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Foreign investing of agricultural enterprises development

Introduction

Development of agricultural production is impossible without sufficient investment providing. Investments is the source of both plain and broadened reproduction of production fund and they are directed on reproduction of new enterprises and their capacity, broadening, modernization, reconstruction, technical re-equipment, overhaul of main means and increase of enterprises current assets.

Within normal economical relations between branches overwhelming part of agrarian enterprises investments is financed by own assets. However such peculiarities of agrarian production as seasonal prevalence, absence of rhythm, high level of capital intensity and long-term productive circles in many branches stipulate eminent necessity of enterprises in attraction of outside investments financing sources.

Nowadays attraction of foreign investment resources and providing their rational usage is the key problem within unsteady crisis conditions and possibilities of further economic development of agrarian production depends on its solving. Increase of speed and capital accumulation volumes provide transition to investing and innovative development model, creates preconditions for economic inrush. So, strengthening and modernization necessity of production potential in branches of national economy, investment increase are gaining exclusive importance on the modern stage of development. This problem is staying to be especially vital for agro-industrial complex of Ukraine which appears to be strategic branch of economy.

Research goals, tasks and methods

The principal *goal of* research lays in searching of investment providing of improvement ways for agriculture with taking into consideration foreign fund potential. It will assist, in its turn, to strengthening of productive branch potential

and solving of social and economical problems. The fulfillment of the given purpose stipulated solving of the following *tasks*:

- to investigate dynamics of investment providing to enterprises of agro-industrial complex of Ukraine;
- to analyze the state of foreign investments into development of agro-industrial complex of Ukraine;
- to consider basic models of obtaining land tenure right for foreign investors in Ukraine.

The *subject* of research is investment of agricultural enterprises development in Ukraine.

For solving set tasks the following basic *methods* were used: monographic, abstract and logic, calculation, constructive and comparative, generally accepted statistic methods.

Investment providing of enterprises in agro-industrial complex of Ukraine

Financial exhaustion of agriculture and corresponding investment recession which had been taking place until 2000, caused coming to a stand of reproductive processes, degradation of branch logistical base and decline of many branches of agrarian production.

In 2000–2008 thanks to the complex of taken measures and extensive reforming of agrarian sector in particular, the trend of productive recession and investment crisis were managed to be overcome and preconditions for improvement of situation in the branch had been created.

If at the beginning of 2000 less than 10% of agricultural gross value added was used for accumulation of main fund. In the last years this index exceeded 20%, and in 2008 it was equal to 26%. As a result the broadened reproduction process of basic fund in agrarian sector of economy was managed to be renovated.

Positive trends in forming agricultural potential became possible thanks to strengthening of financial state in branch enterprises, attraction of own assets for investing needs, increasing of crediting volumes, accumulation of foreign fund amounts and investments of costs by industrial and financial unions. According to the data from State committee of statistics of Ukraine, average annual investment increase tempo in agriculture raised and for the period 2000–2008 it made 28%, investing attractiveness of agrarian business grew, conditions for further development of this important branch of economy have been created.

It is worth to indicate that the tempo of investment increase in agriculture for the mentioned period was higher than in trade and financial activity, where increase of investing activity also took place.

In spite of essential investing activity recovery, investment volumes in branch in 2008 were three times smaller in comparison with 1990 that says about deep investing crisis and considerable losses experienced by agriculture of Ukraine during this period. Exactly thanks to comparatively high level of investing and material and technical providing in 1990 were reached the highest productive volumes of agricultural produce. About priority of agrarian economy development in the 90-ties of the last century affirms the fact that 85% of all investments in agricultural production were directed into agriculture and 15% – in food industry. Dynamics of volumes and branch structure of investments in agricultural production, shown in Table 1, affirms about changes in investment processes.

Table 1
Investment Volumes in Basic Capital on Branches of Agro-Industrial Production

Branches	1990		2000		2007		2008	
	million, UAH	%	million, UAH	%	million, UAH	%	million, UAH	%
Agriculture and hunting	11 799	85	496	30.9	261.6	43.4	3736	54.8
Forestry	66	0.5	37	2.3	40	0.7	46	0.7
Fishing and artificial fish breeding	–	–	2	0.1	10	0.2	11	0.2
Industry manufacturing food products, beverages and tobacco goods	2 023	14.5	1072	66.7	3358	55.7	3036	44.4
Agro-Industrial Complex	13 888	100	1607	100	6024	100	6839	100

Source: According to the data retrieved from www.ukrstat.gov.ua

Priorities in forming investing resources in the branches of agro-industrial production investments have changed. The tempo of investing increase in agriculture during the last years left behind such tempo in the branches of agrarian sector production processing. A fraction of investments, mastered in the branches of food industry in general investment volumes in agro-industrial production in 2000 made 66.7%. In 2008 it went down to 44.4%, and raised in agriculture accordingly from 30.9 to 54.8%.

