

**Foreign Investment in Ukrainian Agriculture: A Comprehensive Discussion of the Moratorium on Sale  
of Agricultural Land and other Non-economic Risks for Investors**

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## **Abstract**

Ukraine is currently undergoing a series of land reforms that will result in the creation of a private market for the sale of agricultural land. These reforms will lead to drastic changes in Ukraine's agricultural industry and are intended to promote economic and regional growth. Ukraine is still faced with daunting challenges with security and a high degree of corruption, however, the Zelensky government is working to address some of the major issues and has also worked out a plan to begin undergoing land reform this year. The creation of a private market for agricultural land through lifting the current moratorium on the sale of agricultural land will create vast opportunities for foreign agricultural investors. Ukraine needs foreign investment to develop the agricultural sector, acquire new technologies and farming strategies, improve infrastructure such as roads, and create jobs in rural regions. This thesis examines Ukraine's plan for land law reforms to evaluate the risks and benefits of the proposed strategy on foreign investment in the agricultural sector.

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## **Table of contents**

Abstract.....	ii
Acknowledgments.....	iii
Table of contents.....	iv
Introduction.....	1
Research Questions.....	2
Practical and Theoretical Relevance.....	2
Theoretical Framework.....	5
Literature Review.....	8
Research Design and Research Tools.....	17
Chapter I: The Moratorium on Sale of Agricultural Land and Ukrainian Land Laws.....	19
Chapter II: Agroholdings in Ukraine.....	41
Chapter III: Foreign Direct Investment in Ukraine.....	56
Chapter IV: Challenges and Risks for Foreign Investment in Ukrainian Agriculture.....	74
Conclusion.....	94
Works Cited.....	104

## **Introduction**

Ukraine represents a large and underdeveloped market, with diverse industries and an abundance of underused human capital that would benefit from multinational investment and Foreign Direct Investment (FDI) inflows. Among other endowments, Ukraine has a growing agricultural sector which is already attracting foreign investors to the country, including Archer Daniels Midland Co., Bunge Ltd., Cargill Inc. and Louis Dreyfus Commodities Group (J.Bunge, 2014). The agriculture sector encompasses a range of activities including growing crops, raising animals, and harvesting fish and other animals from a farm, ranch, or their natural habitats ([United States Environment Protection Agency, 2017](#)). The problem that this research will try to address is that, despite the potential for profits in Ukraine's agricultural sector, political risk factors reduce international investment and impede regional and industry level economic growth. This thesis will examine how foreign investment can promote efficiency in the Ukrainian agricultural sector and generate regional and national economic growth. Ukraine presents unique challenges for multinational enterprises and foreign investors for several reasons including, unstable social and political institutions, corruption, large regional differences, and difficulties implementing successful land reform ([Euler Hermes, 2017](#)). This thesis will also examine the moratorium on the sale of agricultural land and how this affects foreign direct investment in Ukraine's agricultural sector. The goal of this thesis is to understand how the current Ukrainian land laws affect foreign investment in the agricultural sector and to examine the necessary steps required to allow for the formation of an efficient private land market.

## **Research Questions**

The proposed study will attempt to answer the overarching question: What are the implications of land law reforms in Ukraine for foreign investors in agriculture? More specifically, this question will be split up into major sub-questions, which will guide this study. First, what are the current agricultural land laws in Ukraine, and how do they affect foreign investors in this sector? Second, what non-economic risks exist for multinational enterprises investing in the Ukrainian agricultural industry? Third, what benefits can foreign investment in agriculture bring for Ukraine? Fourth, how can multinational enterprises mitigate the risks of investment in the Ukrainian agricultural sector to both generate profits and promote economic growth in Ukraine? Finally, how should Ukraine proceed with land market liberalization in the years to come?

## **Practical and Theoretical Relevance**

This research can contribute to filling the gaps in academic literature regarding the political risks for agribusinesses investing in Ukraine. It will offer practical advice for multinational agribusinesses trying to penetrate the Ukrainian market, through FDI or other strategies. A wide range of academic research exists discussing the motives and behaviors of multinationals investing in foreign markets and transition economies. There is a lack of literature that examines how multinational enterprises assess and later mitigate various social and political, or non-economic risks before investing in specific markets. Most of this literature explores these subjects through macro-level analysis, and the micro or meso-level studies that do exist do not address the particular contexts of Ukraine. There is generally a lack of qualitative academic literature on Ukraine's land laws and their effects on foreign investment in the agricultural sector.

There are also virtually no scholarly articles written after the Crimean conflict that discuss multinational agribusinesses operating in Ukraine and the specific risks they encounter. Most of the literature that exists is found in news articles, or macro-level economic studies conducted by various international organizations and private researchers. One of the significant shortcomings of the current literature is that it does not address the issues with land reform in Ukraine, which is one of the primary political risk factors for agricultural investors. Any discussion of land reform comes from news articles and international organizations advocating the need for change, however, these articles offer no theoretical analysis and are quite brief. This thesis research can narrow some of the gaps that exist in the literature, namely by expanding the knowledge of Ukrainian land law reforms and their effects on foreign investment in the Ukrainian agricultural sector.

Foreign Direct Investment (FDI) occurs when a firm from one country purchases a company in another country, invests in starting operations in another country, or acquires a controlling share of a foreign company ([Feenstra and Taylor](#), 146). In recent years, FDI has become the most significant financial flow exceeding portfolio and other flows substantially ([Klein, Aaron, and Hadjimichael, 2001](#)). FDI is essential for successful economic growth in low-income and middle-income countries because it allows for the rapid and efficient transfer of "best practices" across borders ([Klein, Aaron, and Hadjimichael, 2001](#)). Economic growth is an essential factor for upgrading human capital and reducing poverty ([Klein, Aaron, and Hadjimichael, 2001](#)). FDI in Ukraine can promote economic growth, and the agricultural sector provides many opportunities for investors.

Ukraine has a strategic location, between Europe, Asia, and Russia, coastal access, a well-educated workforce, a large domestic market, and some of Europe's most fertile land ([UK](#)

[Foreign and Commonwealth Office, 2017](#)). Ukraine is a significant exporter of grain and sunflower oil, as well as other agricultural commodities; the agricultural sector has seen the highest level of economic growth in recent years, according to World Bank data ([UK Foreign and Commonwealth Office, 2017](#)). Despite economic stabilization over 2016, FDI, bank lending, and spending on public infrastructure have not increased ([UK Foreign and Commonwealth Office, 2017](#)).

Political risk analysis is one strategy for identifying non-economic factors that can act as impediments to FDI, or the attainment of benefits from FDI ([Korbin, 1982](#)). Most political risk assessments are not industry or region-specific and use countries as the unit of analysis. A more in-depth qualitative study focused on political risk, as it pertains specifically to the agricultural sector, will provide foreign investors a better understanding of the challenges of FDI in Ukraine's agricultural sector. This study can also offer some contextual frameworks for foreign agribusinesses to capitalize on opportunities while mitigating risks. Identifying region-specific social and political risks to FDI and developing mechanisms to address these risks can promote FDI and generate economic growth in Ukraine. This study could also lead to more qualitative academic literature and micro-level studies about investment opportunities, risks, and mitigation mechanisms in different regions and different industries, in Ukraine, or in other contexts. It is crucial to have more qualitative and micro-level studies because opportunities and risks alike are contextual and vary between countries and within countries. There is no single answer to how to mitigate various forms of risk to promote FDI flows, which will benefit national economic growth. Developing Ukraine's agricultural productivity is not only important for generating economic growth and promoting development in Ukraine, but it can also promote global food security because Ukraine is a major global exporter of agricultural outputs.

## Theoretical Framework

Political risk theory will be used to explain how multinationals assess the social and political risks of investing in Ukraine and how they mitigate those risks. This section will briefly summarize this guiding theoretical perspective, and continue to explain how it is relevant and will be used to help guide this research and answer the proposed research questions. Although there is no single clear definition of political risk, Cecelia Sottilotta provides one of the most comprehensive definitions in her book, *Political Risk: Concepts, Theories, and Strategies*;

"political risk could be defined as the probability that the profitability of an investment may be negatively affected by circumstances ascribable either to adverse unforeseen changes (such as revolutions, even when linked to democratization processes, or the outbreak of tribal/ethnic conflict) in the domestic or international political arena or to governmental policy choices affecting an international investor's property rights. In both cases, risk analysis would need to be conducted by carefully looking through the twin lenses of domestic political regimes on the one hand and of international factors on the other" ([Sottilotta, 2017, 10](#)).

Sottilotta's work discusses the macro and micro level approaches to political risk analysis and points to a lack of multidisciplinary approaches to encompass all levels of analysis ([Sottilotta, 2017, 8](#)). Micro political risk assessment occurs at the industry or firm level, while macro-political risk focuses on countries ([Sottilotta, 2017, 8](#)). When foreign businesses need to choose which market to invest in, cross-country macro-political risk assessments might be the most appropriate. Once the decision has been made, and the operational phase of the investment begins, then focusing on monitoring rather than rating countries becomes more critical and micro-level studies become more useful ([Sottilotta, 2017, 15](#)). Different forms of FDI also

require varying degrees of political risk analysis. For example, greenfield FDI investments are typically based on more long-term assessments than brownfield investments, ([Sottilotta, 2017](#), 35) because when a company wants to start operations from scratch in a foreign market, they will encounter more risks than a company that buys an already operating local business.

Sottilotta also argues that political risk analysis is about estimating the likelihood of possible future events. The political risk analyst should know the present condition of a given country, region, or industry and be able to use it to inform the investor or decision-maker on how to proceed ([Sottilotta, 2017](#), 34). This implies that political risk assessment requires a degree of human judgment, which plays an essential role both in determining variables and models and for rating qualitative variables that could otherwise not be quantified ([Sottilotta, 2017](#), 15). The person conducting the assessment and interpreting data must be an expert to understand the complex interplay between the state, multinational businesses, and civil society in specific countries ([Sottilotta, 2017](#), 19). Prakash Sethi and Luther note that one of the challenges in conducting political risk assessments is understanding the actors involved and their roles. Political risks fall into an intersection between the host country, the international community, civil society, and/or multinational businesses ([Prakash Sethi and Luther, 1986](#)). A stakeholder analysis should be conducted to identify the advantages and disadvantages of foreign direct investment for all stakeholders (foreign investors, local populations, and the Ukrainian state), including political risk factors as disadvantages. This will maximize the benefits of foreign direct investment for all parties and help identify challenges to promoting "good" FDI.

