



GETTING THE  
DEAL THROUGH

# Agribusiness

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# Ukraine

Nazar Chernyavsky and Andrew Zablotskyi  
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## Overview

### 1 Describe the agriculture and food supply chain in your jurisdiction.

Ukraine has earned the nickname 'breadbasket of Europe' because of its fertile soil and extensive fields of wheat and other food products. Agriculture accounts for 14 per cent of the country's total gross domestic product. Ukraine is a net exporter of agricultural products with sales worth 360 billion hryvnias in 2015, which accounted for 38.2 per cent of total exports. In the same year, the agricultural sector attracted over 25 billion hryvnias of investment. More than three million people are employed in the agriculture industry (17 per cent of the employed population).

Fertile lands, a favourable climate, a large population and a geographically advantageous position with access to the Black Sea make Ukraine a strategically important player in the food supply chain at a regional and global level.

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

Agriculture forms the raw material base with primary production, supplying the processing industries and further distribution through wholesale and retail chains. The export process is supported by strong infrastructure. Ukraine is the world's third-largest grain exporter and the largest exporter of sunflower oil.

Development of the Ukrainian agriculture industry resulted in:

- the emergence of vertically integrated agricultural holdings operating with significant land banks (up to 600,000 hectares);
- the emergence of a modern food retail sector, rapidly expanding from key cities to small towns;
- rapid development of production and exports in niche industries (eg, walnuts, honey and berries); and
- increased investments in infrastructure.

Ukraine's food processing industry has experienced significant growth during the past 10 years resulting in the development of well-structured subsectors including dairy products, sunflower and vegetable oils, grains processing, meat and meat products, baked goods and sugar processing. The country has strong potential as a market of locally sourced goods as well as for their international distribution.

### 2 What is the regulatory environment for primary agriculture and primary food processors in your jurisdiction?

Primary agriculture production and food processing should be in line with the key requirements for veterinary, sanitary and phytosanitary control, hygienic control and food safety according to the Law on Principles and Requirements on Safety and Quality of Food Products (the Food Safety Law).

All producers should comply with the following requirements:

- to obtain an operational permit for each operational facility;
- to register production facilities;
- to provide hazard analysis and critical control points (HACCP) certification (which will be obligatory as of 20 September 2017);
- to comply with traceability of purchased ingredients;
- to meet hygiene requirements;
- to obtain a veterinary certification (if applicable);

- to obtain a quarantine certification (if applicable);
- to meet requirements on identification of livestock (if applicable); and
- to meet requirements on declaration of crop production.

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### 3 What are the main non-governmental organisations and non-profit organisations in the agribusiness sector in your jurisdiction?

Ukraine's agricultural sector is represented by more than 20 non-governmental organisations (NGOs) that cover the main subsectors such as grains, meat, oil, poultry, dairy and milling. The government has recently initiated systematic reform of NGO regulations in order to provide them with the status of self-regulatory organisations and thus to delegate selected powers and functions of the state bodies.

The main NGOs in the agricultural sector are:

- Ukrainian Grain Association;
- Ukrainian Agrarian Confederation;
- Ukrainian Agribusiness Club;
- Agrarian Union of Ukraine;
- Association of Farmers of Ukraine;
- Association of Oil Producers; and
- Association of Milk Producers of Ukraine.

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## Land acquisition and use

### 4 Identify and summarise the legislation addressing agricultural property transactions in your jurisdiction. Outline how farmland is typically held.

The principal act governing land relations in Ukraine is the Land Code, dated 25 October 2011. Other important acts regulating various aspects of land matters are as follows:

- the Law on Land Valuation;
- the Law on Land Melioration;
- the Law on Lease of Land;
- the Law on State Expertise of Land Management Documentation;
- the Law on State Land Cadastre;
- the Law on Land Planning;
- the Law on Land Protection; and
- the Law on State Control over Land Tenure and Protection of Land.

Generally, more than 50 legal acts (including laws, resolutions and orders) regulate agricultural land issues in Ukraine.

