



NEW
INSTRUMENTS OF
FINANCING UNDER
FUTURE CROPS –

**THE BRAZILIAN
EXPERIENCE OF
A CPR SYSTEM:
OPPORTUNITIES
AND ISSUES
FOR UKRAINE**

Kyiv

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Organization of
the United Nations

Authors

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I. LIST OF ABBREVIATIONS, ACRONYMS AND TERMINOLOGY

AIS	agro-industrial sector
AMDI	Agrarian Markets Development Institute
AR	agrarian receipt
BM&F	Brazilian Commodity and Futures Exchange
CAS	complex adaptive systems
CPR	cédula de produto rural; certificate of agricultural products
EBRD	European Bank for Reconstruction and Development
EU	European Bank
EXW	ex works (conditions of delivery, INCOTERMS)
FAO	Food and Agriculture Organization of the United Nations
GDP	gross domestic product
GOU	Government of Ukraine
GWH	grain warehouse
GWHD	grain warehouse documents system
GWHR	grain warehouse receipt
IFC	International Finance Corporation
IFI	International financial institution
L/C	letter of credit
MinAPFU	Ministry of Agrarian Policy and Food of Ukraine
NBU	National Bank of Ukraine
NGO	non-government organization
PoHF	post-harvest financing
PPD	public-private dialogue
PPHFS	pre- and post-harvest financing systems
PrHF	pre-harvest financing
SCSSM	State Commission on Securities and Stock Market
SMPs	small and medium-size producers
SNCR	National System of Crediting of Agrarian Sector
TA	technical assistance
UAH	Ukrainian hryvnia
UAS	Ukrainian Academy of Sciences
UkrCCFEA	Ukrainian Classifier of Commodities for Foreign Economic Activity
USAID	United States Agency for International Development
VAT	value added tax
WB	World Bank
WG	working groups
WSR	whole-systems-in-the-room
MY	marketing year

agricultural input suppliers	suppliers of agricultural items like seeds, fuel, plant protection means, etc.
actual product delivery	time delivery of products, when goods, etc. are taken to places of work
agricultural credit	loan to the agricultural producer
agricultural business	business in the area of agriculture
bank financing/lending	financing/loan obtained from a bank
crops	agricultural crops like wheat, barley, corn, etc.
crop insurance	insurance of the harvested crops
cost estimates	estimates of the costs incurred
CPRI liquidation	liquidation of agrarian notes
inputs	logistics of agriculture, namely, seeds, fuel, PPIs
farmer	entity or individual agricultural producer
fees and charges	banking commissions
forward sale	sale of a product on a future date
government credit programmes	state loans provided to agriculture by the government
grain crops	wheat, barley, corn, etc.
harvesting	process of collection of the harvest (crops or anything) in the field
harvest	crops collected in the field
law on pledge	the Law of Ukraine about collateral
out-of-court enforcement	law enforcement beyond the court premises
private sector surveyor	monitoring of private entities
produce	agricultural products (crops, etc.)
processor	company/legal entity or plant processing agricultural produce
soybeans	type of agricultural crop
soybean meal	product of processing soybeans
trader	company or legal entity which is selling the agricultural produce

II. INTRODUCTION

In recent years, agricultural enterprises in Ukraine, especially those that are medium- and small-sized, have had virtually no access to loans from commercial banks, even given a state programme that provides partial compensation in terms of interest rates.

Agricultural producers should have access to alternative credit options. This study has been conducted by experts from AMDI and elsewhere, as requested by FAO, in order to provide information and consultative services to MinAPFU on the possible implementation of alternative mechanisms of lending to the agrarian sector. One option that operates successfully in Brazil is the system of credit based on the collateral of a future harvest. This study highlights Brazil's experience with the financial instrument of CPRs (*cédula de produto rural*). CPRs are notes or agreements to supply agricultural produce in the future in exchange for monetary or tradable inputs that allow farmers to function in the present. The study considers the economic and legal advantages and risks associated with the introduction of these agrarian receipts (ARs).

The essence of tradable CPRs is that after their issuance and sale an agricultural producer obtains financing in exchange for the obligation to deliver the goods. In tradable CPRs, the general amount of produce, its quality, the date and the place of delivery are clearly defined.

Financial CPRs are issued to those companies, suppliers or investment funds that are not involved in the sale of agricultural produce. With financial CPRs, the agricultural producer is obliged to repay the funds by an agreed period of time. Such notes envision either the current price of produce at the agreement's conclusion date, or the price of produce at a settlement date defined by the note. A subject of collateral may be insured by a creditor or a borrower by mutual agreement.

By our calculations, following the first year of the use of agrarian notes in the Ukrainian economy, agricultural producers have benefitted from additional loan resources in the amount of UAH two to three billion.

This report was compiled with the materials of EBRD, FAO and IFC along with some operational information from the MinAPFU and from other state agencies of the country. Our experts have also evaluated the relevant legislation that deals with issues of lending, pledging and guaranteeing of delivery in Ukraine. This analysis has allowed us to propose a draft law on implementation of ARs in Ukraine. Some proposals about the modernization of the operating system of grain warehouse documents (GWHD) through integration into a unified system were also included in the report.

III. METHODOLOGY

Methods proposed for further implementation

The team used a combination of different research tools, including statistical and legal analysis based on different data sources that are referred to in the text. The team also held broad discussions with the private sector, government institutions and banks.

Our proposed methodological approach is based on mobilization of stakeholders to:

- a) establish public–private dialogue (PPD);
- b) empower those mobilized and committed stakeholders with operational financing systems;
- c) focus technical assistance (TA) for financing systems development and implementation; and
- d) focus TA for legal platform development to ensure operational financing systems.

Based on this methodological approach, the goal for implementation activities in Ukraine **should be:**

- the improvement of agricultural financing and market-oriented agricultural policies by development of legal platforms and tools for integrated pre- and post-harvest financing systems (PPHFS);
- simplification of access to short-term credit resources; and
- reinforcement of new and ongoing PPD.

Creating PPD with the Government of Ukraine (GOU) and MinAPFU in order to get their political support for further initiatives is imperative. Strengthening PPD will help to establish transparent civil society feedback. The PPD shall have an “open entry” for participation of the private sector and donors, as well. The end results include the vision of these parties becoming stakeholders for enhanced policies and regulations, which will provide an improved investment climate, better trade regimes and efficient financing. The idea of PPD development is a “new and an old one” in Ukraine, so mutual reinforcement of it with other donors, such as EBRD, FAO and IFC, as well as with USAID, P3DP and AgroInvest, will help to create the critical mass needed for sustainable results.

The approach will also facilitate the establishment of relationships with commercial banks and funding institutions. These can conduct a dialogue with and support the PrHF and GWHD systems as they are established. These relations will become a platform for cooperation in anticipation of future funding needs. At the same time, this methodology will assist the GOU to facilitate a credit line from international financial institutions (IFIs) or on-lending local commercial banks; to adopt changes to legal and regulatory framework; and to roll out the approach to all other stakeholders.

Finally, the suggested methodology will directly improve the primary and secondary legislation and PPD, thus providing visible increases in agricultural production and related economic growth in the country.

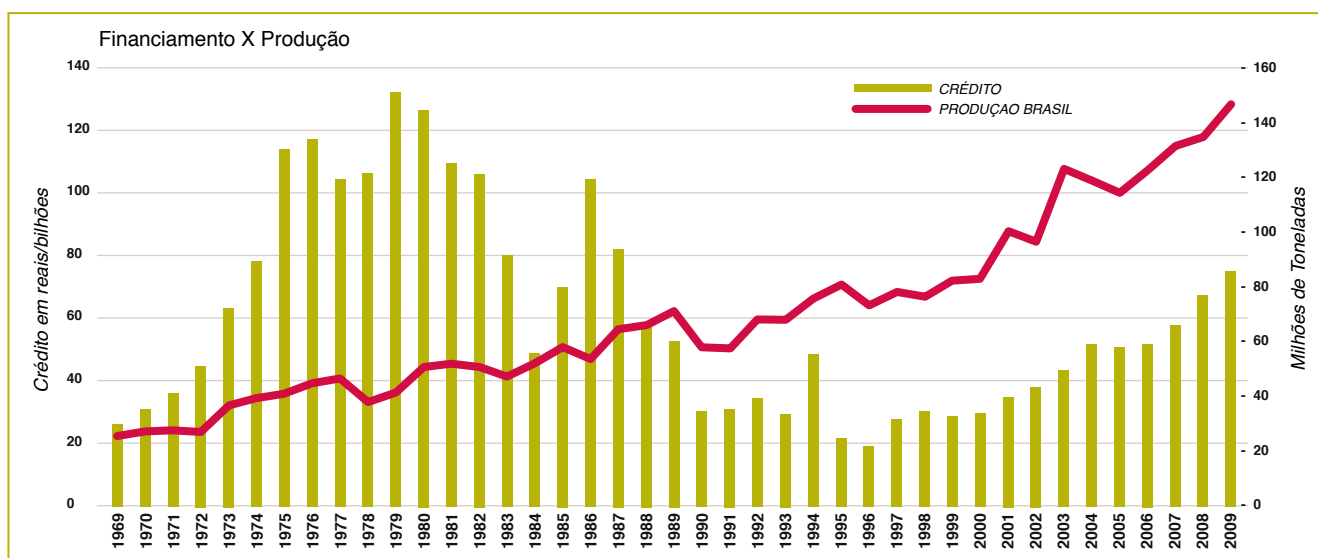
IV. SYSTEMS DESCRIPTION AND FURTHER DEVELOPMENT CONCEPTS

1. BRAZILIAN EXPERIENCE AS TO CPR INTRODUCTION

The agrarian sector of Brazil produces more than 33 percent of gross domestic product (GDP). Traditionally, the agrarian sector holds the leading place in Brazil's economy, employing more than 40 percent of the working population, which is more than work in industry.

While climate may account for the economic importance of the agrarian sector, in many other countries, favourable climate and fertile lands do not necessarily result in the efficient use of these resources. Much of Brazil's success is the result of the attraction of investments through the strictly regulated financing of the agrarian sector. Given the increasing global demand for food products, Brazil has an indisputable advantage because of the availability of 90 million hectares (ha) of uncultivated land, which is suitable for agriculture.

In the 1980s and 1990s, Brazil experienced a number of financial crises. In the mid-1990s, agricultural production was in decline. State financing of agriculture was about 80 percent, but costs of agricultural inputs and production were constantly increasing which added to the pressure on state budgets. And while state financing of agriculture was increasing, the harvests were not. The annual needs of agriculture in Brazil in financial terms is about US\$ 149 billion, 40 percent of which is provided by the National System of Crediting of Agrarian Sector (SNCR).



Source: R. Machado, IFC, Brazil

Figure 1. Volumes of bank financing of the rural sector and dynamics of production of the agrarian sector in Brazil

Figure 1 provides the dynamics of volumes of production of the agrarian sector and volumes of bank loans to the agrarian sector for the period from 1969 to 2009. It is composed of three phases, designated: gold, crisis and market. Up until 1986, one can observe a slow increase of volumes of production of agrarian products in relation to large volumes of banking loans. However, the economic impact of banking resources on production was not high enough. While the state lending programmes to the agrarian sector were in place and were enormous, the money was spent inefficiently.

In the period from 1986 to 1996, known in Brazil as the period of crisis, bank financing decreased considerably. The production of agrarian produce was directly dependent upon the market, and a sharp fluctuation of production of agrarian products was observed annually.

The lack of financial loan resources, including the absence of banking institutions in rural area, high interest rates and the absence of alternative sources of financing also had a negative impact on agrarian activity (Renato M Buranello, Machado)[1, 2].

At this point, the agrarian enterprises together with the Government of Brazil reached an agreement about the introduction of a new financial instrument initiated by the Bank of Brazil. The essence of the idea was to create a loan that would replace the contract used by the trading companies to purchase the goods in advance.

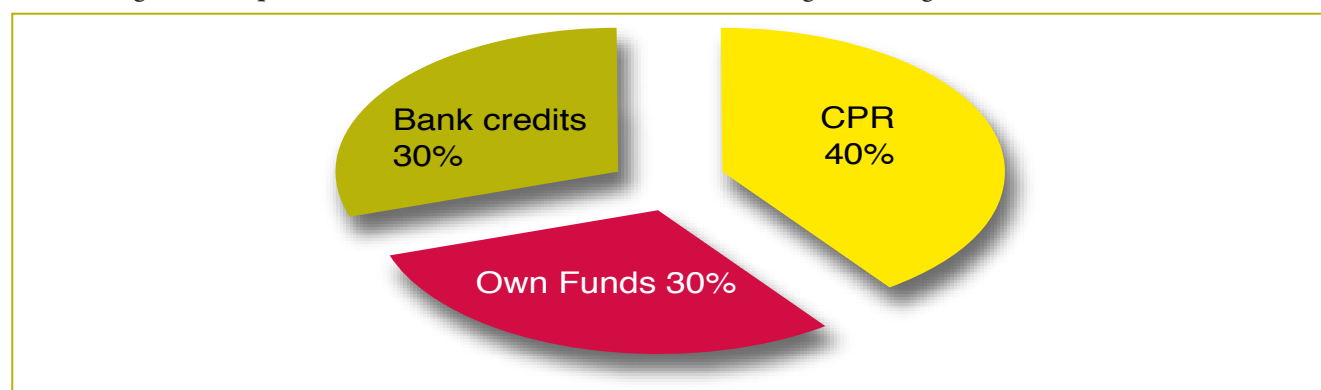
From 1996, Brazil faced the market phase, when the new financial instrument of CPRs for agrarian farmers was introduced. In addition, some special loan programmes for the agricultural sector were also implemented. A considerable increase in production of agrarian products was observed against a background of rational crediting by the commercial banks and the attraction of the new loan instruments.

Before the introduction of CPRs, the financing of the agrarian sector was limited to the loans provided by the banks and credit institutions, or to direct financing by agro-industrial companies and traders by the way of advance payments for inputs, seeds, pesticides, etc. These were provided in exchange for farmer's liabilities to supply the produce to the creditor.

After the adoption of the relevant draft law in 1994, a financing mechanism was created that was a government attempt to find some alternative sources to support the agricultural production with inputs. CPR was one of the credit mechanisms introduced. It was successfully implemented by joint efforts of the Government of Brazil, the Bank of Brazil and with the immediate participation of the main agrarian enterprises.

It should be noted that at the end of 1994, when CPRs were implemented, and up to 1996, the results were not as expected. The campaign for the implementation of the new mechanism of lending was not very active, and other programmes of support from the state to agrarian sector were not implemented.

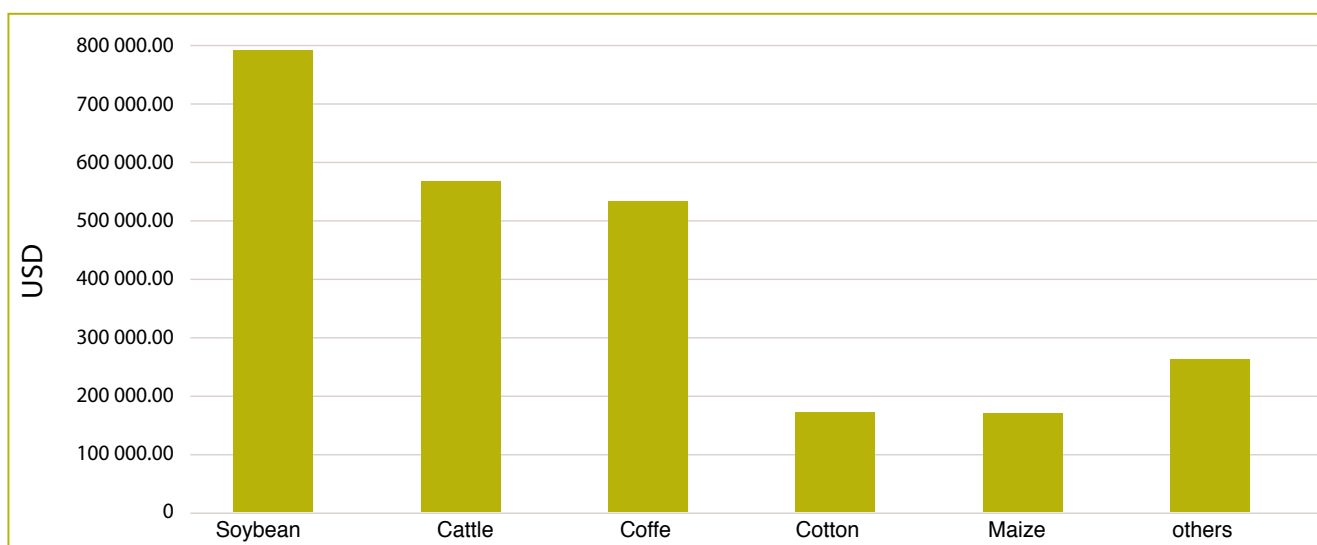
Today, agrarian producers finance their activities using bank credits (30 percent), their own funds (30 percent) and CPRs (40 percent) (See Figure 2). The breakdown of some types of Brazilian agricultural produce in terms of volume of attracted loans is given in Figure 3.



Source: Market Estimate

Figure 2. Sources of financing of the agrarian sector of Brazil (2007–2010).

The main beneficiaries are the producers of soybeans, coffee and cattle.

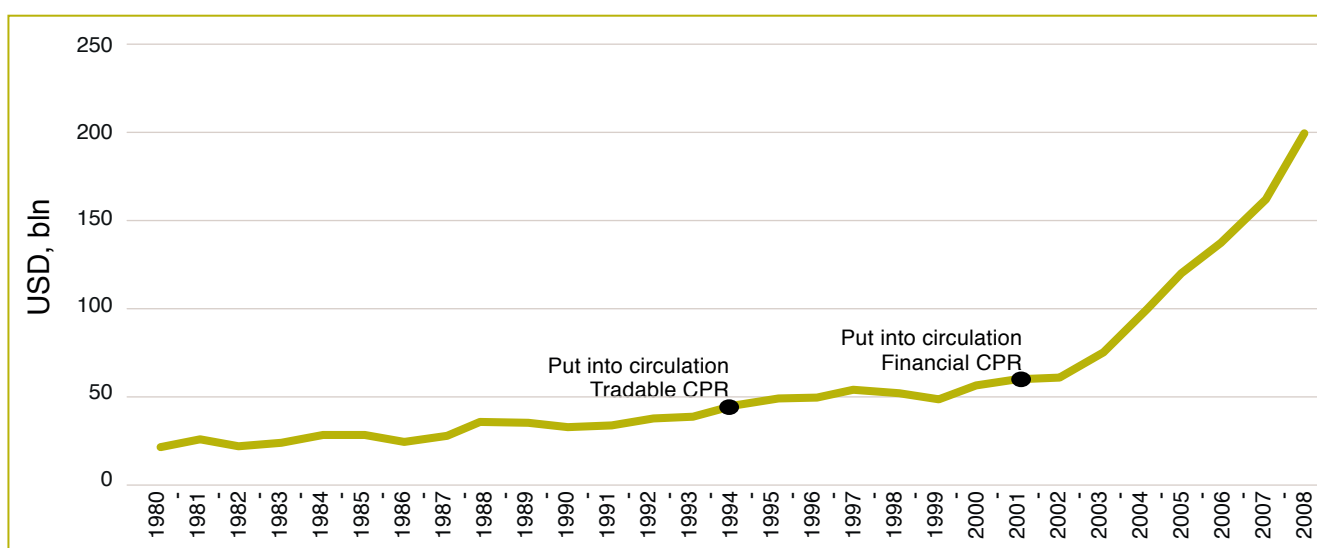


Source: Banco do Brazil

Figure 3. The volumes of attraction of loans with the breakdown of some types of agricultural produce in Brazil (between 1994 and 2004)

The application of CPRs stimulated the export of agricultural produce in Brazil. Today, Brazil is the biggest world exporter of soybeans, sugar, beef meat, coffee, orange juice and tobacco. It is also the second biggest exporter of soybean meal, chicken, soybean oil, and the fourth largest exporter of pork meat, corn and cotton.

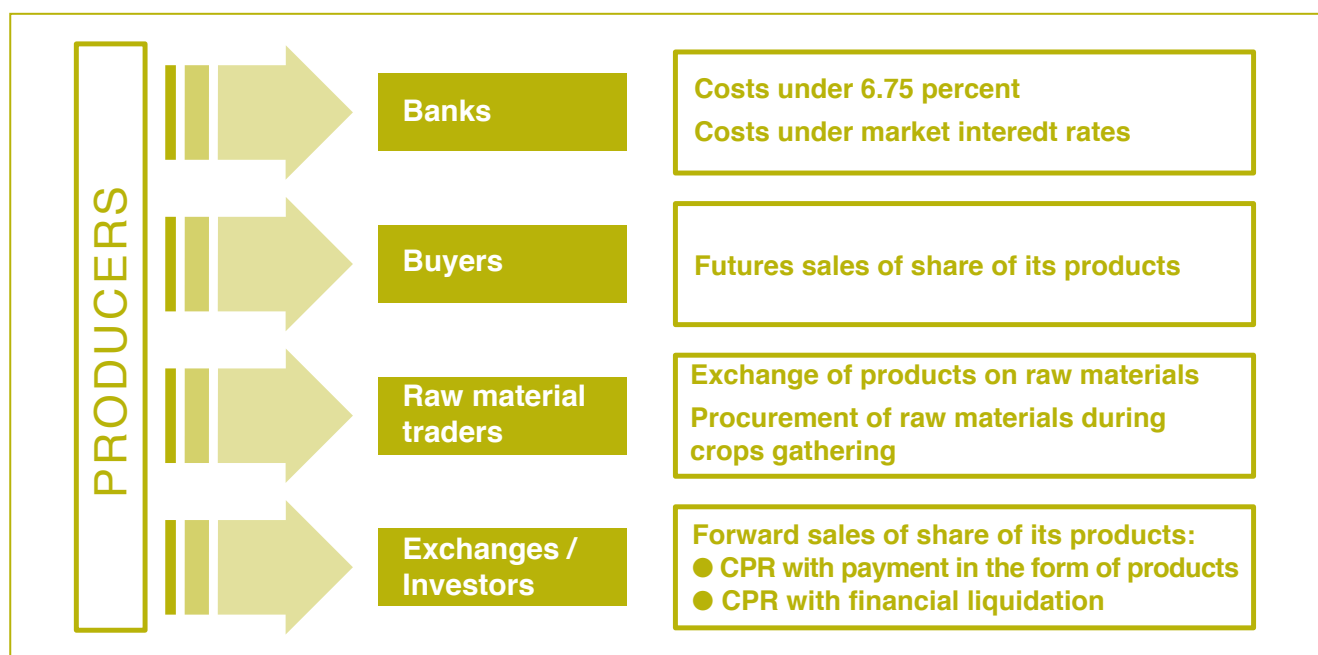
The data of the Ministry of Agriculture of Brazil indicates that the share of export of agrarian products increased from the level of general production of 4.9 percent in 1997 to 6.9 percent in 2006. In the period from 1997 to 2006 the annual average increase of inflows from export of agrarian products and animal breeding products in Brazil reached 9.6 percent. In 2008, the income from the export of animal breeding products and agriculture was US\$ 197.9 billion, that is, 4.5 times higher than in 1994, when this indicator was at the level of US\$ 43.5 billion.



Source: FAO.org

Figure 4. Export of agricultural produce of Brazil

From 1994, Brazil had a successful financial instrument in the form of CPR contracts. Figure 4 illustrates their impact on the dynamics of volumes of production of agricultural produce.



Source: Banco do Brasil and Agribusiness, 2011

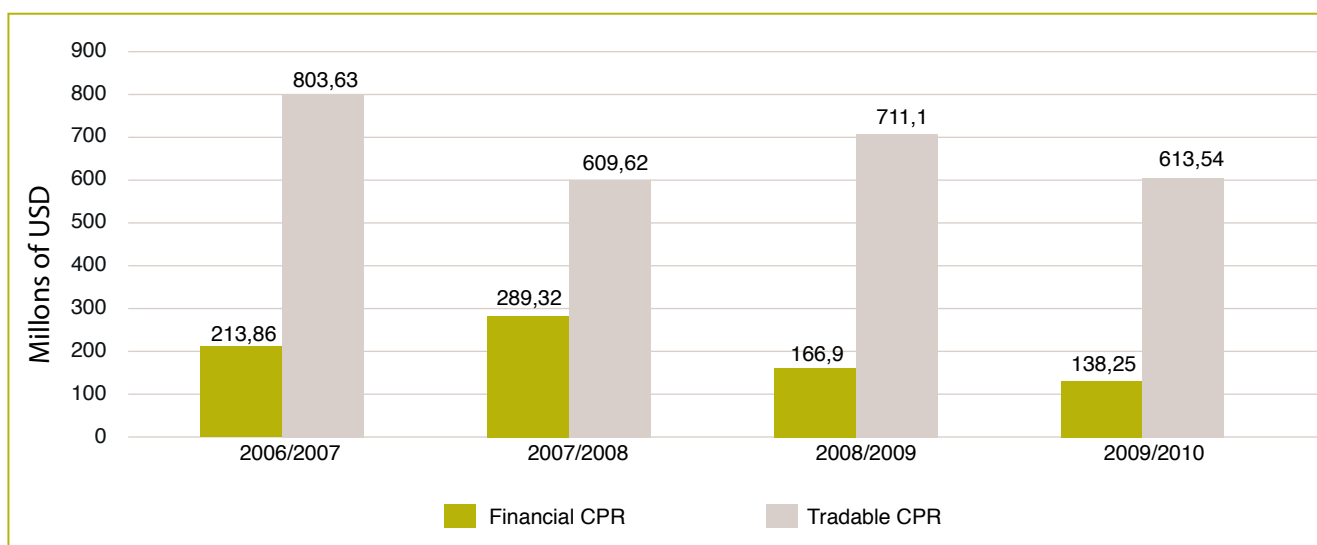
Figure 5. Options of possible financial provision for agricultural producers of Brazil in the year 2010

Figure 5 shows that today the agricultural enterprises of Brazil have the opportunity to obtain bank loans both at the market interest rates of 13 percent and also at the discounted interest rate of 6.75 percent. Also, agricultural produce is sold by forward contracts, which stipulate the delivery of produce in the terms defined by the agreement at the price when the agreement is concluded. Part of the produce is sold in exchange for the supplied inputs. Produce sold with the application of CPR contracts accounts for a large proportion of the produce considered in our study. CPR contracts may also contain a pledge that is provided to a creditor.

In Brazil, there are two types of CPR contracts: **tradable (commodity)** and **financial**. Depending on the type of CPR owned, funds are available in the form of commodity or money:

Tradable CPRs were introduced at the legislative level in Brazil in 1994. After the issuance and sales of such document, a producer obtains financing in exchange for the liability to supply goods at a previously agreed place and time. In tradable CPRs, the general quantity and quality of goods, and place and date of delivery are clearly defined.

Financial CPRs were introduced in 2001 in order to attract investors who were not comfortable dealing with agrarian products. For instance, if an enterprise is involved in the supply of fertilizers or means of production and is not specialized in the sales of agricultural products, then it has the right to conclude an additional agreement with traders or with agro-export companies in order to sell its agricultural products. Financial CPRs were also available to investment funds that did not want to deal with agricultural produce. The financial contracts were the liabilities, in such cases. The essence of financial CPRs is that a producer is obliged to repay the funds in a given period of time. Such CPRs envision either the current price of products or the price of products as of the date of settlement by the CPR. The correlation between volumes of tradable and financial CPRs is given in Figure 6.



Source: Banco do Brasil

Figure 6. Correlation between tradable and financial CPRs

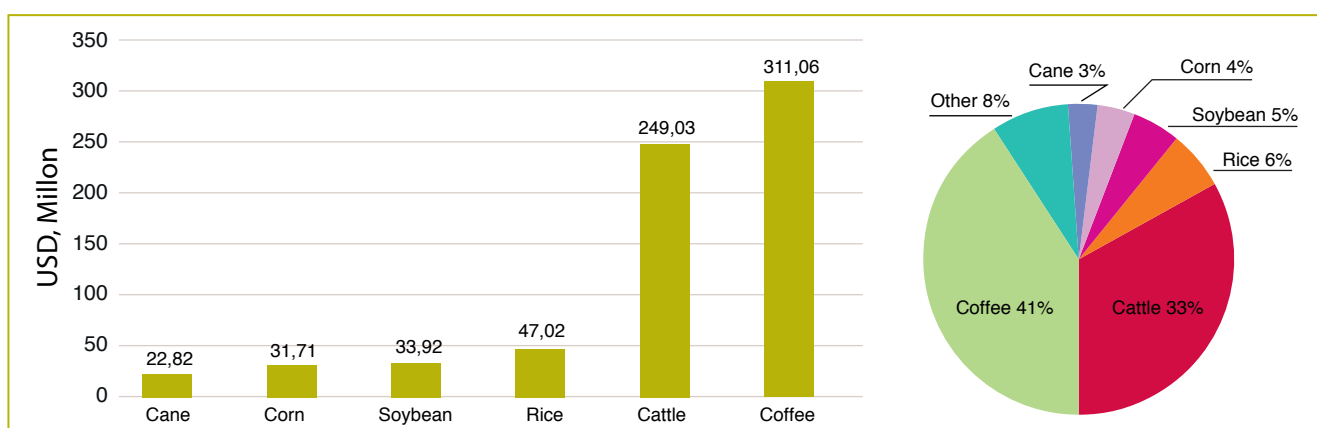
Contracts–liabilities may be registered in the CPR register at the Brazilian Commodity and Futures Exchange (BM&F). Such CPRs in Brazil are equalized to securities. They are quoted at the exchange and are exempt from tax on financial transactions for legal entities, and from income tax for individuals. The issuance of contracts–liabilities can take place with the immediate participation of a bank that adopts the issuance and purchase of CPRs.