Political risk assessments are performed by private or public agencies including, Control Risks, Business Environment Risk Intelligence, Eurasia Group, the Multilateral Investment Guarantee Agency in the World Bank Group, Oxford Analytica, and the Political Risk Services

(PRS) Group, to name but a few ([Sottilotta, 2017, 9](#)). One of the most comprehensive political risk assessments is conducted by the PRS group,

"the PRS Group produces the International Country Risk Guide (ICRG) that features country ratings based on three categories of risk: political, financial, and economical. The Political Risk Rating, which accounts for 50 percent of the overall index, includes 12 weighted variables covering the following political and social attributes: government stability, socioeconomic conditions, investment profile, internal conflict, external conflict, corruption, level of military involvement in politics, religious tension, law and order, ethnic tensions, democratic accountability, bureaucracy quality" ([Sottilotta, 2017, 13](#)).

In this study, we will identify which political risk factors are prevalent in the Ukrainian agricultural sector, and discuss how they effect foreign investors. One major political risk factor which is overlooked in the ICRG, as well as in other major political risk assessments, is land laws. Land laws vary substantially between different states. In some cases, like Ukraine, land laws must be reformed because they represent a substantial political risk and deter investors, especially in the agricultural sector. The following section will provide a brief overview of the relevant literature, which contributes to the discussion of the research problem.

## Literature Review

Revilla et. Al., provide one of the most useful quantitative studies of multinational enterprises operating in Ukraine. They conclude that there are three distinct economic regions characterized by different socio-political contexts leading to a regional variation in FDI flows and types of investment preferred by multinationals ([Revilla et al., 2016](#)). They point out regional differences in industries, namely the industrial east, the agricultural west, and the urbanized capital region. They also briefly discuss certain political risk factors, including corruption, but their analysis does not extend to an in-depth discussion of multinationals in any specific industry ([Revilla et al., 2106](#)). The macro-level quantitative approach that these authors employ does not explain the socio-political differences between regions but rather just acknowledges their existence.

Kenyon and Naoi discuss the effects of regulatory and policy uncertainty on investment in foreign countries. The authors identify a relationship between firms' perceptions of policy uncertainty and political regime type. Policy uncertainty is an essential political risk factor that affects firms' decisions to invest in particular countries and, as a result, impedes economic growth ([Kenyon and Naoi, 2010](#)). The authors found that firms in hybrid regimes, like Ukraine, report higher levels of concern over policy uncertainty than those in authoritarian or liberal-democratic regimes. The main reasons identified as causes of uncertainty and risk are polarized political competition and lack of access to credible information ([Kenyon and Naoi, 2010](#)), both of which are prevalent issues in Ukraine. The authors also point out that export-oriented firms are more affected by policy uncertainty than those operating domestically, and that larger firms and foreign-owned firms are not specifically more affected ([Kenyon and Naoi, 2010](#)). Policy uncertainty pushes away investors and impedes economic growth. This article contributes to the

proposed research because it engages in a more in-depth discussion of one crucial political risk factor; however, the findings presented are based on national-level data and do not discuss Ukraine specifically.

The Political Risk Service Group conducts one of the most comprehensive macro-level political risk analyses and publishes its findings in an annual International Country Risk Guide. According to the 2016 International Country Risk Guide, Ukraine ranks one hundred and twenty-ninth out of one hundred and forty countries based on political risk; financial and economic risk ratings are also available in this report. Ukraine classifies as a high-risk country with a political risk rating of fifty-eight and a half out of a hundred ([Political Risk Services, 2016](#)). To put this in perspective, states with scores above eighty classify as very low risk, scores between seventy and eighty indicate low-risk, sixty to seventy signifies moderate risk, fifty to sixty (where Ukraine fits) indicates high risk, and finally, scores below fifty, point to extremely high political risk. Ukraine ranks particularly low on certain political risk factors including a one out of four in bureaucratic quality, a one and a half out of six in corruption, four and a half out of twelve in socio-economic conditions, and seven out of twelve for government stability, internal conflict, and external conflict ([Political Risk Services, 2016](#)). Each one of these factors is divided into sub-components, which each have their own ratings as well. Although this report does not provide any regional information or information that is specific for investors in the agricultural sector, it provides useful data for all foreign investors. It will help identify the main political risk factors in Ukraine to narrow the focus of this study.

The UK Foreign and Commonwealth office provides a comprehensive report about the risks of doing business in Ukraine. This report begins by outlining the current socio-political situation in Ukraine and discusses how it is impacting foreign investors. Between 2013 and 2014,

Ukraine's capital was overrun by protestors who were disgruntled with President Yanukovich for not signing association agreements with the EU and NATO. Yanukovich was replaced by a pro-EU government led by a coalition between President Poroshenko and Prime Minister Yatsenyuk. Yatsenyuk was replaced by Groysman, another pro-western politician, in 2016 ([UK Foreign and Commonwealth Office, 2017](#)).

In 2019, Groysman was replaced by Volodymyr Zelenskyy, who was elected with a strong majority. Despite commitments and policies to combat corruption and attract foreign investment to Ukraine, Zelenskyy's government has had little success (Filtenborg and Weichert, 2020). Aleksey Jakubin, a politics professor at Kyiv Polytechnical Institute optimistically argues that reforms take a long time and it is too early to judge the effectiveness of Zelenskyy's government in terms of its reform efforts and attempts to combat corruption (Filtenborg and Weichert, 2020). Other scholars including Anders Aslund, Pavlo Kutuev, and Tymofiy Mylovanov are more skeptical. Aslund believes that the reforms and changes in government under Zelenskyy do not represent anything new for Ukraine and will lead to a return of oligarchic and corrupt policies (Filtenborg and Weichert, 2020). Kutuev, a sociology professor, believes that there are too many underlying social and economic issues in Ukraine that are tied to the Soviet past (Filtenborg and Weichert, 2020). In his opinion reforms tend to lead to a one step forward, two steps back scenario and as a result corruption persists and foreign investors are pushed away. Mylovanov, a former economy minister, states that Zelenskyy's reform program is too vague to effectively address corruption and attract foreign investment (Filtenborg and Weichert, 2020). On the positive side, the Zelenskyy government has managed to pass Law 552-IX, which will finally open the agricultural land market, beginning on July 1<sup>st</sup>, 2021 ("Ukraine Adopts Land Reform", 2020). This law will be discussed in more detail in further chapters.

Ukraine has simultaneously been dealing with the annexation of Crimea and continued conflict with Russia in its Eastern provinces. Despite commitments to numerous political and economic reforms, the pace of change has remained slow. The major priorities identified for Ukraine in this report are: combating corruption, reforming Ukraine's judiciary, decentralization, deregulation, and de-oligarchizing.

These priorities are formed to address the issues of weak property rights protection, corrupt judicial systems, a lack of transparency, especially in tax administration, and poor bureaucratic processes ([UK Foreign and Commonwealth Office, 2017](#)). Ukraine has an active civil society pushing the government towards reforms; foreign investors need to gain legitimacy with civil society to reduce popular resistance to FDI or foreign firms. FDI flows to Ukraine declined due to the breakout of the Crimea conflict and the resulting political and economic instability. Despite the situation stabilizing, FDI flows have not substantially increased, especially in the eastern provinces ([UK Foreign and Commonwealth Office, 2017](#)). The report identifies a need for numerous reforms to bolster investor confidence and competitiveness. Overall, this report presents a useful overview of the current socio-political situation in Ukraine and how it translates to political risks for foreign investors.

The Euler Hermes country report on Ukraine identifies many of the same strengths and weaknesses for investors in Ukraine, including a history of political instability, continued conflict with Russia, and weak government institutions ([Euler Hermes, 2017](#)). However, this report is focused on economic risk factors such as inflation rates, so it is less relevant for this research.

The OECD Investing in Ukraine Report provides a more in-depth discussion of political risks for investors in Ukraine and, more specifically, in the agricultural sector. This report offers policy recommendations to help Ukraine attract more and better FDI. The first two chapters provide a summary of Ukraine's investment policies in the agricultural sector and discuss the land and water tenure systems. The following four chapters look at specific sector policies that can encourage investment in agriculture through financial sector development, human resource development, infrastructure development, innovation, and international trade. The final chapter reviews the main challenges of promoting environmentally friendly investment in agriculture ([OECD, 2015](#)). This report is the most comprehensive documents discussing FDI and political risks in Ukraine, especially from an industry level of analysis.

The American Chamber of Commerce country profile on Ukraine identifies similar issues and potential future solutions to those presented by the OECD and other organizations. These problems include unreliable banks, systematic corruption, costly and timely import, and export procedures, and a lack of trust between state, society, and business ([Hunder et. Al., 2017](#)). Ukraine currently has free trade agreements with Canada and the European Union, and it has ended its free trade regime with Russia. There is pressure and support from the international community to challenge corruption, eliminate impediments at borders, and to privatize inefficient state-owned industries ([Hunder et. Al., 2017](#)). This report begins to cover the importance of international partnerships in terms of promoting economic growth and pushing national governments to address corruption. The Country Partnership Framework, is a joint plan of the International Bank for Reconstruction and Development, the International Financial Corporation, and the Multilateral Investment Guarantee Agency that has committed billions of dollars to: enhance corporate governance, boost private sector participation in infrastructure and

energy products, support better access to finance, promote competitiveness, combat poverty, and unlock Ukraine's agribusiness potential ([World Bank, 2016](#)). The European Bank for Reconstruction and Development is working with the Food and Agriculture Organization and the Central European Initiative "to mobilize the private sector and help the country's farmers increase their skills and knowledge of best practices" ([EBRD, 2017](#)). These partnerships are working with the national government in Ukraine and are pressuring officials to implement policies to combat corruption and promote foreign investment.

