



LEGAL ASPECTS OF DEFINING INFRASTRUCTURE OF STATE LAND BANK OF UKRAINE

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Summary

Investigation object of this paper is State Land Bank of Ukraine. The author considers problems of its structure and conducts detailed analysis of its functions, special attention is paid to essentially new features of the bank. Conclusions regarding mechanism of functioning of new institution for Ukraine – State Land Bank are highlighted, also its role in the development of land legal relations in Ukraine is outlined.

Key words: State Land Bank, legal regulation of land market, mortgages, agricultural-industrial sector, bank institution, land exchange, functions of Land Bank.

Аннотация

Объектом исследования данной статьи является Государственный земельный банк Украины. Автором рассмотрена проблематика его структуры и произведен подробный анализ функций, особое внимание уделено принципиально новым функциям банка. Отражены заключения по поводу механизма функционирования нового для Украины учреждения – Государственного земельного банка, а также очерчена его роль в развитии земельных правоотношений в Украине.

Ключевые слова: Государственный земельный банк, правовое регулирование рынка земли, ипотека, аграрно-промышленный сектор, банковское учреждение, земельная биржа, функции земельного банка.

Financial and credit system, the main component of which is the deposit and crediting operations, always reflected the state of economy and financial resources of Ukraine. In conditions of stable economy of western countries annual percentage increase for deposit was generally low and was 5%. With regard to unstable economy of inflationary period value of interest rate on credits of commercial banks is very varied and depended on the ratio of NBU discount rate. Lack of liquidity of banking system, its unreliability is confirmed by analysis of work in recent years.

Under conditions when it is too hard to apply mortgage contracts by private financial institutions, and corresponding need exists and is vital, the question arises about creation of specialized state institution, which would make operations with mortgage assets. There are many discussions now: what State Land (Mortgage) Bank should be? Is it necessary at this stage? Should it be state? If you do not take extreme positions, the answer may be: yes, we need it.

Cabinet of Ministers of Ukraine is assigned by Land Code to create State Land (Mortgage) Bank with proper infrastructure and to implement state registration of rights on land within six months after publication of the Code to work out draft bill about State Land (Mortgage) Bank (p. 4 of the Final Provisions). But it took 10 years and only in 2012 yearly decision of the Cabinet

of Ministers State Land (Mortgage) Bank was created [1].

State Land Bank (SLB) was established with clear aim to improve access to finance small and average agricultural enterprises. Cabinet of Ministers of Ukraine and Parliament have taken all necessary measures to create SLB and implement certain aspects of the legal base of SLB, to process that has not been yet fully completed.

Creation of State Land Bank is, on one hand, protection of land market, which is just beginning to be formed, from possible speculative operations and, on the other hand, creation of temporary preferential treatment for agriculture, which is in difficult economic situation.

The views of scientists concerning creation of market infrastructure are significantly different. It is especially subject to functions of Land Bank.

According to V. Horlachuk, Land Bank shall perform the following functions [2, p. 153]:

- mobilization of funds to perform State programs of organization of rational use and protection of lands;
- control of inpayments and outlay of payments for land;
- credit granting to land owners;
- issue of securities;
- transactions making for purchase, present, transfer by inheritance, exchange, etc.;
- timely provision of land for lease or sale of lands, received by bank in possession from not liquid mortgage;

– protection of the interests of land owners at resolving of land disputes in court [3, p. 90].

O. Kashenko believes that all these functions are to be distributed among various elements of the infrastructure of land market, namely [4, p. 53]:

- land exchange-specializes on the sale and purchase of land rights, that is performance of trade intermediary in the exchange land transactions;
- land bank – will provide credit resources against land credits;
- land protection bank – will control health and reproduction of lands [5].

Functions that will be fulfilled by created State Land Bank, consist of traditional and new ones. Specific feature of State Land Bank is usage of state credit at preferential interest for revival of agriculture. State Land Bank at its structure is banking institution, but it has no intentions of commercial enrichment for the account of sale of deposits at high interest rates, but vice versa its objective is to promote effective operation of agricultural units, satisfying their demand for short-term credits to cover lack of current assets, to invest in strengthening of their material base.

Except usage of state credit for mortgage and short-term preferential crediting, the bank makes conventional credits at discount rates of NBU for the account of contributions of population, and corporate deposits, including leasing and factoring operations, as well as crediting population.



Other functions of departments are common bank ones and do not differ from other banks. In the area of short-term crediting allocation of credit resources is made at types of credits and borrowers. In the sphere of long-term crediting credit operations are made on the basis of credit ability of agricultural units and innovation activities of the customers.

Department of population crediting organizes direct and indirect crediting of consumer products and residential buildings, provision of checking credits and credit cards. Department of interbank transactions makes accounting and analysis of all banking operations and especially with NBU. Apart from transactions with other commercial banks operations with branches and departments are made.

Leasing department organizes material-technical provision of agricultural production and other industries. Leasing with full return of investments must be especially prevalent based on accelerated depreciation, i.e. operational leasing, net leasing, so that bank was not involved in maintenance of leased objects.

Factoring department serves agricultural enterprises, which traditionally experiencing difficulties due to late payment of debts to creditors. This will be open factoring, factoring without right of regression, which provides acquisition of funds and management of credit in the form of prepayment or payment of amount of assigned debentures (minus expenses) before the specified date. As a rule the supplier assigns to factoring department debts of his customers, it is profitable for the supplier, he will not have to keep records and perform operations at individual, not assigned debt demands [6, p. 35].

Factoring department of the bank fulfills prepayment of 80% of assigned debentures value. The last 20% minus expenses of department are transferred upon payment to customers of debts in the contractual terms.