The limit of loan that is received by the issuer–enterprise is within the range of 30 to 70 percent from the calculated quantity or cost of future harvest. It is dependent on the type of produce and the phase of production (i.e. preparation, sowing, cultivation, collection, storage, etc.).

As to the accruals, all fees are paid by the buyer and the producer is freed from a payment.

When a farmer’s enterprise submits the bids to issue CPRs, a credit analysis of the enterprise is conducted. Registration of data, history, production capacities, resources, assets, etc. are checked and the upper limit that defines the level of credit risk for the customer is determined.

In the 2009/2010 marketing year CPRs were used more frequently by enterprises involved in the growing of coffee, rice, soybeans and the raising of cattle, as is seen in Figure 7.



Source: Banco do Brasil

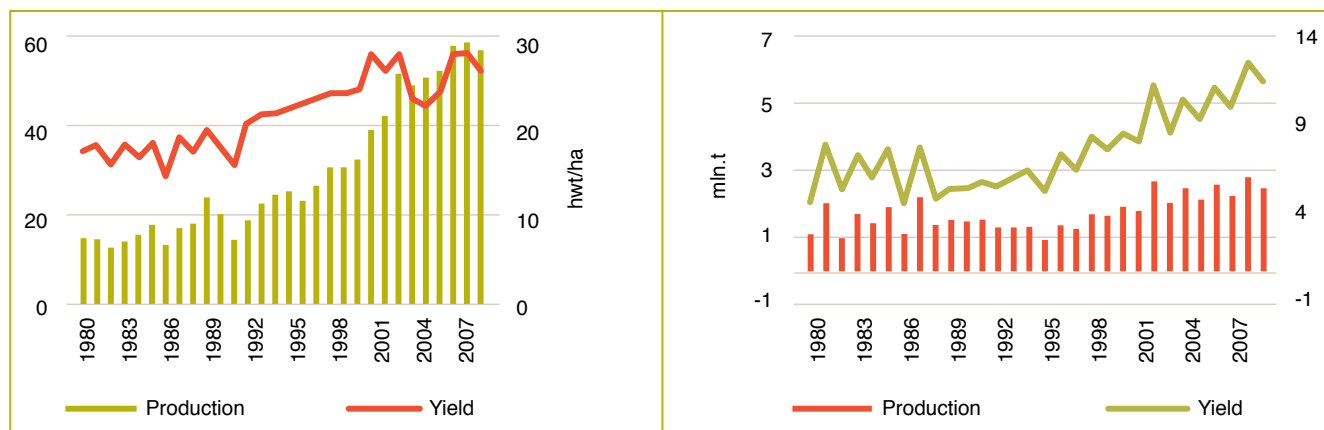
Figure 7. The volumes of loans to the agrarian sector of Brazil with the use of CPRs in 2009/2010 MY by product type

CPRs are similar to forward contracts and are considered as an instrument that includes two components:

- 1) As a debt liability that envisions the delivery of a certain quantity and quality of products (tradable CPR) or money (financial CPR);
- 2) As a guarantee of the existence of an issuer, since the holder of CPR has the right to the next year's harvest, in cases where settlements are not processed in the current year due to poor harvest, etc.

Thus, through the mechanism of CPR agreements, the agricultural producers (or their associations, such as cooperatives) sell agricultural crops before the harvest (under a future harvest collateral), receiving funds or commodity inputs that are necessary for the cultivation of this produce. They then have the responsibility to supply a certain amount of this produce at a specified time, place and price.

Due to the use of such instruments in Brazil, the volumes of agrarian sector crediting reached US\$ 5 billion annually, and agricultural commodity producers managed to increase their gross production and harvest.



Source: fao.org

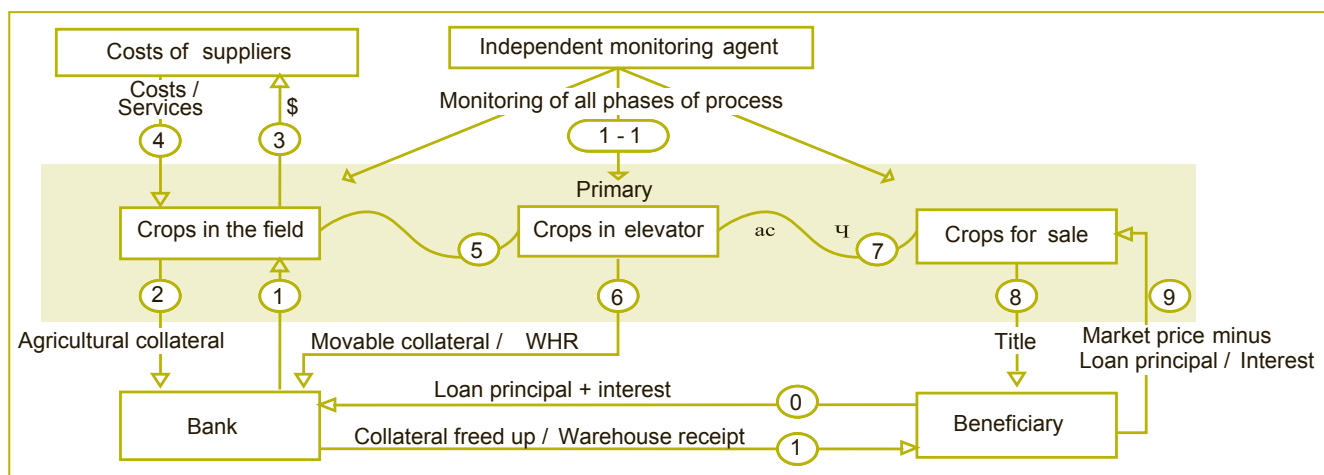
Source: fao.org

Figure 8. Production and harvest of soybeans

Figure 9. Production and harvest of coffee

Figures 8 and 9 illustrate the trends of volumes of production and yield of soybeans and coffee, respectively. Similar trends are observed for the enterprises that are involved in cattle breeding, poultry, corn, sugar cane, rice, etc.

The scheme of functioning of CPRs in Brazil is represented in Figure 10.



Source: EBRD

Figure 10. The scheme of application of CPRs for future harvests in Brazil

Figure 10, which outlines the scheme of application of CPRs in Brazil, shows that the agricultural enterprise receives a bank loan based on the collateral of the future harvest, having concluded the contract–liability. Meanwhile, there is close contact between creditor and the farmer or issuer of the CPR in terms of the sharing of knowledge about transactions, the average harvest in certain regions, the potential capacity in terms of harvest, etc. Such a system allows creditors the opportunity to track down the status of a future harvest. The property collateral and land is registered in the owner’s name through CPR registration, and there is constant monitoring either by independent agents or by the creditors of secured collateral. Detailed monitoring is mandatory at all phases. A field visit occurs before sowing, followed by regular monthly visits, and, then, during harvest, round-the-clock inspection takes place to ensure that no default of farmer-issuer is taking place [3].

The key factor for success of CPRs in Brazil is a simple system of enforcement: these decisions are made efficiently, within one to two days. Another important factor is the impossibility of application of *force majeure* conditions to CPRs. Thus, a borrower has very limited opportunities to deny or to dispute decisions made through the enforcement process.

Also, if the commodities are not sufficient to cover a debt obligation, then the collateral is valid for the next marketing year. The terms of the agreement are left in force until the moment of full debt reimbursement [4].

A CPR is acknowledged to be an agreement that confirms the liability of a debtor for the benefit of a creditor. For instance, if the farmer cultivates soybeans using a forward agreement, he has to sell his produce in October with delivery after harvesting, in April. Meanwhile, the means of production for the cultivation of soybeans are paid in local currency, and the prices for agricultural products are in US\$. The loan is provided for a term from 60 to 360 days, but the most popular terms are for a period of between 150 and 180 days. As a result, the price of collateral may be substantially different from the market price, which is dependent on the status of a field and the situation in the market at the time of sale. As a rule, the Brazilian farmers receive a lower price than the anticipated market price.

The payment for the future harvest is done in two phases: first, when a part of the forecasted sum is paid and a pledge grain tonnage is fixed; and second, when there is the full settlement after the harvest of grain crops. At the final payment for the grain, the market prices at the settlement date are applied.

Under the laws that establish the rules of CPR usage in Brazil, owners of CPRs have a right to conduct voluntary monitoring of the CPR collateral. It usually means that CPR owners and their agents control the processes of seeding-down, crop development, harvesting and harvested crop storage that are done by the debtor under the CPR. For instance, the Brazilian division of BASF conducts such monitoring via its own sales managers that are in touch with debtors, as debtors are also consumers of BASF products. In some cases, special agents for monitoring are used, especially in remote regions of Brazil where CPR owners have no offices. Also, not all of the actions of CPR debtors are monitored: only the performance of unreliable debtors attracts attention for monitoring processes. This fact greatly reduces the expenses of monitoring. The cost of monitoring in Brazil is determined through negotiations with individuals and can be between

US\$1/ha to US\$100/ha. Prices depend on the field area, its location and remoteness from the monitoring office, type of crops growing in the field, etc. On average, Brazilian BASF monitors only 5 percent of collateral under CPRs.²

The experience of Brazil shows that without state support the introduction of such a financial instrument is not possible. The Bank of Brazil is the most active in working with CPRs. The government stimulates the use of CPRs, and, in its turn, the Bank of Brazil analyses the credit capacity of a producer and defines the amount of a loan to be allocated. Meanwhile, the creditor performs the inspection having full access to the field where the future harvest is cultivated. Where necessary, the evaluation of regional risks is conducted based on natural (environmental and climate) conditions.

Also, the experience of Brazil confirms that what is fundamental for the introduction of CPRs is strong state support, particularly through the establishment of legally clear rules. Only once these are in place can CPRs:

- help all chain participants to increase their financial opportunities for their activity;
- give larger guarantees/pledges for traders than the usual types of agreements;
- provide farmers and other small producers with an additional loan by way of the use of its agricultural produce as a payment guarantee;
- increase trust in the agribusiness sector; and
- encourage steady growth even in markets with a high level of risk.

2. APPROACHES AS TO THE INTRODUCTION OF BRAZILIAN EXPERIENCE IN UKRAINE

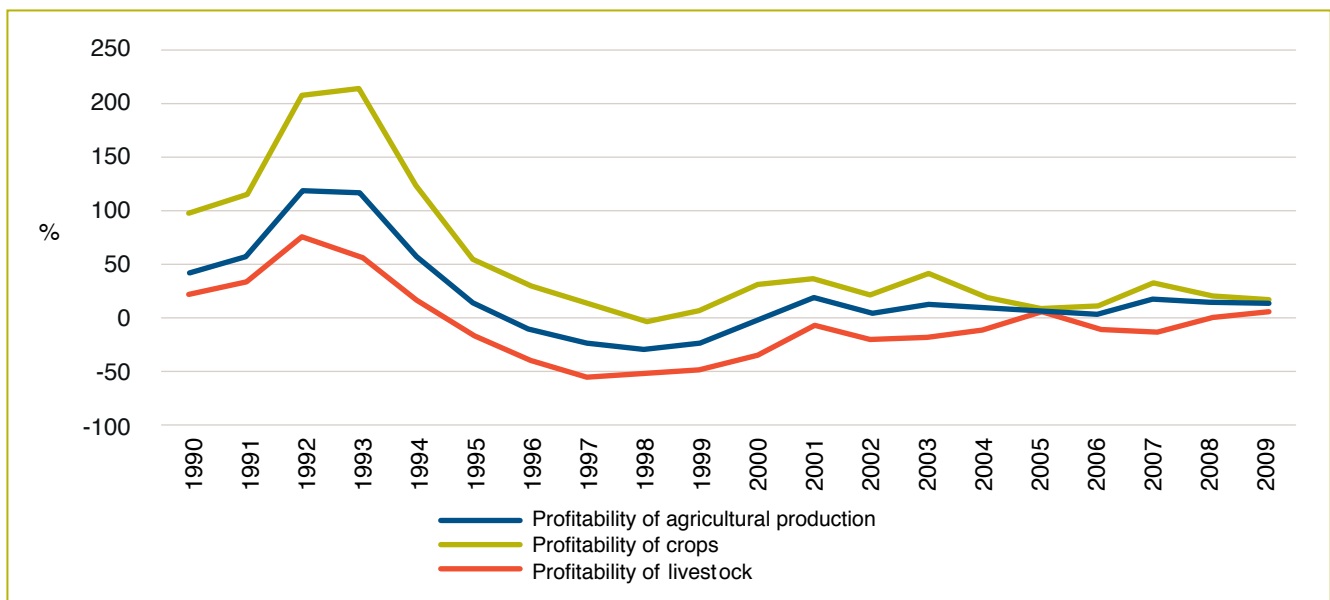
For Ukraine, agrarian production is a strategically important sector of the economy. The financial security of agriculture is one of the strongest factors affecting economic growth. The share of agriculture in the GDP of the country during the period from 2007 to 2009 grew from 15.6 percent to 17.2 percent, because of a considerable drop in other sectors [3].

According to information from the State Statistic Committee of Ukraine, in 2009, the average level of efficiency of agrarian production in the country was 13.8 percent.

Meanwhile, crop production had a higher economic efficiency (16.9 percent) than animal breeding production (5.5 percent). The production efficiency of sunflower seeds was also very high (41.4 percent) along with sugar beets (37 percent). At the same time, there were negative production values in cattle meat (-32.9 percent), sheep and goat meat (-31.8 percent) and poultry meat (-22.5 percent).

It should be noted that these indicators are calculated by the data of all Ukrainian agrarian enterprises, the majority of which perform business by extensive methods, until now using obsolete technologies and equipment. The economic results of modern innovative enterprises are better than indicated in the official data.

2 – Information is received by questioning representatives of the Ukrainian division of BASF T.O.V. Ltd.



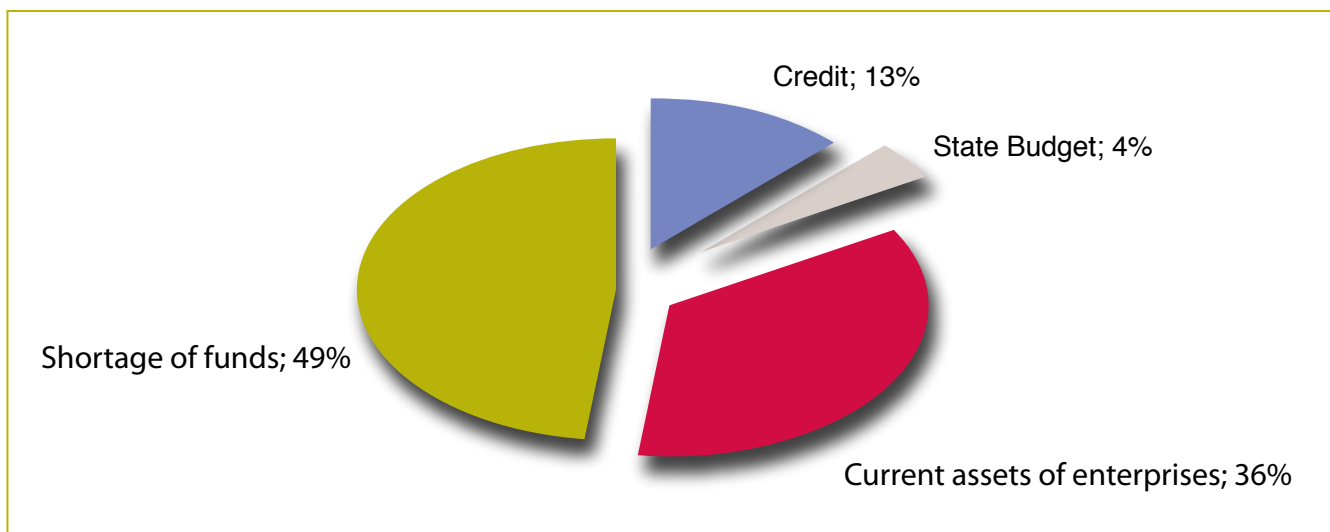
Source: SSC

Figure 11. Level of efficiency of agrarian production in Ukraine

Agrarian enterprises are not attractive loan opportunities because of low solvency, insufficient financial status, lack of liquid security and high credit risk.

It should also be noted that in recent years in Ukraine a class of large producers, or agroholdings, that process up to 20 percent of agricultural lands has emerged. They apply modern technologies of intensive harvesting and technical crop production and have a large network of procurement and sales infrastructure that can directly export agricultural produce.

The world food crisis provides an opportunity for the development of agricultural production in Ukraine. There is the possibility to implement our competitive advantages given the country's considerable inventory of black soils, favourable natural and climate conditions, the convenient location of agricultural lands and the availability of a cheap labour force. Ukraine should pay special attention to the development of agrarian production and should implement the actions oriented for its support.



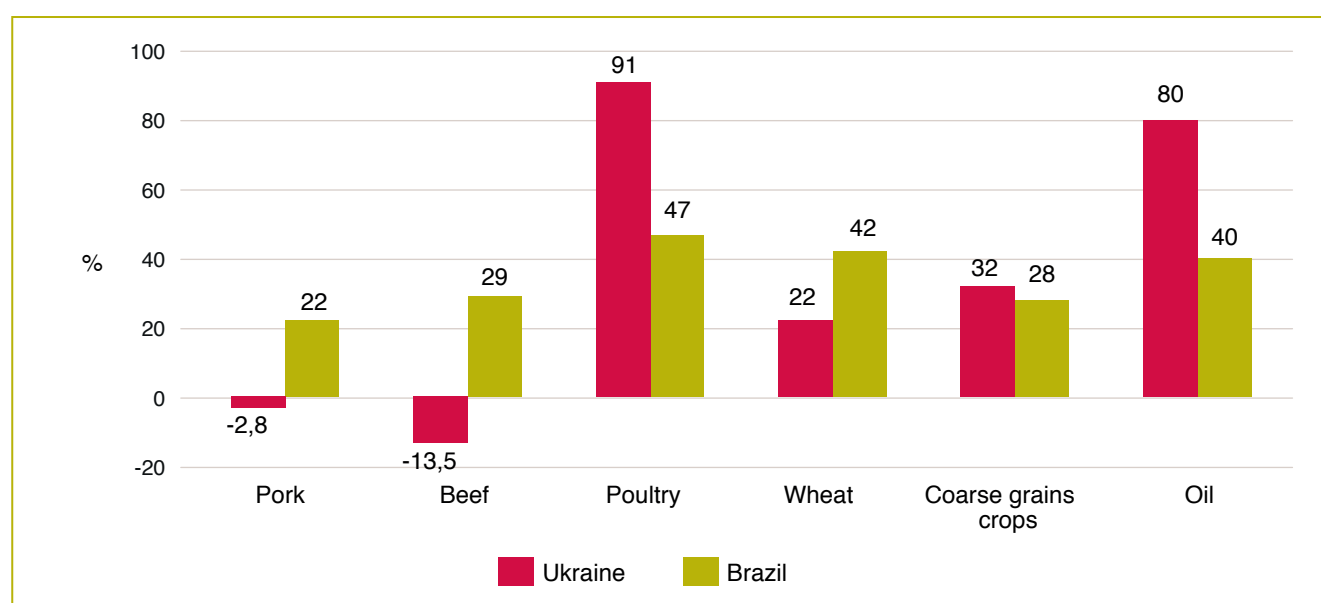
Source: SSC, MinAPFU

Figure 12. Structure of financing and pledges of agrarian enterprises of Ukraine (2009–2010)

According to the data of the MinAPFU, UAH 180 billion is needed in order to develop the infrastructure of the agrarian market in the next four to five years. In addition, the fixed assets of production require capital investments for the renewal in the amount of UAH 250 billion for the same period. Besides that, in order to secure the normal mode of animal breeding sector operation, UAH 43 billion is needed per year, while for crop production UAH 57 billion is required per year; that is, at total of UAH 100 billion is needed per year. In recent years the lack of necessary funds is about 50 percent (Figure 12) [4,5].

FAO's data for the period of 2015 to 2019 in Ukraine, forecasts reductions in the volume of pork meat and beef meat produced compared to the period from 2005 to 2009. However, FAO's data forecasts an increase in the production of wheat, oil-yielding crops, feed grain and poultry (Figure 13).

The GOU intends to institute national programmes to increase the production of grain, vegetables and cattle meat.



Source: FAO forecast

Figure 13. Forecast of trends of production of agricultural produce in Ukraine and in Brazil (comparison of the period 2015–2019 to 2005–2009)

BANK LOANS

In recent years, the financial and credit supply to agricultural producers has consisted of entrepreneurial activity, the attraction of the financial inputs of commercial banks, input suppliers, credit unions and state financial support.

In the Law of Ukraine “On Stimulation of Agricultural Development for the Years of 2001–2004,” it was envisioned that the state would allocate funds to make the cost of loans to the agricultural producers less expensive. On the basis of this law, annual funds from the state budget were to be distributed between creditors and borrowers by the MinAPFU on the basis of mechanisms adopted by the resolutions of the government.

In 2005, by the Law of Ukraine “On State Support of Agriculture”, the availability of these funds was confirmed. However, a new infrastructure unit – the Agrarian Fund – has been introduced.

In practice, it appears that the existing system of loan provision envisions the allocation of cheap loans only to enterprises that have a high level of solvency, liquid collateral and that participate in production of goods that are subject to state price regulation. Such approaches reduce the opportunities for loan provision to agricultural producers, in general, especially those who have innovative projects. These producers do not have security to guarantee the repayment of loans or relevant indicators of solvency that would ensure the receipt of loans. Those indicators are available to them only after the implementation of their innovative projects.

Best practices dictate that in market economies a considerable place should be allocated to extra-banking mechanisms of lending. One of these is the mechanism of commercial lending related to the purchase and sale of goods in credit, with the contract to be concluded with or without an agreement. In the latter case, specific pledge papers, much like promissory notes, are created. Circulation of these notes operates as a separate financial and crediting mechanism.

Unfortunately, the mechanism of commercial lending, especially in this note type, is used less often in the agrarian sector given the insufficient system of information about solvency of borrowers and lack of qualifications of managers and specialists of businesses in the area of financial relations [5].

In terms of extra-banking mechanisms of credit, the mechanism of cooperative crediting is under development in Ukraine. This method is used by credit unions for the disbursement of microcredits, half of which bear the consuming feature. But this option has limited use for small and medium-sized enterprises in villages because of the insufficient development of a network of credit unions and the incomplete development of a system of credit cooperation at the legal level.

In recent years in Ukraine, banks and the state have been the dominant mechanisms for credit in the agro-industrial sector (AIS) (Table 1 and Table 2).

Table 1. Dynamics of volumes and structure of bank loans attracted by the enterprises of AIS in 2000–2004

Indicators	2000	2001	2002	2003	2004	2000 to 2004
Volume of loans provided (%)	100	280.7	296.7	221.6	430.3	330.3
Out of them: short-term	100	2947.4	289.5	229.2	353.1	253.1
medium-term	100	140.0	368.4	146.3	1202.1	1102.1
Volume of discounted loans	100	342.7	263.4	389.9	445.2	345.2
Share of loans provided: short-term	90.9	95.5	88.7	94	74.6	-
medium-term	10.0	4.8	12.7	6.4	34.	15.6
Share of discounted loans	39.1	13.9	13.2	17.7	9.1	-30
Attracted discounted loans with 100 UAH compensation of interest rates, UAH	255.5	717.1	757.9	566.3	1099.4	843.9
Average interest rates of banks for the use of loans in national economy	54	33	25.8	20.8	17.1	- 36.9
Including agrarian enterprises	48	29	25	18	16.8	-31.2
Central Bank's interest rate	18.	14	10	12	10	-8
Level of repayment of loans by the enterprises of AIS in percent	86	92	92	88	94	8
Including agrarian enterprises	92	94	93	92	96	4
Number of enterprises that obtained discounted loans in percent	100	290.9	196.9	344.7	186.7	86.7

Source: *MinAPFU*

Given the fact that the mechanism of state support of Ukraine's AIS was changing annually alongside the fluctuations in volume of support for discounted loans, so, too, the volume of attracted loans was unstable. In 2009, overall volumes of loans provided by banks fell by two thirds, while medium- and long-term loans, in particular, decreased by 130 percent (Table 2).

Table 2. Dynamics of volumes and structure of bank loans attracted by the enterprises of the AIS in 2005–2009

Indicators	2005	2006	2007	2008	2009	2010
Total volume of loans provided to 2004 (%)	115.6	123.2	114	137.2	33.7	24
Short-term	99.2	121.2	121.3	105.1	48.4	39.8
Medium-term and long-term	163.9	126.8	101.6	202.4	12.6	10.9
Volume of discounted loans	210	92.1	110.1	195.1	17.2	13.3
Share of loans provided: short-term	64	63	67.0	51.3	73.7	76.5
Medium-term	56.3	58.8	49.3	94.8	24.7	22.1
Long-term	0	0	0	33	44.6	41.1
Share of discounted loans from all loans	73.5	55	53.1	75.5	38.5	37
Share of transitory loans	0	20.7	28.	30.4	189.3	178.3
Discounted loans attracted for UAH 100, compensation of interest rates, UAH	136	181.9	188.4	132.5	260	187.4
Dynamics of number of enterprises that received the loans in percent	139.1	156.8	104.3	100.3	23.8	34.6
Average interest rates of banks for the use of loans	18	20	18	24	27	27
Central Bank's interest rate	10	10	9	12	10.25	7.25
Level of repayment of loans by the enterprises of AIS (%)	93	77	87	82	n/a	НД
Including agrarian enterprises	72	86	85	78	n/a	НД
The amount of compensation of interest rates from the state budget, UAH	10	10	9	12	15.37	НД

Source: *MinAPFU*

In 2009, the volume and a share of discounted loans fell, but the share of transitory loans and their cost have increased, exceeding the National Bank's discount rate.

Despite a considerable increase in the volume of loans attracted for each UAH 100 of allocated subventions from the state budget, the number of enterprises that obtained loans decreased.

The main reason for this drop is the fact that during 2009 the banking institutions increased interest rates on loans they had previously disbursed, regardless of the loan currency and the exchange rate of UAH to foreign currencies. In some cases, the loan rates increased by three to five percent.

The development of mechanisms of attraction of financial resources is restrained by the fact that:

- the system itself is incomplete;
- there is a lack of proper legal regulation;
- a low level of profitability in the agrarian production; and
- inadequate qualifications in managers dealing with financial transactions.

Today, the GOU studies and processes proposals on the basis of the experience of countries with a developed market economy. It considers the theoretical foundations for the creation of a system of attraction of financial resources for the functioning and the development of a village. And it has created new infrastructural units like the Agrarian Fund and Fund of Loan Guarantees. There has been the development of a system of credit cooperation and the modernization of a large number of credit mechanisms, including mortgage loans and financial leasing.

The analysis of lending to agricultural producers has shown that in a number of risk groups, the value of loan repayment by the agrarian borrowers has decreased. According to the data of the National Bank of Ukraine (NBU), in 2009, the overdue loan exposure in the areas of agriculture, hunting and forestry had increased both by the loan terms and its currencies. The main reason for this increase is the weakness of the system of loan repayment guarantees. In conditions of financial crisis in the country, when one-third of agrarian enterprises are loss-making, the main type of provision of execution of credit liabilities is a pledge.

For example, the joint-stock company Ukrsozbank, uses two types of loan securities. The most popular type is property sureties as loan security or collateral for borrowers and third parties (average 88.8 percent). The second most popular type of collateral is a pledge in the form of property rights on bank account deposits in cash and/or securities (average 9.8 percent).

As can be seen from the analysis of lending conditions of ten banks that provide long-term loans to agricultural enterprises, guarantees of repayment on these kinds of loans are based primarily on pledged property (Table 3).

