

## Artículo de investigación

# Economic and legal differences in patterns of land use in Ukraine

Diferencias económicas y legales en los patrones de uso de la tierra en Ucrania  
Diferenças econômicas e jurídicas nos padrões de uso da terra na Ucrânia

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## Abstract

The article deals with the legal patterns of the use of agricultural land in Ukraine. Legislative consolidation of the moratorium on the alienation of agricultural land leads to a search for legal ways of investors' access to land use in Ukraine. The methodological basis of the study was a complex of philosophical (dialectical, systemic-structural) and special legal (formally-logical, comparative-legal, forecasting and method of interpretation) methods of scientific knowledge. The Agreement of land lease and the agreement of emphyteusis are considered as the object of the study. It is determined that land lease is the most widespread pattern of use of agricultural land. Land lease performs social functions, creating conditions for access to land resources of those who do not own them, and provides conditions for entrepreneurship in the field of agriculture. The authors also consider emphyteusis, which is the right to use the land for agricultural purposes, as well as its features. The article analyzes the differences between lease and emphyteusis in order to determine the most cost-effective and environmentally safe pattern of land use for agricultural entities in modern conditions. In the content of the work, the authors substantiate that the agreement of emphyteusis has certain advantages over the lease agreement. The authors come to the conclusion that emphyteusis can be also considered as an alternative to purchase and selling of land under the moratorium on the alienation of agricultural land in Ukraine.

## Resumen

El artículo trata sobre los patrones legales del uso de tierras agrícolas en Ucrania. La consolidación legislativa de la moratoria sobre la enajenación de tierras agrícolas lleva a la búsqueda de formas legales de acceso de los inversores al uso de la tierra en Ucrania. La base metodológica del estudio fue un complejo de métodos de conocimiento científico filosóficos (dialécticos, sistémico-estructurales) y legales especiales (formalmente lógicos, comparativos-legales, pronósticos y métodos de interpretación). El Acuerdo de arrendamiento de tierras y el acuerdo de emphyteusis se consideran como el objeto del estudio. Se determina que el arrendamiento de tierras es el patrón de uso más extendido de las tierras agrícolas. El arrendamiento de tierras cumple funciones sociales, creando condiciones para el acceso a los recursos de la tierra de quienes no las poseen, y proporciona condiciones para el espíritu empresarial en el campo de la agricultura. Los autores también consideran la emphyteusis, que es el derecho de usar la tierra para fines agrícolas, así como sus características. El artículo analiza las diferencias entre arrendamiento y emphyteusis para determinar el patrón de uso del suelo más rentable y ambientalmente seguro para las entidades agrícolas en las condiciones modernas. En el contenido del trabajo, los autores afirman que el acuerdo de emphyteusis tiene ciertas ventajas sobre el contrato de arrendamiento. Los autores llegan a la conclusión de que la emphyteusis también puede considerarse como una alternativa a la compra y venta de tierras bajo

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**Keywords:** land lease; emphyteusis; land use; agricultural land; land plot; civil law; land law.

la moratoria de la enajenación de tierras agrícolas en Ucrania.

**Palabras clave:** arrendamiento de tierras; emphyteusis; uso del suelo; tierra agrícola; parcela; ley civil; ley de Tierras.

### Resumo

O artigo trata dos padrões legais do uso de terras agrícolas na Ucrânia. A consolidação legislativa da moratória sobre a alienação de terras agrícolas leva a uma busca por formas legais de acesso dos investidores ao uso da terra na Ucrânia. A base metodológica do estudo foi um complexo de métodos filosóficos (dialético, sistêmico-estrutural) e especial (formalmente lógico, comparativo-legal, previsão e método de interpretação) do conhecimento científico. O Acordo de arrendamento da terra e o acordo de enfiteuse são considerados como objeto do estudo. É determinado que a terra é o padrão mais difundido de uso de terras agrícolas. O arrendamento de terras desempenha funções sociais, criando condições para o acesso aos recursos terrestres de quem não as possui e proporciona condições para o empreendedorismo no campo da agricultura. Os autores também consideram enfiteuse, que é o direito de usar a terra para fins agrícolas, bem como suas características. O artigo analisa as diferenças entre locação e enfiteuse para determinar o uso do solo mais econômico e ambientalmente seguro para as entidades agrícolas em condições modernas. No conteúdo do trabalho, os autores comprovam que o acordo de enfiteuse tem certas vantagens em relação ao contrato de locação. Os autores chegam à conclusão de que a enfiteuse pode ser considerada uma alternativa à compra e venda de terras sob a moratória da alienação de terras agrícolas na Ucrânia.