The Land Code determines that farmland is land that is used for agricultural production, carrying out agricultural research and training, 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 that are 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).

Agricultural land plots must be used strictly in line with their designated purpose (zoning), which is specified in the land allotment projects and title documents.

Agricultural land can be owned and used by the following subjects:

- citizens – for the purpose of individual farming, gardening, mowing and grazing, and agricultural commodity production;
- agricultural companies – for agricultural commodity production;
- agricultural research institutions – to conduct scientific research and promote new farming practices in agriculture;
- non-agricultural entities, institutions and organisations, and religious organisations – for subsidiary farming;
- associations – for household farming; and
- wholesale markets – for the purpose of selling agricultural products.

Transactions regarding agricultural land are currently restricted because of a moratorium on the sale of agricultural land introduced in 2002 and in effect until 1 January 2018. The moratorium provides that agricultural land plots owned by individuals or companies for agricultural commodity production or farming cannot be sold, and their designated use cannot be changed except in cases of inheritance, barter or buyout for public needs. Any agreements in violation of the above (including powers of attorney and contracts on the future sale) are null and void.

Until either the end of the moratorium or the enactment of the law on turnover of agricultural land (whichever comes first), state-owned and municipal agricultural land cannot be sold unless it must be acquired to satisfy public need. Agricultural land plots owned by individuals or companies for agricultural commodity production or farming also cannot be sold, nor their designated use changed, except in cases of inheritance, barter or buyout for public need. The designated use of agricultural land can be changed to carry out activities under production-sharing agreements by investors.

Foreigners cannot own agricultural land (this includes foreign individuals and companies, stateless persons and foreign states). Foreigners and stateless persons who inherit agricultural land must dispose of it within one year.

The government of Ukraine has recently initiated a broad public dialogue on cancelling moratorium for sales of agricultural land. We anticipate this vital reform for Ukraine may be launched in 2018.

## **5 Outline any rules related to use of farmland for non-agricultural uses.**

Ukrainian legislation provides priority status for agricultural land, specifying that land suitable for agriculture must be available primarily for agricultural use. The existing moratorium significantly limits use of farmland for non-agricultural purposes.

However, restrictions that fall under moratorium shall not apply to land plots that, at the time of their transfer into private ownership, were designated for purposes other than ‘for agricultural commodity production’. Such designations include:

- subsidiary farming;
- gardening;
- mowing and grazing;
- research and educational purposes;
- promoting new farming practices; and
- building wholesale markets infrastructure for agricultural products.

There are no restrictions on the sale, purchase or other alienation of the above-mentioned land plots, or changes to their designated use.

Ukrainian legislation specifies that it is preferable that non-agricultural areas of land or lower-quality agricultural land plots should be used for the purpose of construction of:

- production plants;
- housing and utility infrastructure;
- railroads and motorways;
- electric and communication lines;
- pipelines; and
- for other purposes not connected with agricultural production.

Foreign citizens and stateless persons can acquire ownership rights to non-agricultural land plots within the boundaries of localities, as well as non-agricultural land plots outside localities on which objects of real estate, privately owned by such citizens and stateless persons,

are situated. Foreign legal entities and joint ventures established in partnership with foreign individuals or legal entities can acquire the ownership right to non-agricultural land plots within the boundaries of localities in case of purchasing real estate objects (other than land plots), as well as for construction of objects for conducting entrepreneurship and outside localities in case of purchasing real estate objects (other than land plots).

## **6 How is lending secured by farmland addressed in your jurisdiction? Do special rules apply for farm lending?**

Land lease is the most common instrument to access agricultural land because of the moratorium described in question 5. All Ukrainian nationals (including locally incorporated companies) can obtain the right of agricultural land lease.

The right to lease a land plot is subject to state registration and shall be done in writing by way of execution of a lease agreement with further notarisation. The government has developed a standard lease agreement that must contain three key elements: the object of the lease, the lease term and the rent value.