Table 3. Conditions of banking long-term lending to agricultural enterprises in Ukraine in 2009

Bank/loan type	Term	Annual Nominal Interest Rate/ Fees	Amount of investment of own funds on a monthly repayment schedule	Collateral
Ukrsozbank: agricultural equipment, machinery	Up to seven years	UAH 17–19%; foreign currency, 10.5–13.5%.	No less than 30%	Property acquired for the account of a loan
JSC Forum: agricultural equipment, purchase of pedigree animals	Up to seven years	€ and US\$13%; UAH, 16–17%. Fee of 1%.	No less than 20%	Property acquired for the account of a loan and additional property
Privatbank: agricultural equipment, purchase of pedigree animals	Up to five years	€ and US\$15–16%; UAH 18–20%.	30–50% (dependent on individual factors of the project)	Property acquired for the account of a loan and additional property
Finances and Credit: agricultural equipment	Up to five years	Foreign currency 13–15%; UAH 18–22%.	No less than 30%	Property acquired for the account of a loan
Reiffeizen Bank: agricultural equipment	Up to seven years	€ and US\$13%; UAH 16.5%. Fee for allocation is 1%.	No less than 30%	Property acquired for the account of a loan and additional property
UkrSibbank: agricultural equipment, purchase of pedigree animals	Up to seven years	UAH from 16%; US\$ from 12.5% ; € from 12%. Fee: 1.55% from the amount of loan in UAH; 1.99% from the amount of loan in foreign currency.	No less than 30%	Property acquired for the account of a loan and additional property

Prominvestbank: agricultural equipment, machinery, purchase of pedigree animals, fixed assets	Up to seven years	UAH 21–22%; foreign currency from 12–14%.	25%	Property acquired for the account of a loan and additional property
Nadra Bank: agricultural equipment, fixed assets	Up to five years	UAH 18.5%; foreign currency 13–14.5%.	No less than 30%	Property acquired for the account of a loan and additional property
Index Bank: agricultural equipment purchase of pedigree animals	Up to ten years	UAH 18%; foreign currency 12%. Fee 0.5% from the loan amount plus 300 UAH for consideration	No less than 15%	Property acquired for the account of a loan and additional property
Ukreximbank: agricultural equipment	Up to five years	UAH 19%; foreign currency 12.5–13%	No less than 30%	Property acquired for the account of a loan

Source: NBU

The legal norms that regulate collateral relations are out of date and require revision. In particular, the provisions of the Law of Ukraine “On Collateral” require improvement in relation to the collateral of secured property, which is subject to high taxes and fees.

This fact and the volatility of the market value of pledged property accounts for the banks’ requirement to provide collateral with value one and a half to three times higher than the amount of the loan. While mandatory independent assessments of collateral increase the value of the loan in case of its transfer as collateral, they also restrain the right of the owner to freely dispose of property.

The value of collateral should exceed the loan amount by one and a half to three times, and should include the full amount of liability; that is, the loan principal, interest rates and other payments (Table 4).

Table 4. Approximated scoring system of collateral used by the banks

Collateral	Value of collateral in % to market value
Buildings, facilities	50-70
Equipment	10-40
Transportation means	20-60
Inventory, finished goods, raw material, semi-products	20-50
Goods at the warehouse	30-50
Deposits	90-95

Source: NBU

To some extent, the introduction of grain warehouse (GWH) receipts improved the mechanism of grain collateral and provided additional guarantees to a security holder in terms of custody of transferred secured property to elevator, in the accordance with the Law of Ukraine “About Grain and Grain Market in Ukraine”.

Considering the absence of sufficient liquid assets in agricultural enterprises in the form of modern agricultural equipment and real estate, banks cannot conclude mortgage agreements on land plots that would be an efficient item of pledge for long-term crediting of agricultural enterprises. But agrarian mortgage crediting necessitates the availability of a network of additional financial and crediting institutions.

Commercial banks accept guarantees or sureties only from financially sustainable legal entities and individuals. The best are the guarantees of commercial banks. In order to evaluate the solvency of a guarantor, the bank performs a detailed analysis of its financial status. For better security of the above-mentioned types of collateral, there may be a tripartite agreement concluded between bank, guarantor (i.e. surety, insurance) and borrower, in terms of the item of pledge.

The form of pledge of loans can be the insurance. In case of insurance of a loan and the interest on it, the bank analyses the financial status (i.e. solvency) of the insurance company involved. The insurance agreement should stipulate that the insurance company is fully responsible for the credit risk, including non-targeted use of a loan. Traditionally, domestic commercial banks do not use insurance to ensure a loan because of problems with the solvency of Ukraine's insurance companies.

The analysis of Ukraine's bank lending practices in terms of agricultural enterprises shows that problem loans may occur in relation to factors beyond the control of bank and borrower such as: changes of legislation; a worsening of economic situation; unfavourable weather conditions; and introduction of the new technologies of production. More often, problem loans result from miscalculations of a bank and a borrower. For example, banking mistakes include:

- improper analysis of the solvency of the borrower;
- insufficient loan pledge;
- wrong structure of a loan that does not cover the specificity and seasonal features of the sector;
- mistakes made while preparing the loan file; and
- insufficient control over the financial and business activities of the borrower.

The mistakes made by borrowers include:

- mismanagement; deterioration of product quality;
- loss of market for raw materials for processing enterprises;
- problems with the sales market for producers of agricultural produce and processing enterprises;
- insufficient financial control; and
- an inadequate marketing policy.

The lending practices of world banks, unlike those of domestic banks, do not tend to make as much use of collateral as an instrument of provision of banking loans. It is thought that the necessity for constant control over collateral and problems with sales are a burden to world banks and distract them from their main business activity. In developed countries, the mortgage, goods, equipment and other assets of a company are used as a pledge. Of course, the insufficiency of loan pledge remains the reason that the banks make losses on lending (Table 5).

Table 5. Enforcement of banking loans in Germany

Form of loan enforcement	Score	Max amount of loan in % to collateral
Mortgage	3	60–80
Deposit as security in lending bank	3	100
Surety (guarantee)	2	Dependent on the level of solvency of surety (guarantor) – up to 100
Pledge of securities	2	Securities yielding solid interest rate of 70–80, shares of 50–60
Transfer of claim on delivery of goods or rendering of services	1	20–40

Source: <http://www.vkredit.org.ua>

In the United States of America more than 80 percent of loans are issued under the pledge of houses. As a pledge, land runs second. It should be noted that only two percent of American borrowers do not repay their debts, necessitating the sale of their property. In the United Kingdom, the crediting of farmers is done for a period from 5 to 40 years. Meanwhile, the maximum amount of collateral is one-third of the cost of the property. In the Czech Republic, a fund has been created to ensure the credit security of agriculture. Guarantees are provided to the banks that issue loans to agriculture and 50 percent of the interest rate is compensated for short-term loans and 80 percent of the interest rate, for long-term loans. In Kazakhstan, there is a fund to guarantee mortgage loans. The fund's founder is the National Bank of Kazakhstan, which contributed 500 million to the statutory capital of the fund. In Denmark, there is a provision of state guarantees to farmers' loans and discounted loans are given to young farmers who start their own business.

It should be noted that the guarantor institutions are used to the composition of the loan market infrastructure. Insurance and guarantee companies, especially in relation to mortgages, work efficiently in the United States of America, Canada, the United Kingdom, Italy, Spain, Sweden, Australia, New Zealand, China (Hong Kong), Israel, South Africa and many other countries. Such institutions are necessary:

- to reduce the risks of creditors;
- to increase of accessibility of borrowers to loans;
- to increase loan amounts in comparison to the amount of secured property;
- to decrease interest rates for the borrower; and
- to extend the terms of lending.

In recent years, in many countries, the collateralized financing of agricultural producers is used through a guarantee of supply that permits them to obtain large loans from foreign banks. Simultaneously, these producers preserve the right to manage – and even to sell – collateralized property.

Financing that includes the attraction of resources of foreign banks under the guarantees of national export insurance agencies, can be very useful and are widely used in the international loan market. With such a goal in mind, in each European Union (EU) country, specialized financial institutions are created and function actively to provide guarantees to banks as to timely repayment of loans and interest. These institutions are called export insurance companies.

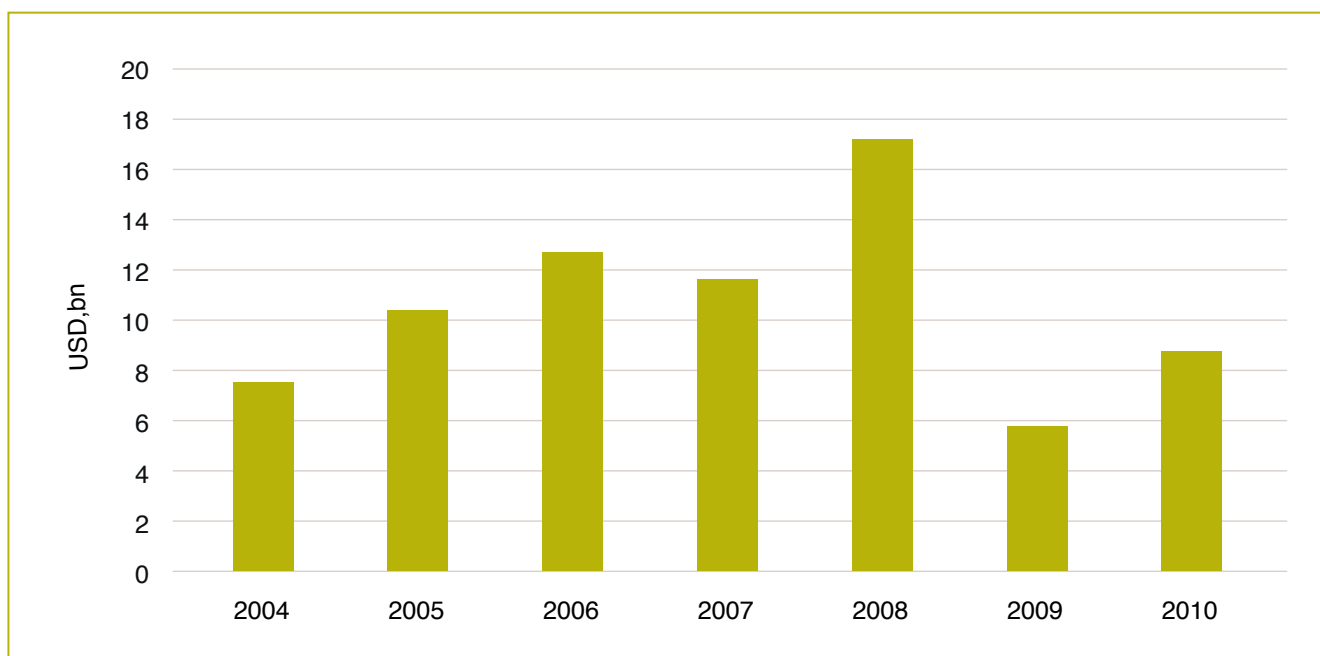
In Ukraine, there is a moratorium on sales of agricultural lands until the end of the current year. This block is also a restraining factor for access to banking loans for agricultural producers.

In general, in Ukraine, the crediting of the AIS is related to the features of the provision of collateral. The amount of collateral in commercial banks is three to five times larger than the loan amount. The inability to use fixed assets as collateral is explained by the fact that their amortization sometimes reaches 90 percent. The share of the agrarian sector in the fixed assets

of the national economy of Ukraine fell from 23.3 percent in 1993 to 13.3 percent in 2001. By 2004, it had fallen to 4.5 percent, and at the end of 2008 the specific weight of fixed assets cost of agriculture was 3 percent. Given this trend, **young animals and future harvest** should be considered as collateral for loans, and their value should not be assessed at a rate lower than the level of market prices.

During periods of financial crisis, it is very difficult for agricultural producers to obtain bank loans. The small and medium-size regional agrarians face the biggest constraints as banks deny them loans. Very complicated and time-consuming procedures of loan application do not necessarily result in loan issuance. Small producers do not have state support, nor do they possess the means to put pressure on the National Bank. As a result, only those farmers that have no less than 15 000 ha of land can get loans. The banks refuse to issue loans to animal breeders, vegetable growers, horticulturalists and wine-makers.

In general, about 15 percent of all credit contributions in the national economy are invested in the agrarian sector. The volume of attraction of loan resources by agricultural enterprises in 2008 was UAH 17.3 billion. By comparison with volumes in 2004, this value is more than 43 percent higher.

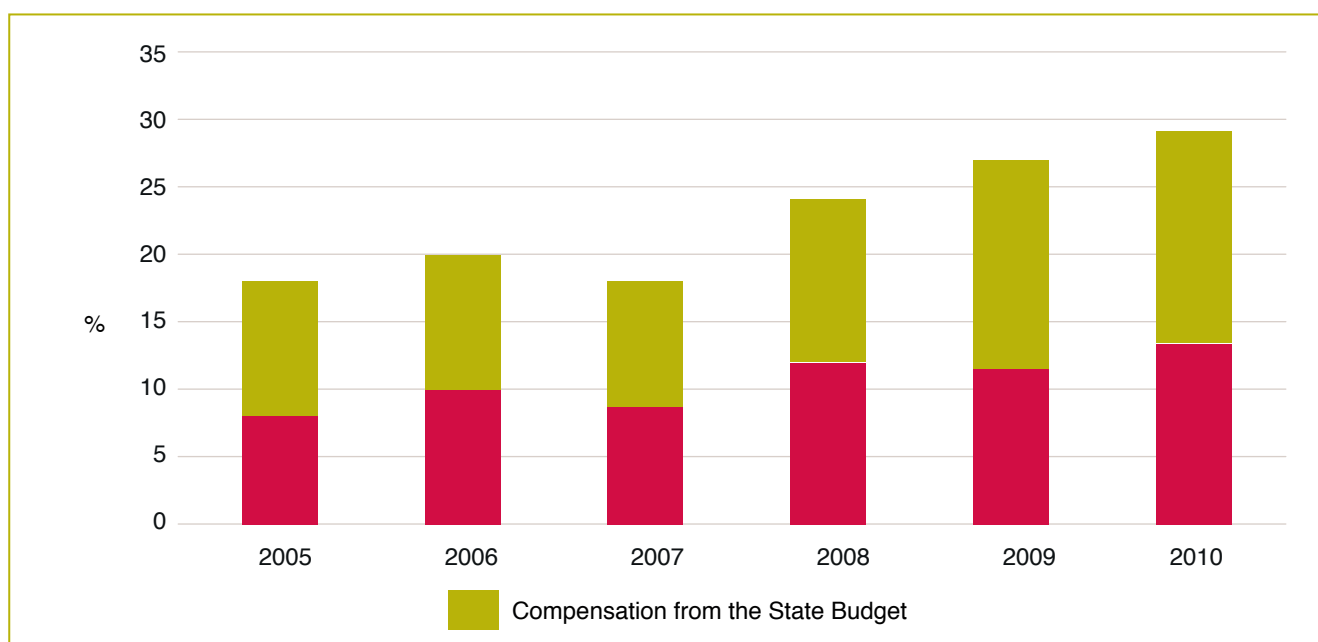


Source: *MinAPFU*

Figure 14. Volumes of crediting of Ukraine's agriculture

The general need for funds in the agrarian sector of economy is more than UAH 100 billion per year. The sources for financing are the own funds of agricultural producers, bank loans, bank loans of previous years with their extension, the funds of state and local budgets, and financing from the Agrarian Fund. But it is evident that these funds are insufficient.

The world economic crisis negatively impacted credit relations in the AIS, and Ukraine was one of the most hard hit. The financial status of agricultural enterprises deteriorated dramatically due to a large drop in prices on agricultural products. Even though, in 2007, Ukraine harvested a record volume of grain crops, the producers were not able to settle with the banks. At the same time, credit institutions were increasing interest rates (Figure 15).



Source: *MinAPFU*

Figure 15. Tendency of change of amounts of effective interest rates on banking loans for agrarian enterprises in Ukraine

Nominal interest rates presented in Table 3 are relevant to the simple interest, but this relation does not take into account the compounding periods.

An effective interest rate caters to the compounding periods in its payment plan. It compares the annual interest of loans with different compounding periods such as a week, month, year, etc. In general, stated or nominal interest rates are less desirable than effective ones, as the latter option offers a true picture of financial payments.

The amount of interest rates on a loan is dependent on the profitability of the agricultural producers, as is reflected in Table 6 in terms of financing of production exclusively by the account of loan resources (bank credits only, i.e. cash). Given the fact that in Ukraine, four to six field crop rotations are the most spread, in terms of profitability, the bank loan interest rate should not exceed ten percent.

Table 6. Dependency of profitability from the amount of interest rate on a loan

Interest rate, %	Profitability, %		
	Two field crop rotation	Four field crop rotation	Six field crop rotation
10	91	29	51
15	68	13	32
20	48	-2	16
25	32	-13	3
30	18	-23	-9
35	6	-32	-18

Source: *aaa-agro.com*

In 2009, the enterprises of the AIS attracted loans in the amount of UAH 5.8 billion, which was 29 percent of the loans attracted in the previous year. Short-term loans accounted for UAH 4.1 billion; medium-term loans, for UAH 1.15 billion; and long-term loans, for UAH 0.5 billion. A total of 2 039 enterprises attracted loans. From the

general volume of discounted loans almost UAH 2.6 billion was attracted (17 percent by comparison to 2008), including short-term loans of UAH 2.2 billion; medium-term loans of UAH 267.1 million; and long-term loans of UAH 55.7 million. A total of 934 enterprises attracted discounted loans. Interest rates on the bank loans ranged from 16.5 to 39 percent.

The requirements of banks for the transitory loans of the years from 2006 to 2008, which included compensation in 2009, were UAH 11.15 billion, including short-term loans of UAH 3.2 billion; medium-term loans of UAH 5.4 billion; and long-term loans of UAH 2.5 billion.

The banks extended the discounted loans on the amount of UAH 3.1 billion or 80 percent of the volume of loans (UAH 3.9 billion) that required extension until 1 January 2010. Of the 2 027 enterprises that required prolongation, 1 599 were given extensions.

Subventions from the state budget are also sources of financing for agricultural producers. However, during 2008, the agrarian enterprises obtained only UAH 3.02 billion for budget subventions. Producers in the crop sector received UAH .88 billion and those in the animal breeding sector received about UAH 1.2 billion.

In 2010, only UAH 621million was allocated in the state budget for bank interest compensation of loans to agricultural enterprises and the Stabilization Fund was designated as the source of financing for this budget line item. The bulk of funds did not play a significant role in the market, as long as they were transferred for the payment of overdue exposure of AIS enterprises from compensation of loan interest rates for the years of 2006 to 2009.

Compensation for the loans to agricultural producers in the state budget for 2011 was increased to 58 percent of the volume, or that on UAH 360million. However, market participants think that the volume of financing proposed by the government is not sufficient for the sector. By their calculation, the financing should be increased to UAH 5.5 billion.

While there are some positive changes in the system of discounted crediting of agricultural production, they are not sufficient. It is necessary to find new modes of providing inputs to agrarian production.

The main problem of credit for the agrarian sector is enforcement of the loan, while observing the rights of both creditors and borrowers. Problem loans to agricultural producers exist because producers have a deficit of financial resources or because there is a lack of expertise in terms of loan issuance. As a result, agrarians do not get timely loans.

It is expedient to propose the introduction of insurance risks, when the funds are paid back to the banks that issued the loans to agricultural producers.

A high level of risk, instability and constraints of forecasting in agro-industrial production are a result of its considerable dependency on climate and natural conditions. While the use of progressive technologies of agrarian production can decrease the impact of weather risks on agricultural enterprises, insurance against weather risks must be mandatory.

The enterprises of the agrarian sector cannot resolve these issues that limit their access to bank crediting. It is necessary to create mechanisms for the development of credit relations that are oriented to the reduction of risk of financial losses and the timely execution of liabilities by contra-agents that is entirely dependent on their financial status.

On the basis of our research, we conclude that the credit system of Ukraine requires the elaboration of a system of guarantees of loan enforcement by the way of:

- 1) the further modernization of legislation as to the mechanism of protection of rights of creditors;
- 2) the creation of systems of registration and assessment of collateral facilities, as well as centralized information systems;
- 3) the elaboration of internal procedures by the banks that regulate the credit process and consider the features of crediting of agrarian borrowers insurance;
- 4) the creation of a flexible system of execution of guarantees by loan agreement of agrarian borrowers both with the participation of the state and public organizations (i.e. joint guarantee companies and other guarantee structures);
- 5) the implementation of all-state market of collaterals (auctions) on the basis of a single electronic database of available types of collateralized property that is sold, in order to enforce the liabilities by loan agreements;³
- 6) the implementation of corporate information reference systems and internet banking subsystems;⁴
- 7) the development of modernized forms of banking credit and investment support of the agrarian sector of economy (i.e. agrarian and cooperative banks) and the introduction of new banking technologies in order to ensure the accessibility of services to relevant customer groups with consideration of the peculiarities of their needs;
- 8) the stimulation of the participation of banks in support of priority sectors of agriculture by guarantee of compensation for the accounts of targeted transfers of budget funds upon condition of financing of unprofitable enterprises in strategic areas of the economy;
- 9) the creation of a state guarantee agency for loan enforcement of agrarian producers which would provide guarantees to banks and advice to new farmers. The experience of similar agencies in Western European along with Northern American service agencies shows that the banks are more willing to finance the

3 – There are several registers of collaterals under different ministries/holders in Ukraine. One of the biggest holders of registers is the Ministry of Justice of Ukraine. It has about 16 unified State Registers, including registers of different kinds of collaterals (e.g. movables, real estate, etc.). The Ministry monopolizes all State Registers and plans to create a separate department to control them. Currently, Ukraine pays royalties for software of these registers to offshore companies. Besides encouraging corruption, this situation additionally complicates and even blocks efficient enforcement in the case of default, and, thus, makes credit obligations difficult to execute. Access to data for outside users is complicated, non-transparent and, in many cases, non-existent. Therefore, one of the strategies under consideration in Ukraine is to create a single e-market place of available collaterals, which could be sold upon demand. Certainly, a single e-market place should be based on a unified e-register with easy, equal and transparent access to information for all interested parties whether private or state-owned.

4 – The same approach (see previous reference) should be taken when creating corporate e-registers (e.g. ministerial, corporate, and/or banking), which will operate as subsystems or parts of an integrated, unified, virtual, national e-register for an e-marketplace for collaterals. Obviously, transactions on this e-marketplace should be based on further development of e-trade and e-banking mechanisms. Certainly, all corporate e-registers must have informational cross-references to other subsystems administered under different institutions or holders. Therefore, the suggested approach will facilitate implementation of this methodology by developing e-registers for PPHFS.

new farmers that are under the care of specialized state and local farmer servicing agencies; and

10) the creation of rating agencies and credit bureaus that would be specialized in agrarian enterprises.

The use of contract-liability in the form of CPRs or agrarian notes is attractive to small enterprises, in particular, that do not ordinarily have opportunities to get bank loans. Using land or the future harvest as collateral, small enterprises can secure a loan through this financing method. As a loan system, CPRs can extend the market and expand work opportunities, with producers and input suppliers existing as the first link in this financial chain.

FORWARD PURCHASES

Forward purchases envision partial financing of producers before the first harvest. After harvesting, forward contracts guarantee that the buyer shall pay the outstanding balance of funds to the producer and shall obtain certain type of goods at the price that was fixed in the contract. The owner of a forward contract can transfer it, re-sell it or get his or her money back.

Both the state and traders can work with forward purchases, but the actions of the GOU have been unpredictable and domestic traders have not been working practically with these contracts, in recent years. As these contracts offer a guaranteed delivery of certain types of agrarian goods by the fixed price, they are the networking capital for the producer. In fact, these contracts offer the producer a loan without interest rates, and a guarantee of sales with the price defined in advance.

In 2011, in order to ensure the work of domestic agrarian enterprises, the government started financing Ukrainian producers in terms of future harvests or forward purchases. They invested UAH 5 billion. The trading agent of the State Food and Grain Corporation of Ukraine Ltd. (Khlbinvestbud) performs forward purchases for the Agrarian Fund.

Financing is done in three trenches in this system. After signing of the agreement, and before sowing, the producer gets half of the amount agreed to in the forward contract. Before harvesting, he receives another 20 percent and the remaining 30 percent after the harvest and delivery of the produce. In earlier agreements, the producer had to wait until after the harvest to receive the remaining 50 percent agreed upon in the contract [5].

As of 30 May 2011, according to data from MinAPFU, the Agrarian Fund concluded forward agreements on 860 000 tonnes of grain, including 836 000 tonnes of wheat, 22 300 tonnes of barley, and 1.7 tonnes of other crops. A total of UAH 748.8 million was paid to agrarian commodity producers, half of which came from forward contracts.

In the current marketing year, it is estimated that the Agrarian Fund shall conclude agreements on 1 050 000 tonnes of grain, or 15 percent of the volume of grain consumption by the population.

It should be noted that at harvest time a surplus of grain may occur causing a sharp decrease in purchase price. Therefore, forward contracts protect producers.

Agrarian enterprises that sign forward agreements also benefit from discounts in terms of the purchase of fertilizers and fuel. The price of a tonne of saltpeter with the discount is UAH 2 815, while the average price for these products in Ukraine varies from UAH 3 200 to UAH 3 500. Producers are also able to buy diesel fuel and low octane fuel cheaper.

If an agrarian enterprise has a contract to supply 10 000 tonnes of grain, then it should have approximately 3 000 ha of land at its disposal. In order to ensure the production of this volume of produce on this land, 350kg of fertilizer should be spread on each hectare in the spring and in the summer. Thus, the liability to supply 10 000 tonnes of grain requires the acquisition of 1 000 tonnes of discounted saltpeter, under the forward contract scheme. A similar scheme is envisioned for fuel.

Despite these advantages, agrarian producers and experts believe that such a procedure is not sufficiently transparent. As practice shows, all schemes of procurement in Ukraine are corrupt. Agrarian producers who want to sell produce to the state, as a rule, are already integrated into this system of corruption.

Some agrarians also believe that the proposed drafts of forward purchase contracts do not consider the rights of sellers. The proposed agreement requires the cost of collateral provided by the agrarian to be twice as much as the amount of a contract, whereas the inception trench grants the producer only 50 percent of the agreed amount in the contract. Joint responsibility is also at issue, in the case of enforcement of commodity from a buyer by a third party and in terms of payment to the Agrarian Fund in the case of an insurance claim.

Unlike Brazil, where investors provide the funds for production of grain and receive the products while taking all risks; in Ukraine, producers and investors bear the risks together, given the high probability of political risk. The Ukrainian system differs from the Brazilian one in other respects:

- According to the new tax code in Ukraine, value added tax (VAT) is not compensated to grain exporters. Thus, agrarian enterprises lose UAH 12 billion annually.
- VAT is reimbursed only on the first sales transaction of the commodity. In this system, when concluding forward contracts, the cost of the commodity, namely, the grain, is calculated with VAT. However, during all subsequent transactions or resale of the commodity, the tax is added, but not returned by the government. Thus, all middlemen, such as traders, grain storage companies, and private investors do not benefit from reimbursement.
- While the state seeks to reduce risk to investors, domestic pressures can increase risk, as, for instance, with the introduction of quoting of export of grain (e.g. draft laws #8 053, #8 163, #8 324 and #8 321). With such indeterminacy in the Ukrainian agrarian marketplace, investors are driven away.
- In Ukraine, the system of harvest insurance is absent. If the state could pay out a share of the insurance premium, then farmers might find insurance more attractive.

In the marketing year (MY) 2011/2012, tax is the most significant determinant of behavior in the grain market. According to the norms of the tax code and UkrCCFEA, starting from 1 July 2011 and lasting until 1 January 2014, VAT is applied only to the initial transaction involving first supply of grain crops. Following that exchange, transactions on some grain crops are VAT exempt. This exemption also applies to those transactions on commodities that are imported. Relevant commodities include grain crops or commodity items 1 001 to 1 008 (excepting commodity item 1 006 and commodity item of subcategory 1 008 10 00 00) and technical crops of commodity items 1 205 and 1 206. Thus, following the first supply by agricultural producers, transactions involving grain crops (excepting rice and buckwheat) and technical crops like rapeseed, turnip and sunflower are all VAT exempt.

In addition, there is no VAT applied on the export of these crops. Thus, this legislation eliminates the need for state compensation of these taxes to exporters, along with the non-transparent settlements that result from compensation schemes. However, the loss of state VAT compensation will force exporters to pay less to producers in order to reduce their expenses.

Again, all risks are passed on to agricultural enterprises.

Potential political risks are attached to the government imposition of export quotas and duties, as was evident in 2010 and 2011. On 21 April 2011, the Ukrainian parliament, using the tax code as its basis, imposed a 9 to 14 percent duty on the export of grain until 1 January 2012. The government sought to establish export duties on wheat, barley and corn. Duties of 9 percent, but no less than €17/tonne were imposed on wheat, meslin (a mixture of wheat and rye) and emmer wheat; duties of 14 percent, but no less than €23/tonne were imposed on barley; and duties of 12 percent, but no less than €20/tonne were imposed on corn. However, these measures have subsequently been cancelled.

Should the amendments to the tax code be adopted, exporters will face one of the following possible scenarios with regard to price increases on export goods: 1) Given the predicted increase of world prices on grain and other crops, forecast by many analytical publication, increases in duty will not impact the incomes of exporters; 2) In the case of stable prices in the world market, exporters will be forced to pay the additional duty and these additional expenses will be transferred to agricultural commodity producers by way of a reduction of purchase price of their commodities by up to ten percent.