**Palavras-chave:** arrendamento de terras; enfiteuse; uso da terra; terras agrícolas; lote de terra; direito civil; lei de terras

### Introduction

Land resources are the largest and most indispensable national wealth. English economist William Petit spoke about the role of land: "Labor is the father of wealth, the earth is his mother" (Petit *et al.*, 1993). Increasing the efficiency of land use is a natural requirement for the further development of society. Land is not only the main means of production in agriculture, but also the production basis for the placement of all sectors of the economy. So today the state land policy, besides the environmental component, should have commercial (economic) and social one (Bondar, 2018).

Ukraine is a real agrarian heart of Europe, and its potential in this field is endless. According to official statistics, over the past 10 years, the volume of exports of main crops from our country has increased more than 3 times. This testifies to the rapid development of the domestic agricultural sector and its immense opportunities to increase production in the future.

Thus, the investment attractiveness of Ukrainian agrarian sector among foreign entrepreneurs has increased significantly. Among the largest foreign investors in the past year we can mention: a) the company Bunge, which attracted more than

\$180 million in the production and reloading complex in the Mykolayiv; b) Cargill, which attracted \$ 100 million to the grain terminal of the port in the city of Yuzhny; c) IFC, which provided Kernel agribusiness with \$ 95 million to replenish working capital; d) the company Risoil S.A., which attracted \$ 70 million to the grain terminal in Chornomorsk port.

It should be noted that, according to research this year, in comparison with 2016, investments in agro-sphere grew by 23.8%, which indicates a considerable interest in the field of agrarian business (UCAB, 2017).

However, despite the interest of investors, Ukraine currently cannot fully use its considerable potential due to lack of basic element of land relations - formed liberalized market of agricultural land. The existence of a moratorium on the alienation of agricultural land is provided for in paragraphs 14, 15 of Section X of the "Transitional Provisions" of the Land Code of Ukraine. The moratorium is a delay in the realization of the right to purchase and sale or other ways of alienation of agricultural land plots and changes in their intended purpose, as well as their inclusion in the authorized capital of enterprises. However, the absence of the

market, and not the crisis phenomenon in the economy, is currently the main deterrent factor: since any investor without ownership of their land assets, taking into account the risks of non-return of invested funds is forced to restrict long-term investment.

It is also important to note that, despite the existence of an open market, within the European Union itself, there are disputes over the established restrictions on the purchase of agricultural land in the legislation of several member countries. For example, after a series of appeals with the requirement to change the legislation, in June 2016 the European Commission appealed the European Court with a claim to Hungary due to the fact that this country ignores the rules of the European Union and restricts the rights of foreigners to buy agricultural lands, which is contrary to the freedom of movement of capital within the EU. What should the agricultural producers do in such conditions? The main alternative and the possibility of obtaining a land plot for use in Ukraine is the conclusion of a lease or an emphyteusis.

## METHODOLOGY

The methodological basis of the study is represented by the following methods: dialectical method of knowledge of the development of ideas about land lease agreements and agreements of emphyteusis; comparative legal, which is used to compare the common and distinctive features in the legislation and scientific literature between the above-mentioned agreements; systemic and structural, which made it possible to determine the place and role of land lease agreements and emphyteusis among other civil law agreements related to the use of land; formally-logical, which was used for the analysis of the content of land lease agreements and agreements of emphyteusis; method of interpretation (literal, logical, systemic), which was used in the process of analysis of the content of acts of civil and land law and practices of their application; the forecasting method was used to identify ways to improve regulatory and legal regulation for the practical application of land lease agreements and emphyteusis.

## RESULTS AND DISCUSSIONS

### Agreement of land lease

At the present stage, the agricultural land market is realized through lease, which is one of the

types of market transactions with land. Land lease performs social functions, creating conditions for access to land resources of those who do not own them, and provides conditions for business in agriculture through the establishment of economic units.

The mechanism of leasing relations in land use is a system of interconnected and subordinated elements. The main component of the system of relations between the landowner and the agricultural enterprise as relations of internal differentiation of processes of appropriation for the factor of production (land), the object of assignment is the land rent, and the subjects of appropriation - the landowner (landlord) and the agricultural enterprise (tenant). Therefore, economic forms of appropriation are rent, rental income and land tax. In this case, if the rent is a result of such an attributive quality of the market economy as the payment of resources, then the income from lease is the result of the freedom of entrepreneurial activity. At the same time, leasing, as a flexible means of redistribution of land resources in favor of more efficient farms, as well as the formation of farms of optimal sizes, also implements such qualities of a market economy as competition and free pricing.