Okhrimenko and Okhrimenko discuss how the European Programme for Agriculture and Rural Development (ENPARD), can drive agricultural development in the Eastern partner countries. ENPARD is an in-depth and comprehensive free trade agreement that promotes economic integration between partners, convergence with EU policies, and rural development strategies. Some of the major goals of ENPARD include food security, sustainable production, and access to affordable foods for European markets. Ukraine is an essential member of this strategic partnership ([Okhrimenko and Okhrimenko, 2017](#)). The eastern partnership has contributed to the increase in productivity in Ukraine's agricultural sector by providing new technology and increasing labor productivity. As Ukraine expands its productive capacity, it expands its export capacity, and more food is available for EU markets. A slight decrease in finished food exports has been observed recently due to an increase in domestic consumption after changes in Russian relations ([Okhrimenko and Okhrimenko, 2017](#)).

Umland discusses the need for political risk insurance for FDI in Ukraine to attract more investors. He outlines two significant issues that have increased the political risk for FDI in recent years. First, the socio-political unrest in 2013 and 2014, over association with the EU and NATO, that led to a change in government. Second, the Russian annexation of Crimea and

continued occupation of the Eastern provinces of Lugansk and Donetsk ([Umland, 2015](#)).

Umland argues that many are misinformed about the current situation in Ukraine and the associated political risks; this is a result of Russian mass media and a lack of understanding about complex post-Soviet ties ([Umland, 2015](#)). Despite Ukraine's unique history, culture, and political identity, it is often viewed as a pawn of the superpowers due to geopolitical issues like being caught between Russia and the EU. Unlike some previous authors, Umland believes Ukrainians should be more concerned with state survival rather than the rule of law or administrative reform issues because they cannot seem to separate from Russia ([Umland, 2015](#)).

The focus of current reforms has been to strengthen the economy through free trade and association agreements with the EU and other partners. Still, little has been done to improve the government's ability to perform the critical functions of the state ([Umland, 2015](#)). If Russia continues to destabilize the investment climate in the Eastern provinces, it will pose a major political risk for FDI. Umland suggests an international insurance scheme and a shift in relations with Russia as potential long-term solutions to protect foreign investors from political risk factors in Ukraine ([Umland, 2015](#)). This article provides a different perspective on political risk in Ukraine and highlights important risk factors associated with Ukraine's connection to Russia that other authors and reports may have overlooked.

In the article “Stimulating Investment in Ukraine by Eliminating Rule of Law Risks”, Luc Vancraen discusses the need for legal reforms in Ukraine to reduce risks for investors and stimulate economic growth. Some major concerns for investors include lack of property rights protection, selective law enforcement, weak judicial systems, and arbitrary decisions made by individual government officials ([Vancraen, 2016](#)). Like Umland, the author proposes international insurance schemes as a potential solution for resolving the rule of law issues for

investors in Ukraine. This insurance scheme could cover items such as title insurance, imposing confiscatory taxes, confiscation of funds or assets, and arbitrary government decisions aimed at harming businesses ([Vancraen, 2016](#)). Weak judiciary and legal systems are a common issue for Ukraine and are referred to in most of the examined literature and throughout interviews. This article can contribute to this proposed research by highlighting the political risk factors that can be mitigated through legal reforms.

In his article, “Informal Payments in Ukrainian Hospitals: On the Boundary between Informal Payments, Gifts, and Bribes”, Abel Polese addresses another major political risk factor for foreign investors in the Ukrainian agricultural sector. Polese describes the process through which gifts become monetized. In Ukraine, the practice of giving gifts in exchange for favors is a common practice in many areas of society. These gifts can be in the form of money, the promise of services, cognac, or favors (Polese, 2014). This practice stems largely from a common belief that the state is unable to perform certain functions and thus informal avenues are taken by citizens to achieve the functions of the state. According to Polese, “money payments are central to the persistence of informality in Ukraine because they are more complex than simple bribes: they cement social obligations and even reciprocity” (Polese, 2014). “Both informal payment and gift refer to a transaction that the state does not mediate (in contrast, for instance, to an official payment, which is recorded by the state) or might not even be aware of” (Polese, 2014).

Informal gifts or bribes are common place in Ukraine’s agricultural sector. Land registrars often take gifts in exchange for changing names on documents or rewriting boundaries between properties. The main problem is that in Ukraine you often cannot resolve even legal disputes without bribes. People going to work as government officials know they will be

underpaid with the expectation that they can supplement their income through collection of bribes of “gifts”. The “distinction between public and private, legal and illegal, becomes here increasingly difficult” (Polese, 2014) to define. This informal economy of bribes and gifts poses a major political risk factor for foreign investors in the agricultural sector for two reasons. First, these foreigners may not have any experience with operating business in an environment where there is an unspoken need to provide gifts to various parties in order to operate effectively and without disruption from external impediments to business operations. Second, having to provide gifts in exchange for favors can be costly and in some cases foreigners are at a disadvantage because they do not have any personal or even second hand connections to people that they have to give gifts to. Locals who are more connected in the community will have an advantage over foreign investors.

The system of land ownership, exchange, and renting represents another significant political risk for foreign investors and multinationals investing in the Ukrainian agricultural sector. According to the World Bank and EBRD estimates, Ukraine can boost annual outputs of agrarian products by over ten billion US dollars through the privatization of agricultural land ([Kahkonen, 2017](#)). Land reform is an essential step for reducing political risks of investment in the Ukrainian agricultural sector, however, most of the reviewed literature skips this topic. In short, the current land laws in Ukraine prohibit foreigners from purchasing agricultural land ([Constitution of Ukraine](#)). Almost all the farmland is owned by Ukrainian oligarchs and a select few agribusiness giants, including, AgroGeneration and the United Farmers Holding Company ([Fraser, 2015](#)). The continued moratorium on the sale of agricultural land acts as a significant barrier for foreign investors' entry into the Ukrainian agricultural market.

The current literature effectively identifies the major political risks associated with investing in the Ukrainian agricultural sector, however, some socio-cultural and historical factors, which may act as the root causes of various risks, are overlooked. The perceptions and experiences of foreign investors, government officials, and local communities are not captured in current political risk assessments or addressed in the current literature.

### **Research Design and Research Tools**

A variety of qualitative research methods were used in this study to answer the proposed research questions. Relevant quantitative data will be collected from various secondary sources, including World Bank, OECD, PRS, and other major international organizations which have existing data sets and macro-level models for assessing political risk. These data sets are focused on a national level of analysis and thus provide limited specific information for regional or industry level comparisons, which are more critical for this study. This study examines political risk from various levels of analysis, including industry, regional, national, and international. This is important because political risk analysis is a complicated endeavor that cannot be complete without using micro and macro levels of analysis or without devoting specific attention to the qualitative aspects of political risk. This research is inductive in that conclusions are drawn from data collected through observations and/or interviews. The collected data will be analyzed to identify which political risk factors have the most significant negative impact on FDI inflows to the Ukrainian agricultural sector, and how foreign investors have mitigated those risks.

Semi-structured interviews are used as the primary method of data collection for this thesis. Semi-structured interviews are the most effective because they allow the interviewer to suggest major themes and guide the interview, while still allowing respondents to develop their

responses ([Desai and Potter](#), 2006, 144). Interviewees were selected based on their knowledge and involvement in the Ukrainian agricultural sector. A total of ten semi-structured interviews were conducted: four interviews were with university professors, two interviews were with lawyers specializing in agricultural law, one interview with a manager of a large scale farm, one with a land register employee, one with the former counselor to the minister of Agrarian Policy of Ukraine, and one interview with an employee of an agroholding company. Interviews were not recorded; the interviewer wrote notes based on participants' responses to questions. To gain an even more in-depth understanding of opportunities and risks for multinational agribusinesses and to obtain answers to the proposed research questions, this study required a fieldwork component. This fieldwork consisted of observational journals and interviews with the previously mentioned interviewees. In-person interviews were necessary because some participants only agreed to be interviewed when introduced through personal connections.

Further, in-person interviews allowed for the collection of more qualitative data and let the researcher take notes on non-verbal expressions and other details throughout the interview. The observational journals were kept to examine the differences between agricultural regions with large numbers of operating foreign agribusinesses and relatively high FDI inflows in the agricultural sector, and those agricultural regions which still lack investment. Observational journals were also kept to see what crops are prevalent and how these crops play a role in present and future agricultural production. For example, commonly grown soy crops are problematic because, despite their short-term profitability and ease of cultivation, soy plants lead to land degradation, and over-farming of these crops will be detrimental to Ukraine's extremely fertile chernozem.

## **Chapter I: The Moratorium on Sale of Agricultural Land and Ukrainian Land Laws**

This chapter will begin by providing an overview of land laws and recent reforms of these laws in Ukraine. It will then discuss how the current land laws are linked to political risks for foreign investors in Ukraine's agricultural sector. Before engaging in a discussion of political risks for foreign investors in the Ukrainian agricultural sector, it is essential to understand agricultural land laws and recent reforms to these laws in Ukraine. The main and most complex reform that is being carried out in Ukraine today is the Land Reform. The moratorium has been operating for 18 years. Under Soviet rule, it was declared that all land was state property. The concept of "private property" was non-existent. Instead, the word "personal property" was used. 'Personal property' was described as something that a person needs in everyday life. In 1991 Ukraine separated from the Soviet Union. The government adopted a land code that allowed for private ownership, not just state land. At first, it resembled permanent use rather than ownership, and eventually, a category of 'private property' was established (O. Polivodskyy, lawyer, personal communication, May 15, 2018).

After gaining independence, the Ukrainian government tried to create a stable economic base for the development of the agricultural sector. Several land reforms have been adopted. Ukrainian society sought to improve well-being. The work of the rural population on land could bring both material and moral benefits. In addition to independent workers, there were still collective farms. The government-controlled these collective farms, but farmers had control over land use. Land on the collective farm was considered collective property. Only people who worked on a collective farm were entitled to it. Collective farmland was divided into private pies, but there were no strict borders. Each piece belonged to one shareholder. No new members were accepted to the collective farms, and if one of the people retired, he would receive a small part of

the land for personal use. Farmers could have land for personal use, but in the law it was written that the alienation of land was prohibited. For 18 years, this law has not changed much. The changes that have taken place concern what can be done on the land. It was declared that the right of private ownership of land was guaranteed. Under the civil code, ownership means ownership, use, and disposal. Disposal of land was prohibited, but there were some moments when it was possible to transfer the land between owners. This could happen if the owner gave a power of attorney, for all actions, or when he received land during privatization (up to 2 hectares) (O. Polivodskyy, lawyer, personal communication, May 15, 2018).