One important element implemented in Brazil and worldwide is a forward exchange. In Ukraine, due to domestic legislation, exchange transactions in trade are not possible. Government and the NBU need to work out a system that can allow the Ukrainian agrarian to participate in forward exchange.

In conclusion, the state policy in the AIS of Ukraine does not stimulate the agrarian commodity producer, and does not favour his or her ability to access financial resources, including those from commercial banks with discounted interest rates. New mechanisms of lending to the agrarian sector, based on those introduced in Brazil, are essential to ensure the development of Ukraine's agricultural sector.

CROP INSURANCE

There are no official statistics for crop insurance in Ukraine, but the Insurance Law of Ukraine specifies four possible types:

- insurance of property;
- insurance against fire and weather risks;
- insurance of responsibility; and
- insurance of financial risks.⁵

There is no mandatory crop insurance as specified in the general Law of Ukraine "On Insurance".

When farmers buy property, fire and weather risk insurance, their indemnity payment is related to expected crop prices on harvest. In responsibility insurance, the indemnity payment is related to farmers' contractual obligations to supply crops. In financial risk insurance, indemnity payments are connected to forecasted profit.

⁵ — Article 6 of Insurance Act, 1996.

Every insurance company that receives a license in one of the above-mentioned insurance types⁶ estimates costs relative to particular risks, but as risks are similar, the premium rates tend to average out to be the same, whatever the insurance type.⁷

Crop insurance involves either insuring the calculated losses of farmers or index insurance.

If the calculated losses of the farmer are insured, the insurance sum is determined through negotiations about the expected value of the crops based on income from crop sales. Such a sum is estimated by calculating farmers' expenses on crop seeding and growing, expected value of crops, expected income as a result of crops sales or any other sum agreed with the insurer. Crop monitoring is obligatory, and the following average insurance rates are used (Table 7):

Table 7. Insurance rates

	Winter crops	Other grain and bean crops	Sugar beets	Potatoes	Technical crops	Gardens, vineland and other plantations	Vegetables in open air	Cultures in growing houses	Seed fields
1	2	3	4	5	6	7	8	9	10
Autonomy Republic of Crimea	6.8	6.0	7.6	7.2	7.2	7.2	6.8	5.2	5.2
Regions:									
Cherkaska	6.0	5.6	7.2	7.6	6.0	6.4	7.2	5.0	4.8
Chernigivska	6.4	5.6	7.2	7.6	7.2	6.8	6.8	5.2	4.8
Chernivetska	6.4	6.0	7.6	7.2	6.8	6.8	6.8	5.2	4.8
Dniproperovska	6.8	6.0	7.6	7.2	7.6	6.4	7.6	5.2	4.8
Donetska	6.8	6.0	7.6	7.2	7.6	6.4	7.6	5.2	4.8
Harkivska	6.4	5.6	7.2	7.2	6.8	7.2	7.2	5.2	5.2
Hersonska	6.8	6.0	7.6	7.6	7.6	7.2	7.6	5.2	5.2
Hmelnytska	6.0	5.6	7.2	7.2	5.6	6.4	6.8	5.2	4.8
Ivano-Frankivska	6.4	6.0	7.2	7.2	7.6	6.4	6.8	5.2	4.8
Kirovogradska	6.0	5.6	7.2	7.6	5.6	6.4	6.8	5.2	4.8
Kyivska	6.0	5.6	7.2	7.6	5.6	6.4	7.2	5.2	4.8
Lugansk	6.8	6.0	7.6	7.2	7.6	6.4	7.6	5.2	5.2
Lvivska	6.4	6.0	7.2	7.2	5.6	6.4	7.6	5.2	4.8
Mykolaivska	6.8	6.0	7.6	7.6	7.6	7.2	7.6	5.2	5.2
Odeska	6.8	6.0	7.6	7.6	7.6	7.2	7.6	5.2	5.2
Poltavska	6.0	5.6	7.2	7.6	5.6	6.4	6.8	5.2	4.8
Rivnenska	6.0	5.6	7.2	7.2	6.4	6.8	6.8	5.2	4.8
Sumska	6.0	5.6	7.2	7.2	6.4	6.8	6.8	5.2	4.8
Ternjpijska	6.0	5.6	7.2	7.2	6.8	6.4	6.8	5.2	4.8
Vinitska	6.4	5.6	7.6	7.2	7.2	6.4	6.8	5.2	4.8
Volynska	6.4	5.6	7.2	7.2	5.6	6.4	6.8	5.2	4.8
Zakarpatska	6.8	6.0	7.2	7.2	7.6	7.2	6.8	5.2	5.2
Zaporizhska	6.8	6.0	7.6	7.2	7.2	7.2	7.6	5.2	5.2
Zhytomyrska	6.4	5.6	7.2	7.6	7.6	6.4	6.8	5.2	4.8
Sevastopol city	6.8	6.0	7.6	7.2	7.2	7.2	6.8	5.2	5.2

Source: Information provided by Ukrainian Fire Insurance Company, Unica Insurance Company, Agrarian Insurance Company and Universal Insurance Company

6 — Articles 2, 38 of Insurance Act, 1996.

7 — Information gained through questioning representatives of Ukrainian Fire Insurance Company, Unica Insurance Company, Agrarian Insurance Company and Universal Insurance Company.

The indemnity payment is determined by the actual damage that the farmer suffered as a result of insured risks (flood, fire, frost, etc.).

In case of index crop insurance, the insured risk is the risk of harvesting less than the average harvest for a field, as stipulated in the insurance contract. The insurance sum is determined by the intersection of field area in hectares with the average harvest per hectare and the spot price of the seeded crops for a metric tonne.

In this case, crop monitoring is also obligatory, and the following average insurance rates are used (Table 8):

Table 8. Insurance rates

	Winter crops	Other grain and bean crops	Sugar beets	Potatoes	Technical crops	Gardens, vineland and other plantations	Vegetables in open air	Cultures in growing houses	Seed fields
1	2	3	4	5	6	7	8	9	10
Autonomy Republic of Crimea	5.2	4.6	5.8	5.5	5.5	5.5	5.2	4.0	4.0
Regions:									
Cherkaska	4.6	4.3	5.5	5.8	4.6	4.9	5.5	3.9	3.7
Chernigivska	4.9	4.3	5.5	5.8	5.5	5.2	5.2	4.0	3.7
Chernivetska	4.9	4.6	5.8	5.5	5.2	5.2	5.2	4.0	3.7
Dnipropetrovska	4.9	4.3	5.5	5.5	4.3	4.9	5.2	4.0	3.7
Donetska	5.2	4.6	5.8	5.5	5.8	4.9	5.8	4.0	3.7
Harkivska	4.9	4.3	5.5	5.5	5.2	5.5	5.5	4.0	4.0
Hersonska	5.2	4.6	5.8	5.8	5.8	5.5	5.8	4.0	4.0
Hmelnytska	4.6	4.3	5.5	5.5	4.3	4.9	5.2	4.0	3.7
Ivano-Frankivska	5.2	4.6	5.8	5.5	5.5	5.5	5.8	4.0	4.0
Kievська	4.9	4.6	5.5	5.5	5.8	4.9	5.2	4.0	3.7
Kirovogradska	4.6	4.3	5.5	5.8	4.3	4.9	5.5	4.0	3.7
Lugansk	4.6	4.3	5.5	5.8	4.3	4.9	5.2	4.0	3.7
Lvivska	5.2	4.6	5.8	5.5	5.8	4.9	5.8	4.0	4.0
Mykolajivska	5.2	4.6	5.8	5.8	5.8	5.5	5.8	4.0	4.0
Odeska	5.2	4.6	5.8	5.8	5.8	5.5	5.8	4.0	4.0
Poltavska	4.6	4.3	5.5	5.8	4.3	4.9	5.2	4.0	3.7
Rivnenska	4.6	4.3	5.5	5.5	4.9	5.2	5.2	4.0	3.7
Sumska	4.6	4.3	5.5	5.5	4.9	5.2	5.2	4.0	3.7
Ternopil'ska	4.6	4.3	5.5	5.5	5.2	4.9	5.2	4.0	3.7
Vinitska	2	3	4	5	6	7	8	9	10
Volynska	4.9	4.3	5.8	5.5	5.5	4.9	5.2	4.0	3.7
Zakarpatska	4.9	4.3	5.5	5.8	5.8	4.9	5.2	4.0	3.7
Zaporizhska	5.2	4.6	5.5	5.5	5.8	5.5	5.2	4.0	4.0
Zhytomyrska	5.2	4.6	5.8	5.5	5.8	4.9	5.8	4.0	3.7
Sevastopol city	5.2	4.6	5.8	5.5	5.5	5.5	5.2	4.0	4.0

Source: Information provided by Ukrainian Fire Insurance Company, Unica Insurance Company, Agrarian Insurance Company and Universal Insurance Company

The indemnity payment is estimated based on the difference between the value of an average harvest from the field according to spot prices on the date of indemnity payment calculation and the value of the actual harvest from the insured field according to spot prices on the date of indemnity payment calculation.

Draft law developers rejected making crop insurance obligatory and an integral part of the AR system because it would cause changes in the insurance law that stipulates all obligatory insurance in Ukraine (article 7 of the Insurance Act, 1996). Such changes would also mean that insurance companies would be required to obtain a new license for this type of obligatory insurance (article 38 of the Insurance Act, 1996) that would increase the value of insurance even more than the rates mentioned above.

The main purpose of ARs is to offer farmers new possibilities to receive credit cheaper than that offered by banks. Making obligatory crop insurance an integral part of an AR system would increase the cost of credit under the AR, thus greatly reducing the attractiveness of ARs.

Moreover, farmers with a deficit in money cannot afford crop insurance. And if other persons or companies pay for insurance, the cost would rise, as they are subject to taxation. The tax code of Ukraine prohibits companies from attempting to diminish the taxes on their profits, by listing the cost of insurance premiums on other people's property⁸ as expenses. Furthermore, people whose property is insured by others are obliged to recognize the cost of insurance premiums paid by such other persons or companies as gifts, and to pay the income tax on them.⁹ For example, if an AR owner would like to insure crops that are a collateral under the AR, he would have to pay profit tax on the sums of insurance premium payment (23 percent in 2011), and the farmer would have to pay the same tax.

However, the draft law offers the possibility of voluntary insurance of crops that are collateral under ARs to secure the investment of creditors.

8 — Paragraph 140.1.6 of The Tax Code of Ukraine

9 — Paragraph 135.5.4 of The Tax Code of Ukraine

3. ECONOMIC EXPEDIENCY OF IMPLEMENTATION OF CPR IN UKRAINE

Analysis of the situation of lending to the agricultural sector of Ukraine shows that commercial banks do not provide the long-term financing needed given the fact that agribusiness is very risky. As a rule, commercial banks provide seasonal loans to the sector, to meet the needs of their networking capital.

Agricultural activity is performed by three types of business entities:

- personal peasants' households;
- farmers' businesses; and
- agricultural enterprises of different forms of businesses.

All of these entities have different financial needs and different opportunities of access to credit. Today, because of high rates of lending, the opportunity for credit for the majority of medium-sized and small commodity producers is limited.

Other obstacles to credit include insufficient pledges to transfer agricultural lands and the absence of a robust institution for the protection of the rights of landlords. Presently, the land issue is not resolved, and there is a moratorium on the sale of agricultural lands.

Also, alternative sources of financing are lacking and volumes have decreased because of state budgets imposing programmes with legally-defined targets. These state programmes have a number of flaws including an inefficient distribution mechanism. For instance, farmers seeking compensation for interest rates on banking loans are subject to the interference of civil servants who assess their companies and determine whether they are eligible for compensation.

Farmers also face a limitation of access to financial resources because of the undeveloped market of forward and futures trade in the country. Agro-industrial companies and traders lack direct financing by way of advance payment for inputs, seed, fuel, pesticides, etc.

Brazil's experience using agricultural produce as a guarantee of payment through a pledge on future harvests, can provide a useful model for Ukrainian commodity producers, as this model will attract additional credit resources, whether financial or commodity. A CPR system reduces the producer's dependency on subsidized loans and allows for long-term planning of their business activities.

The main advantage of such credit mechanisms is the fact that they permit agrarian enterprises to attract loans from the private sector, which, in turn, will positively impact agricultural production. The sources of financing can be input suppliers for agro-producers, banks, traders and other intermediaries.

Table 9. The sources of financing of agrarian enterprises in Ukraine, billion of UAH (2010)

State subventions	10.1
Bank loans	9.8
Funds from input suppliers, traders, processors	151
Own funds of agricultural enterprises	257
Total	427.9

Source: *MinAPFU*

Given the Brazilian experience and estimates of Ukrainian experts, CPR will cover about 30 percent of funds from suppliers of inputs, traders and other intermediaries, as well as about 5 percent of funds from banking institutions. We can expect that implementation of AR could approach about UAH 45 to 50 billion per year.

Based on calculations following the first year of implementation of the mechanism of AR, agricultural producers should be able to obtain about 30 percent of their resources based on future harvest collateral from the input suppliers, traders, and processing enterprises and about 5 percent from the banks – or about two to three billion UAH in total under this mechanism.

Such a mechanism can be lucrative not only to agricultural commodity producers, but also to other market participants. With its assistance, processing enterprises shall have an opportunity to reduce the risks on delivery of shipments, while producers of production assets can obtain the guarantee for payment for the delivered resources [6].

Table 10. The main advantages and risks of implementation of CPR (agrarian receipts) in Ukraine

Participants	Advantages	Risks
For all participants of the marketing chain: supplier of inputs: agrarian commodity producer; trader: agrarian commodity producer; commercial bank: agrarian commodity producer; and the state (Agrarian Fund): agrarian commodity producer.	CPRs help to: attract loans for financing of the business activity; increase the trust to the agro sector; favour sustainable growth in markets with a high level of risk; create transparent mechanisms of crediting that can become alternative options attached to already existing ones; and create opportunities to revolutionize existing mechanisms of grain warehouse receipts (GWHRs).	At inception phase: misunderstanding of the working principles of this instrument; absence of readiness of legal and judicial system, in general, in Ukraine, particularly, as to the speed of enforcement; weak development, immaturity of institutions of judicial enforcement; ability of the bodies of executive power to make an impact on court rulings and on other official organizations; absence of a single consolidated and truthful database on households (square, harvest yield, etc.) or a single register of land plots and land titles; and weak development of market infrastructure, particularly, logistics.
For agrarian producers	guaranteed sales of agrarian products; reduction of dependency on bank loans with high interest rates; facilitation of long-term business planning; reduction of risks related to supply of resources and finished goods sales; opportunity to use cattle as collateral; and opportunity to settle in the follow-up periods.	absence of harvest yield or loss of harvest; a large number of co-owners of a land plot; where risk insurance is used, the cost of lending shall increase; and sharp fluctuations of market prices for agricultural produce that is pledged as future harvest in the form of ARs, which may not favour the farmer and might complicate settlements between parties.

For middlemen and processors, other buyers	<p>expected and planned procurement of produce; reduction of risks related to delivery; better conditions of financing; reduction of risks as to the execution of liabilities; efficient system of enforcement: ruling on enforcement is taken in 24 to 48 hours; impossibility of applying force majeure conditions to CPR, as borrower has very limited opportunities to claim such a ruling about enforcement.</p>	<p>immaturity of judicial system as to the speed of taking court rulings; and weak development and immaturity of institution in terms of implementation of court rulings.</p>
For enterprises-input suppliers	<p>reduction of risk of non-payment; opportunity to perform different types of transactions (e.g. barter); better conditions of financing CPR provides a better level of guarantee/security for the buyer; efficient system of enforcement: ruling on enforcement is taken in 24 to 48 hours; impossibility of applying of force majeure conditions to CPR as borrower has very limited opportunities to claim such a ruling about enforcement.</p>	<p>immaturity of judicial system as to the speed of taking court rulings; and weak development, immaturity of institution in terms of implementation of court rulings.</p>
For small agricultural commodity producers	<p>opportunity to attract small producers who lack opportunities to obtain bank loans, but who possess property for collateral, in the form of land or future harvest; CPR systems considerably extend the market and the opportunities to work, encouraging the participation of not just banks but producers and suppliers.</p>	<p>absence of harvest yield or loss of harvest; and large number of co-owners of a land plot.</p>

Source: Assumptions of authors

Suppliers of inputs can provide the resources by forward contracts under CPRs, and can obtain as payment, both the grain and the cash, in case of its sale.

When an agrarian enterprise promises delivery of grain to certified grain storages, it can receive GWHRs that permit additional bank loans on the same grain.

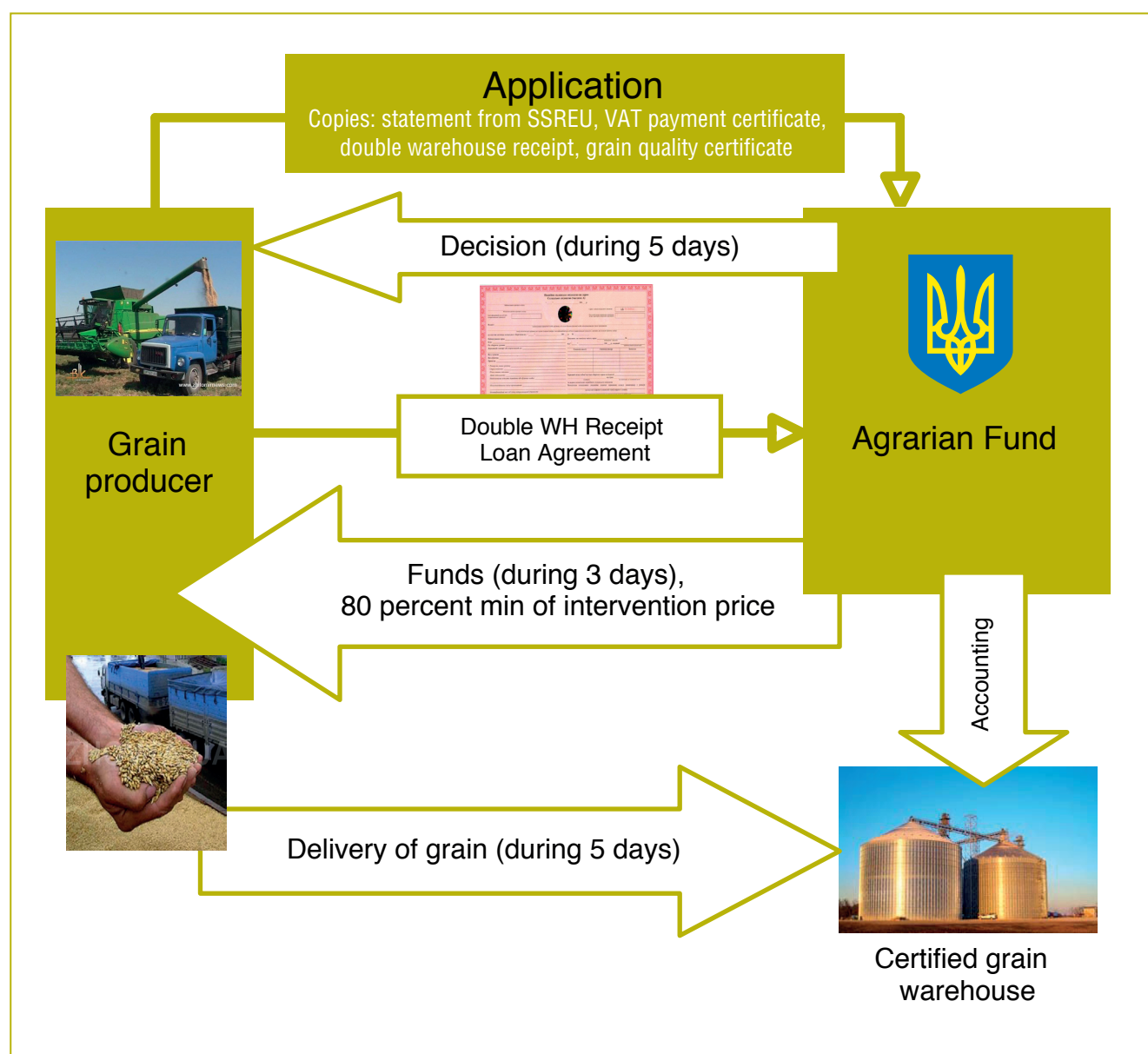
In our opinion, this option is optimal in terms of the redistribution of risks between, and protection of interests of, all participants in the production and sale of grain. The creation of a system that would unite CPRs and GWHRs will help the agrarian commodity producer to obtain both inputs and loan resources.

Acting Ukrainian legislation permits agrarian commodity producers to obtain a budget loan with the collateral of available grain. Thus, today the regulation of state collateralized procurement is done according to the Laws of Ukraine “On Grain and Grain Market in Ukraine” and “On State Support of Agriculture of Ukraine”. So, article 8 of the Law of Ukraine “On Grain and Grain Market in Ukraine” established that the subjects of state collateralized procurement of grain are agrarian commodity producers, grain storages, the Agrarian Fund and other subjects of state collateralized procurement of grain defined by the acting legislation. Paragraph 1 of sub-item 12.2.1, of item 12.2 of article 12 of the Law of Ukraine “On State Support of Agriculture of Ukraine” envisioned that the Agrarian Fund (hereinafter, the creditor) provides the budget or

loan to a grain producer, who is a “subject of state price regulation” (hereinafter, the borrower), using the collateral of items that can be transferred by double WHR to a creditor.

The laws do not expose the grain producer’s opportunity to obtain a budget loan when in possession of land that can be used for agrarian production.

It should be noted that the Agrarian Fund applies these budget loans to producers of grain who are state price regulation subjects, annually in the period from 1 July of the current year until 1 April of the next budget year. The collateral of such subjects must be within the range of funds envisioned in the state budget, but no less than 80 percent of the minimum intervention price. The Agrarian Fund also ensures that accurate accounts are kept in terms of the grain pledged in the loan agreement (Figure 16).



Source: AMDI

Figure 16. The scheme of mechanism of receipt of budget loan under collateral of available grain.

Thus, the agrarian enterprise following such a mechanism can obtain a budget loan **under collateral of available grain**, whereas, the Brazilian experience has as its goal to obtain a commodity or a financial loan **under future harvest collateral**.

In addition to the development of legal regulations, for Ukraine to begin to implement CPRs, it is necessary:

- to define a list of agrarian commodities that can be liabilities (excepting grain, grain crops, beans and oil-yielding crops);
- to train specialists; and
- to envision the mechanisms of registration of such liabilities.

Also, it is necessary to make the provision for tender in order to determine the regional expert institutions, and to conduct such tenders until the moment of creation of a State Register of issued CPRs.

When the Russian Federation implemented ARs using future harvest as collateral in 2001, it faced a number of obstacles that parallel the challenges associated with the use of CPRs in Ukraine, including:

- misunderstanding of the working principles of this instrument at the inception phase;
- weak development of insurance systems of agrarian production;
- weak development of legal system, in general (as in Ukraine);
- inefficient judicial system in terms of speed of court rulings (as in Ukraine);
- weak development and immaturity of enforcement of court rulings;
- opportunity of regional bodies of power to impact on court rulings and on other official bodies.
- absence of a single consolidated and truthful database on households (square, crop yield, etc.) or a single register of land plots and land titles;
- the desire of agricultural commodity producers who want to speculate with their produce, instead of fixing a certain level of yield;
- high level of loans issued to agricultural commodity producers (in the Russian Federation only);
- weak development of market infrastructure, particularly, logistics.

Thus, in 2011, in the Russian Federation, Rosselkhozbank, for the first time, offered credit in relation to the collateral of future harvest without provision of other additional pledges. The limitations as per the list of agrarian crops were removed and the future harvest of these crops was taken as collateral.

The bank simplified the procedure to obtain loans and reduced the time for the consideration of loan applications. The decision about issuance of targeted loans for seasonal fieldwork is taken in four working days from the moment of receipt of a package of documents from a borrower. In addition, the list of documents that are necessary for the loan application is reduced.

Once the current financial year is completed, assessed and analysed, we will understand the advantages and disadvantages both in the process of preparation of legislation and in the process of introduction of the CPR mechanism.

4. LEGISLATIVE APPROACHES TO IMPLEMENTATION OF LIABILITIES SECURED BY COLLATERAL (AR) IN UKRAINE

4.1 Legal Environment¹⁰ (Legal opinion on applicability in Ukraine of Brazil's experience on implementation of ARs)

None of the existing financial instruments envisaged by the Ukrainian legislation contain all features required for AR instrument implementation. The AR instrument could be implemented in Ukraine on the grounds of modified legislation regulating futures contracts and/or WHRs [7]. For implementation, it is necessary to establish an appropriate legal framework by adoption of a special legislative act [7,8]. This legislative act should contain the required provisions for the establishment of ARs, along with amendments to other related legislation.

Adoption of a special legislative act would overrule the existing general regulations (adopted by the NBU, the State Commission on Securities and Stock Market (SCSSM), etc.) whose provisions are not compatible with the AR instrument. The special legislative act should establish the mechanisms for inspection rights, longevity of pledge, valuation of pledge, *force majeure* provisions and priority provisions enforcement, as well as the creation of a specific central register and prompt enforcement mechanism.

For more details, please see the legal analysis below.

Legal Analysis

The legal analysis takes into account effective Ukrainian legislation, a joint IFC and EBRD presentation on the AR instrument, as well as the Brazilian CPR policy analysis. The legal analysis begins with an analysis of the most suitable instrument envisaged by the Ukrainian legislation for AR implementation and follows with comments regarding key pillars of the crop receipt legislation.

General comments on Ukrainian legislation instruments

Ukrainian legislation envisages an exhaustive list of securities types¹¹ that could be issued and used on Ukraine's territory. Taking into account the characteristics of the AR instrument, the most appropriate of these security types to be considered are:

- a) derived securities;
- b) promissory notes; and
- c) WHRs.

A brief description of each instrument with peculiarities envisaged by the Ukrainian legislation is presented below.

a) Derived securities

Derived securities are presented in Ukraine by option certificates, futures and forward contracts. These instruments are not widely used in Ukraine due to the absence of a transparent legislative environment and unfavourable tax consequences resulting from use of these instruments. Option certificates and futures contracts are the most

¹⁰ — For all legal acts referred to in this report, see the electronic legislative database of the Verhovna Rada of Ukraine (<http://portal.rada.gov.ua/rada/control/ukindex>).

¹¹ — The Law of Ukraine “On securities and stock market” of 23 February 2006, No. 3480-IV.

suitable forms of these securities, from an AR implementation point of view. Both are considered as derived securities related to the sale or purchase right for securities, and other financial and/or commodity resources during a defined term.¹²

- **Option Certificates.** According to Ukrainian legislation, procedures of issuance and use of option certificates are regulated by the SCSSM and partly by the Cabinet of Ministers of Ukraine.¹³ The procedures envisaged by the SCSSM are complicated and time-consuming. For example, the time required for registration of the option certificates issue, emission prospect and any changes thereto, is 30 business days.¹⁴ Moreover, it is envisaged that the option certificates could be placed only at the stock exchanges.¹⁵ The legislative provisions make this instrument unattractive for AR instrument implementation.
- **Futures contracts.** Currently, there is no legislative regulation of transactions involving futures contracts. The procedures of futures contracts issuance and usage was cancelled in the middle of 2009¹⁶ and the SCSSM has not adopted any subsequent regulation. Therefore, the futures contracts option could be considered as a basis for the introduction of the AR instrument, given that the appropriate regulations could be drafted and adopted.

b) Promissory notes

Relative to other securities, promissory notes are comparatively well regulated by Ukrainian legislation. The characteristics of promissory notes relevant to AR instrument implementation are as follows:

- Promissory notes can be issued only to formalize the monetary debt for supplied goods;¹⁷
- The amount due under the principal agreement cannot be less than the amount due when the promissory notes were issued to settle the obligations in the principal agreement;¹⁸
- The interest can accrue on the amount due under promissory notes during the term of validity.¹⁹

12 — Par. 5, Art. 3 of the Law of Ukraine “On securities and stock market” of 23 February 2006, No. 3480-IV.

13 — Decision of the SCSSM of 16 June 2009, No. 572 “On approval of the procedure on option certificate issuance and emission prospect registration” // Decree of the Cabinet of Ministers of Ukraine “On approval of the requirements to the standard (typical) form of derivatives” of 19 April 1999, No 632.

14 — Sec. 2, Par. 15 of the decision of the SCSSM of 16 June 2009, No. 572 “On approval of the procedure on option certificate issuance and emission prospect registration”.

15 — Sec. 1, Par. 6 of the decision of the SCSSM of 16 June 2009, No. 572 “On approval of the procedure on option certificate issuance and emission prospect registration”.

16 — The decision of the SCSSM of 24 June 1997, No. 13 “On approval of the stock derivatives issuance and usage” was cancelled on 16 June 2009 by the decision of the SCSSM 16 June 2009, No. 572 “On approval of the procedure on option certificate issuance and emission prospect registration”.

17 — Par. 1, Art. 4 of the Law of Ukraine “On Promissory notes turnover in Ukraine” of 5 April 2001, No. 2374-III.