Lease relations of use of land resources in the conditions of development of a market economy can be various types and appear in various forms. In lease relations, income is formed by the tenant and depends on the quantity and quality of products produced and the level of material costs, including the rent for the means of production.

In the conditions of the development of a market economy, lease relations are based on economic factors, the main among which are the prices of products and means of production, independence and interest in the results of the work of tenants, when over-spending or saving money automatically reduces or increases their income. As the world practice shows, lease relations can develop in any form of ownership and organization of production. This is the universality of land lease relations. Describing the development of lease relations, we would like to note that last year landowners in Ukraine signed 27627 land lease agreements for committing of commercial agricultural production; 7735 contracts for the farming and 5816 contracts for providing of private peasant activity.

At the current stage of development of agricultural land lease relations, there is a situation according to which a significant part of the land on the territory of Ukraine is leased to large agricultural enterprises that are united into agricultural holdings. According to Latifundist.com (media holding Latifundist Media), there are more than 80 land users in Ukraine with a land bank of more than 20 thousand hectares, the largest of which are UkrLandFarming (570.0 thousand hectares), Kernel (550.0 thousand hectares), Agroprosperis (NCH) (430.0 thousand ha), and others.

As it is known, agricultural land leases are widely used in western countries. For example, in the United States, the share of leased land reaches 70%, in Central and Eastern Europe, 40% of farmers lease land for agricultural production. Leased land in the land use of Slovakia is 96%, Bulgaria - 75%, Poland - 20%, Czech Republic - 50%. In the structure of the land fund of Canada, Belgium and France, the leased area is 50-67% of the territory, Ireland, Japan, Italy and Denmark - 13-23%. It should be noted that in Sweden, 20% of farmers are farming fully on leased land, and 30% - partly on their own and leased (Dankevych, 2016). This is explained by the fact that renting land costs much less, which allows saving capital and investing it in production.

The features of agricultural land refer to their lease as a legal form of use. In order to define the concept of lease of agricultural land, it is necessary to establish its specific features that distinguish it from the lease of land of other categories. These features arise from natural peculiarities of agriculture. These include, in particular, the use of land as the main means of production activity, the dependence of the results of labor on climatic conditions, the seasonal nature of production, increased production risk, a long period of time between labor activity and its consequences.

The right to lease land is the right to possess and use land for specified purposes under certain conditions. It is derived from the ownership of land. Economic interest in land lease relations appears in the fact that land is used as a condition of any production, the territorial-spatial basis and the means of production, which brings benefits and income to its owners or users. In the conditions of land and agrarian reform, the study of the content of land lease relations becomes of particular relevance.

The Land Code of Ukraine (Article 93) defines the right to lease land plot as a contractually

based limited-time paid possession and use of a land plot needed by a leaseholder to carry out entrepreneurial and other activities. Land plots may be leased out to citizens and legal entities of Ukraine, foreign citizens and persons without citizenship, foreign legal entities, international associations and organizations and also foreign states.

Lease relations between landlords of land plots and tenants are regulated by a lease agreement, which is concluded in writing form. Instead, for example, in the United States, such an agreement may even be oral, without legal registration, and in most cases for a period of one year, which allows landlords and tenants to significantly expand the possibilities of choosing partners to find more beneficial options for them.

According to Article 13 of the Law of Ukraine "On land lease" a land lease agreement is a contract by which the landlord is obliged to transfer the land plot to the tenant for payment for a certain period of time and the tenant is obliged to use the land plot in accordance with the terms of the contract and the requirements of the land legislation. This Law in Part 1 of Article 15 defines the essential provisions of the lease agreement. These include: the object of lease (cadastral number, location and size of land plot); term of the lease agreement; a rent with an indication of its size, indexation, method and terms of calculations, terms, the order of its introduction and review, and responsibility for its non-payment. By the agreement of the parties in the agreement there may be specified other provisions, in particular, the qualitative condition of land, the procedure for fulfilling the obligations of the parties, the procedure for insurance of the object of lease, the procedure for reimbursing the costs for the implementation of measures for the protection and improvement of the object of lease, as well as the circumstances, which may affect the change or termination of the lease agreement, and others.