Investment volumes in basic capital of agriculture in 2008 raised 7.5 times comparing with 2000, and 2.8 times – in industry manufacturing food products.

Investments in food industry were 9.6% lower in 2008 comparing with the previous year. Simultaneously agriculture, even under conditions of crisis phenomena deepening, reached 43% investment increase in 2008 to the previous year which is the highest among all kinds of economic activity.

The state of foreign investments in agro-industrial complex of Ukraine

Forming of investing resources in agriculture is fulfilled under conditions when predominant majority of branch enterprises are private and it requires taking into consideration peculiarities and investing possibilities of managing subjects, established on the private form of ownership. For the last years the financial state of agricultural enterprises improved, and it assisted in usage of own funds for investing purposes, resources of which are the part of received income and amortization counting off. Own enterprises assets composed almost half of investments in basic capital of agriculture in 2008. Attraction possibilities of own enterprise assets in agrarian sector for investing needs are restricted first of all by price rising for material and technical resources and by unfavorable price fluctuation for plant growing and livestock raising produce on both internal and external markets.

Under conditions of financial resources restriction a foreign capital, attraction volumes of which are growing in Ukrainian economy, is an important source of investments. The state by the first of January 2009 was the following: direct foreign investments in economy of Ukraine composed 35.7 billion \$. USA and average annual tempo of their increase during 2004–2008 exceeded 30%. High tempo of foreign capital attraction into economy of Ukraine assisted its rising so that in 2008 the capital volumes per person of population composed 770 \$, that is almost 10 times higher comparing with 2000. But this level is still considerably lower than corresponding indexes not only in the countries of European Union but also in the countries of CIS.

A portion of foreign investments is still low in the structure of Ukrainian economy financing sources and it composed 3.3% in 2008. Foreign capital is being also actively attracted into development of branches of agro-industrial complex. Growing of cereals, sunflower and some other kinds of produce are the most attractive for both native and foreign investors in agriculture. In food industry majority of foreign business projects are connected with the processing of these kinds of products and manufacturing of dairy, meat, fruit and vegetable production, confectionery, beverages and tobacco goods.

Average annual tempo of foreign investments increase in agriculture during 2000–2008 left beside their volume increase tempo in economy in general and composed 35.4% that affirms growing of investing attractiveness of agrarian business. A portion of foreign investments in the structure of investing sources in agriculture composed 8% in 2008. Fulfillment of measures concerning economy reforming and improvement of investment climate assisted in attraction of foreign investments into agriculture and food industry.

The state of foreign investments attraction in agriculture of Ukraine is reflected by data given in Figure 1.

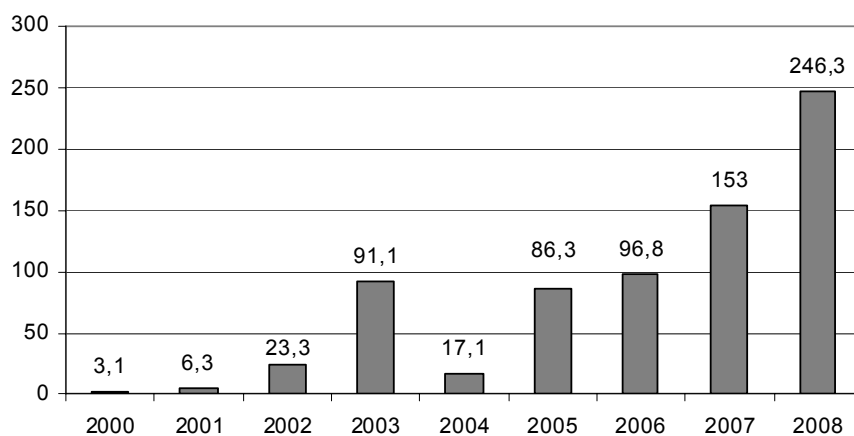


Figure 1

Dynamics of foreign investments increase in agriculture of Ukraine, mln \$ USA

Source: according to the data retrieved from www.ukrstat.gov.ua

Among 35 country-nonresidents, Cyprus and United Kingdom invested most of all in agriculture. Their capital exceeded the half of all foreign investments into branch in 2008. Foreign capital was invested into food industry enterprises mostly by investors from Netherlands, Sweden, Cyprus and Russian Federation. By the form of attraction foreign investments consist of cash money (two thirds), 30% – movable and estate property and 3% – stock. Foreign investments have to become important source of assistance and development of agrarian business in Ukraine.

Models of obtaining land tenure right for foreign investors in Ukraine

Analysis of Ukrainian legislation and practice allows to line out eight models of obtaining land tenure right acceptable both for native and foreign investors.