18 — Par. 2, Art. 4 of the Law of Ukraine “On Promissory notes turnover in Ukraine” of 5 April 2001, No. 2374-III.

19 — Art. 5 of the Convention Providing a Uniform Law For Bills of Exchange and Promissory Notes (Geneva, 1930), enforced by Ukraine starting from 6 January 2000, according to the law of Ukraine “On Ukraine joining the 1930 Geneva Convention Providing a Uniform Law For Bills of Exchange and Promissory Notes” of 6 July 1999, No. 826-XIV.

Considering the above, this instrument could be used to formalize the relations of the agricultural producers and their suppliers regarding monetary debts under sale-purchase, supply agreements, etc. Since financing agreements are not considered supplied goods, this option could not be applicable in every capacity to AR instrument implementation.

c) WHRs

Ukrainian legislation considers a WHR as a document of title to goods. According to the legislation regulating this type of security,²⁰ WHRs could be issued only by certified warehouses and only for accepted commodities. Warehouses could not issue WHRS for commodities that were not in existence.

Warehouses are obliged to administer the WHR register. WHRs are issued on special blanks and can be of two types:

- Simple WHRs are issued in the bearer's name. Thus, the rights under such securities could be transferred by simple presentation of WHRs of such type to another entity.²¹ Simple WHRs could be used and transferred without application of any additional procedures;
- Dual WHRs are issued in the name of a certain entity, which means that the rights are owned by the entity specified in the WHR. The rights under this type of WHR could be transferred only by means of the WHR reissuance. An additional feature of this type of WHR is that they can be used as a pledge.

A combination of the features of both types of WHR could be considered as the basis for AR instrument implementation.

Current enforcement procedures, under any type of security instrument, pose problems in terms of debt collection in Ukraine. Enforcement procedures can be conducted only by the enforcement service under the Enforcement Service Act, 1998 and the Enforcement Procedure Act, 1999.²²

Currently, such a procedure consists of the following steps:

- 1)** filing an application for enforcement (article 18 of Enforcement Procedure Act, 1999);
- 2)** enforcement procedures commence within three days after an application is received by the relevant department of the Enforcement Service; a letter is sent to the debtor with a demand for voluntary execution of a court ruling or other act within seven days (article 26 of Enforcement Procedure Act, 1999);
- 3)** creditors prepayment of Execution Service expenses (article 48 of Enforcement Procedure Act, 1999);
- 4)** search for debtor's assets (articles 50, 63, 64 of Enforcement Procedure Act, 1999);
- 5)** seizure of debtor's assets (article 55 of Enforcement Procedure Act, 1999);
- 6)** estimation of value of seized assets (article 57 of Enforcement Procedure Act, 1999);

20 — Civil Code of Ukraine of 16 January 2003, No. 435-IV // the Law of Ukraine "On warehouses and simple and dual warehouse receipts" of 23 December 2004, No. 2286-IV.

21 — Par. 3, Art. 197 of the Civil Code of Ukraine of 16 January 2003, No. 435-IV.

22 — Article 1 of Enforcement Procedure Act, 1999.

- 7) transfer of debtor's assets to the creditor (articles 60, 61, 64 of Enforcement Procedure Act, 1999); and
- 8) termination of enforcement procedure (article 37 of Enforcement Procedure Act, 1999).

Steps four to eight are to be done by the Enforcement Service within six months from the moment the enforcement procedure begins (article 25 of Enforcement Procedure Act, 1999) with no public responsibility for breach of such a term.

The above-mentioned procedure can be complicated through postponement of enforcement actions (articles 32-36 of Enforcement Procedure Act, 1999), compulsory debt collecting act interpretation (article 28 of Enforcement Procedure Act, 1999) and Execution Service acts appealation (article 85 of Enforcement Procedure Act, 1999).

During steps one to four, the debtor can conceal any movable assets, easily and improperly avoiding responsibility for execution of any of their obligations.

As is apparent from the above analysis, neither of the described instruments envisaged by the Ukrainian legislation contains all the features required for AR instrument implementation. Moreover, there are no required mechanisms for inspection rights, longevity of pledge, valuation of pledge, *force majeure* provisions and priority provisions enforcement. Nor is there a specific central register or the capacity for prompt enforcement.

In order to implement the AR instrument in Ukraine it is necessary to establish an appropriate legislative framework by means of special legislative act adoption. The AR instrument could be implemented on the grounds of modified legislation on futures contracts and/or WHRs. This legislative act should contain the required provisions for AR instrument establishment as well as amendments to other related legislation.

Adoption of a special legislative act would overrule the existing general regulations (adopted by the NBU and SCSSM etc.) envisaging provisions that are not compatible with the AR instrument.

Key pillars of AR legislation

1) Inspection Right

“The lender or its agent shall have full access to the farm and fields during the life of the loan. Experience from Brazil is regular monitoring throughout the growing phase and 24 hour inspection during harvesting.”

Ukrainian legislation envisages no inspection right limitations. In effective legislation, inspection rights could be envisaged under provisions of the agreements concluded by the parties.²³

Considering the importance of the right to inspection given the obligations the AR instrument, it is necessary to establish legal guarantees for inspection rights. The existence of the respective legislative provisions would simplify inspection right enforcement.

23 — Art. 627 of the of the Civil Code of Ukraine of January 16, 2003, No. 435-IV

2) Longevity of pledge

“The pledge remains in force until the debt is fully repaid, i.e. if the production from the next season does not repay the debt, the pledge (and its ranking) remains in place for future seasons.”

Ukrainian legislation envisages similar provisions regulating pledge longevity. In case of partial fulfillment of the obligation that is secured by the pledge, the right to recover debt from a pledge remains the full amount.²⁴

At the same time, in order to support the proper fulfillment of the obligations under the AR instrument, a special legislative act must envisage provisions on sources of possible debt repayment, such as the next season’s production, insurance coverage, etc. It also must rank the priority of pledges under the AR instrument. Existence of provisions regulating and establishing such conditions would encourage the parties duly to fulfill their obligations.

3) Acts of God or force majeure

“Acts of God or force majeure cannot be used as an excuse to not repay the debt.”

The mentioned provision, which is required for implementation of the AR instrument, contradicts current Ukrainian legislation. According to Ukrainian legislation, an entity is released from the liability for breach of obligation in cases where it can be proved to have happened due to accident or *force majeure*.²⁵

Application of the mentioned provision to the AR instrument would allow for bad faith in agricultural producers, as they would legally be free not to fulfill or to only partially fulfill their obligations. Thus, it is necessary to repeal the mentioned legislative provision in relation to the AR instrument.

4) Priority

“Clear priority to proceeds from enforcement should be identified and should preferably be (1) court enforcement costs; (2) bank debt (in order of registered priority); (3) unpaid taxes of owner; and (4) owner or owner’s estate.”

Ukrainian legislation establishes certain cases when priority rules could apply. In order to describe the general approach of the legislation regarding this issue, two cases should be considered.

The first case to be considered is when the transferred amount of funds is insufficient to settle the monetary claim in the full amount. The settlement payment is envisaged as follows:²⁶

- 1) creditor’s enforcement expenses;
- 2) interest and penalties; and
- 3) the debt itself.

Also, in such cases, legislation allows for the establishment of priority by means of respective provisions included in the agreement concluded by the parties. Priority for

24 — Par. 4, Art. 590 of the of the Civil Code of Ukraine of January 16, 2003, No. 435-IV

25 — Art. 617 of the of the Civil Code of Ukraine of 16 January 2003, No. 435-IV.

26 — Art. 534 of the of the Civil Code of Ukraine of 16 January 2003, No. 435-IV.

the obligatory payments in taxes and duties remains at the discretion of the entity.²⁷

The second case to be considered in relation to the implementation of priority rules, applies during the liquidation of a legal entity that is not insolvent. The following priorities have been established:²⁸

- 1) claims secured by pledge or by other method; claims for health damages, mutilation or death;
- 2) claims related to the employees relations; author's claims for results of intellectual, creative activities usage payments;
- 3) claims for tax payments and duties (obligatory payments); and
- 4) all other claims.

In cases of legal entity insolvency and the application of liquidation procedures to it, the established priority is quite similar to the second case described above.²⁹

Since Ukrainian legislation does not envisage in full capacity the required priority for AR instruments, concretized priority provisions would be required in the special legislation designed for these.

5) Central registry

“One registry for registration of all agrarian receipts with on-line access to check priority and existing pledges.”

Currently, no register for ARs exists in Ukraine. Depending on the chosen legislative ground for AR instrument implementation, the required register would need to be established. There are two possible options to consider. One option is the establishment of a new special centralized register. Another option could involve the modification of existing registers of pledges over movable and immovable property. These existing registers could be made suitable with a subdivision that deals with ARs. Also, it is necessary to envisage an obligatory registration of ARs for the purposes of convenient use and centralized recordkeeping.

It should be noted that existing procedures for registration of pledges and enforcement are time-consuming and could be purposefully delayed by the interested parties. Therefore, procedures of pledge registration and enforcement need to be improved for the AR instrument use.

On a separate note, attention should be paid to the absence of the land cadastre and transparent legislation regulating land relations. The current situation makes it difficult both to accept land and/or crops of the next season as a pledge and to enforce such pledges. This difficulty exists particularly because of the legal regime on agricultural land, namely, titles to the land widely used in Ukraine such as land shares or *pai* (“пай”), permanent usage (“*постійне користування*”) and land lease. Issues with land legislation and its applicability to the AR instrument should be discussed further.

27 — Par. 3.1.1., Art. 3 of the Law of Ukraine “On settlement of the tax payers obligations to budgets and special purpose state funds” of December 21, 2000, No. 2181-III.

28 — Art. 112 of the of the Civil Code of Ukraine of 16 January 2003, No. 435-IV.

29 — Art. 31 of the Law of Ukraine “On renewal of the debtors solvency or recognition of the later as a bankrupt” of 14 May 1992, No. 2343-XII.

6) Easy enforcement

“The key success factor from Brazil is the easy enforcement, whereby enforcement decisions are reached within 24–48 hours and there is very limited (if practically no) ability of the borrower to object.”

The GOU acknowledges the inefficiency of the judicial system and is currently attempting reform. Court proceedings are very formal and time-consuming, often lasting years. Court decisions are enforced through the bodies of the State Enforcement Service, or bailiff’s office, following a special court order confirming that the judgment is enforceable. It is the bailiff who finally gets the money from the debtor’s bank account, sells his assets and pays the creditor. The enforcement procedure is also very formal, containing various stages and offering the possibility to challenge the actions of the bailiff either through administrative levels of the Enforcement Service or in court. Therefore, given present judicial procedures, enforcement of the AR instrument would not be easy.

Arbitration is not an option due to a number of issues that exist during arbitration proceedings. The technical non-availability of the interim measures at local courts is one of them. Moreover, enforcement of the arbitral award is granted under the rules of civil procedures within the judicial system, with all their formalities and time-consuming peculiarities described above.

Bankruptcy procedures are also problematic as: (i) Ukrainian legislation does not prescribe any special out-of-court procedures. Therefore, they are always used at the discretion of the parties involved and (ii) bankruptcy proceedings are usually multistage, expensive and time-consuming.

Non-litigation enforcement procedures could be considered as a suitable option for the AR instrument, subject to the availability of relevant clauses in the loan and pledge, such as mortgage agreements. Ukrainian law allows for the collection of money and mortgaged assets through an out-of-court procedure, in some cases. However, a number of issues should be considered. For instance, non-litigation collection of the mortgage on the basis of a so-called creditor’s claims satisfaction clause in the mortgage agreement is available. This clause usually stipulates that in case of default, under the secured obligation, the creditor can either assume the title over the mortgage or sell it to a third party. However, for lenders to register the title in their name or to sell the mortgage, they need the original title documents, which are often retained by the borrower. They also need a special notice from the real estate registration authorities, granted only at the request of the current owner. Therefore, non-litigation enforcement of a mortgage may not be available without the borrower’s consent.

Considering the above, none of the envisaged legislation mechanisms are applicable in full capacity for the purposes of easy enforcement. As a solution, several options could be considered during elaboration of the AR instrument:

1. establishment of a separate type of court proceeding with easy enforcement of the court decision by the state enforcement services;
2. non-litigation enforcement procedures:
 - a) application of the notary deed with easy enforcement by the state enforcement services; or
 - b) immediate enforcement proceedings based on the existing documents of the creditor, to be defined in legislation.

4.2 Concept of legal framework for AR introduction in Ukraine

The use of future harvest as collateral raises a few questions as to the legal formulation of such type of credit liabilities, namely:

- Can or cannot one use the future harvest as collateral?
- What are the risks of collateral of future crops?
- What are the main peculiarities of a relevant collateral agreement, etc.?

Following a synthesis of materials prepared by EBRD, IFC and the representatives of agrarian business, a group of experts of AMDI prepared a draft law. In that law, they seek the development of the institution of collateral of movable property in order to create favourable conditions for the crediting of agricultural commodity producers, first of all by the suppliers of raw materials, inputs, etc. The target of implementation of a system of ARs is the creation of a protected mechanism of crediting for agrarian commodity producers.

The goal of a draft Law of Ukraine “On Agrarian Receipt” is the implementation of the system of execution of liabilities collateralized with agrarian commodities as the protected mechanism of crediting of agrarian commodity producers. So, the agreement fixes the unconditional liability of a debtor to perform actions related to disposal of things defined by generic features that are ensured by collateral.

An AR is a disposable commodity document that fixes the unconditional liability of a debtor ensured by collateral to perform the delivery of agrarian products or to pay money on the defined conditions. ARs may be used in transactions with agrarian commodities; the list is defined in groups 01-14 UCC of the Law of Ukraine “About Customs Tariff in Ukraine”.

According to provisions of the draft law, ARs are allowed to conclude only for the registration of opposite liabilities of a debtor for cash funds, delivered goods, performed works and services rendered.

ARs may be issued to the persons who have an agricultural land plot title or the right to use it on a legal basis for agrarian commodity production. In cases where the property right on a land plot belongs to two or more users, the ARs are issued to them jointly, and, accordingly, they bear joint responsibility for the failure to execute their obligations.

The contract should contain the following:

- name and place of parties;
- the matter of claim secured by collateral, its amount and liability execution term (conditions of collateral agreement may be presented both in the text of this agreement, and by the way of referral to the conditions of the agreement, from which the main liability is ensured by collateral);
- the description of the subject of collateral that is to be pledged, so that it may be identified; and
- other conditions in terms which apply to fulfill one side of the agreement, such as conditions as to the insurance of future harvest for the benefit of a financial institution.

The body that regulates issuance, circulation and enforcement of ARs is MinAPFU. The GOU elaborates and implements the state programs of crediting agrarian commodity producers using AR. In terms of liability, ARs are divided into tradable and financial.

Tradable ARs fix the unconditional liability of a debtor to perform the delivery of the approved agricultural production in terms of the quality, amount, place and time of delivery defined by the agrarian note.

Financial AR establishes the unconditional liability of a debtor to pay a cash amount that is defined by the formula approved by each side with consideration of prices for agricultural production in the defined amount and quality.

Typical ARs should contain the following mandatory information [3,8]:

1. name – “Agrarian Receipt”;
2. the sequence number of the issued AR by a debtor;
3. date and place of issuance;
4. debtor’s name, its place of registration and identification code in the case of individuals;
5. name, address of location, code of SSREU for legal entities;
6. data on land plot where the crop is cultivated, including documents that certify the exclusive right of ownership on a land plot or the exclusive right to use it ;
7. unconditional liability:
 - To perform the delivery in the case of tradable ARs;
 - To provide payment, in the case of financial ARs;
8. the name of the product, its quantity, quality, approval of formulas of recalculation of quantity in relation to the different quality of the delivered product;
9. place of delivery on conditions of ex works (EXW) (Incoterms 2000); applicable only for tradable ARs;
10. method of payment of cash funds, for financial ARs;
11. date of execution of liabilities on delivery or payment by a debtor;
12. name of expert institution that shall be resolving the disputes if there are any in terms of product quality for tradable ARs;
13. specification that ARs become effective after its notary certification and registration;
14. specification about impossibility of delivery execution of payment in parts;
15. specification about mandatory return of AR by creditor at the moment of receipt of execution;
16. forfeit or penalty for breaching the liability;
17. data on future harvest AR collateral:
 - name of produce of future harvest, including its amount, quality, approval of formulas of recalculation in relation to a different quality;
 - data on land plot where the crop is cultivated, including documents that certify the exclusive right of ownership on a land plot or the exclusive right to use it;
18. specifications about the right of creditors to satisfy the claim by the way of appropriation of collateral with consideration of the sequence of ARs;
19. specification about creditor’s right to inspect the land plot mentioned in AR;
20. basis for foreclosure and enforcement; and
21. chapter for performance of (re)assignments.

In case of transfer either of property rights on land plots or the right to use it to another person mentioned in AR, such a person bears joint responsibility for the execution of ARs issued by all previous owners or land users. The transfer of property right on land plots or the right to use land does not stop the action of future harvest collateral indicated in ARs.

ARs may fix the unconditional debtor's liability to perform actions related to disposal of grain in terms of the Law of Ukraine "On Grain and Grain Market in Ukraine" and/or other agricultural produce; the list of additional produce that could be used as collateral under warehouse documents may be extended by MinAPFU.

The quality of produce is the subject of real ARs and is determined by mutual agreement on the day of issue of the AR.

An expert institution authorized to resolve disputes about the quality of produce in terms of liability on execution of tradable ARs is to be chosen by the mutual agreement of debtor and creditor from the list of competent institutions.

If, in cases of dispute about quality, the institution named lacks the necessary expertise to make competent judgments, according to the law, the debtor and the investor, by their mutual consent, may choose another expert institution. If the sides cannot reach consensus about product quality, then the expert institution in the relevant region assigned by the MinAPFU shall perform the expert analysis.

The cost of expertise is incurred by the side that incorrectly evaluates the quality of the produce once that is determined by the expert institution.

The formulas of recalculation of quantity of commodity that is subject to the delivery by tradable AR in relation to a different quality of delivered products are approved by each party by mutual agreement. The MinAPFU works out the methodology for such recalculations.

The execution of liabilities on delivery of production by the tradable AR is done on EXW conditions (Incoterms 2000). The debtor pays for storage of produce up to the date of AR execution while the investor pays for storage after receipt of execution by the AR. At the moment of receipt of produce the investor is obliged to return the original copy of the AR, which is recorded as "executed".

The payment of cash funds by financial AR is done on condition of revocable letter of credit (L/C) with conditions approved by both parties. When the investor receives funds, the original copy of the AR is returned and is recorded as "executed".

The inalienable component of ARs is the provision of liabilities by the future harvest pledge; the actions of a debtor are related to the disposal of production. The amount of collateral should be no less than the amount of liability by AR, and the conditions of collateral are to envision the opportunity of a creditor to appropriate the collateral by way of writing off the debtor's liabilities. The conditions of AR may include the referral to other agreements that ensure the execution of the liabilities by a debtor.

The monitoring of collateral objects is to be one of the most vital parts of the AR system in Ukraine. The climate of Ukraine necessitates strict regulation of the technology for agrarian production during all stages of technical process. Negligence during any stage of the process may lead to damage or devastation of crops or animals that incur obligations under ARs.

There are no public records of amount and quality of crops harvested, products of animal origin gathered by farmers or private entities, or domestic animals grown by them. The lack of regulation on turnover of crops, animals and products of animal origin could lead to uncontrolled evasion of the execution of a debtor's duty to use harvested crops, domestic animals and gathered products of animal origin as collateral for ARs once crops in the field have been harvested and stored.

In order to remove both above-mentioned risks, the Ukrainian version of CPR implementation offers the right to monitor collateral including inspection of: crops existing in the field, technologies for cultivation of crops and animals, crop harvesting and harvest storage methods as well as conditions of harvest storage and animal husbandry in AR owners, as is already done in Brazil. Moreover, the draft law grants additional guarantees for AR owners by stipulating their right to conduct any action to ensure the proper use of technology for crop and animal growth, and at the farmer's expense if the farmer fails it do it himself. This specification in the law is not new, but is an elaboration on existing Ukrainian law protecting the right to save someone else's property as stipulated in chapter 1162 of the Civil Code of Ukraine.

In Brazil, the farmer can file a lawsuit against CPR owners who he believes falsely claim that there is negligence on the farmer's part in terms of failure to grow and husband, harvest and store, crops and animals in proper ways. Such lawsuits are heard as common civil cases. In Ukraine, court hearings are much longer and technical knowledge about crop growth, harvest and storage is needed to resolve these kinds of disputes. Ukraine's draft law offers the services of a special arbitration authority appointed by the government. This authority is mandated to solve such disputes within two working days from receipt of the farmer's complaint. Until this solution is reached, the owner of the AR has no right to conduct any actions on farmer's field or against the farmer's crops and animals. If the special arbitration authority fails to satisfy the complaint of the farmer within the above-mentioned terms, the complaint is to be recognized as rejected. The use of a specialized arbitration authority and the efficient procedures of qualified complaint processing would establish a rather simple and highly effective system for balanced protection of farmers – who are interested in free growth of crops and animal husbandry – and AR owners – who are interested in effective growth of crops and animal husbandry [1,2,3].

In case of a debtor's failure to execute the liabilities of the AR in the term specified, the investor has the right, at any time, to address the notary for the performance of executive record and to obtain the execution of AR and forfeit from a debtor. ARs that have not been recorded as executed are considered to offer sufficient confirmation of the indisputability of the creditor's claim.

Creditors by AR have a prevailing right over the rights of other persons to satisfy their claims for the account of the subject of AR collateral.

Those creditors whose AR was issued first have the prevailing right to satisfy their claim for the account of the subject of AR collateral over other investor's rights by other ARs that have been issued by the same debtor for the same produce.

Also, those creditors who were issued ARs first have the right to satisfy their claim, if later investors received the execution of AR from a debtor before they did.

In cases where a creditor receives an AR from a previous investor by the way of executing a record of transfer, he/she has the right to satisfy his/her claims for the account of property of such previous investors or any other previous investors that are placed higher than his/her name in a line of transfer records, if in the text of transfer record there is no rule "unbailed". In cases where a previous investor would execute the liability by AR for the account of own property, he/she assumes the rights of an investor by AR.

The debtor bears the responsibility for the failure to execute the liabilities by AR, regardless of his/her culpability or circumstances, whether random coincidence or *force majeure*. A debtor's civil responsibility for the failure to comply with obligations of AR

is the commitment to pay a forfeit to a creditor; the amount of forfeit is defined by each side at the moment of conclusion of the AR, but it should not exceed the amount of collateral indicated in the AR. In addition, the debtor may bear civil responsibility in other forms, orders or conditions as envisioned by the legislation of Ukraine. Debtors bear criminal responsibility for the failure to execute the liabilities by AR in the order and on the conditions envisioned by the legislation of Ukraine.

Liabilities by AR become effective from the moment of notary certification of AR and are valid until their full execution. By the mutual consent of the both parties, and also, in some specific cases, as is envisioned by the law, the date of execution of liabilities by AR can be transferred to the next marketing year.

When collateral is in the form of future harvest, it is important for the development of the proposed mechanism, to create the conditions for a situation when a creditor, in cases of violation of liability, can have the opportunity to obtain fast and efficient satisfaction of claims for the account of the pledged property.

It is proposed that in cases of a debtor's violation of liabilities, the procedure of appropriation of pledged movable property by mortgagee should envision the right of a creditor to address the notary whose executive record is sufficient for a forced receipt of execution of liabilities from a debtor.

The acceptance of the draft law "On Agrarian Receipts" also requires:

- the parallel regulation of the legislative gaps that deal with amending the instructions on the order of execution of notary actions by notaries of Ukraine;
- changes to the regulation on State Register of legal deeds; State Register of liens on movable property;
- changes to the list of documents where the enforcement is done in incontestable order on the basis of executive records of notaries, adopted by the Resolution of CMU dated 29 June 1999 №1172;
- changes to the Penal Code of Ukraine including amendments to the article 191-1 to envision punishment in case of failure to execute the liabilities of the unconditional and secured agricultural produce collateral agreement, by a person who concluded it.

5. CONCLUSIONS

Agrarian sector stakeholders function best when resources that are necessary for their operations and economic development, such as legislation and regulatory policy, financing systems, inputs supply, production and processing are within their grasp. Optimal management of those resources is dependent upon empowered and informed decision-makers with access to working infrastructure, marketing chains and inputs supply. Thus, the implementation **objectives should be** [5,6]:

- 1) to increase credit resources to agriculture through the introduction of the functioning PrHF instruments tailored to farmer's seasonal needs;
- 2) to contribute to the development of sustainable agricommodity supply chain financing by integrating pre- and post-harvest systems;
- 3) to mobilize and to facilitate stakeholders' commitment and engagement in ongoing PPD through development of common ownership of proposed solutions; and
- 4) to strengthen agricultural marketing, service and high value chains and financing institutions in order to improve the access to markets and financing for small and medium-size producers (SMPs).

Authors suggest several innovative approaches to be utilized separately or in combination to achieve the synergy of implementation of efforts.

Implementing activities will bring identified multiple and varied stakeholders together, using whole-systems-in-the-room (WSR)³⁰ meetings and problem-solving techniques, creating both commitment to and ownership of the future solutions. WSR is an innovative, large group planning method that enables stakeholders to develop a common vision and a shared agenda for a sustainable future action. A participatory process that brings representatives from all parts of a system into the room to work together, WSR facilitates the creation of a vision and the mode to achieve it in the future. The WSR process has three main outcomes: it enables diverse groups to come together and develop a shared vision for the future; it enables stakeholders to discover shared intentions and begin implementation of an action agenda; and it facilitates diverse-group increased collaboration and cooperation for sustainable self-managed solutions. This collaboration will also promote risk reduction created by "free rider"[9] attitudes towards common pool resources management. At the same time, it will help to get real buy-in of stakeholders and to achieve increased self-responsibility for decision-making [10,11].

Another innovative approach is the use of the theory of Complex Systems [12,13,14,15,16,17] for description and development of PPHFS. This approach helps to optimize the systems' components, the links between them and their functions. It also creates feedback loops for efficient error correction and operative control [18,19,20,21].

If implemented in the future, these approaches will improve the stakeholders' access to financial resources and increase its efficiency by developing sustainable PPHFS in the agrarian sector. That sector's sustainability will be based on a relevant legal platform and shall be secured by the PPD. A "sustainable partnership and dialogue" concept will provide a foundation for the development of an enabling legal and regulatory framework and will create the opportunities for commercial financing of the implementation and operation activities in Ukraine. Further implementation activities

30 — WSR is developed by Future Search and SCALE by AED (now FHI360), and later developed under USAID programs and other documents.

shall focus on improvement of the effectiveness and the efficiency of financing systems to ensure sustainability of the agrarian sector. In order to achieve this objective, the implementation activities should assist in development of a PrHF system and in the improvement of the post-harvest financing (PoHF) system, GWHF, with the goal of further integration. This achievement would create an environment that is conducive to the financial viability of SMPs:

- by providing simplified access to short-term financial resources;
- by abolishing gaps in current legislation;
- by developing an e-register, based on information systems enabling e-trade regional platform development; and,
- by the establishment of PPD to abolish the current practice of monopolized decision-making processes in industry at the level of the economy.

The following approach, therefore, is primarily focused on integrating private-public participation and NGO-based mechanisms into the financial systems and legal platform development for the agrarian sector in Ukraine, thereby ensuring their sustainability, as well as its up-scaling. This process would contribute to the overall improvement of the financing services rendered for Ukraine's agriculture. The interventions will focus on the regulatory and institutional framework; on building technical and managerial capabilities of organizations involved in provision and delivery of financial services; in particular, the MinAPFU and the sector's NGOs. The implementation activities are to be supported by high-level working groups (WG) of Ukrainian government officials and members of the private sector (e.g. current WGs on pre-harvest legislation development and on the dialogue in the grain sector are initiated by FAO, EBRD and MinAPFU).

The Brazilian experience with CPRs shows that there is an opportunity to implement such financial instruments for agrarian commodity producers in Ukraine with the goal to obtain additional loans under the pledge of future harvest.

To a large extent, the success of the work of this system in Brazil was dependent on a simplified system of enforcement in case of failure to execute the concluded agreements by CPR contract: ruling on enforcement is taken in 24 to 48 hours. Another important factor is the impossibility of applying *force majeure* conditions to CPRs. The borrower has a very limited opportunity to claim these conditions against enforcement rulings.

The main advantages of CPRs for different market participants of agrarian production are as follows [3,4,6]:

- 1) for agrarian producers:
 - future sale of produce;
 - decrease of dependency on loans; and
 - better process of long-term planning.
- 2) for middlemen and processors:
 - expected and planned procurement of produce;
 - reduction of risks related to delivery; and
 - better conditions of financing.
- 3) for the enterprises-input suppliers:
 - reduction of risk of non-payment;
 - opportunity of performance of different types of transactions (barter); and
 - better conditions of financing.