The essential provisions of the lease agreement are also defined by the Law. We should note that in 2015, the legislation of Ukraine has undergone some positive changes in the field of land lease. Until February 2015, the legislation has not regulated the minimum term of lease of agricultural land, and therefore, the agreements were concluded even for a period of one year, which did not contribute to the efficient and rational use of land. However, Part 3 of Article 19 of the Law of Ukraine "On land lease" was

changed. Now it establishes that the term of the lease of land plots for agricultural purposes for commercial agricultural production, farming and private farming is determined by agreement of the parties, but may not be less than 7 years. In the case of the creation of an industrial park on the lands of state or communal property, the land plot is leased for a period of not less than 30 years. At the same time, the maximum term of lease of a land plot cannot exceed 50 years.

Such a legislative restriction is relevant and expedient, both for state and communal lands, and for lands that are privately owned. Of course, the specific term of the land lease agreement is determined by the consent of the parties within the statutory time limits. The long term of the land lease agreement is more advantageous to the tenant than the landlord, as it guarantees him the right to dispose of the land plot (Fedchyshyn *et al.*, 2018).

In general, the trend in the lease relations towards the reduction of tenants' dependence from landlords (duration of lease 18-49 years, forced lease, etc.) is observed in the world. All this contributes to increasing the efficiency of agrarian production, which is based not on land ownership, but on economic possession and use (France, USA).

For comparison, in the UK land lease is made without restrictions on its terms with the full protection of the interests of the tenant and landlord. There are agreements for 99 years, but in most cases, the terms of the lease are less. The right to lease can be alienated or mortgaged. In the United States, the lease, as a rule, is concluded for a year, followed by its continuation.

Another essential provision for the land lease agreement is the lease payment. Lease payments in land lease agreements are usually made in cash. However, with the consent of the parties, such payments may be made in kind. The calculation of the lease payment in kind must correspond to the monetary equivalent of the value of the goods at market prices on the date of the payment.

The size, terms and conditions for the payment should be established by the agreement of the parties in the lease agreement (except for the terms of payment for land plots of state and communal property, which are established in accordance with the Tax Code of Ukraine (Part 2 of Article 21)). In addition, in accordance with

Part 3 of Article 21 of the Law of Ukraine "On Land Lease", the calculation of the payment for land is made taking into account inflation rates, unless otherwise provided by the lease agreement.

The practice of establishing of lease payments can be various. In some foreign countries (Denmark, Greece, Ireland, etc.) the land owner and tenant determine the level of such payment. In other countries (Belgium, the Netherlands, Spain, Portugal), it is legally established and paid in cash, based on potential yields and prices in past years.

For the last year in Ukraine, the average payment for the year is 1369 UAH / ha, and the area of land leased by the owners of land shares reaches 16.9 million ha (StateGeoCadastr, 2017). According to the World Bank, the average rent of 1 hectare of arable land in Denmark is \$ 708.83, the Netherlands - \$ 672.14, Ireland - \$ 592.2, Bulgaria - \$ 278.94, Luxembourg - \$ 256.17, Spain - \$ 227.3, Germany - \$ 219.36, Belgium - \$ 123.75 (Kubakh *et al.*, 2016). So the payment for agricultural land in Ukraine is several lower and equals about \$ 48. On the one hand, this is explained by considerably higher incomes of agribusiness in the EU, which, in particular, are formed as a result of the implementation of the EU Common Agricultural Policy, but there are also obvious disparities in the redistribution of land rent in Ukraine.

There is a prevailing practice that the payment must necessarily be "tied" to the normative-monetary valuation of leased land plot. This was largely due to the widespread use of the form of a typical land lease agreement, approved by the Cabinet of Ministers of Ukraine. At the same time, few know that a normative monetary valuation is not necessary for the purposes of determining the amount of payment for land plots of private property and conclusion of lease agreements on such land plots, since it is not included in the essential provisions of lease agreement.

The normative-monetary valuation of land plot is not proclaimed by the current legislation of Ukraine as the essential provision of lease agreement of such a plot. In connection with the changes in the legislation dated on 02.02.2015, the provision was ruled out that in case of absence in land lease agreement of one of the essential provisions it is the ground for refusal in the state registration of the lease agreement and recognition of it as null and void.



Consequently, the current legislation of Ukraine permits to set a fixed amount of payment for land plots of private property, without calculating it from normative-monetary valuation. Knowledge of this aspect will save time and money required for obtaining normative-monetary valuation of land plots. This will also greatly simplify the administration of lease payments.

It should also be noted that according to Article 125 of the Land Code of Ukraine the right to lease a land plot arises since the moment of its state registration. So, the legal relationship, on the emergence of which an agreement was concluded, arises after the state registration of the right to lease land. A land lease agreement may also be certified by a notary at the request of one of the parties.

