in the State Classifier on Commercial Types of Activities established by the Cabinet of Ministers of Ukraine.

13. WHAT IS THE FIXED AGRICULTURAL TAX?

Among other tax incentives aimed at supporting the agricultural sector is the fixed agricultural tax (FAT) regime, which was earlier established by the Ukrainian government, in order to grant tax relief to agricultural companies.

Registration as an FAT payer gives taxpayers the possibility to effectively reduce their tax burden by substituting a number of taxes and mandatory payments (i.e. corporate profit tax, land tax, municipal tax, etc.) as a single tax payment.

Ukrainian agricultural producers are allowed to register as FAT payers under the following conditions:

- Company is incorporated under the Ukrainian legislation as an “agricultural enterprise” in any legal form allowed by the law;
- Company is engaged in production (cultivation), processing and distribution of agricultural products; and
- Aggregate income from sales of self-produced agricultural products during the previous tax year exceeds 75% of the company’s total gross income.

Please note that recent legislative updates extended the category of FAT payers’ to entities formed as a result of a reorganization of agricultural companies, provided these entities used to be FAT payers and are still engaged in production (growing), processing and sale of agricultural goods and services.

The applicable reporting period constitutes 12 calendar months preceding the month in which the FAT payers were registered.

Importantly, FAT Law prohibits classifying the following entities as FAT payers:

- (i) entities carrying out investment or innovation projects in special (free) economic zones and on priority-development territories with special investment regimes under technological park conditions, carrying out innovation projects;
- (ii) small business entities which are registered as single tax-payers.

The object of the FAT is an area of agricultural land, which has been transferred into the ownership or use of an agricultural goods producer, and is used to perform base calculations of the FAT amounts due.

FAT rates are thus set based on one hectare of agricultural land as a percentage of its monetary appraisal:

- (iii) for plough-land, hayland and pastures – 0,15%;
- (iv) for perennial plantations – 0,09%;
- (v) for lands of water funds – 0,45%.

The FAT law was due to expire on December 31, 2009. However, recent anti-crisis initiatives enacted by the Ukrainian Parliament extended its implementation for an indefinite period of time.

14. WHAT MECHANISMS ARE AVAILABLE FOR REPATRIATION OF PROFIT?

Ukrainian agricultural companies may undertake the following mechanisms in order to repatriate their profit from Ukraine:

- (a) Dividends;
- (b) Interest;
- (c) Royalties;
- (d) Service fees (management / secondment / marketing / consulting, etc.).

The table below contains the comparative summary of these types of payments from the Ukrainian tax perspective:

	Dividends	Interest	Royalties	Service fees
Deductibility	No	Yes	Yes	Yes
VAT	No	No	No	Yes
Restrictions	Depending on the amount of after-tax profit and terms approved by the meeting of shareholders.	Limitation on deductibility may exist	License contracts exceeding EUR 100,000 are subject to Derjzovnishin-form examination	Service contracts exceeding EUR 100,000 are subject to Derjzovnishin-form examination

According to Ukrainian laws, service fees are not subject to a withholding tax. Dividends, interest and royalties are subject to a withholding tax at a rate of 15%, unless a respective Double Tax Treaty provides otherwise.

15. HOW TO OBTAIN VAT REFUNDS?

According to provisions of the VAT law, a legal entity or individual may apply for a VAT refund from the government, if certain criteria are satisfied.

According to the general rule, the refundable amount of VAT is calculated as the difference between the VAT output and VAT input within one reporting period. However, the VAT amount to be actually refunded may be substantially different from the amount anticipated to be refunded. Indeed, practice shows that tax authorities do not recognize the whole amount of incurred and claimed VAT as deductible, and refuse to refund certain parts of VAT amounts accordingly.

Based on the established procedure, the VAT refund cycle takes not less than 3 months. However, practically it may take much longer to recover VAT amount claimed from the government.

Indeed, over the last couple of years, the situation with claiming and actually receiving VAT refunds from the state budget has become a serious problem for taxpayers. In practice, refunds have occurred very seldom and taxpayers often apply to the authorities to offset the amounts of VAT to be refunded against other tax liabilities.

In light of the current economic situation, the Ukrainian Parliament, in order to support Ukrainian taxpayers, has introduced amendments into the VAT refund procedure that would allow taxpayers to convert overdue VAT refunds into 5-year state bonds with an annual repayment rate of 20% over the principal amount. The bonds will carry an interest of 120% of the NBU's prime rate, currently set at 12%. It is however unclear whether such new amendments are currently effective in Ukraine.

16. HOW TO BRING IN GOODS INTO UKRAINE – IMPORTING RULES

16.1 Import regime in Ukraine

Import constitutes a special customs regime, according to which goods are brought to the territory of Ukraine for free circulation and an unlimited period of time and without any customs restrictions.