The minimum lease term for agricultural land is set at seven years and the maximum is 50 years. The amount of rent cannot be less than 3 per cent nor more than 12 per cent of the land’s value. The rent is paid in monetary form; however, often settlements of lease payments may be concluded with goods that have a combined value equivalent to the lease rate. Lease of state and municipal land plots is paid exclusively in monetary form.

## **7 Are there provisions relating to creditors’ rights on default by farmers that apply in your jurisdiction?**

The principal act governing bankruptcies in Ukraine is the Law on Restoring Debtor Solvency or Declaring a Debtor Bankrupt (the Bankruptcy Law).

The Bankruptcy Law provides specific provisions with respect to insolvency proceedings of agricultural companies, if it is established that their main activity is production or processing of agricultural products and the total revenue from sales of such products is more than 50 per cent of total revenue of the company.

If the agriculture producer is declared bankrupt and enters liquidation, all land used under their lease agreements (of temporary or permanent use) shall be returned to its owners and the lease agreements will be terminated.

In the course of immovable property sales to which the bankrupt has title and is used for production purposes, other agricultural producers operating on the neighbouring land plots shall have priority right to purchase such property.

Upon the request of the committee of creditors and under the presence of a representative from the local authorities, the court can order a rehabilitation procedure for the agricultural producer that may last up to 15 months.

## **8 Describe any rules relating to public control of farm property in your jurisdiction. What legislation governs them?**

The State Service of Ukraine for Geodesy, Cartography and Cadastre (StateGeoCadastre) is the central executive body responsible for implementation of state policy in matters of topography, geodesy, cartography, land relations and state land cadastre.

The following are the key functions of the StateGeoCadastre:

- conducting legislative activities within the scope of competence;
- developing international cooperation in the mentioned directions;
- coordinating and ensuring state control under the sphere of topography, geodesy and cartography;
- developing state geodesic network;
- developing National Spatial Data Infrastructure and standards in the matter of geodesy and cartography;
- coordinating the activities regarding geographical names and the creation of the National Register of Geographic Names;
- administering the state land cadastre;
- providing state registration of land parcels;
- managing state-owned agricultural land; and
- maintaining the state register for land surveyors.

The Land Code also provides that StateGeoCadastre is empowered to control the use of farmland, particularly with respect to construction and maintenance of farm property located on agricultural land plots.

Under Ukrainian law, use of farm property must conform to the zoning (designated use) of the land plot.

In some cases, farm property can be placed on agricultural lands provided that the quality of such land is low and under the permission of respective authorities conducting public control over construction.

**9 Are there any restrictions on foreign ownership of farm property in your jurisdiction? What legislation governs them?**

See responses to questions 4 and 5.

**Government programmes**

**10 Does the government provide agriculture support programmes to producers, processors or agriculture-related businesses and organisations? Outline the programmes and how they are generally accessed.**

In 2017, the state budget of Ukraine provided 5.4 billion hryvnias of support for agricultural development.

In particular, the budget was assigned to:

- financial support for repaying loans to agricultural producers (300 million hryvnias);
- state support of livestock production (170 million hryvnias);
- financial support on financial leasing programmes (3.8 million hryvnias);
- providing loans to farmers (65 million hryvnias); and
- financial support of agricultural producers (4.7 billion hryvnias).

Access to state support is through the Ministry of Agrarian Policy and Food of Ukraine, which is in charge of granting access to and distribution of funds.

**11 Are there any programmes addressing assistance or government incentives for investment by foreign ownership in agribusiness?**

In Ukraine, there are no special government incentives for investments in agribusiness. Any investment activity in agribusiness is subject to general investment regulations, unless the government decides to enter into a public-private partnership with a foreign investor and to set specific conditions of cooperation, including various types of incentives that can be foreseen.

