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## **INTERNATIONAL AGRARIAN RECEIPTS AS A MECHANISM FOR FOREIGN INVESTMENT**

**Abstract.** The paper analyzes the characteristics of lending to agricultural commodity producers using the innovative financing method — the agrarian receipts.

In order to operate a new tool for lending to agricultural commodity producers, in the fall of 2014, a joint Order of the Ministry of Agrarian Policy and Food and the Ministry of Justice of Ukraine has introduced a pilot project *Agrarian Receipts in Ukraine* with the assistance of the International Finance Corporation (IFC) in partnership with the Swiss Confederation in Ukraine. Not only suppliers and distributors of material and technical resources, grain traders, banks, but also non-resident companies from Estonia, the Netherlands, and the United Arab Emirates have joined creditors on agrarian receipts. As a result of the Project, small and medium agricultural commodity producers have received an effective tool that will help to attract additional financial resources due to transparency of relations with the lender and to reduce the cost of the registration procedure compared to other tools.

That is why the paper notes the importance of improving the mechanism of international agrarian receipts by amending the current legislation of Ukraine. After all, this will contribute to improve the access of agricultural commodity producers to production resources and financing, usability, efficiency, reliability of agrarian receipts, and expand the scope of their use. In this regard, proposals to amend the Law of Ukraine *On Agrarian Receipts*, namely, to determine the legal nature of an agrarian receipt and to enshrine at the legislative level of an agrarian receipt as a security with the possibility of its use in free circulation have been developed.

It is considered the foreign experience in crediting the agricultural sector using of agrarian receipts. The features and attractiveness of the mechanism for financing agricultural commodity producers using international agrarian receipts, because it allows domestic agricultural producers access to international financing, have been disclosed. Therefore, one of the main purposes of this paper is to attract the attention of researchers to the need to improve the mechanism for applying international agrarian receipts, putting them into circulation, which will facilitate the effective use of this tool by agricultural commodity producers in the process of attracting foreign financial resources.

**Keywords:** agrarian receipt, security, commodity agrarian receipt, financial agrarian receipt, debtor, lender, register of agrarian receipts, pledge of future harvest.

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## МІЖНАРОДНІ АГРАРНІ РОЗПИСКИ ЯК МЕХАНІЗМ ІНОЗЕМНОГО ІНВЕСТУВАННЯ

**Анотація.** Проаналізовано особливості кредитування сільськогосподарських товаровиробників із використанням інноваційного способу фінансування — аграрних розписок.

З метою функціонування нового інструменту кредитування сільськогосподарських товаровиробників восени 2014 року спільним Наказом Міністерства аграрної політики та продовольства і Міністерства юстиції України було запроваджено пілотний проєкт «Аграрні розписки в Україні» за сприяння Міжнародної фінансової корпорації (IFC) у партнерстві зі Швейцарською Конфедерацією в Україні. До кредиторів за аграрними розписками долучилися не лише постачальники і дистриб'ютори матеріально-технічних ресурсів, зернотрейдери, банки, а й компанії-нерезиденти з Естонії, Нідерландів, ОАЕ. У результаті роботи Проєкту малі та середні сільськогосподарські товаровиробники отримали ефективний інструмент, що сприятиме залученню додаткових фінансових ресурсів за рахунок прозорості відносин із кредитором і здешевлення процедури оформлення у порівнянні з іншими інструментами.

Саме тому у статті наголошується на важливості удосконалення механізму міжнародних аграрних розписок шляхом внесення змін до чинного законодавства України. Адже це сприятиме поліпшенню доступу сільськогосподарських товаровиробників до виробничих ресурсів і фінансування, підвищить простоту в користуванні, ефективність, надійність аграрних розписок, розширить сферу їх використання. У зв'язку з цим розроблено пропозиції щодо внесення змін до Закону України «Про аграрні розписки», а саме у визначенні правової природи аграрної розписки і закріплення на законодавчому рівні аграрної розписки як цінного папера з можливістю його використання у вільному обігу.