In order to import goods on the territory of Ukraine, the following procedures must be followed:

- (a) submission to the customs authorities of the documents which evidence the grounds and conditions of importing of the goods to Ukraine, and namely:
 - (i) Customs declaration,
 - (ii) Air waybill, bill of lading, etc.
 - (iii) Sale-purchase agreement, supply contract or other agreement based on which the goods are imported;
 - (iv) Invoice or any other document evidencing the value of the goods.
 - (v) Other documents, the non-exhaustive list of which is provided by the Cabinet of Ministers for each category of goods.
- (b) payment of all taxes and duties;
- (c) Fulfillment of requirements laid out in non-tariff regulations and other restrictions (licensing and quotas of import and export, certification of conformity, etc.)

The classification of goods for the purpose of customs declaration shall be performed according to the Ukrainian Classification of Foreign Economic Activity Goods (the “UCFEAG”). The UCFEAG is based on the Harmonized Commodity Description and Coding System developed by the World Customs Organization.

16.2 International commercial agreements

The import of goods to Ukraine is usually performed on the basis of international commercial agreements. Should one of the parties to an international commercial agreement be a non-resident of Ukraine, the parties may submit this agreement to foreign law and international arbitration. Nevertheless, certain requirements of Ukrainian legislation will have to be followed, and namely that the agreement will be in writing and translated into Ukrainian, contain all the required annexes, etc. The fulfillment of these requirements is

important as international commercial agreements are presented to Ukrainian authorities on numerous occasions (i.e. for customs formalities, obtaining licenses, performance of payments through the bank, etc.)

16.3 Licensing of imports

The Cabinet of Ministers of Ukraine establishes annually a list of import goods subjected to licensing and/or quotas. In 2009, the import of the following goods has been subject to licensing: pork and chicken meat and fat, sugar syrups, food products containing cacao, insecticides, herbicides, substances directly impacting plants growth, etc. No import quotas were imposed for 2009 apart from goods imported from the Republic of Macedonia.

Import licenses are issued by the Ministry of Economy or by the local State administrations. With regard to certain goods, a preliminary consent from the Ministry of Agriculture or another State body is required. Applications for import license shall be considered by the competent authorities within 10 to 60 days depending on the existence of quotas. License fees for a non-quota license amount up to about EUR 20 and for the quota license of about EUR 70.

Importing goods without a license is subject to a fine in the amount of 10% of the total sum of the transaction. Any breach of the Ukrainian legislation on international commerce may lead to the cancellation of the import license.

16.4 Certification

Almost all food products and agricultural equipment imported to Ukraine are subject to certification, i.e. to confirmation of their compliance with State norms and standards. Certificates on conformity are required for importing goods through the customs, as well as for the sale of these goods on the territory of Ukraine. The exhaustive list of these goods is established by the State Committee on technical regulation and consumer's policy.

The Committee, its local departments and other certified companies and laboratories are competent to conduct the certification procedures based on the agreement with the importer and at his expense. The price for the certification is established in each separate case and may be rather high. Should the goods be subject to the sanitary certification, quarantine or veterinarian verifications, the certificate on conformity will be issued only once these mandatory procedures are accomplished.

It must be stressed that the system of certification in Ukraine is often criticized for its archaic norms and standards. Most of the Ukrainian standards were elaborated in the Soviet times and do not comprise either the wide range of imported food products or the sophisticated equipment produced abroad.

The goods will be allowed to enter the territory of Ukraine only upon presentation of the certificate of conformity and the information on these goods is entered into the Ukrainian Unified Register of Certified Goods.

Please note that Ukraine's accession to the World Trade Organization will have a direct impact on the system of certification. First of all, the certification of food products will be cancelled and all other certification procedures shall be phased out, in order to comply with WTO standards.

16.5 Import rates

Ukraine is currently adapting its legislation to bring its legal regime in compliance with WTO requirements, which Ukraine joined at the middle of 2008.

The import of goods and ancillary services into the customs territory of Ukraine is taxed at a standard 20% VAT, unless specifically exempted under the VAT law.

The VAT base for goods that are imported is generally their contractual value, which should not be lower than the customs value, including all charges for transportation, insurance, customs duty and excise duty, if any.

Please note that contributions in-kind are taxable at the general VAT rate but are exempt from customs duties and are widely used in practice for the import of equipment.

Export of goods is taxed at 0% VAT rate. The value of ancillary services is included into the customs value of goods (shipping, transportation, etc.)

Raw materials, which are imported into Ukraine may be processed and further exported from the customs territory of Ukraine.

17. LABOUR LAW SPECIFICS RELATED TO THE AGRIBUSINESS

Due to the specifics of the agricultural business, particularly, its seasonal character, there are special regulations applicable to agricultural producers. The most important exception relates to the working hours of the employees. As a general rule, an employee should work not less than 40 hours per week; however, in agricultural business the amount of working hours per week may vary depending on the workload. A different work schedule may be established by the employer provided that:

- the working day does not exceed 10 hours during the intense season and is shorted to 5 hours when the workload is less important;
- the total average amount of work hours per week within a certain defined period (i.e. 2-3 months) does not exceed the 40 hours limit;
- the employees (or their representatives) approved the seasonal schedule;
- the registration of the worked hours is carefully carried out by the employer;

The same rules are applicable to working on the days-off.



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