Many older women living in agricultural areas and villages are facing an additional problem today as the government is trying to create a proper land register. When collective land was distributed in the form of pies, these pies were given to workers of the kolkhoz, which were typically male. Women who also engaged in agricultural activity outside of the kolkhoz were not given pies like their husbands. The life expectancy of men in rural areas and villages is much shorter than women due to a number of reasons including alcoholism, smoking, and dangerous lifestyle. Now many older women who have lost their husbands are trying to claim their family's land plot but are facing resistance and many bureaucratic challenges trying to reregister their land in the new electronic land register system. In areas like the Zhytomyr oblast protest over the distribution of land are making the news (Слободенюк, 2020).

Ukrainian rural populations got the right to land ownership and to become real farmers. Early land reforms in Ukraine, before 2000, were not very effective due to a lack of distinct reform programs and proper legislative processes. Farmers did not understand the principles of a private land market and how to operate farming operations in this new market. Changes in land market relations occurred irregularly in different regions of the country. In the western

provinces, reforms were more active and successful than in the central and eastern provinces. One reason for the slower pace of change in central and east regions is that these regions are more attached to the old "kolhoz" soviet style collective farms ([Hubeni and Krupa, 2019](#)). A collective farming model is still preserved in some villages. Despite the slow rate of Ukrainian land reforms through the nineties, some progress was made; private land ownership became recognized, and landowners were now issued legal documents to prove ownership. In 2001, the Land Code of Ukraine was implemented, a national land cadastre was established, and monetary land evaluation was introduced ([Hubeni and Krupa, 2019](#)).

On January 1, 2013, a new system for registering land was introduced, and registration departments were opened. These departments receive and register technical and legal documentation. This documentation is developed by organizations that have appropriate licenses and certification. Documents include geodetic measurements, legal issues, decisions on basic fundamental documents, and documents on property and ownership for land plots. Every registration department checks the availability of all documents and their compliance with the legislation, writes them into the electronic registry (database), and assigns them unique code numbers that identify the land plots. 'Land books' are created on the basis of all these documents, and people receive final documents for land ownership. However, all land transfers that happened before 2013 were not included in the database. There are some problems in this regard (O. Sapojkova, lawyer, personal communication, May 20, 2017).

One of the issues is how to identify and divide plots of land to secure them. Every piece of land has boundary tags. When there is no clear boundaries between different properties owners were provided with flags and signs on turning points of rural roads and in between neighboring plots. The owner shows these restriction points to the representative of the

registration department, and based on these points, the coordinates are determined and recorded in the registry. After that, this information is transferred to landowners in the form of documents or certificates. From this moment, the landowner is responsible for the integrity of these restrictive signs or boundary tags on their plot of land (O. Sapojkova, lawyer, personal communication, May 20, 2017).

Some historical-mental or ethnic factors influence political risks. Ukraine left the command and administrative Soviet system, which always made decisions. According to Professor Stilchuk, people in Ukraine usually want radical changes, immediately, and do not believe politicians. Much of the population in Ukraine believe that everything proposed by the government, by default, is bad. It will take a lot of time for people to understand and accept that foreign investment is good. Investors may face difficulties until time passes, and peoples' mentality shifts. Also, the average Ukrainian populations, especially rural populations, do not have experience in conducting business. They do not know how to start and develop a business, how to make investments, how to invest, and how to plan. There are no good business practices, and the historically firm position of the villager is that land cannot be allowed into market relations (B.Strilchuk, professor at University, personal communication, June 4, 2017).

The Ukrainian peoples' deep connection with their land is a major socio-cultural challenge when taking on land reforms and opening up the land market to foreign investors. This is only one of the issues. Some other problems include lack of transparency of land reforms, large scale turnover of land to private companies and agroholdings, and lack of state support for small and medium-sized farms which are then forced to lease lands to large agrocompanies ([Hubeni and Krupa, 2019](#)). The activities of these large private agro-holdings and agrocompanies often do not meet the principles of stable development; economic interests overshadow

environmental, ecological, and personal interests of farmers ([Hubeni and Krupa, 2019](#)). Agroholdings engage in monoculture types of production, which leads to fertility decrease, chemical pollution (pesticides), and causes soil degradation ([Hubeni and Krupa, 2019](#)). Rural populations do not have sufficient means of ensuring their rights are protected in terms of land tenure. One reason for this is the lack of adequate state mechanisms for controlling land use and protecting land rights ([Hubeni and Krupa, 2019](#)). Considering the current situation with land reform in Ukraine, it is imperative to avoid future mistakes in reforms moving forward. Hasty privatization can have economic, social, and ecological consequences.

To identify steps moving forward and "good" reforms, the expectations, needs, and interests of landowners must be taken into account. It is also important to carefully analyze legislation on land and recent land law reforms as well as political resolutions or acts pertaining to land ownership. To address the political risks for foreign investors in the Ukrainian agricultural sector, this chapter has begun with a discussion of Ukraine's current agricultural land market and laws. Further sections will discuss the effects of agricultural land laws and the moratorium on foreign investors.

Under Ukraine's Land code, certain farmland transactions are permitted for owners of either rural households and/or family farms. According to current law, foreigners can buy land as long as this land is not intended for agriculture. This land has to be within the city or within the boundaries of a settlement for the construction of residential, industrial, or commercial objects. If the industry is located within the boundaries of the settlement and these lands are not related to agriculture, for example the processing industry, then foreigners can buy land in the village, build an enterprise, and lease agricultural land close by (O. Sapojkova, lawyer, personal communication, May 20, 2017). Several additional factors, such as the moratorium on buying

and selling land and the inability to own agricultural land as the equity capital of business, affects the situation. According to the government, the purpose of the moratorium is to prevent farm managers from putting pressure on landowners to transfer their land to large corporations. These measures are weakened by the fact that Land Codes do not limit long lease terms, which can lead to the absorption of land as corporate equity.

According to current law when leasing agricultural lands for conducting agricultural commodity production, farming, and personal peasant farming, the validity of the land lease agreement is determined by agreement of the parties, but may not be less than seven years. ([Law of Ukraine, 2015](#)). In the case of government lands, this law is respected, but private individuals usually do not have written agreements. This scares off small foreign investors. Only big foreign investors, which are often agricultural holdings, can deal with this. These large companies have many lawyers, and also they have law enforcement agencies on their side. Conflicts between them sometimes happen, as well (O. Polivodskyy, lawyer, personal communication, May 15, 2017).

The expansion of large-scale farms is one of the outcomes of this legal framework. Another outcome is that the land lease is an essential source of income for rural residents. As landowners, they earn money from renting out their plots of land to corporate farms ([Lerman et al., 2007](#)). In Ukraine, the profitability of land leases depends on the region and local authorities. If the local government is reasonable and adequate, then everything is in order, pleasing to both sides.

One consideration is the so-called cadastral value of land, which is very far behind the market value. This is unfavorable for landowners. There was a very high rise in prices over a short period, after which prices were not revised downwards. This has led to the fact that today

the legal rate for rent for farmer's land is very high. This leads to the fact that the leases are often illegal, and done by oral agreement. This has considerable risks. Personal relationships determine a lot; therefore, foreigners usually hire or work with a co-founder who is a local authority figure. Purely foreign companies have much more risk than companies created with Ukrainian partners (O. Sapojkova, lawyer, personal communication, May 20, 2017). It is evident that agro holdings are in a privileged financial situation in comparison with non-holding farms and have resources to pay more for the same land. These put non-holding farms at a disadvantage in the market.

In the situation when a lease is the only legal way to access land, non-holding farms can not compete with agro-holdings and risk losing a significant number of leasers in this price war. Smaller non-holding farms are also at a disadvantage in terms of the ability to introduce new technologies and provide social support to the population. The introduction of new technologies to balance raising land rent costs leads to growing unemployment and social tensions in rural areas. This puts farms under increasing societal pressure and forces them to invest in their corporate social responsibility (CSR) activities.

It is known that most Ukrainian farms, to a certain degree, inherited a service structure from Soviet Collective Farms (Kolkhozes) ([Gagalyuk and Schaft, 2016](#)). Current non-holding farms are smaller in size and resources and have difficulties in addressing landowner communities' needs. On the other hand, annual budgets of large agro-holdings reach millions of dollars ([MHP 2016](#); [Kernel, 2016](#)). Non-holding farms' support to landowners is most often limited to ad hoc activities, such as the plowing of a vegetable garden located next to a landowner's household or the removal of snow from rural access roads in winter. In contrast, the CSR of agro-holdings includes both ad hoc aid and well-planned infrastructural projects. They

include but are not limited to schools, hospitals, churches, sports activities, and help with local utility and infrastructure projects ([Astarta 2017](#); [MHP 2016](#); [Kernel, 2016](#)).

One of the most significant challenges for land reform in Ukraine is the formation of a transparent agricultural land market where both landowners and buyers are legally protected. The creation of a "fair" land market will generate growth in the agrarian economy and the development of rural territories. The agricultural land market should "ensure efficient distribution and usage of arable land, competitive and balanced agriculture development, and act as an instrument of coordinating the interests of landowners and agribusiness subjects" ([Hubeni and Krupa, 2019](#)). There are several prerequisites for the formation of an agricultural land market in Ukraine. First, there must be a normative and legal base for the protection of land rights and land transfers/sales. Second, a market infrastructure should be developed for conducting land transactions effectively and without issues. Third, there must be a mechanism for state regulation and control of the legislature that pertains to land circulation ([Hubeni and Krupa, 2019](#)). Ukraine still has a long way to go in terms of forming a complete market for agricultural land. For now, more attention has been devoted to the abolition of the land sale moratorium; this is dangerous without the formation of a well-functioning land market.

To work transparently, the land market must be well thought out and properly organized. Since the land is not correctly distributed, a significant problem arises because the landowner has the right to terminate the contract at any time. The issue will need to be resolved in court, but most often, the courts take the side of the landowner. This is an unfavorable risk for foreign investors. The interests of the investor and his lack of land ownership rights can lead to his activities being misunderstood by society. This can lead to confrontation by locals who lease or

own land. Investor interests may differ from current land use standards; for example, foreign investors renting land may engage in monoculture farming and deteriorate the quality of the soil.