Розглянуто зарубіжний досвід щодо кредитування аграрного сектору за допомогою аграрних розписок. Розкрито особливості і привабливість механізму фінансування сільськогосподарських товаровиробників з використанням міжнародних аграрних розписок, адже це дозволяє отримати доступ вітчизняним сільськогосподарським товаровиробникам до міжнародного фінансування. Тому одним з основних призначень цієї статті є привернення уваги вчених до необхідності удосконалення механізму застосування міжнародних аграрних розписок, введення їх в обіг, що сприятиме ефективному застосуванню цього інструменту сільськогосподарськими товаровиробниками у процесі залучення іноземних фінансових ресурсів.

**Ключові слова:** аграрна розписка, цінний папір, товарна аграрна розписка, фінансова аграрна розписка, боржник, кредитор, реєстр аграрних розписок, застава майбутнього врожаю.

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## МЕЖДУНАРОДНЫЕ АГРАРНЫЕ РАСПИСКИ КАК МЕХАНИЗМ ИНОСТРАННОГО ИНВЕСТИРОВАНИЯ

**Аннотация.** Проводится анализ особенностей кредитования сельскохозяйственных товаропроизводителей с использованием инновационного способа финансирования — аграрных расписок.

С целью функционирования нового инструмента кредитования сельскохозяйственных товаропроизводителей осенью 2014 года совместным Приказом Министерства аграрной политики и продовольствия и Министерства юстиции Украины был введен пилотный проект «Аграрные расписки в Украине» при содействии Международной финансовой корпорации (IFC) в партнерстве со Швейцарской Конфедерацией в Украине. В результате работы Проекта малые и средние сельскохозяйственные производители получили эффективный инструмент, который способствует привлечению дополнительных финансовых ресурсов за счет прозрачности отношений с кредитором и удешевления процедуры оформления по сравнению с другими инструментами.

Именно поэтому в статье отмечается важность усовершенствования механизма международных аграрных расписок путем внесения изменений в действующее законодательство Украины. Это будет способствовать улучшению доступа сельскохозяйственных товаропроизводителей к производственным ресурсам и финансированию, увеличит простоту использования, эффективность, надежность аграрных расписок, расширит сферу их использования. В связи с этим разработаны предложения по внесению изменений в Закон Украины «Об аграрных расписках», в частности определения правовой природы аграрной расписки и необходимости предусмотреть на законодательном уровне аграрную расписку как ценную бумагу, которая может использоваться в свободном обращении.

Рассмотрен зарубежный опыт кредитования аграрного сектора с помощью аграрных расписок. Раскрыты особенности механизма финансирования сельскохозяйственных товаропроизводителей с использованием международных аграрных расписок, который позволяет получить доступ отечественным сельскохозяйственным товаропроизводителям к международному финансированию. Поэтому одной из основных задач данной статьи является привлечение внимания ученых к необходимости усовершенствования механизма применения международных аграрных расписок, введение их в оборот, что будет способствовать эффективному применению этого инструмента сельскохозяйственными товаропроизводителями в процессе привлечения международных финансовых ресурсов.

**Ключевые слова:** аграрная расписка, ценная бумага, товарная аграрная расписка, финансовая аграрная расписка, должник, кредитор, реестр аграрный расписок, залог будущего урожая.

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**Introduction.** The lack of financial resources, limited bank lending and lack of own working capital encourage the search for alternative mechanisms to attract financing to the domestic agrarian sector, in order to increase its productivity and profitability. Such alternative mechanism was agrarian receipts, the launching process of which began with the adoption on November 6, 2012 of the Law of Ukraine «On Agrarian Receipts» [1]. Its purpose was to create an effective financing mechanism for small and medium agricultural producers to provide the quality plant protection products and seeds on future harvests bail. As at March 2020, more than 3000 agricultural receipts were issued in Ukraine for a total amount more than UAH 28.8 billion.

It is worth to note that the basis was the model of agrarian receipts, which occurred more than 20 years ago in Brazil, as a form of agricultural financing.

Nowadays, Brazil is the world's most powerful producer of agricultural products. To provide agricultural producers with financial resources, it is used the agricultural receipts as a financing tool that provides an opportunity to borrow money as collateral for future harvests. In order to implement the alternative sources and increase the role of private financing of the agricultural sector, mobilization of working capital, it was introduced the CPR (Cedula de Produto Rural — Certificate of Agricultural Products) [2, p. 2].