Generally, protection of foreign investments in Ukraine is regulated by the Law on Regime of Foreign Investments and the Law on Protection of Foreign Investments. This sets the basic principles of foreign investments in Ukraine as follows:

- in the event of a change of guarantees in relation to protection of foreign investment, the state guarantees effective legislation at the time of investment would apply within 10 years from the date of enactment of such changes; and
- the state authorities of Ukraine are not entitled to requisite foreign investments, except for emergency measures in the event of natural disasters, accidents, epidemics and epizootics. Such requisition and its conditions can be made based on government decision. Investors have the right to appeal such conditions in court.

Foreign investors are entitled to reimbursement for losses, including lost profits and moral damage caused to them because of actions, omissions or improper performance of duties by the state authorities of Ukraine or their officials towards a foreign investor or enterprise with foreign investments, according to the legislation of Ukraine. Reimbursement is based on current market value.

In case of termination of investment activities, a foreign investor has the right to return, within six months following termination of such activities, their investments in kind or in the currency of the investment (ie, the actual amount of the investment), without payment of customs duties, as well as revenues out of such investments, in monetary or goods form at real market value at the date of termination of investment activities.

In practice, because of numerous regulations, execution of the aforementioned principles is costly and time-consuming, and requires qualified legal assistance.

**Food safety, certification programmes, animal safety and disease**

**12 Outline the applicable legislation for primary processors of live animals. Is any distinction made between meat for domestic consumption and meat for export?**

The principal acts applicable for primary processors of live animals are as follows:

- 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.

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.

**13 Describe the food safety regime in your jurisdiction, including applicable legislation and regulations.**

The food safety regulatory system has changed significantly following the implementation of the Food Safety Law that entered into force on 20 September 2015. As it is based on the principle 'from farm to fork', the Food Safety Law introduced all basic EU standards applicable to the cycle of production, processing and distribution of agricultural food (eg, the principles of HACCP, traceability and responsibility of business operators). In addition, the Law envisages a new approach in which the system of state supervision and control over the market is assigned to only one authority: the State Service on Safety of Foodstuffs and Consumer Protection.

The new Law reduced the number of administrative procedures, cancelled licensing and certain other procedures (which are absent in the EU legislation), and provided detailed requirements for the procedure of state control of food products on the Ukrainian market and imported products respectively. It also facilitates the conditions of obtaining operating permits that are mandatory only for enterprises that have activity connected with the production or storage of food of animal origin. Other businesses should just obtain registration.

In particular, as set out in the Food Safety Law, the government regulates food safety by:

- setting up sanitary measures;
- imposing requirements for certain food safety products;
- state registration of sanitary objects;
- issuing, annulling and renewing operational permits;
- imposing health requirements for employees involved in food production; and
- providing state control of food safety.

In July 2017, significant changes to the system of food safety control were adopted that will be effective from 4 April 2018. In particular, the basic principles of the EU food safety control regulations were introduced in Ukraine as part of implementation of the EU-UA Association Agreement that resulted in creating a separate system of control over food production, sales, etc. As the Food Safety Law is relatively new, and taking into account recent changes, more than 40 bylaws are to be adopted by April 2018 to fully introduce new regulatory system of food products.

**14 What enforcement can take place in relation to food supply chain safety? What penalties may apply?**

The State Service on Food Safety and Consumer Protection, as the competent authority, is entitled to order the suspension of production or circulation of food products that present a danger to human health for a maximum of 10 calendar days, with submission of a corresponding application to the court.

Suspension of production or circulation of food products for more than 10 days shall be possible only by a decision of the court for the term required to remedy the identified violations.

If, within a feasible term, a market operator does not fulfil the technical requirements under the law, another executive document on the suspension of operations of a facility or part of a facility, or a temporary ban of circulation of objects of sanitary measures, it may have its

operating permit suspended. In certain cases, an operational permit can be recalled and cancelled.