Under the moratorium, a lot of agricultural land is in the hands of individuals that are ready to sell their property at a low price. To prevent land grabbing, and prevent foreigners from buying the land cheap, the oligarchs have tried to buy up all the land before the moratorium is lifted so that later it would be possible to sell it at a higher price. The procedure for obtaining land rights is very subjective, i.e., today, the land is transferred into ownership by the decision of some member of parliament, and sometimes they are not always honest, and this process can be entirely arbitrary. The government maintains the moratorium because there is no legislation for the formation of a proper land market or to protect private landowners and rural populations from being exploited by wealthy foreign investors. In Ukraine, there are no institutions that have worked in the free market. All institutions remained very bureaucratic. It is argued that the land code needs to be changed, and that there is a need for new laws on the creation of land banks, land auctions, exchanges, and so on. Everything should be transparent. In essence, it is necessary to radically change all the land laws that currently exist (O. Sapojkova, lawyer, personal communication, May 20, 2017).

From a different perspective, according to a land registrar, the moratorium on the sale of land protects the rural population. It prevents them from selling their land for nothing or little money and is a guarantee that the family is protected from exploitation or loss of land (N. Maevskaya, land registrar, personal communication, June 5, 2017). In an interview that was conducted with the head of an average agricultural holding, she stated that she believes that the moratorium on the sale of land should not be lifted. In her opinion, the rural populations are not ready for this process. The value of the land is not clearly indicated, people will unknowingly

sell the land at a low price, and there will be no turning back (Anonymous Agro-Holding Manager, personal communications, June 7, 2017).

Timoshenko's party, *Batkivschina*, sharply opposed the lifting of the moratorium. The party's argument is that insufficient legal frameworks will lead to the excessive purchase of land by foreigners. Although it is permitted to sell land to Ukrainians and Ukrainian enterprises, citizens with dual citizenship can also buy land under Ukrainian legislation. Under Ukrainian law, Ukrainian enterprises can be registered in Ukraine, where 99 percent of the ownership of this company belongs to foreign capital or foreign companies. According to the bill proposed by the team of President Zelensky, it was decided to sell "all agricultural land, 42 million hectares, which is 72% of the territory of sovereign independent Ukraine" ([Timoshenko, 2019](#)). This bill will also allow foreigners to purchase land. The leader of the "*Batkivschina* (Fatherland)" added that bill No. 2178 provides that a single company, through foreign investment, can buy 210 thousand hectares of land in Ukraine, and several affiliates "can buy up to 1 million hectares of land in foreign ownership" ([Verkhovna Rada of Ukraine, 2019](#)). "This is the affirmation and development of the agrarian oligarchy, which even today destroys the agrarian sector of Ukraine" ([Timoshenko, 2019](#)). Zelensky has said that parliament should amend the law to stipulate that the issue of whether foreigners will be allowed to buy farmland be put to a referendum.

The question of the sale of land is a significant and ongoing discussion at the moment. One part of the population believes that this issue is a matter of national relevance, national security, and maintaining the independence and sovereignty of Ukraine. It will be beyond the power of the average citizens and rural populations to buy land. Large agricultural companies, and large agricultural holdings in Ukraine, with abundant financial resources at their disposal,

will buy up huge land parcels that they already lease. According to the law, for one business entity, an agricultural holding can use from 100 thousand to 600 thousand hectares of land. This suggests that the law *de facto* preserves the large oligarchic agricultural holdings that today already own most of the agricultural land of Ukraine. These large agroholdings push out small and medium-sized agricultural producers. Those small and medium-size farms which choose not to keep operating will find themselves surrounded by large agricultural holdings and enterprises. This will make operations inconvenient for the small and medium-sized producers, who will have to travel through large farms just to get to markets or grain elevators. In addition, the monoculture farming of large agroholdings will overtime degrade the land and will make it even more difficult for small or medium-size farms that try to grow different crops. Over time, the large agroholdings and companies will likely buy out the small and medium-size farms which will not be able to operate efficiently. This situation is suitable for foreign investors because it's easier and safer to have a deal with big companies and holdings. However, this law violates citizens' right to use land and the right to permanent, lifelong, inherited ownership and use of state or communal property land plots. That is, those farmers who at one time were given pies of land to use for their livelihood, now, by law, will be required to redeem these land plots at market prices within five years. The current market price for agricultural land in Ukraine is very cheap compared to other countries in the region, so farmers will not receive a fair rate for their pies of land. Most rural populations are getting older and are not able to maintain or use their land efficiently. Furthermore, young people continue to migrate to cities, and farmers cannot afford new equipment and technology. These rural populations currently lease their land pies, and this allows them to have a continuous source of income. If they are required to sell their lands, they will be left with very little. Thus, small and medium-sized enterprises will be pushed

out, and foreign ownership of agricultural land will become widespread. Another effect will be the strengthening and prosperity of the large monopolistic agricultural holdings, which today already lease land and have controlling stakes in foreign corporations.

Since 72 percent of Ukrainian territory is agricultural land, the adoption of this law will affect 72% of Ukraine. If this law is adopted, Ukraine will not build a farm system that is good for the development of the Ukrainian agricultural sector, especially for the part of the agricultural sector, which is composed of small and medium agricultural producers. This means that step by step, Ukrainian farmers, who make up the middle class of Ukraine, will be forced out of the agricultural sector, and new ones simply will not appear. Then in Ukraine, as in Brazil or Argentina, the result will be large oligarchic formations that essentially own the territory of Ukraine. These are very good prerequisites for foreign investment. Depending on what activities the agricultural holdings will conduct and if their interests are only in maximizing profits, then the people of Ukraine will suffer negative consequences. This can happen because no one will prohibit large foreign owners in Ukraine from exporting products out of Ukraine in the form of raw materials and exporting the generated capital out of the country.

Almost all countries bordering Ukraine now issue passports to Ukrainians, and so many Ukrainian citizens have two citizenships. These citizens of Ukraine will be able to acquire land; they can acquire hundreds of thousands of hectares of Ukrainian territory but not within 50 kilometers border of Ukraine. It is feared that they could seek to separate these border territories from Ukraine. Ukraine had this experience with Crimea and does not want to see it happen again. This fear is mostly unwarranted as it is unlikely that Ukrainian citizens living in EU states such as Romania, Hungary, or Poland will attempt to seize land on the Ukrainian border. However, the law prohibiting the sale of land near borders serves other strategic purposes mainly

preventing security threats. The effectiveness of this law is questionable because foreigners will still be able to lease land in border regions, so in terms of security this law will have minimal effects (Kirichenko, 2020).

Another negative point for the Ukrainian people related to the removal of the moratorium on the sale of agricultural land is that the "Ukrainian village" remains a common type of settlement, and the basis of Ukrainian spirituality, Ukrainian culture, and the Ukrainian faith. If large monopolies own land, they don't need villages. They will not need workers, due to new technologies for growing raw materials and crops, including those that will spoil the quality of black soil. Farming operations will primarily be done with technical equipment, chemical fertilizers, genetically modified seeds, and many other components that can adversely affect Ukrainian lands. The same factor can be considered as one that increases the interest of investors in the agricultural sector of Ukraine ([Timoshenko, 2019](#)).

Part of the population of Ukraine considers that the moratorium on land should be lifted. The lifting of the moratorium means opening a market, and in the case of Ukraine, this market has no restrictions. There are no restrictions on concentration, there are no restrictions on the change of purpose, and there are no restrictions on foreigners. From a political point of view, this is important. Until now, the price of land in Ukraine is very small from the point of view of a foreigner. But for a resident of Ukraine is not always affordable. The market therefore needs to be opened in stages. First of all, it is necessary to solve the question of whether only citizens of Ukraine have the right to land. The next point is whether legal entities can participate in this process. Thirdly, some people consider that it is not necessary to immediately put all government land for sale. This should instead be done in stages.

According to lawyer O. Polivodsky, before opening a land market, a good legislative framework first needs to be created. This relates to the issue of control over the land, over the quality of the land, and about safety. Inspections to ensure the safe use of land and the quality of the soil are not regularly conducted. There is no strict legal obligation for large farms to perform various inspections, and when inspections are done, bribes can easily be paid to hide, misrepresent, or skew negative findings. Soil sales (the export of chernozem to foreign entities) should be prohibited. The issue of land planning should be resolved. The relationship between industrial and other types of zones should be determined. These issues are currently not outlined in the laws. Corruption opportunities, in this case, are available. It is necessary to adopt a new land code, which in content should be like a law on the land market. This law, in addition to the above, must necessarily include the question of land management: what, where, how, etc. It is necessary to uniquely determine the structure and powers of each structure, so that people know who is responsible for what (O. Polivodsky, lawyer, personal communication, May 15, 2017).

A system of limits and restrictions must first be established to begin privatizing the sale of agricultural land. Opponents of lifting the moratorium argue that there are many adverse effects, and rural populations will be the most negatively affected unless proper restrictions and legal structures are established to protect small and middle-size farmers. Some arguments include: reform programs will lead to a change in ownership but not an improvement in efficiency; concentration of land ownership by oligarchs and foreign companies; rural populations will sell their lands for cheap, and the well-being of these populations will only improve short term; more monoculture agriculture, such as soy, which will result in further degradation of soil; poor infrastructure in place for the opening of the agricultural land market. Despite the recent attempts to reform land laws, the government has seen substantial resistance

from some local populations, and the first stages of the Zelensky reforms were not entirely successful.

The legal reforms on the sale of agricultural land of Ukraine were recently submitted to the Verkhovna Rada for consideration. The ban on the sale of agrarian land was lifted by the Verkhovna Rada in the first reading of the bill on November 13, 2019. The adopted bill provides that from October 1, 2020, the ban on the alienation of agricultural land of all forms of ownership will be lifted ([Draft Law of Ukraine, 2019](#)). Citizens of Ukraine, territorial communities, the state, Ukrainian legal entities, as well as foreign citizens and stateless persons – will be able to buy land plots and sell land received through inheritance.