The law LEI 8.929, DE 22 DE AGOSTO DE 1994 [3] established two types of CPR: commodity and financial one. Commodity CPR — are securities issued by agrarian producers (individuals and legal entities, their associations, including cooperatives) and oblige the supply of agricultural products of appropriate quality and quantity that is specified in the security. Such certificates of agricultural products allow the sale of future crop and were introduced, first of all, for the export development and to attract the non-resident investors [4, p. 9]. The financial CPRs are used as collateral for financing operations and fix either a fixed amount or the value on the settlement day, taking into account stock prices and indexation [5, p. 16].

The introduction of agricultural receipts in Brazil, allowed to solve the following main tasks: 1) financing of agricultural producers through the sale of future products, because agricultural receipts allow agricultural producers to raise funds on collateral by future harvests; 2) creation of guarantees of supply of raw materials to the processing enterprises by preliminary sale, the processing enterprises receive an opportunity to provide the capacities, receiving production of a vegetable and animal origin as a pledge; 3) sale of materials for agricultural production by exchange for future harvests (barter agreements); 4) providing alternative investments [6, p. 9].

The advantages of agricultural receipts are, first of all, that their implementation has changed the state support for the price regulation policy for private investment. The CPR market is transparent and is provided by selling them through electronic auctions, where it is possible to study the market agents, the number of concluded agreements, price offers, etc.; it is significantly reduced the dependence of agriculture on seasonal and price risks [7, p. 5]. The CPRs became a reliable tool with the help of which the lender receives a 100% guarantee of payment by the creditor (agricultural producer) because there are no force majeure, collateral, and reliable recovery mechanism in cases of default [8, p. 6].

**Analysis of research and statement of the problem.** The analysis of economic and legal literature shows that theoretical issues related to the study of this topic have been considered in many researches of domestic researchers, such as: V.Ye. Andrievskiy [9], N.G. Radchenko [10], R.I. Sodoma [11], S.V. Stender [12], S.M. Tereshchuk [9] and others, as well as in the works of foreign scientists, such as: R. Buranello [13], C. Mendes [14], L. Umberto [15], A. Wilson [16] and others. However, there are a number of unresolved issues that require new developments to determine the best ways to finance agricultural producers through international agrarian receipts; there is a need for further research on practical experience, problems and prospects for the development of the financing mechanism.

**The purpose** of the article is various theoretical, methodological and practical aspects of the use of agrarian receipts, including international; generalization of domestic and foreign experience, as well as the development of proposals for amendments to legislation on the operation and circulation of agrarian receipts.

**Research results.** The term «international agrarian receipt» is not enshrined in law, so it should be understood as the obligation of the debtor (the person who issues an agrarian receipt to formalize its obligation) to supply agricultural products or pay money to a non-resident creditor under conditions specified by the agrarian receipt.

Taking into account the international experience and the experience of domestic agricultural producers, the legal regulation of this instrument needs to be improved, in terms of simplifying the procedure for transactions with agrarian receipts, modernizing the reliability of creditors' protection system, expanding their area.

In our opinion, first of all, it is expedient to define the legal nature of the agrarian receipt. Thus, in accordance with paragraph 1, part 1 of Article 1 of the Law of Ukraine «On Agrarian Receipts» is a commodity document that fixes the unconditional obligation of the debtor, secured by collateral, to supply agricultural products or pay money on the conditions specified therein [1]. It is a document certifying the contractual relationship between the person who issued the agrarian receipt and the person who owns it. However, Part 1 of Article 3 of the Law of Ukraine «On Securities and the Stock Market» from February 23, 2006 №3480-IV, says that the security is a document of a prescribed form with the relevant details, certifying money or other property law,

determines the relationship between the issuer of the security (the person who issued the security) and the person entitled to the security, and it is expected to fulfil of obligations, as well as the possibility of transferring rights to the security and rights to the security to others persons [17].