The land lease agreement, which is concluded between landlord and tenant in accordance with the requirements of the Law of Ukraine "On Land Lease" on the basis of the Model agreement, determines the conditions associated with the transfer, use and return of the land, as well as other conditions that are in the interests of parties of this agreement and do not contradict the legislation in force.

As it is known, the conditions of lease vary in different countries, but, however, we can distinguish two main types of such agreements. The first is characterized by regulation by the state of the maximum size of the payment and the terms of the agreement (for example, France). The second type is based on the achievement of a bilateral agreement between the landlord and the tenant, the lease term and the size of the payment is determined solely by market conditions. This type includes Germany, Sweden, and the Czech Republic. In countries such as Italy and the United Kingdom, there are two types of lease agreements.

Based on the foregoing, we can state that in Ukraine the state restricts the economic freedom of landlords and tenants regarding the forms and sizes of the lease payments, the types of agreement and its essential provisions, the mandatory state registration of such rights, etc. That is why agribusiness constantly searches for new, alternative forms of use of agricultural lands, including the right of emphyteusis.

### **Agreement of emphyteusis**

Taking into account the results of the research on agricultural land use in Ukraine, we consider it necessary to analyze in detail the differences

between the right to lease and the emphyteusis to determine the most cost-effective and environmentally safe type for economic entities in modern conditions.

Emphyteusis is the right to use a land plot for agricultural needs. It is proclaimed by the Civil Code of Ukraine as a separate type of property right. Its use is gradually becoming more popular among tenants of agricultural land, as it is more profitable and provides flexibility in harmonizing the essential provisions of land use.

Under the current legislation of some countries of Europe, emphyteusis belongs to a group of limited real rights. The laws of Italy, Germany and other European countries specifically stipulate the possibility of restricting the right of private ownership (up to the withdrawal of land from the owner with compensation) for the purpose of rational exploitation of land and "the establishment of just social relations", for "the common good" or for "reasons of public benefit" and so on. However, in countries whose legislation is based on the pandectists' system (Austria, Switzerland, Czech Republic, Hungary, etc.), there is no emphyteusis. This is due to the replacement of it by the similar in content legal constructions - personal easements (usufruct), the right to build (superficies) and others.

In European rule of law, emphyteusis is usually defined as a real long-term inherited right to use a land plot (most often agricultural purpose), which gives the land user a broad content mandate.

In accordance with Part 1 of Article 407 of the Civil Code of Ukraine the object of emphyteusis is a special category of things, namely, a land plot of agricultural purpose. Unlike the right to lease, only the agricultural land plots can be used on the right of emphyteusis. That is why land plots for dacha or garage construction and other non-agricultural land cannot be granted for the use on the right of emphyteusis. According to emphyteusis, the same way as in the case of lease, land plots are transferred to the users' possession and use. Thus, there are no differences with the lease in fullness of the rights of possession and use of land plots.

Emphyteusis is established by agreement between the owner of the land plot and the person who has expressed the desire to use it for agricultural needs. Subsequently, the latter may alienate his right of use to others and pass it by inheritance.

In accordance with Part 2 of Article 411 of the Civil Code of Ukraine, the owner of the land plot is given the priority to acquire the right to use the land plot (emphyteusis) in the event of the sale of this right to another person, as well as the right to receive percent from the sale price of the emphyteusis to another person. In case of sale of the right to use a land plot (emphyteusis), the owner of this land plot has the priority to purchase it, at the price declared for sale, and on other equal conditions.

In the case of sale, the seller of the emphyteusis is required to notify the owner of the land plot in writing of the intention to sell his right to a third party, indicating the price announced for sale and other terms of sale. Determination of the price of sale of emphyteusis should take into account the relevant provisions of regulation of the Cabinet of Ministers of Ukraine "On expert monetary valuation of land plots". In accordance with paragraphs 42-44, 47 of the abovementioned regulation, the assessment of emphyteusis is based on the preliminary determination of the market value of the land plot.

The owner of land plot, who within one month in writing declares his intention to redeem the emphyteusis, is obliged to buy it at the price and conditions announced for sale. If the land owner refuses to exercise his priority right to purchase the emphyteusis, or he doesn't give his consent to the purchase in writing, or he agrees to a possible purchase at a different price, the land user can sell his right to any person, but under conditions previously announced for sale. If the land owner, having given consent to the purchase of emphyteusis, will subsequently give up his intention, the land user may demand compensation from him for the damage caused by such a refusal in accordance with Articles 22, 23 of the Civil Code of Ukraine.