Public opinion on the subject of land market creation and land law reforms dramatically varies and is often not correctly informed. Only 6 percent of respondents asked to share their opinion on the lifting of the moratorium have adequate and unbiased information on the land market situation and knowledge of legislation ([Hubeni and Krupa, 2019](#)). Most people receive social opinions manipulated by politicians and the media. Political parties' rhetoric influences citizens' views about the benefits and dangers of a free and private land market. 55% percent of surveyed Ukrainians believed that canceling the moratorium would benefit the country; however, 80% noted that there could be various negative consequences as well ([Hubeni and Krupa, 2019](#)). There are also significant regional differences in opinion which are tied to both political associations and socio-cultural and historical factors. For example, in the eastern provinces where there was a long history of kolkhoz or collective farming, even in recent years, attitudes towards the cancelation of the moratorium are more negative than in western provinces that have more experience with private markets and western European agricultural models.

Another challenge with land market creation is the blocking of reform by lobby groups representing the interests of large agroholdings currently operating in Ukraine. Owners of large agroholdings are not interested in the creation of a land market because the rent of lands is linked to a monetary market value assessment. The value of land would increase with the introduction of the land market, and thus the rent that these agroholdings are paying will also be subject to increase ([Hubeni and Krupa, 2019](#)). At present, with farmers not using land and willing to lease it to agroholdings for cheap, these agroholdings can accumulate thousands of hectares through inexpensive leases. Without ownership of the land, there is no incentive for ecologically safe farming practices. Instead, monoculture farming is promoted, which allows agroholding to generate large short-term profits at the cost of degrading the land. Buying the same large quantities of land would be more expensive and may not be worth it for short term returns. With leases, agroholdings can practice monoculture farming of plants like soy and not have to worry about depreciation of the land value because they don't own the land ([Hubeni and Krupa, 2019](#)).

Based on the previous argument, the creation of a land market will create an incentive for better farming practices and soil fertility restoration because investors will have a greater stake in the land and keeping its value. On the other hand, if most land is bought by oligarchs and large foreign agribusinesses, then these entities would control the agricultural process and local development ([Hubeni and Krupa, 2019](#)). Profits for agricultural processes and agricultural production outputs would likely be shipped abroad, rural populations would be displaced for cheap, and local development would not be a priority.

A large percentage of landowners are transferring their shares of land or leasing them to be cultivated by larger agricultural entities. Some reasons for this trend include:

- Insufficient resources (capital, technology, labor force) for efficient farming practice;
- Lack of knowledge about agrarian entrepreneurship and business practices;
- Inability to work due to old age;
- Lack of socio-psychological stimulus to farm beyond personal gardens.

The competitive lease market promotes the creation of a transparent and attractive lease market for both landowners and leaseholders ([Hubeni and Krupa, 2019](#)). Although most leaseholders are satisfied with the situation, farmers are still getting paid quite little and seek rent increases. Many farmers in Ukraine live in poverty with insufficient income sources and a lack of awareness about profiting in a private agrarian market. It is important for rents and land prices to increase to provide a source of income for rural populations. The average rent for agricultural land in Ukraine is currently one of the lowest in all of Europe, despite the superior quality of the land in Ukraine. In comparison to some other countries, the rent for a hectare for a year in Ukraine is 41-45 euros, in Croatia, it is 76 euros, in Spain 144, in Austria 348, and in the Netherlands 791 ([Eurostat, 2016](#)). Based on a survey of rural landowners that was conducted, 160 euros per hectare was identified as an acceptable price that would satisfy most landowners (about 60%) ([Hubeni and Krupa, 2019](#)). The people with higher education doubt most of all that rents will increase, as they realize that the rent depends on many factors and must correspond to the interests of the landowners and the leaseholder as well ([Hubeni and Krupa, 2019](#)).

A recent sociological survey in Ukraine, conducted by a research group called "Rating," shows that 73 percent of Ukrainians firmly oppose the introduction of a land market, and 81 percent oppose permitting foreigners to buy land in Ukraine. Fifty-eight percent of respondents believe that farmland should be state-owned ([Barandiy, 2019](#)). Despite this, there are some good

reasons to accept the necessity of lifting the moratorium. At present, the land is distributed as a checkerboard, and some farmers do not give their land for rent; as a result, it is difficult to acquire large plots of land without having at least one or two small farms operating in the middle of large farms. This makes it difficult to cultivate the land, as one may lack an area in the centre of a field. (O. Ivanushin, personal communication, May 28, 2018).

Another current problems is that there are too many small private owners who cannot efficiently farm their land but do not want to get rid of it because they will receive low market value for these lands. On the other hand leasing these lands to agroholdings lead to a concentration of monoculture farming and poor use of land, resulting in degradation of soil ([Hubeni and Krupa](#), 2019). A further issue is that the village and rural way of life is constantly changing, and this is an irreversible process. The rural population and landowners are subject to drastic changes related to evolving market relations, material motivation, rational expectations, and other factors of new realities ([Hubeni and Krupa](#), 2019). A lot of younger rural people don't want to maintain traditional rural ways of life; they become more mobile, demand better living conditions and amenities.

The lifting of moratorium will have some positive effects for farmers as well, providing them with an opportunity to expand their land ownership legally, that is, to buy and own their property forever. It will also enable a person to get money from the sale of land if, for some reason, that person needs it, and is an opportunity to remove the burden of landownership for those who experience it as a burden - for example, a person who owns land and must pay tax, but has no money for it. Some lands are not in demand. That is, it is impossible to get income from them, and they incur only expenses. For retirees, it is also difficult to cultivate land due to age.

The ability to exercise the right to sell property is therefore important (O. Polivodskyy, lawyer, personal communication, May 15, 2018).

While the law is being discussed, foreign investors have time to localize capital, study potential areas of investment, supply, and demand, acquire the necessary connections and build bridges, establish contacts, familiarize themselves with the legal framework in the field of interest to investors, analyze the economic feasibility, quantity, and purposefulness of funds, etc. The bill stipulates that foreigners will be allowed to purchase land only after a referendum. Restrictions on the purchase and sale of land will be introduced in the border regions of Ukraine: companies with foreign ownership will be prohibited from buying agricultural land within 50 km from the border, even if a different decision is made in a referendum.

All the commissions and institutes that work on this task note that the moratorium will, in fact, be lifted soon. The logic is that, after the moratorium is lifted the market itself will demand new institutions. In Ukraine, the latter are a necessary accompaniment of the lifting of the moratorium. At present, the local market is strongly divided into agricultural holdings and farms. The latter do make good money, but it is hard to develop them further. To facilitate this, it is necessary to create mechanisms for financing small-scale agricultural producers so that they stand on their feet and can buy land. Under current law, land cannot be given as collateral for a loan. Interest rates are high, and there are no national programs that would enable farmers to get cheap loans. For now, only European donor programs are running, which allow farmers to get a small amount of money as assistance, mainly subsidies for the purchase of any kind of machinery, equipment, or seeds. (O. Sapojkova, lawyer, personal communication, May 20, 2017).

As well as finance, the introduction of the free land circulation market requires the creation of a proper land inventory. Efficient state and public systems of land usage administration and monitoring are among the other measures that must be implemented. Efficient mechanisms for protecting the land market from dishonest competition and monopolization must be developed. For this purpose, it would be advisable to create Government Advisory Boards to help raise awareness in landowners and to prevent dishonest competition and monopolization. To improve decisions made by state authorities, independent studies must complement other sources of data and eventually lead to improved relations in the land market. It should be the responsibility of big leaseholders to invest in social welfare, interact with communities, and as a result, take responsibility for land care and protection. The reforms should create proper mechanisms to manage relations between land market stakeholders. This can lead to the establishment of optimal land concentration, create healthy economic activity, and healthy competition in the market.

Ukraine should take into account its experience and the foreign experience that already exists. Poland opened its land market in stages and has achieved positive results. (O. Polivodskyy, lawyer, personal communication, May 15, 2017). The Poles' experience involved the complete withdrawal of the state from the functioning of small and medium-sized businesses and the gradual regulation of large businesses. Poland has always had a right to private property. Ukraine didn't have this right; therefore, it is impossible to follow this Polish model blindly, but Ukraine can adopt a two stage reform process to minimize risks for foreign investment: opening the land market and maximizing business liberalization (transferring business to private hands) (B. Strilchuk, professor at University, personal communication, Jun 4, 2017).

On March 31<sup>st</sup>, 2020 Zelenskyy's government passed Law 552-IX will begin the gradual relaxation of the moratorium on the sale of agricultural land; this law will come into effect on July 1<sup>st</sup>, 2021. This law will allow Ukrainian citizens and companies to purchase and sell agricultural land for commercial and personal farming. Individual persons can acquire a maximum of one hundred hectares and companies can acquire up to ten thousand hectares. Under this new law foreigners and foreign companies are still not allowed to purchase agricultural land ("Ukraine Adopts Land Reform", 2020). Although this is a small step towards the creation of a free land market it is still a historic moment for Ukraine. This law is also intended to ease domestic concerns that oligarchs and foreigners will buy up all the land.

Ukraine's land laws and the slow reform process can be attributed to several political risk factors identified by Sottilotta, mainly government instability, corruption, and a lack of law and order. The government in Ukraine has frequently changed leadership over the past five years. Although parties have implemented some reforms and liberalized the land market to an extent, no long term land reform program has been successful because the different parties have different ideas about what to do. Corruption has also slowed the development of a private land market. Wealthy Ukrainian and Russian oligarchs who own large agroholdings and currently acquire large plots of agricultural land via inexpensive leases are resisting the introduction of a private land market because they do not want to have to pay more for the land when the foreign competition is introduced. These oligarchs are not just wealthy but also have political power through connections and associations with politicians. Change is slow if these oligarchs oppose the opening of the land market. The land laws must change, but due to the potential downsides of lifting the moratorium mentioned above such changes should be accompanied by measures to create legal means of protecting private property, foreign investors, and the quality of the soil. A

fair, private land market would create national economic growth, allow rural populations to benefit, and generate profits for foreign investors, but currently there are not enough good laws, law enforcement, or fair courts to enable this to happen.

## Chapter II: Agroholdings in Ukraine

This chapter will provide a general explanation of agroholdings and what they do. Further, it will discuss agroholdings in Ukraine and examine some of the reasons for their prominent presence in the Ukrainian agricultural sector and the effect this has for foreign investment. It will conclude with a discussion of how agroholdings are related to several political risk factors that affect foreign investment in Ukraine's agricultural sector.