If native investors are more or less prepared for receiving land tenure rights at a fixed date, the foreign ones are always prepared for receiving proprietary right.

Model 1 – Proprietary right

The first barriers on the way of foreign investor are laid in paragraph 82 of land code of Ukraine. Juridical persons (established by citizens or juridical persons of Ukraine) may obtain ownership of land parcels for fulfillment of entrepreneurial activity in case of:

- acquirement after purchase contract, rent, donation, exchange, other civil-legal agreements;
- bringing land parcels by their founders in statutory fund;
- reception of inheritance.

Foreign juridical persons may obtain ownership of land parcels for non-agricultural purposes:

- within boundaries of settlements in case of buying estate property objects and for building objects connected with entrepreneurial activity in Ukraine;
- beyond the boundaries of settlements in case of buying estate property objects.

It is worth drawing attention to restrictions foreseen by part 1 of paragraph 82: land parcel ownership right may be received only by juridical persons founded by citizens or juridical persons of Ukraine. Thus, juridical person-residents founded with the participation of foreign juridical persons do not fall under act of paragraph 82 of Land code of Ukraine and can not be the subjects of land ownership right. To skirt these restrictions of land regulations foreign juridical persons are forced to create «clean» company-resident. The chain looks the following way: at first firm establishes Ukrainian company (resident), then this company-resident establishes another company (juridical person), which will fall under act of part 1 of paragraph 82. Restrictions foreseen by paragraph 82 of Code are absolutely unintelligible for foreign investors, because such assets as land parcel can not be transported or carried out of Ukrainian borders.

Ownership right is the most «acceptable» for foreign investor because: first of all, western investors are brought up by private ownership, secondly, land ownership – is one of the most important assets of any company which may be mortgaged for attraction of necessary credits.

Models 2 and 3 – lease right (sublease)

Land lease right is one of the most popular land rights. According to regulations of land legislation, land lease right – is agreement-based and fee-based tenure and use of land parcel necessary for lessee's enterprising and other kinds of activity at a fixed date.

Agreement execution of land lease is fulfilled on the basis of consideration or decision of corresponding authority or local self-government body, or civil contract (in case of lease right estrangement), or in order of inheritance.

According to Ukrainian legislation, land parcel lease right (except for lands of state and municipal property) may be alienated, sold on land tenders and also transferred to inheritance, brought in statutory fund by the owner of land parcel for a period up to 50 years.

Earlier lease right was the most popular right used by foreign investors coming in Ukraine. After considerable changes in legislation foreseen by the act dated from the 28th of December, 2007 (introducing order of receiving lease right through auction sale), quantity of people willing to lease land parcels reduced considerably. It concerns those investors who planned to take land parcels for a long-term lease. The reason is – economic. Together with implementation of auction sales were risen the lease rates for state and municipal lands to the level which can not exceed 12% of their normative valuation. Of course, local authorities have used these regulations and raised the rates of lease fee up to indicated 12%. So, a person leasing a land parcel for a period more than eight years actually overpays its cost twice. That is why long-term lease of land parcel stopped to be attractive for investors.

Model of sublease, actually, is analogous to a mentioned one above. Leased land parcel or its part may be subleased by leaser without changing purpose-oriented use if it is foreseen by lease agreement or it is allowed by written assent of lessor. Terms of land parcel sublease agreement must be restricted by terms of land parcel lease agreement and not contradict it. Term of sublease can not exceed the term determined by land lease agreement.

Lease and sublease of land are equally accessible for both residents and non-residents. The principal advantage of land lease and sublease for nonresidents is the fact that nonresidents have no necessity to register pure Ukrainian enterprise like in case of ownership right. Among the disadvantages of such models one may denominate duration of registration procedure.

Models 4 and 5 – Superficiy and Emphiteusis

According to regulations of Land code of Ukraine, superficiy – is the right to use smb. else's land parcel for building. Emphiteusis – is the right to use smb. else's land parcel for agricultural needs.

These rights arise from agreement between the owner of land parcel and the person willing to use this land parcel for defined needs. Besides, superficiy may arise from testament.

Both superficiy and emphiteusis are alienated rights; they may be transferred into inheritance, brought in statutory fund of enterprise, passed to mortgage,

except for land parcels of state and municipal property. Sale of land parcels of state and municipal property or rights of their usage (lease, superficies, emphyteusis) on the competition base in the form of auction is fulfilled in cases and in order defined by chapter 21 of Land code. Only banks may be mortgage holders of land parcels for agricultural purposes and rights on them (lease, emphyteusis).

The reasons for stopping agreements of superficies and emphyteusis are:

- unity of land parcel owner and land user in one person;
- finishing of term, which was given for the right to use;
- land parcel redemption connected with social necessity in case of smb. else's land parcel use for agricultural needs;
- non-utilization of land parcel for building during three years in case of smb. else's land parcel use which is assigned for building;
- law court decision.