Violation of food safety requirements is classified as any of the following:

- not complying with hygiene requirements;
- producing and storing food products at facilities that are not registered;
- producing and storing food products without an operating permit;
- failing to perform duties regarding the introduction of ongoing procedures at facilities, which are based on HACCP principles;
- mislabelling food products;
- infringing traceability requirements;
- failing to perform duties on recall or withdrawal of unsafe food products from circulation;
- using unregistered processing aids and materials in contact with food products;
- using unregistered objects subject to sanitary control;
- circulating unsuitable food products;
- infringing safety parameters of objects of sanitary measures;
- not fulfilling legal requirements (decisions) of competent authority officials regarding elimination of legislative violations on safety and specific quality parameters of food products within the term agreed upon with the competent authority;
- not fulfilling legal requirements (decisions) of competent authority officials regarding destruction of food products and processing aids that are unsafe for human consumption or intended to be used otherwise;
- concealing information, (non-provision), refusing to provide information, or providing unreliable information to the competent authority officials; and
- refusing to provide access to competent authority officials to carry out state control.

Depending on the type of violation, the penalty is a fine of twice or up to 75 times the minimum wage (currently, 3,200 hryvnyas).

#### **15 Describe any certification programmes and rules for genetically modified foods, organic foods or other differentiated products.**

The Law on the State Biosafety System at the stage of development, testing, transportation and use of genetically modified organisms (GMOs) provides obligatory registration of all types of GMO prior to their use in Ukraine. However, as of the time of writing, there are no registered GMOs in Ukraine.

If a food product contains GMOs, or if a part of a food product exceeding 0.9 per cent contains, consists of or is produced from GMOs, the labelling 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. However, the absence of GMO in a food product is subject to confirmation as per legislative requirements on safety and specific quality parameters of food products. Data from the suppliers regarding the presence of GMOs in ingredients not being available shall be sufficient proof for the application of such labelling.

Ukraine has effective legislation for organic production. According to the Law on Processing and Turnover of Organic Agricultural Products and Raw Materials, organic production is subject to state registration and certificates of confirmation must be obtained. Organic production for agricultural companies is available starting from entry in the State Register of Organic Producers (currently more than 300 companies are registered as organic producers).

#### **16 What are the food labelling requirements, including the applicable legislation, enforcement and penalties?**

Circulation of food products with labelling that does not comply with legislative requirements on safety and specific quality parameters of food products is prohibited. All food products in circulation in Ukraine shall be labelled in the official language, but there may be translations into other languages beside the text.

Labelling may contain references to certain substances and their quantity without specifying the properties that a food product has because of such substances. Thereby, the market operator must have evidence regarding the composition of such substances that, in

particular, includes laboratory analysis and information on the origin of the ingredients.

It is prohibited to advertise dietary additives as follows:

- statements regarding potential therapeutic effect or relief of pain;
- letters of appreciation, recognition and advice if they are related to the treatment or relief of the course of a disease, as well as any reference to such information; and
- statements that may cause or contribute to a negative psychological condition in the consumer.

Legal entities that are responsible for mislabelled food products will incur a penalty of five to eight minimum wages and recall of the product, or the withdrawal of such products from circulation. Individual entrepreneurs responsible for mislabelling will incur a penalty of three to five minimum wages and recall of the product, or withdrawal of such products from circulation (one 'minimum wage' is 3,200 hryvnyas).

#### **17 Outline any applicable legislation regarding the health of animals reared as livestock, including transportation and disease outbreak and management.**

See question 12.

#### **18 What are the restrictions on the movement of animals within your country?**

The following restrictions are applicable to the movement of animals in Ukraine:

- movement of animals without their identification according to the law is prohibited;
- transportation of animals shall be made under appropriate conditions and with the accompanying set of documents (identification number, veterinary certificate, consignment documents); and
- prohibition on the movement of animals from quarantine zones set by the government.

#### **19 Describe any restrictions on the import of food animals.**

Importing food products of animal origin for consumption without the appropriate packaging is prohibited.