Agroholdings are large scale farming entities that operate and manage thousands of hectares of farmland. These entities typically form in transitional and emerging economies and consist of a mother company that controls a stake in hundreds of corporate farms ([Gagalyuk and Valentinov, 2018](#)). Agroholdings are involved in a wide range of agricultural activities, including crop production, animal farming, exports and imports, and food production ([Matyukha et al., 2015](#)). The development of agroholdings is made possible by an inflow of excess capital from other industries that are used to acquire land assets and corporate farms ([Petrick et al., 2013](#)).

Agroholdings are a prominent player in Ukraine's agricultural sector. Two factors served as a prerequisite for the creation of large agricultural holdings. Collective farms were reorganized into small cooperative agrarian enterprises (CAE). As a result of this agrarian reform in Ukraine, these enterprises received permissions from the state for collective ownership of land. At the second stage of agrarian reform, farm members received certificates of ownership of their land share. With the adoption of the Decree of the President of Ukraine "On urgent measures to accelerate the reform of the agrarian sector of the economy" on December 3, 1999, the third stage of land reform began. CAEs became private enterprises (farms, limited liability companies, private agribusinesses), with CAE members emerging from their composition with the allocation of land and property units ([Novgorodska, 2007](#)). At first, legislation allowed for

the allocation of free land for those who would cultivate it. Land needed to be cultivated, otherwise, it would just be overgrown with weeds. Later, however, the chairmen of the village councils offered people free land plots. (O.Polivodskyy, lawyer, personal communication, May 15, 2017). Thus, a situation arose in which the people have acquired land and have to pay land taxes, but are not ready or do not want to cultivate it. At the same time, a large number of rich people and oligarchs emerged. There was also money from large Ukrainian industrial groups that took their assets abroad to minimize or, in some cases, completely evade taxation in Ukraine. ([A.Novak, 2019](#)). As a result, the situation favorably affected the emergence of agricultural holdings.

As mentioned earlier, agroholdings were able to form and prosper from the inflow of capital from non-agricultural industries. Other important factors that contributed to the emergence of agroholdings are market and political developments in the 2000s. First, global demand for food has led to the development of new technologies and knowledge-based farming ([Hermans et al., 2017](#)). Second, public policy has shifted to favor the self-sufficiency of food supply, growth of agricultural exports, and the deregulation of domestic markets supported large-scale industrialized agriculture over traditional family farming ([Matyukha et al., 2015](#)). Agroholdings also benefited from subsidization and tax exemptions ([Visser et al., 2012](#)). Third, the moratorium on the sale of agricultural land has allowed agroholdings to consolidate large land areas through inexpensive leases ([Lapa et al., 2015](#)). All this paired with a worsening socio-economic situation in rural areas, and a labor deficit in the agricultural sector. These are some of the significant factors which contributed to the proliferation of agroholdings in Ukraine.

Agroholdings' continuous expansion is an interesting and surprising fact as they are generally inefficient. Reports conclude that they suffer from disadvantageous cost structures in

comparison with non-holdings. Good examples are the tendency to employ more labor and spend more on production than non-holdings ([Lapa et al., 2015](#); [Petrick 2017](#)). Agroholdings' advantage in terms of lower transaction costs is also questionable ([Lapa et al., 2015](#)). The research shows that, on average, farms in agroholdings are not more profitable or efficient than independent farms. For this reason, the growing membership base of agroholdings is against traditional views on the nature of firm growth. Conventional wisdom indicates that firm growth strategy is driven by efficiency considerations, i.e., firms must decide whether to grow organically, by the use of their own available capacities, or through mergers and acquisitions based on the efficiency gains or losses each of the modes of growth entails ([Williamson, 1985](#); [Thompson, and Valentinov, 2017](#)).

However, the case of agroholdings' growth demonstrates that relatively efficient enterprises deliberately decline to take on the possibility of growing on their own, and instead choose to join less efficient, slow-growing structures. Agroholdings do not grow organically. One advantage of large scale agroholdings in Ukraine is “better access to factor and/or product markets due to superior aggregate size, synergies within the holding or the abuse of market power” (Matyukha, Voigt, and Wolz, 2015).

“Driving forces for holding growth are seen in strongly intertwined political and business relationships, as well as in significant state support for agribusinesses perceived as 'strategic' ('too big to fail') and their conglomerate parents' inclusion in the registry of systemic companies. In other words, with regard to the source of agroholdings' growth, it is all about how to link individual production units, thus benefiting from strong positioning in local and regional markets and making the most of ties to the relevant politicians, not about organizing production itself ” (Matyukha, Voigt, and Wolz, 2015).

Simply put agroholdings can remain inefficient as long as they maintain political support and continue to lobby against laws which would allow small and medium sized private farms to be more competitive. The above observations prove the fact that the efficiency of the business is not the main rationale for the growth of agroholdings in Ukraine.

In the case of Ukraine, agroholdings represent associations of agricultural enterprises that use their own funds to acquire controlling stakes in other enterprises engaged in economic activities in the field of production and processing of agricultural products. The legal bases for the founding and operation of holding companies, including agroholdings, in Ukraine were the Presidential Decree No. 116/96 of 11.05.1994 “On Holding Companies Formed in the Process of Corporatization and Privatization”; the Law of Ukraine “On Holding Companies in Ukraine” 03/15/2006 No. 3528-IV; and the Economic Code of Ukraine dated January 16, 2003, No. 436-IV (1-4]. According to the law, a holding company is a joint-stock company (JSC), which includes a parent company that owns the controlling stake shares of other subsidiary enterprises. A subsidiary is an entity governed by a holding company. The entities that join the holdings have financial and legal autonomy. The parent management company may carry out only management activities (net holdings), and may also engage in entrepreneurial activities (mixed holdings).

Agroholdings emerged as a peculiar response of the agrarian economy of Ukraine, to the demands of the market. Their emergence was aimed at the restoration of broken interconnections of agricultural and processing enterprises, price parity between sold agricultural products and material and technical resources of industrial origin, and the conquest of new sectors. These factors increase the value of the company, and its capitalization, which requires the efficient operation of the whole system of companies belonging to the holding. Holdings can be created through sequential integration or through control of companies involved in one industry. To

expand business boundaries, and spheres of influence, and to conquer new sectors of the market are the main ideas behind establishing such holdings ([Gagalyuk and Valentinov](#), 2018).

Consistent creation of enterprises, and joining them in an existing group, allows big losses to be avoided in case one of the enterprises goes bankrupt. During the merger of enterprises of a single technological cycle (from raw material procurement to the production of finished products), the holding becomes a vertically integrated company. The purpose of creating such a holding company is to reduce costs, increase price stability, and make the company more efficient.

Holding-type integrated associations are characterized by the presence of an investor who has the necessary financial resources and agricultural production capabilities, and who defines a policy for the functioning of an agricultural holding company. Insolvent agricultural enterprises transfer their debts in full to the integrated entity and receive the form of a joint-stock company or limited liability company (LLC) and become subsidiaries ([Gagalyuk and Valentinov](#), 2018). The holding is managed through a meeting of shareholders, the board of directors, and an executive directorate. There are no fundamental differences between the management of the holding company and the joint-stock company. However, for the holding, the major shareholders are clearly identified, and they manage the entire group of companies. The legal forms of such an agroholding are quite diverse: open joint-stock company (JSC), closed joint-stock company (CJSC), LLC, associations, etc. ([Gagalyuk and Valentinov](#), 2018).

In countries with economies in transition where the land and capital markets are underdeveloped, it is difficult to comprehensively study the effectiveness of agricultural holdings and small agricultural structures ([Gagalyuk and Valentinov](#), 2018). The ability of traditional types of agriculture to survive and conduct any activity depends on fluctuations in the business environment. When the business environment is unstable, like in Ukraine, then it is

unpredictably difficult to assess the attractiveness of the market. Some authors ([Koester](#), 2005; [Sutela](#) 2012) argue that sustainability also occupies as significant a place as economic efficiency. The choice of farms to participate or not in the activities of agricultural holdings largely depends on stability and sustainability.

Environmental Turbulence is one factor that contributes to the stability and sustainability of agricultural production. In the literature, environmental turbulence is understood as “a measure of the change in the components of a firm’s environment” ([Smart & Vertinsky](#), 1984, p.200) or “volatility and difficult to predict breaks in the environment” ([Haleblian & Finkelstein](#), 1993, p. 845). Destructive markets and technological change are seen in organizational sustainability literature as sources of environmental turbulence ([Fainschmidt et al.](#), 2016). Natural and human-made disasters can also be attributed to this category ([Rose & Krausmann](#), 2013). However, the theory of organizational sustainability rarely takes into account institutional turbulence. It arises from economic relationships. Exchange relations, labor relations, partnerships, and mutual participation in the economy form the basis of markets ([Gagalyuk and Valentinov](#), 2018). It is this turbulence that calls into question the rationale for the effectiveness of the behavior of the organizational system.

What is happening in Ukraine confirms the validity of this theory. The imperfection of the organization of small agricultural facilities, the complexity of their existence in a system where the market is poorly developed, and there is no powerful supporting factor, leads to the rapid growth of agricultural holdings. This chapter highlights some key facts that lead to the formation of agricultural holdings in Ukraine. The recent history of Ukrainian agricultural holdings proves their steady growth in a turbulent environment ([Gagalyuk and Valentinov](#), 2018). Over the last years, numerous agroholdings were established in Ukraine. Some of them

have grown significantly. This growth happened thanks to internal and external investments. Along the way, this was facilitated by an unfavorable economic system that does not support small and medium producers. As a result, around 80 agroholdings operate approximately 30% of total farmland, and their sizes exceed 10,000 hectares each ([Gagalyuk and Valentinov, 2018](#)).

The impact of agroholdings is hard to understate. They provide a large share of the country's Gross domestic product (GDP), create jobs, and regulate food prices. 40% of Ukrainian exports are agricultural products, and these are the results of the work of agricultural holdings and other farms. Agroholdings are vertically integrated structures, especially in Ukraine. These enterprises have two entities: the parent company and subsidiary. The parent company, as a rule, assumes the responsibility for external economic relations: purchase of sowing material, plant protection products, fertilizers, agricultural machinery. Subsidiaries are entitled to the operational management of field processes. Today, more and more attention is being paid to the efficient process of growing the agricultural produce itself. Improvement and optimization of production, the use of new technologies, and agrochemical additives make growing and selling grain much more efficient than simply increasing the quantity of land owned. Today, the focus is on quality not quantity.