On the basis of the legislation and practice of Brazil as to implementation of CPRs, FAO and USAID joined efforts in order to ensure the elaboration and adoption of similar legislation in Ukraine. EBRD, IFC, MinAPFU and some national and international companies from the private sector support these efforts.

In Ukraine, the option of implementation of new contractual liabilities between agrarian commodity producers and creditors in the form of liabilities secured by collateral of agricultural produce under future harvest, or AR, is under consideration. It shall permit agricultural commodity producers who have limited access to loan resources, to receive direct cash credit through new financial instruments (bank lending, including state bank lending and such transactions under discounted interest rates) or indirect credit through inputs (seeds, fertilizers, plant protection means, fuel, etc.) from investors or creditors. These things will be obtained under the collateral of their future harvest of agrarian commodities; primarily, grain crops and sunflower. Such an instrument can be rolled out to other types of agrarian commodities; namely, cattle.

The obstacles in the way of implementation of ARs in Ukraine are:

- misunderstanding of the working principles of this instrument;
- weak development of the insurance system of agricultural production;
- generally inefficient legal and judicial system in Ukraine, particularly, as to the speed of enforcement of court rulings;
- weak development and immaturity of enforcement of court rulings;
- opportunity of regional bodies of executive power to impact on the court rulings and on other official bodies;
- absence of a single consolidated and accurate database on households (square, harvest yield, etc.)
- lack of a single registry of land plots and land titles; and
- weak development of market infrastructure, particularly in terms of systems of inputs and insurance of future harvest.

Development of credit relations requires the creation of mechanisms that shall be oriented to the reduction of risk of financial losses and timely execution of liabilities of contra-agents, which depends upon their financial status. The main risks are:

- the amount of pledge in commercial banks is three to five times larger than the loan amount;
- the absence of the possibility to use fixed assets as collateral is explained by the fact that their amortization sometimes reaches 90 percent;
- the share of agrarian sector in the fixed assets of the national economy of Ukraine was reduced from 23.3 percent in 1993 to 13.3 percent in 2001, then 4.5 percent in 2004, until, at the end of 2008, the specific weight of fixed assets cost of agriculture was 3 percent;
- the fact that a pledge may be the young animals and a future harvest; their value should not be assessed lower than the level of market prices.

The main risks for farmers who will be concluding the agreements for inputs under the pledge of future harvest in the form of ARs from the creditors, can be sharp fluctuations of market prices for agricultural produce. This instability can complicate settlements between farmers and creditors. These are not always resolved in favour of the farmers, as the practice of Brazil shows. Considering this fact, while concluding the agreement for the delivery of inputs in exchange for a CPR, it is mandatory to indicate the mechanism of price adjustment in order to minimize the losses of farmers. Also, the mechanism

that shall facilitate the mutual settlements and shall reduce price risks can be a further agreement for this produce in exchange for GWH receipts. These shall become the pledge for commercial banks in order for the farmer to receive additional loan resources.

AR's draft law framework, suggested by the authors

The authors drafted AR law [8] concepts and framework based on these findings. We initiated discussions of it with relevant stakeholders and WG members of MinAPFU. In general, the draft law envisages the following features of the Ukrainian PrHF.

PrHF system in Ukraine: goals and objectives

Goal: the improvement of agricultural financing and market-oriented agricultural policies by developing legal platforms and tools for the integrated PPHFS, simplifying the access to short-term credit resources and reinforcing new and ongoing PPD.

Objectives: 1) increase of credit resources to agriculture through the introduction of functioning PrHF instruments tailored to farmer's seasonal needs; 2) to contribute to the development of sustainable agricultural supply chain financing systems by integrating PPHFS; 3) to mobilize and to facilitate stakeholders' commitment and engagement in ongoing PPD through development of common ownership of proposed solutions; and 4) to strengthen agricultural marketing, service, and high value chains and financing institutions in order to improve the access to markets and financing for SMPs.

Contents of Ukrainian counterpart (AR) to Brazilian CPR

■ **Tradable AR:** The farmer performs delivery of an agreed quantity of his produce. In fact, this is a kind of barter transaction or forward contract depending on the type of input that is supplied in exchange to the farmer performing such a delivery;

or,

■ **Financial AR:** The farmer pays an amount that is related to the price of a certain amount of his produce in specific trading organizations at the date of payment.

General attracting features of ARs:

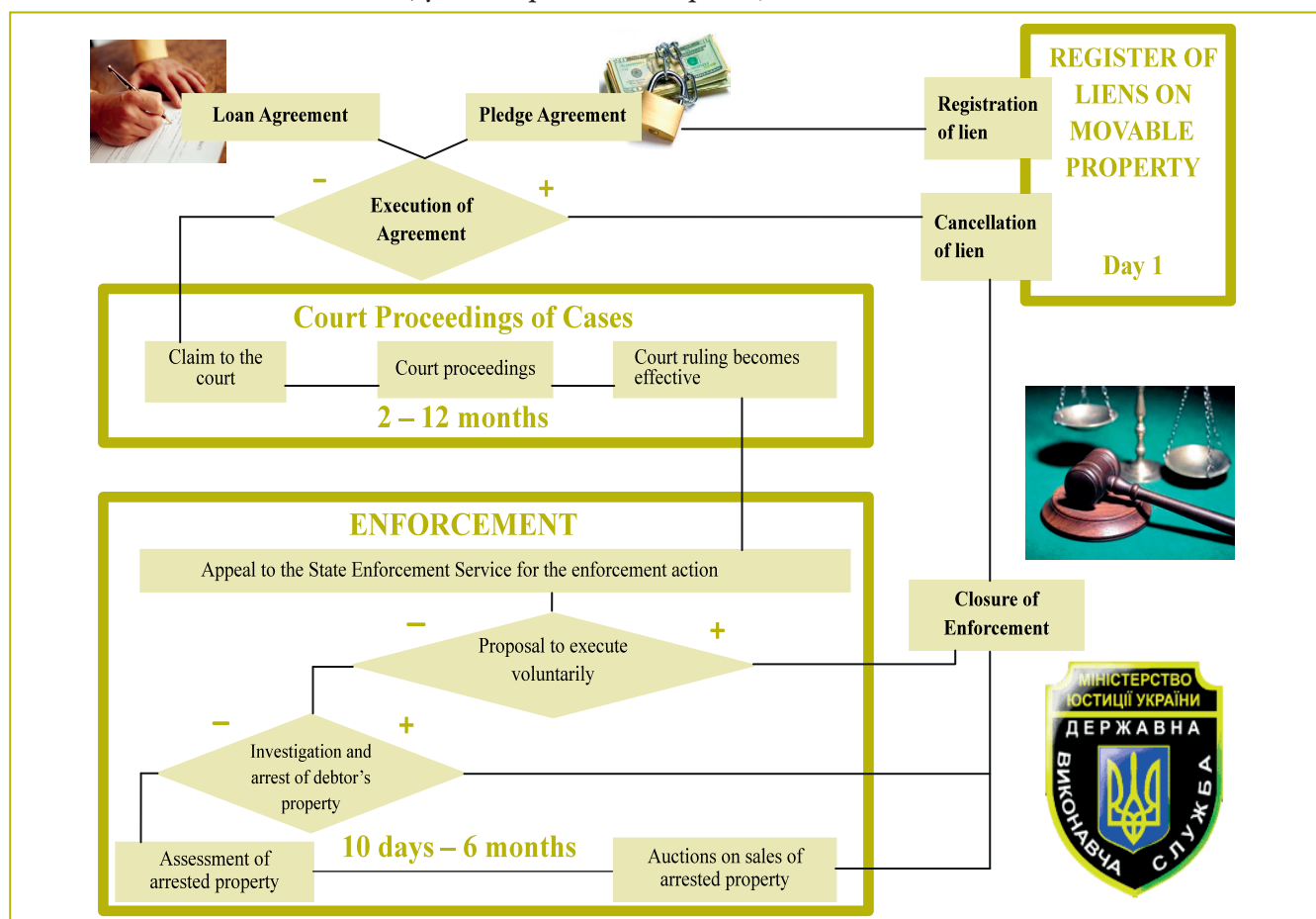
- indisputable obligation of a farmer to perform such a payment;
- relevant ease of circulation;
- provision of pledged crops which would be harvested from a certain land plot;
- simplified procedure of enforcement during the harvest; and
- open register of ARs with a possibility to search liens both per individual and per land plot.

Key conditions of ARs expected for Ukraine:

- the issuance of AR is done only for the opposite liabilities of farmers, and inspection is performed by a notary during registration;
- the relation of AR to agricultural produce is clearly defined by the law;
- an inspection of an individual's title for a land plot producing harvest that becomes a subject of collateral. AR's term of validity cannot exceed the terms of duration of such rights. A change of the ownership of land plot means that the new owner also attains the obligations of the CPR;

- actual delivery on the terms EXW in tradable ARs; payment in any form in financial ARs;
- the use of AR blanks to accompany legal actions as to AR circulation and their execution;
- availability of produce recalculation formulas in case the quality of the produce delivered is different than anticipated in the tradable AR; availability of produce quantity recalculation formulas into a cash liability; and name of financial institution whose recalculation formula is approved to assess the product's value;
- registration of AR as an agreement and as a lien, with the register of liens on AR being generally accessible;
- re-assignment of AR as promissory note endorsement plus notary certification of such legal action that is to be recorded in the register of liens of individual holders of pledge;
- out-of-court enforcement;
- future harvest collateral per each AR.
- Satisfactory resolution of claims for the account of pledged property in favour of holders of ARs, with priority given to the holder of the earliest AR;
- AR holder's right to obtain satisfaction for the account of pledged property from individuals who acquired such property from a holder of pledge during the AR validity term; and
- possibility to apply specific criminal responsibility to a farmer for the failure to execute AR.

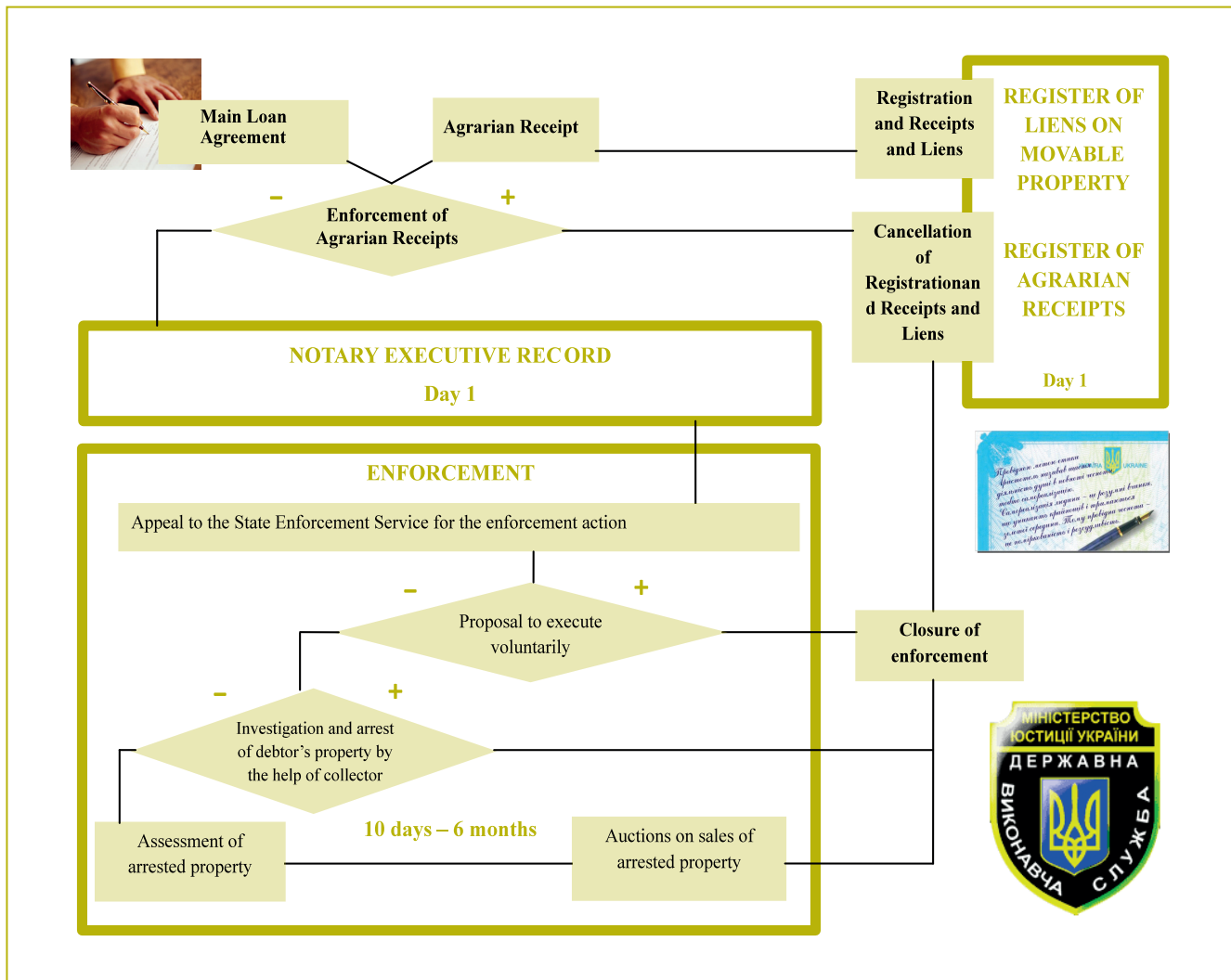
Chart 25 shows a scheme, currently existing in Ukraine, of creditor's protection with pledge and enforcement, as well as its timeframe. In the best case scenario, a court decision is reached in 18 months (system's operational response).



Source: AMDI

Chart 25. Existing system of creditor's protection with pledge

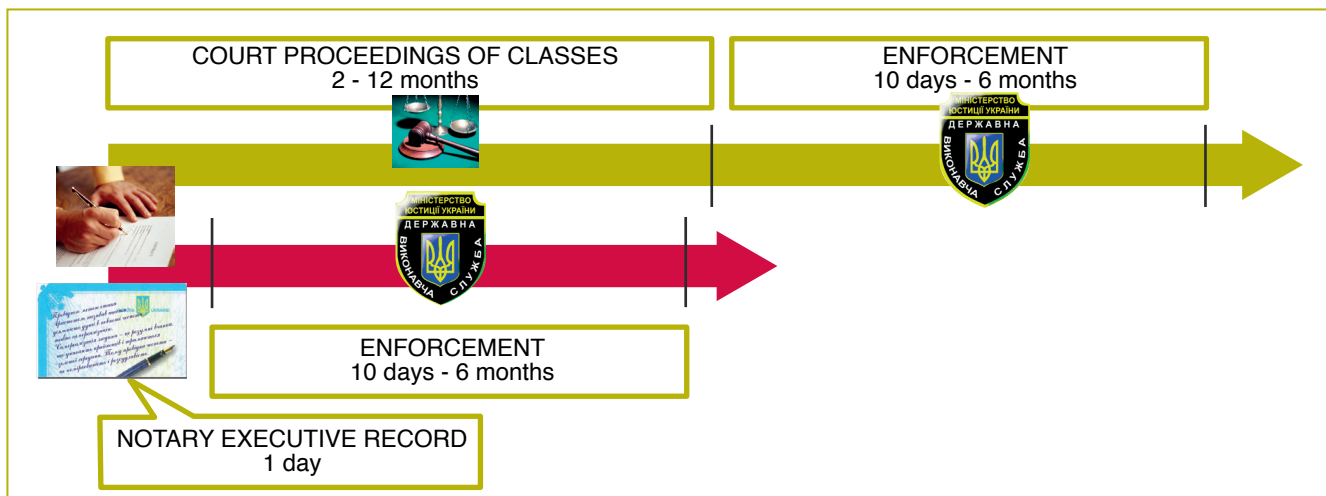
Chart 26 provides an algorithm and relevant operational response timeframe of the system for creditor's protection proposed by the draft law. In the best case scenario, response occurs in eleven days, and in the worst case, it happens in six months.



Source: AMDI

Chart 26. System of creditor's protection proposed by the draft law

Chart 27 provides a comparison of the responses for the existing system of creditors' protection compared to the system proposed by the authors.



Source: AMDI

Chart 27. Creditors' protection: comparative time-frame.

ECONOMIC EFFECT

Future expectations:

- UAH two to three billion additional loan resources for agricultural producers during the first year of introduction of agrarian notes.
- UAH 45 to 50 billion per year may be involved in agricultural enterprises using this mechanism.

About 30 percent of these additional resources will be funds from suppliers of inputs, traders and other intermediaries, while about 5 percent will be supplied by banking institutions (Chart 28).



Source: Authors' calculations

Chart 28. General financing of agrarian enterprises from suppliers of inputs, traders and banking institutions

While working on this report the authors continued to draft a framework for the AR law [8] participating in the MinAPFU WG (See Attachment 1). The following content of the draft law (See Attachment 2) has been developed and agreed upon by the members of the WG. The draft law, therefore, consists of four sections and fifteen articles which are the foundations of the key features described in this report (See Table 12).

Table 12. Draft Law of Ukraine “On Agrarian Receipts” framework

Section	Articles
Section I General Provisions	Article 1. Sphere of Application
	Article 2. Definitions
Section II Agrarian Receipts	Article 3. Agrarian Receipts
	Article 4. Commodity Agrarian Receipts
	Article 5. Form of Commodity Agrarian Receipts and Settlement of Disputes about the Quality of Agricultural Products
	Article 6. Financial Agrarian Receipts
	Article 7. Form of Financial Agrarian Receipts
	Article 8. Pledge of Future Crops
	Article 9. Monitoring of Pledged Future Crops and Livestock
Section III Circulation of Agrarian Receipts	Article 10. Issue of Agrarian Receipts
	Article 11. Keeping the Register of Agrarian Receipts
	Article 12. Assignment of Agrarian Receipts
	Article 13. Fulfillment of Obligations under Agrarian Receipts
	Article 14. Liability
Section IV Final Provisions	Article 15. Bail (guarantee) of Financial Institutions

Final provisions of the law following legislation, which should be amended or added, in order to bring this draft law into force:

- Law of Ukraine “On Notary Services”;
- Ministry of Justice of Ukraine, “The Instruction for the Performance of Notary Acts by Ukrainian Notaries”;
- Law of Ukraine “On Executive Proceedings (Enforcement)”;
- MinAPFU to adopt an act that will regulate the issues pertaining to the determination of the quality of agricultural products;
- Ministry of Justice of Ukraine to make corresponding changes in the instructions for the keeping of the State Register of Transactions;
- Ministry of Justice of Ukraine to make corresponding changes in the instructions for the keeping of the State Register of Pledged Movable Assets and completion of applications;
- the Cabinet of Ministers of Ukraine shall amend the list of documents required for unconditional collection of indebtedness based on executive notary inscriptions approved by the resolution of the Cabinet of Ministers of Ukraine No.1172 dated 29 June 1999;
- add Article 198-1 to the Criminal Code of Ukraine;
- amend the Criminal Procedure Code of Ukraine; and
- the Cabinet of Ministers of Ukraine shall amend the state targeted program for the development of Ukrainian rural areas for the period until 2015 by working out a program for the development of lending to agricultural producers with the use of the agrarian receipt mechanism, the execution of the key provisions of this law and the provision of necessary funding.

All theoretical assumptions, approaches and systemic principles provided in this report have been discussed and approved by the WG members.

Authors prepared a presentation (See Attachment 3) for the IInd Grain Congress (on 16-18 October 2011, Kyiv) (See Attachment 4) and for the round table (See Attachment 5) with members of the WG and stakeholders. It was recommended that a draft be sent to the Ministry and the Verhovna Rada for its official registration. Simultaneously, FAO comments on the draft law have also been considered and relevant answers provided (See Attachment 5).

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VII. ATTACHMENTS



МІНІСТЕРСТВО АГРАРНОЇ ПОЛІТИКИ ТА ПРОДОВОЛЬСТВА УКРАЇНИ НАКАЗ

від 12 травня 2011 року N 170

Про створення Міжвідомчої робочої групи

На виконання доручення Кабінету Міністрів України від 31 січня 2011 р. N 65878/5/1-10 щодо удосконалення механізму фінансово-кредитного забезпечення сільськогосподарських товаровиробників **наказую:**

- 1.** Створити Міжвідомчу робочу групу з питань розробки законопроекту щодо удосконалення механізму фінансово-кредитного забезпечення сільськогосподарських товаровиробників (далі - робоча група) у складі згідно з додатком.
- 2.** Керівнику робочої групи:
 - 2.1.** У місячний строк подати керівництву Міністерства законопроект щодо удосконалення механізму фінансово-кредитного забезпечення сільськогосподарських товаровиробників для подальшого внесення суб'єктом законодавчої ініціативи на розгляд Верховної Ради України.
 - 2.2.** Забезпечити супровід законопроекту під час розгляду у Верховній Раді України.
- 3.** Контроль за виконанням наказу залишаю за собою.

Міністр

М. В. Присяжнюк

Додаток

*до наказу Міністерства аграрної політики та продовольства України
12.05.2011 N 170*

СКЛАД

Міжвідомчої робочої групи з питань розробки законопроекту щодо удосконалення механізму фінансово-кредитного забезпечення сільськогосподарських товаровиробників

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(за згодою)

САМУСЬ

Олег Георгійович - директор з юридичних питань та зі зв'язків з громадськістю
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ATTACHMENT 2. Draft law on ARs (Ukrainian and English)

Проект

Вноситься народними депутатами

України

ЗАКОН УКРАЇНИ

Про аграрні розписки

Розділ I

Загальні Положення

Цей закон регулює правовідносини, які виникають у сфері оформлення, видачі, обігу, виконання аграрних розписок, визначає порядок їх реєстрації та спрямований на створення правових, економічних, організаційних умов функціонування цих документів.

Стаття 1. Визначення термінів

У цьому Законі нижченаведені терміни вживаються в такому значенні:

аграрна розписка – товаророзпорядчий документ, що фіксує безумовне зобов'язання боржника, яке забезпечується заставою, здійснити поставку сільськогосподарської продукції або сплатити грошові кошти на визначених в ньому умовах;

боржник за аграрною розпискою – особа, яка видає аграрну розписку для оформлення свого зобов'язання здійснити поставку сільськогосподарської продукції або сплатити грошові кошти на визначених в аграрній розписці умовах;

кредитор за аграрною розпискою – фізична чи юридична особа, яка надає грошові кошти, послуги, поставляє товари, виконує роботи як зустрічне зобов'язання за договором, за яким боржник за аграрною розпискою видає їй аграрну розписку, наділяючи правом вимагати від нього належного виконання зобов'язань за аграрною розпискою, а також фізична чи юридична особа, яка отримала права кредитора за аграрною розпискою від іншого кредитора за аграрною розпискою незабороненим законом способом;

Реєстр аграрних розписок – єдина інформаційна система, що містить відомості про обов'язкові реквізити виданих та погашених аграрних розписок;

експертна установа - фізична чи юридична особа, діяльність якої полягає у проведенні за плату товарознавчих досліджень у галузі сільського господарства, і яка підтвердила свою кваліфікацію у порядку, встановленому законом для судових експертів.

моніторинг предмета застави за аграрними розписками – діяльність спеціально-уповноваженого органу державної влади по забезпеченню реалізації державної політики у сфері нагляду (контролю) в агропромисловому комплексі, а також діяльність кредиторів за аграрними розписками та залучених кредиторів за аграрними розписками інших зацікавлених осіб зі здійснення спостереження за майбутнім врожаєм та/або живими тваринами, що виступають предметом застави за аграрними розписками, збору інформації про предмет застави та боржників за аграрними розписками, її систематизації в бази даних та користування такими

базами даних в порядку, передбаченому законом.

сільськогосподарська продукція – продукція, перелік якої визначений в групах 01-14 розділів I та II Української класифікації товарів зовнішньоекономічної діяльності, згідно із Законом України «Про Митний тариф України».

живі тварини – тварини, які визначені в розділі I Української класифікації товарів зовнішньоекономічної діяльності, згідно із Законом України «Про Митний тариф України».

Розділ II

Аграрні розписки

Стаття 2. Загальні положення

Аграрні розписки використовуються в операціях з сільськогосподарською продукцією.

Аграрні розписки можуть видаватися особами, які мають право власності на земельну ділянку сільськогосподарського призначення або право користування такою земельною ділянкою на законних підставах для здійснення виробництва сільськогосподарської продукції. Якщо право власності на земельну ділянку належить двом і більше співвласникам або право користування належить двом і більше користувачам, аграрні розписки видаються ними спільно. Особи, що спільно видали аграрну розписку, несуть солідарну відповідальність за невиконання своїх зобов'язань.

Перехід права власності чи права користування земельною ділянкою не зупиняє дію вказаної у аграрній розписці застави майбутнього врожаю, та не припиняє прав боржника та кредитора за аграрною розпискою на користування земельною ділянкою до збору відповідного врожаю але не довше ніж до закінчення поточного маркетингового року.

Аграрні розписки складаються у двох примірниках, один з яких зберігається в справах особи, що вчиняє нотаріальні дії з їх посвідчення та реєстрації, а інший - передається кредитору за аграрною розпискою. За бажанням боржника за аграрною розпискою, йому може бути надана посвідчена копія виданої ним аграрної розписки.

Відповідно до виду зобов'язання аграрні розписки поділяються на товарні аграрні розписки та фінансові аграрні розписки.

Стаття 3. Товарні аграрні розписки

Товарна аграрна розписка – це аграрна розписка, що встановлює безумовне зобов'язання боржника за аграрною розпискою здійснити поставку узгодженої сільськогосподарської продукції, якість, кількість, місце та термін поставки якої визначений аграрною розпискою.

Стаття 4. Форма товарної аграрної розписки і вирішення спорів про якість сільськогосподарської продукції

Товарні аграрні розписки складаються у письмовій формі на бланку, підлягають нотаріальному посвідченню і не можуть бути переведені у бездокументарну форму (знерухомлені), якщо інше не передбачене цим Законом.

Товарна аграрна розписка має містити наступні обов'язкові реквізити:

1. Назву – «Товарна аграрна розписка»
2. Термін поставки сільськогосподарської продукції.
3. Реквізити кредитора та умови про подальшу передачу прав за аграрною розпискою.
4. Предмет – безумовне зобов'язання здійснити поставку сільськогосподарської продукції, визначення її кількості та якості. Формули перерахунку кількості сільськогосподарської продукції у випадку поставки сільськогосподарської продукції іншої якості.
5. Умови та місце поставки сільськогосподарської продукції.
6. Опис предмету застави, в тому числі інформація щодо кількості заставленого рухомого майна, кадастрового номеру, місця розташування, правовстановлюючих документів на земельні ділянки, на яких вирощується заставлений майбутній врожай сільськогосподарської продукції або ідентифікаційні номери живих тварин, які виступають предметом застави за аграрною розпискою.
7. Дата та місце видачі.
8. Ім'я боржника, його місце реєстрації, реєстраційний номер облікової картки платника податків (номер та серія паспорту у випадку якщо особа відмовилася від його отримання) та підпис – для фізичних осіб. Назва, адреса місцезнаходження, код ЄДРПОУ підпис уповноваженої особи та печатка – для юридичних осіб. У випадку коли боржників два і більше, зазначаються дані всіх боржників.

Боржник та кредитор можуть домовитись про включення до тексту товарних аграрних розписок додаткових умов, що не суперечать положенням цього закону.

Документ, що не відповідає вимогам цієї статті, не є аграрною розпискою.

Якість сільськогосподарської продукції, предмету аграрної розписки, визначається боржником і кредитором за взаємною згодою виходячи з ГОСТ технічних умов, технологічних регламентів, класифікаторів чинних в Україні на день видачі аграрних розписок.

Експертна установа, уповноважена вирішувати спори щодо якості продукції в зобов'язаннях з виконання товарних аграрних розписок обирається за взаємною згодою боржником та кредитором з переліку установ, що відповідно до закону мають повноваження здійснювати експертизи якості такої продукції.

У разі якщо на день виникнення спору щодо якості продукції погоджена боржником та кредитором за аграрною розпискою експертна установа не матиме відповідно до закону повноважень здійснювати потрібні експертизи, боржник та кредитор за взаємною згодою вправі обрати іншу експертну установу, яка має відповідні повноваження.

У разі недосягнення боржником і кредитором згоди, експертизи якості буде проводити експертна організація, визначена головним органом у системі

центральної виконавчої влади з питань формування та забезпечення реалізації державної аграрної політики, політики у сфері сільського господарства та з питань продовольчої безпеки держави.

Стаття 5. Фінансові аграрні розписки

Фінансова аграрна розписка – це аграрна розписка, що встановлює безумовне зобов'язання боржника сплатити грошову суму, розмір якої визначається за погодженою боржником і кредитором формулою з урахуванням цін на сільськогосподарську продукцію або живі тварини у визначеній кількості та якості.

Виконання боржником зобов'язань за фінансовими аграрними розписками здійснюється лише в безготівковій формі.