According to the Law on Veterinary Medicine, the government maintains a register of specific countries from which imports are prohibited, and goods that are prohibited from being imported into Ukraine for safety reasons. The register may also include a list of production facilities in the exporting countries, the products of which may be subject to import prohibition because of non-compliance with Ukrainian legislation on food safety production.

#### **20 What are the regulations related to livestock slaughtering?**

The Law on Identification and Registration of Animals requires obligatory registration of livestock that is due to be slaughtered in the respective state register.

It is prohibited to slaughter an animal that does not have an accompanying veterinary certificate attesting to its health, or to slaughter domestic animals in a slaughterhouse that does not have an operating permit (which is required if their operation exceeds three to five units per day).

All slaughterhouses must obtain an operating permit and are subject to state veterinary control.

All animals are subject to compulsory post-slaughter (post-mortem) state control carried out by a state officer, including animals killed by humans (eg, those killed in traps or hunted game), irrespective of whether the products thereof are intended for human consumption or feeding animals.

A mark of suitability shall be applied only to animals (domestic ungulates, farm-raised wild mammals other than lagomorphs and large wild animals) that undergo ante-mortem and post-mortem inspections in accordance with legislative requirements.

#### **21 Outline the regulatory regime relating to pest control and pesticides, and other management regimes in relation to disease and pests in plants and animals.**

The State Service on Food Safety and Consumer Protection (created in 2014) is in charge of pest control in Ukraine. Currently, pest control and issuance of phytosanitary certificates is exclusively carried out by

### Update and trends

The government of Ukraine initiated a broad public dialogue on 'opening' the agricultural land market in Ukraine by cancelling the current moratorium and establishing clear rules that will allow land to be sold or purchased, or used as a collateral in order to stimulate farmland production and investments in agriculture. We anticipate new rules on farmland may be established by early 2018.

state laboratories. However, the government initiated changes to the legislation in accordance with EU practices that aim to delegate powers of laboratory inspections to private labs.

Ukraine has recently cancelled obligatory quarantine certification, with the exception of movement of goods outside the country's set quarantine zone and, in certain cases, of imports – in particular, when goods were repacked after initial documents from the producer were issued.

Customs clearance of cargo in Ukraine is made only after phytosanitary control has been carried out, both for export and import operations.

### Business organisation

#### 22 How are agricultural operations typically organised in your jurisdiction?

Currently, foreign investors may establish the following types of companies in Ukraine, operating in agribusiness:

- traditional business companies (limited liability companies (LLCs), joint-stock companies, additional liability companies, general partnerships, or limited partnerships);
- enterprises with foreign investments;
- subsidiaries ('daughter enterprises');
- private enterprises; or
- a representative office in Ukraine.

The most popular forms of legal entities for conducting agribusiness in Ukraine are LLCs and private enterprises.

#### 23 Outline any restrictions on foreign ownership of agricultural operations or businesses other than farming operations.

Not applicable.

### Agricultural workers, immigration, and health and safety

#### 24 Describe any specific rules or laws governing the rights of workers or employees for agricultural operations.

See question 26.

#### 25 How is farmworker immigration regulated in your jurisdiction?

There are no special regulations on immigration of farmworkers; general rules apply.

Enterprises in Ukraine are entitled to employ a foreigner provided that the State Employment Service of Ukraine has issued a work permit for their employment. The law provides that a work permit shall be issued providing one of the following conditions is applicable:

- there are no qualified Ukrainian employees suitable for the role or the necessity to employ a foreigner is duly substantiated;
- a foreigner seconded by a foreign business entity to Ukraine under agreements between a Ukrainian and a foreign business entity (the number of foreigners hired shall not exceed half of the total number of employees of the respective Ukrainian business entity);
- a foreigner has been seconded to Ukraine as an intra-corporate transferee; or
- a foreigner has applied for refugee status.

The work permit is usually valid for the term of the employment contract but cannot exceed one year; however, it may be prolonged repeatedly for one-year periods.

#### 26 Outline the health and safety regulations relating to farmworkers in your jurisdiction.

Health and safety regulations relating to farmworkers in Ukraine depend on the type of work carried out.

