

# THE MAIN LEGAL AND ECONOMIC RISKS OF AGRIBUSINESS WHEN USING STATE AGRICULTURAL LAND

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# What are the needs of the investor when using state lands?

- reasonable and sufficiently long **period of land use**
- predictability of changes in land user **payments**
- the ability to use land with **modern technologies**
- minimum **risk of loss of the land use right** due to the actions of government bodies, courts, state or local inspectorates

# **Risk #1: Rent for state land is a tax payment!**

- Because rent for land in Ukraine is a tax payment, it can change when the tax legislation changes without the consent of the parties to the lease contract. This can happen even if you have acquired the right to lease at an auction.

**It is necessary to legally ensure the unchanged lease conditions after signing the lease agreement. Legislation can regulate the procedure for establishing the initial rent, but not its changes without the consent of the parties to the contract!**

# **Risk #2: Land value is determined on a non-market basis!**

- Rent for state land is levied on the basis of the so-called "normative land valuation", which is not related to the real market value of land. The evaluation technique can be changed unpredictably by the government. For example, a new evaluation methodology was adopted in 2016, and in 2017 it was changed for some regions.

**A gradual transition to the market base for the valuation of land plots is required to determine the rent for state lands. The valuation should not be done by a simplified non-market methodology, but by a professional appraiser. It is advisable to follow the International Valuation Standards or the European Valuation Standards!**

# **Risk #3: Unpredictable indexation of rent!**

- Rental payments are annually changed (indexed), and the indexation coefficient depends on the consumer price index and is in no way connected either with the efficiency of agribusiness work or with the change in the value of agricultural land.

**It is necessary to change the methodology for the land monetary valuation update (indexation) envisaged by the tax legislation. Rent payments should be adjusted on the basis of the agricultural market data and the cost of agricultural products!**

## **Risk #4: Land squatting?**

- The boundaries of land plots of state property are not always determined and registered correctly. As a result, land users often processing field "beyond the boundaries" of the official land area.

**It is necessary to mitigate the responsibility of agricultural land users for insignificant violations in land use arising from inaccurate cadastral data!**

# Risk #5: State land inspection!

- The state is trying in various ways to strengthen the supervision of land users, and even insignificant violations can be considered as grounds for early termination of land use rights.
- A land user may be forced to provide a costly agrochemical certification of land by state-controlled institutions. The land user can be accused of worsening the fertility of soils, there may be violations in the registration of land rights, legal validity of the contract, etc.

**Requirements for land users should be extremely simplified and specified. Punishment for non-essential violations should not be deprivation of the right to use the land!**