Стаття 6. Форма фінансової аграрної розписки

Фінансові аграрні розписки складаються у письмовій формі на бланку, підлягають нотаріальному посвідченню і не можуть бути переведені у бездокументарну форму (знерухомлені), якщо інше не передбачене цим Законом. Фінансова аграрна розписка має містити наступні обов'язкові реквізити:

- 1.** Назву – «Фінансова аграрна розписка»
- 2.** Термін сплати коштів.
- 3.** Реквізити кредитора та умови про подальшу передачу прав за аграрною розпискою.
- 4.** Предмет – безумовне зобов'язання сплатити грошові кошти, визначення формули розрахунку розміру грошового зобов'язання боржника, кількості та родових ознак сільськогосподарської продукції, що є невід'ємною частиною такої формули.
- 5.** Умови та місце сплати грошових коштів.
- 6.** Опис предмету застави, в тому числі інформація щодо кадастрового номеру, місця розташування, правовстановлюючих документів на земельні ділянки, на яких вирощується заставлений майбутній врожай сільськогосподарської продукції або ідентифікаційні номери живих тварин, які виступають предметом застави за аграрною розпискою.
- 7.** Дата та місце видачі.
- 8.** Ім'я боржника, його місце реєстрації, реєстраційний номер облікової картки платника податків (номер та серія паспорту у випадку якщо особа відмовилася від його отримання) та підпис – для фізичних осіб. Назва, адреса місцезнаходження, код ЄДРПОУ підпис уповноваженої особи та печатка – для юридичних осіб. У випадку коли боржників два і більше, зазначаються дані всіх боржників.

Боржник та кредитор можуть домовитись про включення до тексту фінансових аграрних розписок додаткових умов, що не суперечать положенням цього Закону.

Документ, що не відповідає вимогам цієї статті, не є аграрною розпискою.

Стаття 7. Застава майбутнього врожаю

Аграрна розписка встановлює забезпечення виконання зобов'язань боржника за аграрною розпискою заставою його майбутнього врожаю або живих тварин. Предметом такої застави може бути виключно майбутній врожай сільськогосподарської продукції або живі тварини, що є предметом аграрної розписки.

Розмір застави повинен бути не меншим за розмір зобов'язання за аграрною розпискою. На день видачі аграрної розписки, майбутній врожай сільськогосподарської продукції або живі тварини не можуть перебувати в інших заставах ніж за аграрними розписками.

В момент збору врожаю або отримання продукції тваринного походження предметом застави стає відповідна кількість зібраної сільськогосподарської продукції.

Застава майбутнього врожаю сільськогосподарської продукції або живих тварин за аграрною розпискою наділяє кредитора правом у разі невиконання боржником зобов'язання за аграрною розпискою у порядку примусового виконання зобов'язання боржника за аграрною розпискою одержати задоволення вимог за рахунок заставленого майбутнього врожаю сільськогосподарської продукції або живих тварин переважно перед іншими кредиторами цього боржника за аграрною розпискою. Задоволення вимог кредитора за аграрною розпискою за рахунок заставленого майбутнього врожаю сільськогосподарської продукції або живих тварин здійснюється за вибором кредитора за аграрною розпискою будь-яким незабороненим законом способом, в тому числі шляхом передачі йому права власності на предмет застави в рахунок погашення майнового зобов'язання боржника за товарною аграрною розпискою, наділення кредитора за аграрною розпискою правом доростити заставлений майбутній врожай сільськогосподарської продукції або живих тварин, зібрати врожай сільськогосподарську продукцію самостійно або уповноваженою ним особою та погасити майнове зобов'язання боржника за товарною аграрною розпискою шляхом набуття права власності на таку зібрану сільськогосподарську продукцію або погасити грошове зобов'язання боржника за фінансовою аграрною розпискою шляхом укладення договору купівлі-продажу заставленої сільськогосподарської продукції (живих тварин) з іншою особою-покупцем (в тому числі шляхом укладення договору на публічних торгах) та отриманням в рахунок виконання зобов'язань боржника за аграрною розпискою плати за таким договором.

Витрати, понесені кредитором за аграрною розпискою на дорощування та збір врожаю заставленої сільськогосподарської продукції відшкодовуються боржником за аграрною розпискою окремо в порядку, передбаченому законодавством для відшкодування майнової шкоди.

Після збору врожаю або отримання продукції тваринного походження та повного погашення за рахунок такої зібраної сільськогосподарської продукції зобов'язань боржника за аграрною розпискою решта зібраної сільськогосподарської продукції або отриманих від її реалізації коштів повертається боржнику за аграрною розпискою.

Виконання зобов'язань за аграрною розпискою може забезпечуватися додатково будь-якими передбаченими законодавством України видами забезпечення виконання зобов'язань.

Предмет застави може бути застрахований кредитором за аграрною розпискою або боржником за аграрною розпискою. Кредитор та боржник можуть домовитись про спільне здійснення витрат на страхування предмету застави за аграрною розпискою.

Стаття 8. Моніторинг застави майбутнього врожаю сільськогосподарської продукції та живих тварин

Кредитор за аграрною розпискою має право самостійно або залучаючи третіх осіб здійснювати моніторинг майбутнього врожаю сільськогосподарської продукції та живих тварин, що є предметом застави за його аграрною розпискою. Моніторинг може здійснюватися цілодобово протягом всього терміну дії застави майбутнього врожаю сільськогосподарської продукції або живих тварин.

Здійснення моніторингу передбачає здійснення спостереження за майбутнім врожаєм та живими тваринами, дотриманням боржником за аграрною розпискою відповідних технологічних процесів, з можливістю доступу до земельних ділянок, на яких вирощується майбутній врожай або утримуються живі тварини, що є предметом застави за аграрною розпискою, а також доступу до приміщень, де утримуються живі тварини та зберігається зібрана сільськогосподарська продукція, що є предметом застави за аграрною розпискою.

Після збору врожаю моніторинг здійснюється шляхом спостереження за зібраною сільськогосподарською продукцією, з можливістю доступу до місць її зберігання.

Безпосереднє втручання або перешкоджання господарській діяльності боржника забороняється, якщо інше не передбачене законом.

У разі виявлення в ході моніторингу порушення боржником за аграрною розпискою технологічних процесів вирощування сільськогосподарської продукції, майбутній врожай якої є предметом застави за аграрною розпискою, або умов утримання живих тварин, які є предметом застави за аграрною розпискою, що ставить під загрозу отримання майбутнього врожаю сільськогосподарської продукції або живих тварин у звичайному обсязі, кредитор за аграрною розпискою вправі скласти акт про порушення технологій виробництва та вимагати від боржника усунути таке порушення протягом розумного строку. У випадку якщо вимоги, викладені в акті про порушення технологій виробництва не будуть усунути боржником за аграрною розпискою самостійно протягом вказаного у акті строку, кредитор за аграрною розпискою вправі з метою порятунку майбутнього врожаю боржника самостійно взяти під охорону заставлене майно і самостійно або з залученням третіх осіб здійснювати дії з дорощування майбутнього врожаю або живих тварин з дотриманням відповідних технологічних процесів, при цьому витрати кредитора за аграрною розпискою на таке дорощування відшкодовуються боржником за аграрною розпискою в загальному порядку.

У разі незгоди з вимогами, викладеними в акті про порушення технологій виробництва, боржник за аграрною розпискою вправі звернутися до організації, спеціально уповноваженої головним органом у системі центральних органів виконавчої влади з питань забезпечення реалізації державної аграрної політики, продовольчої безпеки держави, державного управління у сфері сільського господарства, садівництва, виноградарства, харчової і переробної промисловості

та комплексного розвитку сільських територій для вирішення таких спорів. Вказана організація зобов'язана розглянути спір та прийняти остаточне рішення по спору, яке буде обов'язковим для сторін, протягом двох робочих днів з дня отримання скарги з доданим оскаржуваним актом кредитора про порушення технологій виробництва боржником. При цьому до вирішення такого спору спеціально уповноваженою організацією кредитор за аграрною розпискою не вправі здійснювати дії з самостійного дорощування заставленого за аграрною розпискою майбутнього врожаю або живих тварин. За відсутності рішення вказаної вище організації протягом зазначеного строку, скарга боржника вважається безпідставною та відхиленою.

Розділ III

Обіг аграрних розписок

Стаття 9. Порядок видачі аграрних розписок

Аграрна розписка видається окремо на кожний вид сільськогосподарської продукції, визначений родовими або індивідуальними ознаками. Товарна аграрна розписка може видаватися на кожен погоджений боржником та кредитором обсяг поставки узгодженої сільськогосподарської продукції.

При видачі, аграрна розписка підлягає нотаріальному посвідченню в порядку, передбаченому Законом України «Про нотаріат» для правочинів, з врахуванням особливостей, встановлених цим Законом. Відомості про аграрну розписку в момент її посвідчення вносяться до Державного реєстру аграрних розписок особою, що вчиняє нотаріальні дії. Відомості про предмет застави за аграрною розпискою вносяться до Державного реєстру обтяжень рухомого майна особою, що вчиняє нотаріальні дії в момент нотаріального посвідчення аграрної розписки. У випадку наявності додаткового забезпечення аграрної розписки, інформація про таке забезпечення може вноситись до відповідних реєстрів відповідно до законодавства України.

Аграрна розписка вважається виданою з моменту її реєстрації в Державному реєстрі аграрних розписок.

Стаття 10. Ведення реєстру аграрних розписок

Держателем Реєстру аграрних розписок є головний орган у системі центральних органів виконавчої влади з питань забезпечення реалізації державної аграрної політики, продовольчої безпеки держави, державного управління у сфері сільського господарства, садівництва, виноградарства, харчової і переробної промисловості та комплексного розвитку сільських територій. Держатель Реєстру аграрних розписок в порядку, визначеному Кабінетом Міністрів України наділяє осіб, що вчиняють нотаріальні дії повноваженнями реєстраторів Реєстру аграрних розписок, які надаватимуть послуги щодо внесення записів до Реєстру аграрних розписок про аграрні розписки та по наданню інформації з цього реєстру іншим особам.

При цьому не може бути жодних обмежень в доступі до інформації про факт видачі аграрних розписок конкретним боржником за аграрною розпискою, які на момент звернення до Реєстру аграрних розписок залишаються невиконаними,

та назви сільськогосподарської продукції, з якою пов'язані зобов'язання такого боржника.

Реєстратор Реєстру аграрних розписок вправі видавати іншим особам інформацію про видані конкретним боржником аграрні розписки та історію їх обігу лише за згодою боржника або кредитора за такою аграрною розпискою відповідно до Закону України «Про захист персональних даних».

Головний орган у системі центральних органів виконавчої влади з питань забезпечення реалізації державної аграрної політики, продовольчої безпеки держави, державного управління у сфері сільського господарства, садівництва, виноградарства, харчової і переробної промисловості та комплексного розвитку сільських територій визначає державне підприємство, що належить до сфери його управління, адміністратором Реєстру аграрних розписок, уповноважує його здійснювати заходи із створення та супроводження програмного забезпечення Реєстру аграрних розписок та відповідає за технічне і технологічне забезпечення, збереження та захист даних, що містяться у Реєстрі аграрних розписок.

Вимоги до Реєстру аграрних розписок та порядок його ведення встановлює головний орган у системі центральних органів виконавчої влади з питань забезпечення реалізації державної аграрної політики, продовольчої безпеки держави, державного управління у сфері сільського господарства, садівництва, виноградарства, харчової і переробної промисловості та комплексного розвитку сільських територій.

Стаття 11. Передача прав кредитора за аграрною розпискою

Передача прав за аграрною розпискою здійснюється шляхом здійснення на ній або на зазначеному в аграрній розписці її невід'ємному додатку передавального напису «Відступлено» з вказівкою нового кредитора за аграрною розпискою. Такий напис скріплюється підписом та (у разі наявності) – печаткою попереднього кредитора за аграрною розпискою.

Передача прав за аграрною розпискою підлягає нотаріальному посвідченню в порядку, передбаченому Законом України «Про нотаріат» для правочинів, з врахуванням особливостей, встановлених цим Законом..

Передача прав за аграрною розпискою, не посвідчене нотаріально не породжує перехід до іншої особи прав кредитора за аграрною розпискою.

Стаття 12. Виконання зобов'язань за аграрними розписками

Аграрні розписки діють до повного їх виконання. За згодою кредитора, дата виконання зобов'язань за аграрною розпискою може бути перенесена на наступний маркетинговий рік.

Виконання аграрних розписок щодо кожного виду сільськогосподарської продукції здійснюється в черговості їх видачі.

Товарні аграрні розписки виконуються шляхом здійснення поставки вказаної в аграрній розписці сільськогосподарської продукції від боржника за аграрною розпискою до кредитора за аграрною розпискою на погоджених ними умовах поставки.

Поставка сільськогосподарської продукції іншої якості ніж визначено в аграрній розписці або в погоджених формулах перерахунку, є невиконанням аграрної розписки

Фінансові аграрні розписки виконуються шляхом перерахування боржником за аграрною розпискою грошових коштів на вказаний кредитором за аграрною розпискою банківський рахунок.

Кредитор за аграрною розпискою зобов'язаний протягом трьох робочих днів з моменту отримання виконання зобов'язання за аграрною розпискою зробити на аграрній розписці напис «Виконано», що скріплюється підписом і печаткою (у разі наявності) кредитора, і повернути таку аграрну розписку боржнику. Повернення здійснюється шляхом особистої передачі аграрної розписки від кредитора до боржника, а у разі неможливості - шляхом направлення цінним листом з описом вкладення на адресу боржника, вказану в аграрній розписці.

Після повернення боржнику за аграрною розпискою оригіналу аграрної розписки з відміткою про її виконання, боржник за аграрною розпискою вправі звернутися до особи, яка вчиняє нотаріальні дії, для внесення запису про виконання аграрної розписки до відповідних реєстрів.

Аграрна розписка з відміткою про її виконання до повторного обігу не допускається. Інформація про видані аграрні розписки та їх виконання зберігається в Реєстрі аграрних розписок не менше ніж десять років.

Виконання зобов'язань за аграрними розписками за згодою кредитора за аграрною розпискою і боржника за аграрною розпискою допускається частинами. Для цього в товарних аграрних розписках погоджується розмір мінімальної партії сільськогосподарської продукції, яка може бути поставлена на її часткове виконання. В фінансових аграрних розписках визначається мінімальний обсяг грошових коштів, який може бути сплачений на часткове виконання фінансової аграрної розписки. Якщо в тексті аграрної розписки не міститься застереження про мінімальний розмір часткового виконання аграрної розписки, то кредитор за аграрною розпискою вправі відмовитися від прийняття часткового виконання зобов'язань боржника за аграрною розпискою.

У випадку отримання часткового виконання за аграрною розпискою на ній робиться напис, в якому фіксується виконана частина зобов'язання та розмір зобов'язання, яке зберігається. Такий напис скріплюється підписами та печатками (у випадку наявності) боржника за аграрною розпискою та кредитора за аграрною розпискою. При цьому забезпечення аграрної розписки заставою зберігається в первісному обсязі.

За згодою сторін, виконання зобов'язань за товарною аграрною розпискою може бути здійснене шляхом передачі складських документів, що посвідчують право власності їх власника на сільськогосподарську продукцію, що зберігається на товарному складі.

Стаття 13. Відповідальність

За невиконання аграрних розписок, боржник за аграрною розпискою несе відповідальність незалежно від наявності його вини, дії обставин непереборної сили чи випадкового збігу обставин.

Наявність аграрної розписки без відмітки про її виконання є достатнім підтвердженням безспірності вимог кредитора за аграрною розпискою.

У разі невиконання боржником за аграрною розпискою зобов'язань за аграрною розпискою у вказаний в ній строк кредитор за аграрною розпискою вправі звернутися за вчиненням виконавчого напису до особи, уповноваженої вчиняти нотаріальні дії, який підлягає негайному виконанню і на підставі якого державний виконавець протягом 48 годин забезпечує передачу кредитору за аграрною розпискою предмета застави аграрної розписки.

У разі відсутності в натурі предмета застави, що має бути переданий кредитору за аграрною розпискою, кредитор за аграрною розпискою має право на задоволення своїх вимог за рахунок іншого майна боржника.

У разі відчуження боржником за аграрною розпискою майна, що виступає предметом застави за аграрною розпискою, будь-якій третій особі до того, як ним будуть виконані зобов'язання за аграрною розпискою, кредитор за аграрною розпискою вправі задовольнити свої вимоги до боржника за аграрною розпискою за рахунок такого чи рівноцінного майна такої третьої особи, після чого в неї виникає право регресної вимоги до боржника за аграрною розпискою.

Кредитор за аграрною розпискою, яка була видана раніше, має переважне право на задоволення своїх вимог за рахунок предмету застави в аграрній розписці відносно прав кредиторів за аграрними розписками, які були пізніше видані тим самим боржником щодо тієї самої сільськогосподарської продукції.

Кредитор за аграрною розпискою, яка була видана раніше, вправі задовольнити свої вимоги за аграрною розпискою за рахунок майна кредитора за пізніше виданою боржником аграрною розпискою щодо тієї самої продукції, якщо такий кредитор отримав від боржника виконання за аграрною розпискою з порушенням черговості, встановленого статтею 12 цього Закону, в межах такого позачергово отриманого виконання, після чого в такого позачергово отримавшого виконання кредитора виникає право регресної вимоги до боржника за аграрною розпискою.

У разі якщо кредитор за аграрною розпискою отримав аграрну розписку від попереднього кредитора за аграрною розпискою шляхом вчинення напису про передачу, він має право задовольнити свої вимоги за рахунок майна такого попереднього кредитора або будь-якого з попередніх кредиторів, що знаходяться вище його імені в списку передавальних написів, якщо в тексті передавального напису аграрної розписки не міститься застереження «без поруки». В випадку якщо попередній кредитор за аграрною розпискою виконає зобов'язання за аграрною розпискою за рахунок власного майна, до нього переходять права кредитора за аграрною розпискою.

У разі невиконання кредитором за аграрною розпискою передбаченого статтею 12 цього Закону обов'язку повернути аграрну розписку після отримання виконання зобов'язання за нею у повному обсязі, такий кредитор за аграрною розпискою зобов'язаний відшкодувати боржнику за аграрною розпискою всі понесені ним збитки, а також сплатити штраф у розмірі 10 мінімальних заробітних плат.

У разі невиконання кредитором за аграрною розпискою без поважних причин передбаченого статтею 12 цього Закону обов'язку повернути аграрну розписку після отримання виконання зобов'язання за нею протягом більш ніж одного місяця, такий кредитор за аграрною розпискою зобов'язаний відшкодувати

боржнику за аграрною розпискою всі понесені ним збитки, а також сплатити штраф у розмірі 100 мінімальних заробітних плат.

У разі невиконання кредитором за аграрною розпискою без поважних причин передбаченого статтею 12 цього Закону обов'язку повернути аграрну розписку після отримання виконання зобов'язання за нею протягом більш ніж шести місяців, такий кредитор за аграрною розпискою зобов'язаний відшкодувати боржнику за аграрною розпискою всі понесені ним збитки, а також сплатити штраф у розмірі 300 мінімальних заробітних плат, але в будь-якому разі не менше ніж мінімальну суму вимог, встановлену Законом України «Про відновлення платоспроможності боржника або визнання його банкрутом» для порушення провадження у справі про банкрутство.

Стаття 14. Поручительство фінансових установ

Зобов'язання за аграрними розписками можуть бути забезпечені порукою фінансової установи, про що така фінансова установа зазначає в тексті аграрної розписки шляхом вчинення напису «Поручаюсь», який скріплюється підписом її уповноваженого представника та печаткою. Поручительство фінансових установ за аграрними розписками здійснюється в тому ж порядку що й операції по авалюванню векселів.

Розділ IV

Прикінцеві положення

- 1.** Цей Закон набирає чинності через два місяці після його опублікування
- 2.** До приведення актів законодавства у відповідність із цим Законом закони та інші нормативно-правові акти застосовуються до відносин з оформлення, видачі, обігу, виконання аграрних розписок у частині, що не суперечить цьому Закону.
- 3.** Внести зміни до таких законодавчих актів:
 - 1)** Доповнити Кримінальний кодекс України статтею 191-1 наступного змісту:
«Ухилення від виконання зобов'язань за аграрною розпискою особою, яка її видала, що заподіяло майнову шкоду іншим особам – караються позбавленням волі на строк до трьох років або обмеженням волі на той самий строк або штрафом у розмірі від ста до двохсот неоподатковуваних мінімумів доходів громадян .
Ті самі діяння, що заподіяли істотну майнову шкоду іншим особам караються позбавленням волі на строк від трьох до п'яти років або обмеженням волі на той самий строк.
Дії, передбачені частиною 1 цієї статті, що завдали майнову шкоду у великих розмірах - караються позбавленням волі на строк від чотирьох до шести років або обмеженням волі на той самий строк.
Дії, передбачені частиною 1 цієї статті, що завдали майнову шкоду у особливо великих розмірах - - караються позбавленням волі на строк від п'яти до восьми років.»

Внести зміни до пунктів 2-4 примітки до ст.185 Кримінального кодексу України, включивши слова «а також ст.191-1» перед словом «цього Кодексу»

2). Внести зміни до частини 2 статті 112 Кримінально-процесуального кодексу України, включивши слова «статтею 191-1» після слів «статті 190» та перед словами «статтями 192».

3). Доповнити ч.1 ст.37 Закону України «Про нотаріат» пунктами 6, 7 наступного змісту:

« 6) нотаріально посвідчують аграрні розписки, передання прав за ними,

7) вчиняють виконавчі написи про примусове виконання зобов'язань за аграрними розписками та звернення стягнення на предмет застави за ними»

4). Внести зміни до Закону України «Про виконавче провадження»:

1. Доповнити статтю 11 частиною 4 наступного змісту:

«4. У випадках, передбачених законом, здійснення прав державного виконавця, передбачених п.4,5,7, 15 ч.3 ст.11 може бути передоручене державним виконавцем іншим учасникам виконавчого провадження, про що вноситься вмотивована постанова. При цьому всі виконавчі дії, вчинені такими повіреними під час реалізації доручених їм прав державного виконавця, підлягають затвердженню та набувають юридичної сили лише після затвердження державним виконавцем.»

2. Доповнити частину другу статті 25 абзацом третім та четвертим наступного змісту:

«Виконавчі документи про примусове виконання зобов'язань за аграрними розписками розглядаються в день їх надходження, про що державний виконавець виносить постанову про відкриття виконавчого провадження.

В постанові про відкриття виконавчого провадження по примусовому виконанні зобов'язань за аграрними розписками державний виконавець вказує про необхідність боржнику самостійно виконати рішення у строк до одного дня з моменту винесення постанови та зазначає, що у разі ненадання боржником документального підтвердження виконання рішення буде розпочате примусове виконання цього рішення із стягненням з боржника виконавчого збору і витрат, пов'язаних з організацією та проведенням виконавчих дій, передбачених цим Законом. За заявою стягувача державний виконавець одночасно з винесенням постанови про відкриття виконавчого провадження може накладати арешт на майно та кошти боржника, про що вноситься відповідна постанова, а також доручити стягувачу чи його представнику здійснювати виконавчі дії та користуватися правами державного виконавця відповідно до частини 4 статті 11 цього Закону щодо розшуку майна боржника, його опису, арешту та передачі на відповідальне зберігання, а також накладати арешт на майно та кошти боржника, про що вноситься відповідна постанова»

3. Викласти частину третю статті 29 у наступній редакції:

«Провадження виконавчих дій у нічний час допускається у разі, якщо невиконання рішення створює загрозу життю чи здоров'ю громадян, або пов'язане з примусовим виконанням зобов'язань за аграрними розписками, або якщо виконавчі дії, розпочаті до двадцять другої години, необхідно продовжити, але з наступним повідомленням начальника відділу, якому безпосередньо підпорядкований державний виконавець, не пізніше наступного робочого дня після проведення таких дій.»

Доповнити статтю 61 частиною третьою:

«В такому самому порядку виконуються виконавчі написи про примусову передачу предмету застави за аграрними розписками.

Для їх виконання протягом 48 годин з моменту порушення виконавчого провадження державний виконавець особисто або особа, якій він доручив це відповідно до частини 4 статті 11 вилучає предмети, вказані у виконавчому документі як предмет застави, у боржника і передає їх стягувачеві, про що складає акт передачі. У разі знищення речі, що мала бути передана стягувачеві в натурі, або у разі відсутності такої речі у боржника з іншої підстави, державний виконавець складає обґрунтований акт про неможливість виконання, який є підставою для закриття виконавчого провадження щодо примусового стягнення за товарною аграрною розпискою, і підставою для вчинення подальших виконавчих дій, щодо розшуку іншого майна боржника за фінансовою аграрною розпискою.»

4. Доручити Міністерству юстиції України внести зміни до Інструкції про порядок вчинення нотаріальних дій нотаріусами України, Інструкції про ведення державного реєстру правочинів, Інструкції про порядок ведення державного реєстру обтяжень рухомого майна та заповнення заяв для приведення у відповідність з цим Законом

Примітка: Інструкція доповнюється в п.35 включенням до видів правочинів, що підлягає нотаріальному посвідченню таких правочинів як видача та переуступка аграрних розписок, а також створюється новий розділ – Порядок здійснення дій з нотаріального посвідчення дій, пов'язаних з аграрними розписками, що включає в себе внесення запису до Державного реєстру правочинів (відомості про боржника, кредитора, дату видачі, тип продукції, земельну ділянку та документи на неї), до Державного реєстру обтяжень рухомого майна, Реєстру аграрних розписок, присвоєнням аграрним розпискам індивідуального номеру, а також внесенням відомостей про переуступки та про повне виконання боржником зобов'язань після надання аграрних розписок з відповідними написами.

5. Доручити центральному органу виконавчої влади з питань аграрної політики розробити щодо визначення якості сільськогосподарської продукції

6. Доручити Міністерству юстиції України внести відповідні зміни в Положення про державний реєстр правочинів, Державний реєстр обтяжень рухомого майна.

7. Кабінету Міністрів України внести зміни в перелік документів, за якими стягнення заборгованості провадиться у безспірному порядку на підставі виконавчих написів нотаріусів, затверджений Постановою Кабінету Міністрів України від 29 червня 1999 р. N 1172.

Примітка: Доповнити пунктом 12 Стягнення за аграрними розписками

Для отримання виконавчого напису подається оригінал аграрної розписки, який не містить відмітки про його виконання і строк виконання зобов'язань за яким сплив на дату звернення

8. Кабінету Міністрів України внести зміни до Державної цільової програми розвитку українського села на період до 2015 року шляхом розроблення програми розвитку кредитування сільськогосподарських виробників через механізм аграрних розписок, виконання основних положень цього закону та їх фінансового забезпечення.

Draft

Law of Ukraine “On Agrarian Receipts”

SECTION I

General provisions

Article 1. Sphere of application

This law regulates the legal relations pertaining to the perfection, issuance, circulation, and redemption of agrarian receipts, defines the procedures for their registration and is aimed at creating legal, economic and organizational conditions for the functioning of these instruments.

Article 2. Definitions

In this Law, the terms used below shall have the following meanings:

agrarian receipt – means a commodity-related instrument which reflects an unconditional secured obligation of the obligor to deliver agricultural products or to pay money according to the terms thereof;

obligor under an agrarian receipt – means the person who draws the agrarian receipt in order to confirm the person’s obligation to deliver agricultural products or to pay money according to the terms thereof;

obligee under an agrarian receipt – means a natural or legal person that provides money, services, supplies goods or performs works as the counter-obligation under the agreement according to which the obligor under the agrarian receipt draws the agrarian receipt to the obligee giving the obligee the right to require due performance of the obligations under the agrarian receipt from the obligor; it can also be a natural or legal person that has legally received the obligee’s rights from the obligee under the agrarian receipt;

Register of Agrarian Receipts – means a common information system which contains the mandatory details of issued and paid agrarian receipts;

expert – means a natural or legal person whose activity consists of the performance of paid commodity-related studies in the agricultural sector and whose qualification is confirmed following the procedure established by law for court experts;

monitoring of security for agrarian receipts – means the activity of the public authority with the special powers to enforce the state policy in the sphere of supervision (control) in the agricultural production complex, as well as the activity of obligees under agrarian receipts and other interested persons involved by obligees under agrarian receipts to supervise future crops and/or livestock used as security under agrarian receipts, to collect information about them and obligors under agrarian receipts, to systematize such information in databases, and to use the databases in accordance with the law.

agricultural products – means the products specified in Groups 01 to 14 of Sections I and II of the Ukrainian Classification of Foreign Economic Activity Commodities, in the Appendix to the Law of Ukraine “On the Customs Tariff of Ukraine”;

livestock – means the animals specified in Section I of the Ukrainian Classification of Foreign Economic Activity Commodities, in the Appendix to the Law of Ukraine “On the Customs Tariff of Ukraine”.

SECTION II

Agrarian receipts

Article 3. Agrarian receipts

Agrarian receipts are used in transactions with agricultural products.