In addition, the land owner is also entitled to receive a payment for its use. The size, conditions, procedure and terms of payment are established by the agreement (part 2 of Article 409 of the Civil Code of Ukraine). As a rule, such agreements establish a one-time payment for the transfer of emphyteusis. However, there are also cases when user is required to pay the owner payments for the use of the emphyteusis in a certain way and agreed terms.

The calculation of the size of payment should be made taking into account inflation indices, unless otherwise stipulated by the agreement on

emphyteusis. The size of the payment for emphyteusis may vary significantly depending on the nature of the use of the land and the conditions of its provision.

Parties are free to choose between the monetary, natural and mixed forms of payment for the use of the specified land plot in determining the specific terms of the agreement. They also may provide in the agreement a combination of different forms of payment. Agreements on the emphyteusis provides for full freedom in determining the size, form and terms of payment for this agreement. The presence of such an opportunity makes the use of emphyteusis extremely economically attractive, which contributes to the intensive development of the practice of concluding these agreements in modern conditions.

The term of the agreement on the emphyteusis is established by agreement of its parties. Such an agreement may be concluded for a specified or indefinite period without any restrictions in the maximum or minimum terms of it. Thus, the parties are free to determine a specific term at their discretion in the agreement. In this case, the parties may be guided by the requirements of reasonableness and fairness in accordance with Article 627 of the Civil Code of Ukraine. The calculation of the terms of the agreement on emphyteusis is in accordance with the provisions of Chapter 18 of the Civil Code of Ukraine. However, for state and communal land, the terms of emphyteusis, as well as lease, cannot exceed 50 years, and in respect of privately owned land plots, the maximum term of the agreement is not limited. In practice, there are cases when the agreement of emphyteusis is concluded for a term of 100, 500 and more years. For example, an agrarian holding "Trigon agri" signed an agreement on emphyteusis for 200 years.

This agreement combines unique opportunities for possession and use of agricultural land over a significant period of time, which is an effective alternative to a lease agreement. So, for example, you can get the right to use an agricultural land for more than 100 years, having made one single payment, without the need for further accounting of landlords, organizing the implementation of periodic calculations, which undoubtedly for many enterprises will be a decisive factor in choosing between lease and emphyteusis.

The parties are obliged to agree on the provisions that they consider essential in the agreement of emphyteusis. This gives the parties much more freedom and allows them to adjust only those provisions that are important for them, which is especially important for foreign investors.

As well as the right to lease, the right of emphyteusis has to be registered in the State register of real estate rights and arises from the moment of such registration. If the agreement of emphyteusis was certified notarially, the right to use land under these conditions have to be registered by a notary, otherwise, registration should be carried out in the local unit of the State Registration Service of Ukraine.

Consequently, the agreement on emphyteusis is an interesting alternative to the lease of agricultural land and proved to be more effective in terms of the validity of land use rights, the financial relations of the parties, and administration.

## CONCLUSION

It can be stated that the agreements on emphyteusis have certain advantages over lease agreements. These agreements may provide for the alienation and transfer of the right to use someone else's land plot for agricultural purposes. Unlike a lease agreement, under which the maximum term of an agreement must not exceed 49 years, the emphyteusis has an unlimited period of validity. In addition, in such agreements, on the one hand, there is a prohibition on the use of a land plot not for its intended purpose, but on the other - the owner of the land plot guarantees non-interference in the activity of the user of the land.

Significant advantage of emphyteusis is the lack of strictly regulated requirements to the content and provisions of this agreement. So the optimum conditions for the parties can be formed, which in turn provides additional benefits to them.

An important aspect that shows the benefit of emphyteusis is that the permanent registration of lease agreements when changing ownership, inheritance, giving and other civil-law agreements involves significant costs for notarial services, which in turn entails a burden on agricultural enterprises and farms. Emphyteusis is a more universal right, which will allow eliminating the above extraordinary transaction

costs and promote the development of agricultural land use.

The combination of the benefits of emphyteusis makes it an alternative to purchase and sale of land plots under a moratorium on the sale of agricultural land. Thus, emphyteusis actually replaces agreements of purchase and sale, since the alienator on such an agreement transfers the land plot for use for a significant period of time and receives funds equivalent to the market value of the land. It should also be added that the land bank, formed from land plots received for a long time under already paid agreements of emphyteusis, is an asset that is interesting for the market.

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