There are no other conditions and restrictions concerning making agreements and smb. else's land parcel using for building or agricultural needs and this fact makes superficies and emphyteusis quite attractive for foreign investors.

Which disadvantages for investor do superficies and emphyteusis have?

Agreements of both kinds according to the Law of Ukraine «About state registration of material rights for real estate and their restrictions» from the first of July, 2004p, have to be registered. However, officials from centers of State land cadastre sometimes refuse to register such agreements, referring to absence of necessary legislative regulations. That is why parties of agreement are made to apply to court of law with the lawsuit about incentive to making actions (agreement registration).

Model 6 – Investing agreement

The model, which is most frequently used, when one of juridical persons, who already has necessary documents but has no appropriate assets and wishes to attract investor for project fulfillment. So, the deposit of one party is the registered right on land parcel and allowing documentation, and the deposit of the other party – assets. As a rule, such model is used for fulfillment of big complex building projects, and the principal arguments for investor in this case are economical attractiveness of the project and present risks.

Such model is acceptable both for resident and nonresident. But while choosing such model one should strictly consider the interrelations of future co-owners after taking the object into exploitation and its property rights registration.

Model 7 – Corporative right acquisition of juridical person who already has land rights

It is one of the most advantageous models of receiving land rights. Interested juridical person obtains mediated land right by gaining corporate right of

other juridical person, who stays to be the owner/user of land parcel. Such model of receiving land rights is the most advantageous and most popular for mining useful minerals. It is one of the most favorite juridical models for investors-non-residents. But it will be acceptable only for those investors who have enough own funds for project fulfillment and do not require attraction of other persons' funds.

Model 8 – Constant land use right.

Unfortunately, constant land use right may be only conditionally brought to the model of receiving land right by foreign investor as according to regulations of Land code of Ukraine constant land use right may be given exclusively to: enterprises, institutions and organizations which belong to state or municipal property, and invalid public organizations of Ukraine and their enterprises (unions), institutions and organizations.

Conclusions

On the basis of fulfilled research we may formulate the following conclusions:

1. Long-lived activity experience of agricultural enterprises located in different regions of Ukraine affirms considerable influence of investment providing level on results of productive activity. Only highly equipped and complex mechanized agriculture can produce competitive output and be attractive for national and foreign investors. During the last years investing activity has been activated in agrarian sphere of economy (for the period since 2000 till 2008 investing volumes in AIC have raised more then 4 times and reached 50% level of 1990 indices), conditions of attracting investments have been improved, priority directions of capital investing have been defined. At the same time worsening of situation in development of agriculture under the influence of financial crisis which especially was felt in 2009 requires elaboration of measure system as to overcoming the consequences.
2. A portion of foreign investments is still low in the structure of Ukrainian economy financing sources and it composed 3.3% in 2008. Foreign capital is also intensively attracted for development of branches of agro-industrial complex. Growing of cereals is the most attractive for foreign investors in agriculture. Average annual tempo of foreign investments increase in agriculture during 2000–2008 left beside their volume increase tempo in economy in general and composed 35.4% that affirms growing of investing attractiveness of agrarian business.

3. Models choosing of land right obtaining in Ukraine is fulfilled by foreign investor with considering his own advantages and possibilities, general legal regulations and requirements, local peculiarities and, of course, available risks typical for all projects. Besides, it is very important for investor to have opportunity to use land parcel right as liability providing for the next attraction of funds.

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Zagraniczne inwestowanie w rozwój przedsiębiorstw rolniczych

Streszczenie

Zgodnie z postawionym celem oraz podstawowymi zadaniami badawczymi w artykule rozważono pytania inwestycyjnego zabezpieczenia rozwoju przemysłu rolno-spożywczego. Analizie poddano dynamikę inwestowania w przemysł rolno-spożywczy w okresie 1990–2008. Sformułowano wniosek o znaczącym wpływie poziomu zabezpieczenia inwestycyjnego na wyniki działalności produkcyjnej. Badaniu poddano zagadnienie zagranicznego inwestowania w rozwój przemysłu rolno-spożywczego Ukrainy. Stwierdzono, że gospodarka zbożowa jest najbardziej atrakcyjną dla inwestorów zagranicznych. Średnioroczne tempo przyrostu inwestycji zagranicznych w rolnictwie przewyższa tempo przyrostu tych inwestycji w gospodarce ogółem, co wskazuje na wzrost atrakcyjności inwestycyjnej agrobiznesu. Określono podstawowe modele nabycia praw własności ziemi przez inwestorów zagranicznych na Ukrainie. Sformułowano wniosek, że najbardziej atrakcyjnymi formami wejścia na rynek wewnętrzny przez inwestorów zagranicznych są nabycie prawa własności gruntu oraz dzierżawa gruntu.