Deposit operations department is intended for accounting and analysis of attracted funds and own capital of bank: contract deposit of funds, accounting and analysis of deposit funds of legal entities. Department of deposits of population makes operations like saving bank, savings its accepted conditions of saving, issue, transfer of funds as directed

by the customer. Department of prediction of bank activity realizes functions of the bank from the standpoint of ensuring of basic principles of its operations – liquidity, reliability and profitability. It develops matters of bank business policy, bank balance sheet, credit potential is determined, provisions of income and expenses of bank are developed, actual expenses in relation to planned expenses are analyzed.

Department of cash management services opens and maintains accounts, makes calculations and cash transactions. Currency department maintains currency accounts, buys and sells currency, accepts deposits and issues mortgages, insures risks, maintains currency positions, cash transactions, term agreements.

Legal department of the State Land Bank develops normative documents of bank and makes changes in the charter of the bank, concludes contracts, deeds of pledge and other acts, statements of claim, protests and so on. Matters in judicial and administrative institutions are managed, performance and accuracy of bank agreements is controlled.

Auditing department verifies work of bank and its branches in accordance with accounting norms, stated by banking policy. Department of introduction and operation of computers arranges computer systems of bank, provides development of programs for bank departments and branches, supplies bank with computers and office equipment.

Thus, Minister of Agricultural and Food Policy Mykola Prysiashniuk states that Land Bank will perform two functions: commercial – to give credits to agrarians at 6-8% per annum secured by land, and economic – to control state land. Thus, Land Bank will be additional signal for investors of reliability of Ukrainian agricultural sector.

We remind that till 2016 year in Ukraine there is moratorium on purchase and sale of agricultural lands for commercial production. A large proportion of land plots of this category is leased by the formal owners of land plots as a rule to legal entities [6].

Over 27 mln. hectares of Ukrainian lands are divided between 7 million of owners. 10 mln. hectares more of agricultural lands are owned by the state. But these lands are extremely scattered. State land ownership is the area that

totally exceeds the territory of the number of developed countries in Europe, but in these circumstances the state still does not have instrument for effective use of such powerful resource [6].

Under the latest data from the State Agency of Land Resources on January 1, 2013 year within 4.7 million of lease contracts the owners transferred to use the land plots with total area of 17.5 million hectares (63% of distributed land plots). Including: 241.1 thousand of transactions is concluded for a period of 3 years, about 1.9 million – for 4-5 years, 1.9 million of contracts – for 6-10 years, 638.8 thousand – for period of 10 years [7].

As for functions that are performed by mortgage banks experience of Germany should be considered in the more detailed way, which is significant in this matter.

According to the Law about Mortgage Banks (LMB), their main features are [8]:

- crediting secured by real estate, located on the territory of Germany, in the amount of 60% of its value;
- emission of backfilling letters within 60% of the value of the pledged property;
- crediting of German corporations and institutions of public law as well as third parties, provided that the guarantors are specified corporation;
- emission of communal debt on the basis of acquired claims to institutions of public law;
- credits secured by real estate in the states-members of European Union, in the states-members of the Agreement about European Economic Area and in Switzerland;
- acceptance of deposits;
- receiving of credits;
- keeping of securities;
- securities management [9, p. 49].

Thus, mortgage banks in Germany can carry out only a few specialized, legally defined types of activities. Broad field of universal banks activity is closed for them.

Thus, the functions of State Land Bank of Ukraine shall include:

- refinancing of commercial banks that provide credits secured by land;
- control for compliance with legislation in the process of withdrawal of land in case of failure to pay back credit by the borrower;
- issue of mortgage bonds;
- other activities in accordance with applicable law [10].



In the context of number of recent changes to the Land Code of Ukraine it can be assumed that creation of State Land Bank of Ukraine will lead to significant restructuring of financial legal relations in the agricultural sector of the economy of Ukraine.

State Land Bank should act as central government body that guarantees and ensures implementation of land relations between all economic entities and state to ensure effective and efficient use of land and its natural resources [9, p. 50].

It should be noted that the above functions of the State Land Bank should not duplicate activity of other government institutions.

State Land Bank of Ukraine has seven new departments:

1. Analytical department that studies change in the monetary value of land due to changes in supply and demand and crop yield (function of specialists of the Ministry of Agrarian Policy of Ukraine);

2. Department of land records and analysis of land users and landowners, which analyzes data about size of land area for each land user of all categories of ownership and their change (feature of experts from the Ministry of Agrarian Policy of Ukraine);

3. Department of agrochemical land evaluation, which analyzes economic soil fertility and causes of fertility loss (function of agrochemical laboratory specialists);

4. Inspection of processes of purchase and sale of land, which analyzes lands of land users and land owners, process of buying and purchase of land plots (function of State Committee of Ukraine for Land Resources);

5. Tax Inspection analyzes taxes payment for land (function of State Tax Inspection);

6. Department of financing of land melioration, which manages financing processes of water-industrial construction, operation of main canals and supplying of water, gypsuming of soils (function of the State Committee of Ukraine for Water Management);

7. Environmental inspection, which analyzes the state of environmental damage (function of the Ministry of Environmental Protection of Ukraine).

In future creation of specialized Land (mortgage) banks or operation of mortgage branches in universal commercial banks

may have positive impact on the provision of mortgage services, financial support for agricultural producers. Mortgage of land as one of the most important instrument to attract additional investment funds requires more adequate adjustment. The need for creation of State Land (Mortgage) Bank is conditioned by its status – to serve new land relations, help to restore agriculture based on credits secured by land ownership.

Only balanced and well thought-out policy concerning formation of infrastructure of land market in Ukraine, solving of problems of land ownership can influence effective development of mortgage of land in Ukraine.

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