There are various occupational safety and health rules applicable for agricultural production, livestock production, plant breeding, and the use of agricultural machinery and pesticides issued in the form of respective regulations. Generally, safety regulations are subject to certification in certain cases. Farmworkers are required to be educated in specific areas and upgrade their qualifications depending on the type of work they undertake and the occupational risk level.

### International trade

#### 27 How are the export and import of agricultural products (animal and non-animal) regulated in your jurisdiction?

Under Ukrainian law, all documents necessary for the import and export of goods can be generally divided into two groups: documents submitted with respect to all products and documents that are submitted depending on the particular customs code. The documents required for exportation and importation of all products are listed in article 335 of the Customs Code of Ukraine.

Products of animal origin are subject to veterinary control, while products of non-animal origin are subject to phytosanitary control. The facilities used by producers exporting food products must be included in the 'list of approved exporting facilities'. Exporting facilities may be included in the list only after the relevant audit of the producer.

For the importation of food products, the importer has to present an 'international certificate', issued by the competent authority of the country of origin. Other objects of sanitary control must be accompanied by documents certifying the safety and quality of the respective product. Food products exported from Ukraine must also be accompanied by an international certificate or other document ensuring the safety of the product and issued by the competent authority (depending on the requirements of the importing country).

Starting from mid-2014, Russia banned imports of milk, dairy and confectionary products from Ukraine. Additionally, starting from July 2014, the import ban was extended to cover juices, canned fruit and vegetable products as well as canned fish. As a response to such aggressive trade policy, Ukraine banned imports of certain meat products, fish, dairy, baked goods, milk, vodka and cigarettes originating from Russia, starting from January 2016.

#### 28 May tariffs, quotas or similar measures be put in place?

As a member of the World Trade Organization (WTO), Ukraine does not apply quotas or similar restrictions, except for those listed in the Schedule of Concessions of Ukraine. The Schedule of Concessions sets forth the maximum import duty rates that may be levied on the products imported from the territories of other WTO members.

In addition, Ukraine actively concludes free trade agreements (FTAs), in the framework of which the duties and other restrictive regulations of commerce are eliminated. Ukraine has effective FTAs with:

- the EU;
- European Free Trade Association (Iceland, Lichtenstein, Norway and Switzerland);
- Canada;
- Georgia;
- Macedonia;
- Turkmenistan; and
- Montenegro.

Ukraine is also a member of the Commonwealth of Independent States Free Trade Area, which includes Armenia, Azerbaijan, Belarus, Kazakhstan, Kyrgyzstan, Moldova, Tajikistan, Uzbekistan and Russia.

Ukraine has the right, according to WTO regulations, to impose quotas or similar measures in certain cases, particularly for the protection of human health and morals, in case of critical shortage of goods, and for public need, but only subject to compliance with WTO rules.

#### 29 What treaties apply to the import and export of agricultural products in your jurisdiction?

The import and export of agricultural products is regulated by WTO Agreements (the General Agreement on Tariffs and Trade, the WTO

Agreement on Agriculture, the WTO Sanitary and Phytosanitary Agreement, etc) and FTAs.

Ukraine has a separate treaty with China on the supply of certain agricultural products – mainly soft commodities.

### Intellectual property

#### 30 How are plant breeders' property rights protected in your jurisdiction?

In accordance with the Law on the Protection of Plant Variety Rights, registration of a plant variety may give the following rights:

- personal non-property rights on plant variety;
- the intellectual property rights on plant variety; and
- the intellectual 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 authorise 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 right to commercialise the plant variety is given upon registration in the respective state register and receipt of the certificate on state registration. State registration is also a condition for commercialising planting material in Ukraine.

#### 31 How is farmers' access to crop varieties and plant technologies addressed in your jurisdiction?

A licence agreement on the transfer of plant breeders' rights can only be concluded in respect of those plant varieties that are protected by patent and require authorisation of the patent holder.