Thus, it can be concluded that the agrarian receipt by its legal nature is a security that fixes the unconditional obligation of the agricultural producer, which is secured by collateral, to supply agricultural products or to pay money. The need to determine the legal nature of agrarian receipts and enshrine it at the legislative level, is primarily in the use of general rules if there is no special rules in the Law of Ukraine «On Agrarian Receipts», as well as the expediency of transforming the agrarian receipts into a financial instrument, that would be a subject of circulation in the market, an object of purchase and sale or other transactions.

Agrarian receipts have achieved significant success in Brazil and are becoming an increasingly technically complex mechanism. From 2015, the agrarian receipt can be registered on the stock exchange, where it can be traded as a security, which allows such creditors as banks to launch the agricultural receipt for free circulation on the stock exchange, and this will facilitate lending [8, p.8].

Given the positive experience of Brazil, in order to increase the turnover of agrarian receipts, it is advisable to amend the legislation on the circulation of agrarian receipts in both the unregulated market and the stock exchange, according to which agrarian receipts can be transferred to the depository system of Ukraine. It provides the possibility of resale through the stock exchange or unregulated off-exchange market, expand the circulation of agrarian receipts on the secondary market, provide access to persons who can invest in agriculture through the depository system of Ukraine, create conditions for issuing agrarian receipts to foreign investors through the possibility of correspondent relations between the Central Securities Depository and foreign depository institutions.

Both the positive experience of Brazil and the mistakes should be taken into account. With the adoption of the Law of Ukraine «On Agrarian Receipts», a single electronic centralized registration system was implemented in Ukraine, which consolidates all information on agrarian receipts.

According to the current legislation, agrarian receipts are made in writing on a special form, need to be notarized and cannot be transformed into undocumented form (immobilized). The information on the agrarian receipt at the time of its certification has to be entered into the Register of agrarian receipts by the person issuing notarial acts; and in addition to the State Register of Encumbrances over the movable property, the information about the pledge subject on the agrarian receipt.

The register of agrarian receipts is a unified information system about the mandatory details of issued and redeemed agrarian receipts. According to Part 1 of Article 10, the holder of the Register of Agrarian Receipts is the central executive body that ensures the formation and implementation of state agricultural policy. According to the Procedure for maintaining the Register of agricultural receipts, approved by the Resolution of the Cabinet of Ministers of Ukraine on July 17, 2013 № 665 [18] and the Procedure for making of notarial acts by notaries, approved by the Order of the Ministry of Justice of Ukraine on February 22, 2012 № 296/5 [19], persons who issue the notarial acts, endowed with the powers of registrars of the Register of agrarian receipts, provide services for making entries in the Register of agrarian receipts on agrarian receipts and information from this register to other persons. In order to simplify the procedure for issuance, circulation and termination of agrarian receipts, it is advisable to provide the parties with the opportunity to make transactions with agrarian receipts, using an electronic signature or by applying to registrars. In such case, a prerequisite for the effective functioning of the mechanism of agrarian receipts should be mutually agreed and related information Register of agrarian receipts, State Register of Encumbrances over the movable property, State Registration of Rights to Real Estates, State Registration of Legal Entities, Individual Entrepreneurs and public organizations of Ukraine, Land Code of Ukraine and other registers and databases required to verify information when making operations with agrarian receipts.

The advantage of international agrarian receipts is the ability to use the future harvest as collateral and thus receive funding for the purchase of quality seeds, plant protection products, fertilizers, fuel and more. The Article 7 of the Law of Ukraine «On Agrarian Receipts» stipulates that an agrarian receipt establish the fulfilment of the debtor's obligations under an agrarian receipt by collateral for his future harvest. The subject of such pledge can only be the future harvest of agricultural products [1]. The subject of the pledge under international agrarian receipts is usually the harvest of cereals and oilseeds, such as corn, sunflower, wheat, soybeans, canola, millet, including niche crops such as buckwheat, flax, mustard and others. However, in order to further activate the introduction of agrarian receipts, including international ones, in the segments of livestock and primary products, the term «agricultural products» should be interpreted as defined in the Law of Ukraine «On State Support of Agriculture of Ukraine» of June 24, 2004, № 771877-IV [20]. Namely as products specified in groups 1—24 of the Ukrainian Classification of Goods for Foreign Economic Activity in accordance with the Law of Ukraine «On Customs Duty Rates of Ukraine». Such goods (products) are grown, fattened, caught, collected, manufactured, produced, processed directly by the producer of these goods (products), as well as products of processing, if they were purchased or produced at own or leased facilities (areas). This may allow to attract foreign investment in new segments of agricultural production and expand the use of agrarian receipts with new areas: livestock products, vegetables, horticulture.