Agrarian receipts may be issued by individuals who have the title to a plot of agricultural land or the legal right to use such a land plot for agricultural production. If the title to a land plot belongs to two or more co-owners or if the right to use it belongs to two and more users, agrarian receipts must be issued by them jointly. Persons who jointly issue an agrarian receipt are jointly liable for non-performance of the obligations hereunder. The transfer of the title or the right to use a land plot shall not terminate the pledge of the future crops under the agrarian receipt or the rights of the obligor and the obligee hereunder to use the land plot until the crops are harvested but not later than until the end of the current marketing year

Agrarian receipts shall be drawn in two copies, one of which shall be kept in the records of the person that performs their notarization and registration, and the other one shall be kept by the obligee under the agrarian receipt. The obligor under an agrarian receipt may receive an authenticated copy of the issued agrarian receipt.

Depending on the type of obligations, there are commodity and financial agrarian receipts.

Article 4. Commodity agrarian receipts

A commodity agrarian receipt is an agrarian receipt which establishes the unconditional obligation of the obligor to deliver the agreed agricultural products in accordance with the requirements to quality, quantity, place and time of delivery specified in the agrarian receipt.

Article 5. Form of commodity agrarian receipts and settlement of disputes about the quality of agricultural products

Commodity agrarian receipts shall be drawn in writing on a special form and notarized; they may not be converted into a non-documentary form (immobilized) unless otherwise provided by this Law.

A commodity agrarian receipt shall have the following mandatory details:

- Name – “Commodity agrarian receipt”.
- Term of delivery of the agricultural products.
- Details of the obligee and conditions of further assignment of the agrarian receipt.
- Subject – the unconditional obligation to deliver the agricultural products, the definition of its quantity and quality. The formulas for the recalculation of the quantity of the agricultural products if they are delivered with a different quality.
- Conditions and place of delivery of the agricultural products.
- Description of the security, including the information about the quantity of pledged movable assets, the cadastre numbers, location, legal documents for

the land plots on which the pledged agricultural products are grown, or the identification numbers of the livestock used as the security for the agrarian receipt.

■ Date and place of issue.

■ Name of the obligor, the obligor's place of registration, the taxpayer card registration number (or the passport number and series if the person has refused to receive the taxpayer number), and the signature if the obligor is a natural person. Name, address, EDRPOU (Unified State Register of Enterprises and Organizations of Ukraine) code, signature of the authorized representative and the stamp if the obligor is a legal person. If there are two or more obligors, the data shall be provided for all of them.

The obligor and the obligee may agree to include additional conditions in the text of commodity agrarian receipts provided that such conditions do not contradict the provisions of this Law.

Documents that do not meet the requirements specified in this Article shall not be considered as agrarian receipts.

The quality of the agricultural products constituting the subject of agrarian receipts shall be determined by the obligor and the obligee by mutual consent based on the GOST (State Standards), technical conditions, technical regulations, and classifications effective in Ukraine as of the date of issue of the agrarian receipts.

An expert having the authority to resolve product quality disputes relating to obligations under commodity agrarian receipts shall be selected by the obligor and the obligee by mutual consent from the list of experts that have the legal authority to perform expert reviews of the quality of such products.

If such an expert has no legal authority to perform necessary expert reviews on the date when the product quality dispute arises, the obligor and the obligee may, by mutual consent, select another expert that has appropriate authority.

If the obligor and the obligee cannot reach any agreement, the quality review shall be performed by the expert review organization nominated by the central executive authority in the sphere of agrarian policy for conducting expert reviews in the corresponding region.

Article 6. Financial agrarian receipts

A financial agrarian receipt is an agrarian receipt that established an unconditional obligation of the obligor to pay an amount of money determined in accordance with a formula agreed between the obligor and the obligee taking into account the prices for the defined quantity and quality of the agricultural products.

The obligations of the obligor under financial agrarian receipts can be performed only in non-cash form.

Article 7. Form of financial agrarian receipts

Financial agrarian receipts shall be drawn in writing on a special form and notarized; they may not be converted into a non-documentary form (immobilized) unless otherwise provided by this Law. An agrarian receipt shall have the following mandatory details:

1. Name – “Financial agrarian receipt”
2. Term of payment.
3. Details of obligee and conditions of further assignment of agrarian receipt.
4. Subject – the unconditional obligation to pay, the definition of the formula for the calculation of the amount of the obligor’s monetary obligation, the quantity and the features of the agricultural products which constitute an integral part of such formula.
5. Conditions and place of payment.
6. Description of the security, including the information about the cadastre numbers, location, legal documents for the land plots on which the pledged agricultural products are grown, or the identification numbers of the livestock used as the security for the agrarian receipt.
7. Date and place of issue.
8. Name of the obligor, the obligor’s place of registration, the taxpayer card registration number (or the passport number and series if the person has refused to receive the taxpayer number), and the signature if the obligor is a natural person. Name, address, EDRPOU (Unified State Register of Enterprises and Organizations of Ukraine) code, signature of the authorized representative and the stamp if the obligor is a legal person. If there are two or more obligors, the data shall be provided for all of them.

The obligor and the obligee may agree to include additional conditions in the text of financial agrarian receipts provided that such conditions do not contradict the provisions of this Law.

Documents that do not meet the requirements specified in this Article shall not be considered as agrarian receipts.

Article 8. Pledge of future crops

Through an agrarian receipt the obligor secures its obligations with future crops or livestock. Only the future crops or livestock specified in an agrarian receipt can be used as collateral for such agrarian receipt.

The amount of the collateral may not be smaller than the amount of obligations under the agrarian receipt. The future crops or livestock used as collateral for an agrarian receipt may not be subject to other pledges as of the date of issue of the agrarian receipt.

After the crops are harvested or animal products are received, the corresponding amount of the received agricultural products becomes the pledged asset.

The pledge of future crops or livestock under an agrarian receipt gives the obligee the preferential right in relation to other creditors of the obligor to enforce the pledged future crops or livestock. The obligor may select any legal option for the enforcement of the pledged crops or livestock, including the transfer of ownership of the pledged asset to the obligee, acquiring the right to grow the pledged future crops or breed the livestock, to harvest the crops himself or to authorize another person to harvest the crops, and to redeem the pledge under the agrarian receipt by acquiring the ownership of such received agricultural products, or to redeem the monetary obligation of the obligor under a financial agrarian receipt by selling the pledged agricultural products

to another person (including through public tenders) and redeeming the obligor's monetary obligation with the proceeds from such sale.

The breeding, growing and harvesting costs incurred by the obligee under an agrarian receipt shall be reimbursed by the obligor separately following the pecuniary damage reimbursement procedure established by law.

After the crops are harvested or the animal products are received and used to redeem the obligor's obligations under an agrarian receipt in full, the remaining agricultural products or proceeds from the sale thereof shall be returned to the obligor.

Obligations under an agrarian receipt may be additionally secured by any other types of security provided for by Ukrainian legislation.

The pledged asset may be insured by the obligor or the obligee. The obligor and the obligee may agree on sharing the cost of insurance of the asset pledged under an agrarian receipt.

Article 9. Monitoring of pledged future crops and livestock

The obligee under an agrarian receipt may monitor, himself or through third persons, the future crops and livestock which constitute the pledged asset under the agrarian receipt. The monitoring may be conducted 24 hours a day throughout the term of the pledge of the future crops or livestock.

The monitoring implies the surveillance of the future crops and livestock, as well as the proper performance of the corresponding technological processes by the obligor, with access to the land plots where the pledged future crops are grown or the livestock is kept, as well as access to premises where the pledged livestock is kept and harvested crops are stored.

After harvesting, the monitoring is conducted by way of surveillance of the harvested crops with access to the places where it is stored.

No direct interference into or hampering of the obligor's business activity is allowed unless otherwise provided by law.

If the monitoring reveals that the obligor violates any technological processes associated with the growing of the crops or conditions of keeping of the livestock pledged under an agrarian receipt, which threatens the future availability of the crops or livestock in the appropriate quantity, the obligee may draw an act about such violations of agricultural production technologies and require the obligor to eliminate the violations within a reasonable term. If the obligor fails to satisfy the requirements set out in the act about such violations of agricultural production technologies himself within the term specified in the act, the obligee may, with the purpose to salvage the future crops of the obligor, continue growing or breeding the future crops or livestock, himself or with the involvement of third persons, following the appropriate technological processes, in which case the costs of such growing or breeding shall be reimbursed by the obligor following the general procedure.

If the obligor disagrees with the requirements set out in the act about violations of agricultural production technologies, he may refer the dispute to the organization specially authorized to settle such disputes by the main body in the system of the central bodies of executive power responsible for the implementation of the state agrarian policy, country's food safety, state administration in the agricultural sector, horticulture,

food and processing industries, and comprehensive development of rural areas. Within two working days of the receipt of the complaint, which must be submitted with the obligee's contested act about violations of agricultural production technologies, the said organization shall consider the dispute and issue a final decision that will be binding for the parties. The obligee may not continue growing or breeding the pledged future crops or livestock before the dispute is settled by the specially authorized organization. If the aforementioned organization fails to issue the decision within the specified term, the obligor's complaint shall be deemed without merit and rejected.

SECTION III

Circulation of agrarian receipts

Article 10. Issue of agrarian receipts

Agrarian receipts shall be issued for each specific type of agricultural products classified by group or individual features. An agrarian receipt may be issued for each supply volume of agricultural products agreed between the obligor and the obligee.

Upon issue, an agrarian receipt must be notarized following the procedure specified in the Law of Ukraine "On Notary Services" for legal transactions taking into account the special requirements established by this Law. The person who performs the notary actions must enter the details of agrarian receipts in the State Register of Agrarian Receipts at the time of their notarization. The person who performs the notary action must enter the details of the pledged assets in the State Register of Pledged Moveable Assets at the time of notarization of the agrarian receipt. If additional security is used for an agrarian receipt, the information about such security can be entered in the corresponding registers in accordance with Ukrainian legislation.

An agrarian receipt is deemed to be issued as of the moment of its registration in the State Register of Agrarian Receipts.

Article 11. Keeping the Register of Agrarian Receipts

The Register of Agrarian Receipts shall be kept by the main body in the system of the central bodies of executive power responsible for the implementation of the state agrarian policy, country's food safety, state administration in the agricultural sector, horticulture, food and processing industries, and comprehensive development of rural areas. The keeper of the Register of Agrarian Receipts shall, following the procedure defined by the Cabinet of Ministers of Ukraine, authorize the persons who perform notary actions to act as registrars of the Register of Agrarian Receipts who will provide the services of entering agrarian receipts in the Register of Agrarian Receipts and providing information from this Register to other persons.

There must be no restrictions or limitations of the access to information about issued agrarian receipts of specific obligors which are not redeemed as of the date of the access to the Register of Agrarian Receipts, as well as the names of the agricultural products to which the obligor's obligations relate.

Registrars of the Register of Agrarian Receipts may provide information about agrarian receipts issued by specific obligors and their circulation history to other persons subject

to the Law of Ukraine “On the Protection of Personal Data”.

The main body in the system of the central bodies of executive power responsible for the implementation of the state agrarian policy, country’s food safety, state administration in the agricultural sector, horticulture, food and processing industries, and comprehensive development of rural areas shall nominate a state enterprise within the sphere of its control as the administrator of the Register of Agrarian Receipts, authorize the same to develop and support the software of the Register of Agrarian Receipts, and be responsible for the technical and technological support, storage and protection of the data contained in the Register of Agrarian Receipts.

The main body in the system of the central bodies of executive power responsible for the implementation of the state agrarian policy, country’s food safety, state administration in the agricultural sector, horticulture, food and processing industries, and comprehensive development of rural areas shall define requirements to the Register of Agrarian Receipts and the procedure for its keeping.

Article 12. Assignment of agrarian receipts

Agrarian receipts can be assigned by putting an endorsement “assigned” and indicating the new obligee on the agrarian receipt or the integral appendix thereto which must be specified therein. Such endorsement shall be certified with the signature and (if appropriate) the stamp of the previous obligee.

The assignment of agrarian receipts shall be subject to notarization following the procedure specified in the Law of Ukraine “On Notary Services” for legal transactions taking into account the special requirements established by this Law.

If the assignment of an agrarian receipt is not notarized, the obligee’s rights are not transferred to another person.

Article 13. Fulfillment of obligations under agrarian receipts

Agrarian receipts shall remain valid until their full redemption. Upon the obligee’s consent, the date of the fulfillment of obligations under an agrarian receipt can be postponed until the next marketing year.

Agrarian receipts for each type of agricultural products shall be redeemed in the order of their issuance.

Commodity agrarian receipts shall be redeemed by way of delivery of the agricultural products specified in them from the obligor to the obligee under the delivery terms agreed between them. If the quality of delivered agricultural products is different from the quality indicated in the agrarian receipt or the agreed recalculation formulas, the agrarian receipt shall not be considered as redeemed.

Financial agrarian receipts are redeemed by way of transferring funds from the obligor to the obligee in the bank account specified by the obligee.

Within 3 working days of the redemption of an agrarian receipt, the obligee shall put the inscription “redeemed” on the agrarian receipt, certify the inscription with the obligee’s signature and stamp (if appropriate), and return the agrarian receipt to the obligor. The obligee must return agrarian receipts to the obligor personally or, if this is not possible, send them in a recommended letter to the obligor’s address indicated in the agrarian receipt.

After the original agrarian receipt with the inscription about its redemption is returned to the obligor, the obligor may ask the person who performs notary actions to enter a record about the redemption of the agrarian receipt to the corresponding registers.

Agrarian receipts with the redemption inscriptions may not return into circulation. The information about issued agrarian receipts and their redemption shall be kept in the Register of Agrarian Receipts for at least ten years.

Agrarian receipts may be redeemed by installments subject to the consent of the obligor and the obligee. In this case, the minimum lot of agricultural products or the minimum amount of funds which can be used as an installment must be specified in commodity agrarian receipts or financial agrarian receipts, respectively. If the text of an agrarian receipt does not contain any provisions for the minimum installment, the obligee may refuse to accept such partial redemption of the agrarian receipt.

If an agrarian receipt is redeemed by installments, both the redeemed and the outstanding obligations shall be indicated in an inscription thereon. Such inscription shall be certified by the signatures and stamps (if appropriate) of the obligor and the obligee. In such case, the initial amount of security shall not change.

Upon the parties' consent, the obligations under an agrarian receipt can be fulfilled by way of transferring warehouse documents which certify their holder's title to agricultural products stored in a commodity warehouse.

Article 14. Liability

The obligor under an agrarian receipt shall be liable for its non-fulfillment irrespective of whether such non-fulfillment is due to his own fault, *force majeure* circumstances or unfortunate coincidences.

The existence of an agrarian receipt without the redemption inscription shall be sufficient evidence of the indisputability of the obligee's claims hereunder.

If the obligor under an agrarian receipt fails to fulfill his obligations within the term specified therein, the obligee may request an executive inscription from a person authorized to perform notary actions. Such inscription shall be subject to immediate execution and serve as grounds for the state executive officer to transfer the asset pledged under the agrarian receipt to the obligee within 48 hours.

If the pledged asset which must be transferred to the obligee is absent, the obligee may satisfy his claims with other assets of the obligor.

If the obligor transfers the pledged asset to any third person before the agrarian receipt is redeemed, the obligee may satisfy his claims to the obligor with such or equivalent assets of the third person, upon which the third person may recourse to the obligor.

The obligee under an agrarian receipt which was issued earlier than other agrarian receipts issued by the same obligor for the same agricultural products to other obligees shall have the preferential claim to the pledged assets in relation to the later obligees.

The obligee under an agrarian receipt which was issued earlier may satisfy his claims under the agrarian receipt from the assets of the obligee under an agrarian receipt issued by the same obligor later for the same agricultural production if the latter obligee received the redemption from the obligor in violation of the order established in Article 13 of this Law. Such claims may be satisfied within the scope of such early redemption, upon which the latter obligee may recourse to the obligor.

If an obligee receives an agrarian receipt from a previous obligee by assignment, the current obligee may satisfy his claims from the assets of such previous obligee or any previous obligee indicated above its name in the list of endorsements unless the endorsement is qualified as “no guarantee”. If a previous obligee satisfies the claims under the agrarian receipt with his own assets, he shall receive the obligee’s rights under the agrarian receipt.

If the obligee under an agrarian receipt fails to fulfill the obligation under Article 13 of this Law to return the agrarian receipt after its full redemption, such obligee shall reimburse all the losses incurred by the obligor and pay a fine in the amount of ten minimum salaries.

If the obligee under an agrarian receipt fails to fulfill the obligation under Article 13 of this Law to return the agrarian receipt after its full redemption for more than one month, such obligee shall reimburse all the losses incurred by the obligor and pay a fine in the amount of 100 minimum salaries.

If the obligee under an agrarian receipt fails to fulfill the obligation under Article 13 of this Law to return the agrarian receipt after its full redemption for more than six months, such obligee shall reimburse all the losses incurred by the obligor and pay a fine in the amount of 300 minimum salaries, but in any case not less than the minimum amount of claims established by the Law of Ukraine “On Restoring the Debtor’s Solvency or Declaring the Debtor a Bankrupt” for opening bankruptcy proceedings.

Article 15. Bail of financial institutions

Financial institutions can provide bail (guarantee) for agrarian receipts. In this case, the financial institution shall inscribe “surety” on the agrarian receipt, and such inscription shall be certified with the signature of its authorized representative and its stamp. The same procedures apply to the suretyship of financial institutions under agrarian receipts as to guarantees on promissory notes.

SECTION IV

Final Provisions

- 1.** This Law shall come into force two months after the date of its publication.
- 2.** Other laws and regulations shall apply to the relations associated with the perfection, issuance, circulation and redemption of agrarian receipts insofar as they do not contradict this Law.
- 3.** To add paragraphs 6 and 7 to Part 1 of Article 37 of the Law “On Notary Services” as follows:
“6) notarization of agrarian receipts and assignment thereof;
7) put executive notary inscriptions for the enforcement of obligations or security under agrarian receipts.”
- 4.** To instruct the Ministry of Justice of Ukraine to amend the Instruction for the Performance of Notary Acts by Ukrainian Notaries in order to bring the same in accordance with this Law.

Note: Clause 35 of the Instruction shall be amended by adding the drawing and assignment of agrarian receipts to the list of transactions which require notarization, and a new Section shall be added – Procedure for Notarization of Transactions Relating to Agrarian Receipts which includes recording agrarian receipts in the State Register of Transactions (information about the obligor, the obligee, date of issue, type of products, land plot and legal documents thereto), the State Register of Pledged Movable Assets, the Register of Agrarian Receipts, the assignment of individual numbers to agrarian receipts, as well as recoding the information about assignments and full performance of obligations by the obligor once the agrarian receipts are presented with the corresponding endorsements.

5. To amend the Law of Ukraine “On Executive Proceedings (Enforcement)” as follows:

To add Part 4 to Article 11 as follows:

“4. In the cases foreseen by the law, the execution of the rights of the state executive officer specified in paragraphs 4, 5, 7, 15 of Part 3 of Article 11 may be delegated by the state executive officer to other participants of the executive proceedings, for which a substantiated resolution shall be issued. In such case, all the executive actions performed by such trustees in the course of the execution of the rights of the state executive officer delegated to them shall be subject to approval of the state executive officer and shall acquire legal force only after such approval.”

To add paragraphs 3 and 4 to Part 2 of Article 25 as follows:

“The executive documents on the enforcement of obligations under agrarian receipts shall be considered on the day of their receipt, for which purpose the state executive officer shall issue a resolution to open executive proceedings.

In the resolution to open executive proceedings for the enforcement of obligations under agrarian receipts, the state executive officer shall indicate that the obligor is required to execute the decision within one day after the date of the resolution and that the decision will be enforced if the obligor fails to provide documentary evidence of the execution of the decision, in which case the executive fee and the costs associated with the organization and performance of the executive actions under this Law will be collected from the obligor. Upon request of the enforcing party, the state executive officer may, concurrently with the issue of the resolution to open the executive proceedings, arrest the assets and funds of the obligor, for which a corresponding resolution shall be issued, and to entrust the enforcing party or a representative thereof to perform the actions under Part 4 of Article 11 of this Law as regards the search for the obligor’s assets, taking an inventory thereof, their arrest and transfer for safekeeping.”

5.3. To amend Part 3 of Article 29 as follows:

“It is allowed to perform executive action during nighttime if non-execution of the decision threatens the life or health of citizens, or is related to the enforcement of obligations under agrarian receipts, or if it is necessary to continue executive actions which started before 22:00, provided that in such cases the head of the department to whom the state executive officer directly reports is notified about such actions not later than on the next working day thereafter.”

To add Part 3 to Article 61 as follows:

“The executive inscriptions for the enforcement of the security under agrarian receipts shall be executed following the same procedure.

For their execution, the state executive officer or a person entrusted by the state executive officer with the execution in accordance with Part 4 of Article 11 shall seize the assets specified in the executive documents as security from the obligor and transfer them to the obligee, for which a transfer act shall be drawn. If the asset that must be transferred to the enforcing party is destroyed or is not in the possession of the obligor for other reasons, the state executive officer shall prepare a substantiated act on the impossibility to execute, which shall serve as the grounds for the closure of the executive proceedings for the enforcement of the agrarian receipt, as well as grounds for further executive actions regarding the search for other assets of the obligor under a financial agrarian receipt.”

6. To instruct the central executive authority in the sphere of agrarian policy to adopt an act that will regulate the issues pertaining to the determination of the quality of agricultural products.

7. To instruct the Ministry of Justice of Ukraine to make corresponding changes in the Instruction for the Keeping of the State Register of Transactions, the Instruction for the Keeping of the State Register of Pledged Movable Assets and Completion of Applications.

8. The Cabinet of Ministers of Ukraine shall amend the list of documents required for unconditional collection of indebtedness based on executive notary inscriptions approved by the Resolution of the Cabinet of Ministers of Ukraine No.1172 dated 29 June 1999.

Note: Clause 12 shall be added – Enforcement of agrarian receipts

The executive inscriptions can be put provided that original agrarian receipts are presented which have no inscriptions about their redemption and are past due as of the date of presentation.)

9. To add Article 198-1 to the Criminal Code of Ukraine as follows:

“Non-fulfillment of obligations under an agrarian receipt by the issuer thereof which caused pecuniary losses of other persons shall be punished with imprisonment for up to three years, restriction of freedom for the same term, or a fine in the amount of 100 to 200 non-taxable minimum incomes of citizens.

Same acts which caused substantial pecuniary losses of other persons shall be punished with imprisonment for three to five years or restriction of freedom for the same term.

Same acts which caused large pecuniary losses shall be punished with imprisonment for four to six years or restriction of freedom for the same term.

Same acts which caused especially large pecuniary losses shall be punished with imprisonment for five to eight years.”

10. To amend Clauses 2-4 of the Note to Article 185 of the Criminal Code of Ukraine by adding the words “and Article 198-1” before the words “this Code”.

11. To amend the Criminal Procedure Code of Ukraine as follows:

To amend Part 2 of Article 112 of the Criminal Procedure Code of Ukraine by adding the words “Article 198-1” after the words “Article 198” and before the words “Article 199”.

12. The Cabinet of Ministers of Ukraine shall amend the State Targeted Program for the Development of Ukrainian Rural Areas for the Period until 2015 by working out a program for the development of lending to agricultural producers with the use of the agrarian receipt mechanism, the execution of the key provisions of this law and the provision of necessary funding.

ATTACHMENT 3. AMDI and WG round table report

AMDI and WG round table report

A round table discussion of the draft Law of Ukraine “On Agricultural Receipts”, was held on 28 October 2011 in Kyiv, organized by AMDI and MinAPFU. This draft law regulates the legal relations arising in the design, delivery and circulation of agricultural receipts. It determines the order of their registration and is aimed at creating legal, economic and organizational conditions for the functioning of these documents.

Round table: DISCUSSION: DRAFT LAW OF UKRAINE “ON AGRARIAN RECEIPTS”

Target Group: representatives of government, agricultural science, public and private sector, international organizations and other stakeholders.

Agenda:

1. Presentation of the overall structure of the Law of Ukraine “On Agrarian Receipts”

Victor Andrievsky (Director AMDI) and Sergei Rabenko (Consultant on legal affairs of the IFC)

2. The system charges, insurance and registration of farm receipts

Sergey Kliutsa (Consultant on legal affairs at BASF)

3. Discussion of comments provided by stakeholders and FAO

Round table participants (See Table 1).

Table 1. Participants List

1	Ahafoshyna, K.	Chief Financial Officer “BASF”
2	Ahydzhyanov, Bagrat	Director of finance and credit policy MinAPFU
3	Bogdanova, Anna	USAID
4	Boholiy, Vladimir	Chief Financial Economist, Department of Banking coordinating relations with the National Bank Financial Policy Department of the Ministry of Finance
5	Borchevskyy, Viktor	Specialist business department, Innovation “Syngenta”
6	Vilinskiy, Sergei	Counsel DP SANTREYD
7	Voloschenko, Lada	Ph.D., Senior Research Fellow, Institute of Economic Forecasting of NAS of Ukraine,
8	Gavrilenko, Natalia	Head of department of cooperation with WTO, MinAPFU
9	Hudz, Elena	Doctor of Economic Sciences, Professor, Institute of Agroecology and Environmental Economics,
10	Demyanchuk, V.	Deputy Head of the Department of Agrarian Policy and Land Relations Secretariat of the CMU
11	Demidov, A.	Director of the Department of Agriculture MinAPFU
12	Kvasha, Sergey	MinAPFU, Department Chief
13	Vladimir, Klimenko	President of the Ukrainian Grain Association
14	Klyutsa, Sergey	Consultant on legal issues “BASF”
15	Korotkov, Oleksandr	Head of department “Ukrsibbank”
16	Kuzmenkov, Alexey	Deputy Director of Food State Committee, MinAPFU
17	Kupchak, P.	Senior Research Fellow, Institute of Economic Forecasting of NAS of Ukraine
18	Lapa, Volodymyr	Chief Executive Officer UCAB (Ukrainian Club for Agrarian Business)
19	Lebed, Valery	First Deputy Director, State Enterprise “State Register of Ukraine”
20	Lviv, Vitaly	Vice-President SUSOKU

21	Malinovska, Tamara	Counsel “Louis Dreyfus Komoditiz Ukraine LTD”
22	Novikov, G.	Chairman of the Agrarian Union of Ukraine
23	Paroha, Yuriy	Chief Specialist of the Department of Economics agriculture sectors of the Ministry of Economic Development and Trade
24	Polishchuk, Nelia	Assistant, Verhovna Rada Agrarian Committee Secretariat
25	Rabenko, Sergey	Consultant on legal issues IFC
26	Oksana, Ryumina	Head of international organizations and coordination of international projects of the Department of Foreign Economic Relations MinAPFU
27	Samus, Oleg	Director of Legal Affairs and Relations with the Public Subsidiary SANTREYD
28	Sergey, Stoyanov	General Director of Ukrainian Agrarian Confederation (UAC)
29	Khodakivskiy, Igor	Director, State Enterprise “State Register of Ukraine”
30	Alexander, Yaroslavsky	Deputy Director General of the Ukrainian Agrarian Confederation (UAC)
31	Tereshchuk, Sergiy	Deputy Head, Verhovna Rada Agrarian Committee

Speakers presented a draft law (i.e. a bill) and revealed the nature of ARs and their terminology. Analysing the Brazilian experience, they proved the advantages of introducing ARs in Ukraine, especially for grain market participants. They argued that the use of ARs – a new hybrid instrument that combines the form of a promissory note with a futures contract – provided an opportunity for agricultural producers to attract more inputs and financial resources secured by future crops.

The structure of the bill was also discussed and they analysed the terms used in the bill. Further discussion focused on the main provisions of the draft articles which guarantee systems to protect creditors’ or investors’ interests.

Representatives of agriculture producers and farmers (Mr. Yaroshovets and Mr. Lviv) noted the need for such a bill, because of potential cost savings provided by it, compared to the very expensive terms of regular commercial loans which have high interest. The introduction of ARs will allow SMPs to obtain loans on the security of their products. They talked about the necessity to consider the possible risks to farmers. They also stressed the need to have a good awareness campaign explaining the operational mechanisms of ARs. In general, they supported the bill and are willing to assist in promoting it with the profile committee of the Verkhovna Rada of Ukraine.

Mr. Lapa organized a discussion on issues relating to:

- whether to have a standardized blank form for ARs. (The speakers noted that in Brazil the form is arbitrary; however, it has several mandatory requisites, which are not applicable in Ukraine. It also has to be standardized for e-registration purposes);
- number of copies (assuming two, but proposed three (Article 2));
- how many days required to ensure the transfer of the creditor for AR collateral: the bill provided for 48 hours (Article 13), but this is deemed insufficient;
- considering compliance in terms of agricultural crop rotation, in cases when they move to the next marketing year in terms of obligations (Article 12);
- the concept of appropriate registers (Article 9, third paragraph); and
- the different types of agricultural commodity and financial receipts.

Participants have also considered comments on the draft bill provided by FAO and have recommended the draft law be sent to the MinAPFU and the profile Committee of Verhovna Rada for its official registration. Answers to these comments are given in Table 2.