However, a common practice applies when a commercialised plant variety in Ukraine has no patent protection. By virtue of the registration of such a plant variety in the state register and receipt of the certificate on state registration, the holder of the certificate enjoys only the intellectual property right to commercialise the plant variety in Ukraine. Authorisation to commercialise the plant variety is given by the holder of the certificate on state registration of plant variety to another entity and is not covered by the motion of licence (licence agreement). The licence may be issued (ie, the licence agreement concluded) only in respect to those plant varieties that have patent protection.

Thus, the authorisation to commercialise the plant variety (by the holder) may be recognised as a licence or other agreement on transfer of intellectual property rights.

There are two types of licence agreement that can be concluded in respect to intellectual property rights in plant varieties: in respect to patented plant varieties; and in respect to plant varieties that are registered in the state register but have no patent protection in Ukraine.

#### 32 What other intellectual property considerations apply to agribusiness in your jurisdiction?

Other intellectual property considerations specific only to agribusiness are not applicable. General intellectual property regulations shall apply.

### Environmental issues

#### 33 Describe the regulatory agencies that have a role in managing the environmental impact of agricultural production in your jurisdiction.

There are three main state bodies managing the environmental impact of agricultural production in Ukraine:

- StateGeoCadastr (for the use of land);
- State Service on Food Safety and Consumer Protection (for pest control, and veterinary, sanitary and phytosanitary control); and
- State Ecological Inspection (for ecology and radiology control, land conservation, use of water and air pollution).

#### 34 Describe how water and air pollution is regulated in relation to primary agriculture in your jurisdiction.

The State Service on Food Safety and Consumer Protection provides state control over maintenance of the sanitary norm on use of water for production and consumption purposes, and set levels of indicators in the soil.

Emissions into the atmosphere of pollutants and other substances are controlled by state permits in accordance with set thresholds. According to the law, emissions are allowed if a permit is granted. There are three types of permit based on set thresholds that are valid for seven years, 10 years, or an unlimited term.

If primary agricultural production produces air pollution above permitted levels, such production must be authorised by obtaining a permit from the Ministry of Ecology and Natural Resources.

#### 35 Describe how liquid and other waste is regulated in relation to primary agriculture in your jurisdiction.

The regulatory framework of liquid and other waste policy in Ukraine is encompassed by, among other things:

- the Law on Waste;
- the Law on Ensuring Sanitary and Epidemic Safety of the Population; and
- the National Solid Waste Management Programme for 2013–2020.

The Law on Waste sets forth the general principles for activities related to the prevention or reduction of waste, its collection, transport, storage, sorting, recycling and disposal, as well as a reduction in

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the negative impact of waste on the environment and human health within Ukraine.

Furthermore, the Law on Air Protection prohibits the disposal of agricultural waste within the territory of agricultural enterprises, except when this is done with the use of special devices in compliance with environmental regulations. It is obligatory for primary agricultural producers dealing with liquid and waste processing to declare their activity to local authorities according to regulation requirements. Such activity is subject to state control and in certain cases, when special requirements are applied, it is prohibited to carry out any activity that produces waste without a permit, which is subject to issuance by the local authorities.

A special permit must also be obtained for operations that involve pesticides, for their transportation, storage, etc.

## Getting the Deal Through

Acquisition Finance  
Advertising & Marketing  
Agribusiness  
Air Transport  
Anti-Corruption Regulation  
Anti-Money Laundering  
Arbitration  
Asset Recovery  
Automotive  
Aviation Finance & Leasing  
Banking Regulation  
Cartel Regulation  
Class Actions  
Commercial Contracts  
Construction  
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Cybersecurity  
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Foreign Investment Review  
Franchise  
Fund Management  
Gas Regulation  
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Insurance & Reinsurance  
Insurance Litigation  
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Pensions & Retirement Plans  
Pharmaceutical Antitrust  
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Private Antitrust Litigation  
Private Banking & Wealth Management  
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