The signing of the Association Agreement between Ukraine and the European Union [21] has become a condition for the adaptation of Ukrainian legislation to EU Council Directive 88/361/EEC for the implementation of Article 67 of the Treaty dated June 24, 1988 [22] and fundamental changes to the system of currency regulation, aimed at achieving the highest possible level of liberalization of capital flows, namely the removal of any restrictions of capital flows between its residents and residents of third countries.

In this regard, on June 21<sup>st</sup>, 2018, the Law of Ukraine «On Foreign Exchange and Foreign Exchange Transactions» [23] was adopted and a number of legislative acts were developed by the National Bank of Ukraine, which significantly simplified the use of international agrarian receipts. It was created a legal basis for attraction the foreign capital into the agricultural sector, liberalization of payments under financial agrarian receipts, namely operations provided by non-residents with funds to a resident under an agreement. Under this agreement, this resident issues to a non-resident agrarian receipt, and/or according to the financial agrarian receipt. Such operations are not mandatory to register in the automated information system of the NBU «Loan agreements with non-residents» [24]. In addition, financial agrarian receipts are not subject for e-limit requirements — restrictions of total amount of foreign exchange transactions for a specified period [25].

According to Clause 2, Part 3, Article 4 of the Law of Ukraine «On Foreign Exchange and Foreign Exchange Transactions», the non-residents have the right to open accounts in Ukrainian financial institutions and carry out currency transactions through such accounts. In cases of enforcement and recovery of money amounts may occur both on the financial agrarian receipt (recovery of the basic obligation or penalties) and on the commercial agrarian receipt (recovery of losses in the case of non-delivery by the debtor of agricultural products or losses from pledge) crediting funds to the current accounts of a non-resident in Ukraine. All this is certainly a tool for attracting foreign funding, as significantly improved conditions for the use of international agrarian receipts, not only at the stages of conclusion and voluntary execution, but also at the stages of enforcement.

However, it should also be noted that there is a gap in national legislation that needs to be improved, namely the procedure for enforcing agrarian receipts by direct transfer of mortgaged agricultural products to the creditor. If a non-resident creditor receives a customs receipt of goods on the territory of Ukraine as a result of enforcement, the issue of customs clearance of such products remains problematic, as current legislation does not provide the right of a non-resident to customs clearance of goods for movement across the state border. That is why, in cases of compulsory foreclosure on agrarian receipts that is good for non-resident creditor, the transfer of ownership of the collateral to repay the debtor's property obligation occurs by placing the goods in

the customs regime of the customs warehouse. The obligation of customs clearance of agricultural products transferred the ownership to the creditor, as an obligation and must be imposed on the authorities or persons who carry out such enforcement and make appropriate changes to the current legislation of Ukraine.

It should be added that agrarian receipts are very interesting for traders, as they can be used as a guarantee of forward goods for export. A forward contract is a common form of financing a sowing company by agricultural producers, in which the buyer of agricultural products pays in advance part of the cost of such products, and the seller undertakes to supply agricultural products in a certain quantity and quality at a predetermined price (or price calculation formula). This form of relationship allows the producer of agricultural products to obtain financing, and the buyer to obtain the desired amount of agricultural products at certain prices. When using agrarian receipts as a means of securing a forward contract, the buyer receives additional guarantees that the agricultural producer will fulfil its obligations under the loan agreement. In case of forward contract, the use of a commodity agrarian receipt is an extremely convenient mechanism, because buyers under such contracts can act as large agricultural traders who are interested in obtaining a significant amount of grain for export [26].

**Conclusion.** International agrarian receipts contribute to the opening of access to foreign investment with the ability to pledge future harvests; the opening of export markets for agricultural producers; reducing the risk of foreign exchange transactions due to pegging the value of agricultural products to foreign markets; high returns on investment in domestic agriculture for foreigners; legal protection for both agricultural producers and foreign investors.

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