Huge land territories in our time are far from being a guarantee of high and stable profits. Today, it is necessary to focus on the modernization of production processes, the use of precise technologies for sowing and processing, and new disease-resistant and weather-resistant hybrids of seeds. Agricultural production is becoming less dependent on climate factors. Another important aspect is the modernization of production facilities and equipment, which directly affect production, drying, refinement, etc. This allows a significant increase in the price of

finished products. Ukraine's agricultural holdings are paying more and more attention to investments and innovations to increase efficiency and profit.

The largest agroholdings of Ukraine (according to Rating of agricultural holdings in Ukraine 2019 by the size of a land bank from Agricultural Consulting) are corporations such as Nibulon, Mironovsky Khleborodukt, UkrLandFarming, Kernel, Mriya, Svarog West Group, Astarta, as well as many other important and influential companies. The two largest agroholdings are Ukrlandfarming and Kernel; they manage over 600,000 hectares each ([Latifundist.com, 2017](#)). These large agro-holdings not only expand in their primary business but, at the same time, integrate smaller companies in upstream and downstream lines of the agricultural supply and production chain. For example, Ukrlandfarming is the largest industrial egg producer in Eurasia ([Ukrlandfarming, 2017](#)), and Kernel is the number one sunflower oil exporter in the world ([Kernel, 2016](#)). Thus, as mentioned above, the agricultural holdings of Ukraine are some of the most important subjects in the national economy. They are the "legislators" of food prices, one of the main exporters and "producers" of the country's GDP, create thousands of jobs across Ukraine, and are innovators in precision agriculture.

Traditional types of farming are facing significant challenges with institutional problems and underdeveloped strategic markets. Previous research findings show that membership in agro-holdings presents a resilient strategy for small farms. Particular attention is drawn to institutional problems in the markets for finance, land, and labor that contribute to the changes in institutional optimization ([Gagalyuk and Valentinov, 2018](#)). The lack of development of the financial market is a considerable barrier to corporate growth ([Peng & Heath, 1996](#)). To effectively grow, Ukrainian agro-holdings need to overcome this obstacle, to which end they have developed a strategy to attract outside capital from several alternative sources, working in

conditions of absence of an effective stock market and very restrictive finance rates implemented by Ukrainian commercial banks ([UCAB, 2013](#)).

In the years before 2015, about twenty Ukrainian agro-holdings completed IPOs and raised approximately \$1.5 billion in a total of their shares on international stock exchanges ([UCAB, 2014](#)). Out of the ten largest agro-holdings by farmland, seven are or were listed on international stock markets such as the Frankfurt Stock Exchange, London Stock Exchange, and Warsaw Stock Exchange. Several agro-holdings received loans from international finance institutions such as the European Bank for Reconstruction and Development (EBRD) and the World Bank Group's International Finance Corporation (IFC). The loans were targeted at financing working capital, land lease rights, and the expansion of processing lines and storage capacities. Additional complimentary assistance and advisory services from the donors were offered to them as part of the program ([EBRD, 2016](#); [IFC, 2014](#)).

Assistance and guidance provided by the donors, as well as regulatory pressure from international investors, brought changes to business models and new approaches to corporate governance. New paradigms of transparency in reporting and operation had to be developed and adopted ([Horváth et al., 2017](#)). The major problems they faced were related to the inability to utilize outside directors on the board or to diversify their top management teams. Some new practices include the presence of independent directors on boards, independent auditing, and disclosure of information about owners and financials. These requirements are increasingly regarded as contributing to the resilience of agroholdings and serve as safeguards against shady business practices. The added transparency is particularly important in the face of frequent transition-specific problems, such as raider attacks and hostile takeovers ([Rojansky, 2014](#)).

The new requirements for transparency extended their effect on other stakeholder groups. Handbooks on corporate culture for employees, sustainability requirements for suppliers, and corporate newspapers for rural communities are becoming standard practice among agro-holdings ([Astarta, 2017](#); [MHP, 2016](#)). Initiatives of this sort require substantial financial resources available to agro-holdings and can't be implemented within limited budgets of production-focused non-holding farms. The public sector provided safety nets that are generally inadequate in Ukraine due to transitional factors. Implementation of reforms to improve welfare in the social sphere continuously fails, particularly in rural areas. The loss of employment followed by labor migration to cities and abroad has its dramatic influence on Ukraine's economy. The lack of purchasing power drives the decline of social services ([Keyzer et al., 2013](#)).

Non-holding farms appear to be at a disadvantage in solving labor and migration-related problems. Their narrow specialization in crop production does not allow for a great offer of alternative jobs in other sectors. The UCAB database contains “information about the whole population of approximately 8,500 Ukrainian corporate farms and data points such as land use, employee numbers, production volumes, costs, and sales of agricultural production as well as farm affiliation with an agroholding” ([Gagalyuk and Valentinov, 2018](#)). All the data, except the agroholding affiliation, is drawn from the official statistics provided by the State Statistics Service of Ukraine. UCAB adds an update on farms' associations with agroholdings based on an annual survey of corporate farms and continuous monitoring of the reports of the Antimonopoly Committee of Ukraine on farm acquisitions ([Gagalyuk and Valentinov, 2018](#)). All farm types in Ukraine are trying to use technology as a substitute for regular labor, as the unattractive living conditions in rural areas drive more and more young people to the cities and abroad for better

opportunities and pay. The result is a growing deficit of qualified farmworkers that the majority of corporate farms face ([Koester et al., 2010](#)).

The deficit of qualified farmworkers is forcing agroholdings to invest in professional human resource management (HRM) to increasingly design and offer above-average compensation packages and qualification improvement programs ([Morley et al., 2016](#)) for both managers and non-management employees. Staff retirement profit sharing and health protection schemes are becoming a standard part of employee compensation packages. The above-average benefits are additionally able to promote employees' self-identification with, and loyalty to, an employing company. The fact of developing loyalty is particularly crucial in an atmosphere of prevalent employee fraud in Ukrainian agriculture ([Gagalyuk & Schaft, 2016](#)). The limited amount of finance is resulting in poor human resource management practices, commonly related to Soviet-era practices that are unattractive for skilled workers ([Petrick, 2017](#)). For the most part, this problem exists due to the embedded institutions which accompany the transformation process in former planned economies. Rural societies in Ukraine and some other transitional countries are characterized by high-risk aversion, lack of trust, a preference for traditional employment, lack of self-reliance, and corruption and nepotism ([Koester, 2005](#)). Professional HRM and new labor monitoring technologies provide successful solutions to the problems of opportunistic behavior by employees ([Chaddad & Valentinov, 2017](#)). Investments in HRM solutions are long term and, as such, are more extensively realized in agroholdings. This fact makes them very difficult to implement elsewhere, with limited funds available to non-holding farms.

During an interview with the head (hired manager) of a large agricultural holding in Ukraine, I discussed other problems agricultural holdings face and what needs to be done to

improve performance. It was a large agricultural holding which owned 100 thousand hectares of land; 50 thousand is located in the Rivne region, and 50 thousand located in the Zhytomyr and Kyiv regions. This agricultural holding cultivates soybeans, corn, and sunflower. The first risk factor is the changes in tax policy and regulations. In recent years, the value-added tax has been abolished. The holding paid taxes to the government, and the money went to a special account. From this account, the holding could spend money to buy goods and materials for further production. It could be used for commodities such as seeds, fertilizers, diesel fuel, etc. It was impossible to pay salaries from this account. Now a new tax has been introduced. Value-added tax has become a sales tax. This new tax significantly reduces the efficiency of agricultural production. This is a heavy burden for agricultural production right now (O. Ivanushin, personal communication, May 28, 2017).

The second risk factor is the lack of investment in infrastructure. In the holding, all the equipment is imported. Seeds, tractors, combines and other equipment that is used is up to date. The holding uses highly reproductive seeds and all the new technologies that appear for agricultural producers, including drones and automated irrigation systems. Otherwise, the competitive ability cannot be maintained because there are no roads, and there are not enough elevators for drying and storing crops. The level of development of the agricultural sector in Ukraine is quite high. The volumes of production through agricultural holdings are huge. Everything must be serviced immediately. The problem is that there are not enough rolling stocks, cars, planes, ships, and transport methods for all the produced outputs. This is an area where foreign investment could make a positive contribution.

The third risk factor is that the land is not distributed correctly. According to law, contracts for land leases must be renegotiated. The rent rises every year. Not everyone agrees to

renegotiate a contract, and this is their right. For agricultural activities, this is not good, because the sowing rate is 5-7 years. As a result, agroholdings have large land plots in the middle of which private owners keep their small farms and refuse to lease them. These owners, who are in the center of these large agroholding plots often have to travel through the larger plots to reach roads or other access routes required to transport their agricultural products. They can demand that their plots should not be cultivated, and in addition to this, they must be given access and passage to their plot. It is inconvenient for agroholdings to work around these small plots. This leads to serious conflict and inefficient use of land. There are no ways around this problem. The logistics of the movement of large equipment is interrupted. Large equipment is not maneuverable, and it is quite challenging to go around these areas. According to the documents, there is a road, but there is no road. No one has the right to prevent a person from accessing their lands. Some landowners pave their way to their plot through the cultivated fields of the agricultural holding. The law takes the side of landowners in these cases (O. Ivanushin, personal communication, May 28, 2017).

State support for the Ukrainian agrarian sector is feeble. At the end of 2018, the agrarian ministry of Ukraine faced criticism over unfairly distributed subsidies between agroholdings, and small and medium agribusinesses. The entire system for support of the agrarian sector was in question. That year, “out of more than 6 billion dollars of subsidized funds, nearly 30% were used by one agroholding: Yuriy Kosiuk's MHP received the largest share” ([Dorontseva, 2019](#)). Small and medium businesses faced many challenges in receiving subsidies because the application procedure was too complicated. That year, several agricultural organizations, including the All-Ukrainian Association of Rural and Town Councils, the Poultry Farmers' Union of Ukraine, and the Ukrainian Agrarian Confederation, appealed to the President with a

request to abolish these inefficient mechanisms of state support ([Dorontseva, 2019](#)). These associations had already tried to petition the government six times to simplify the application process for subsidies, making them more accessible for small and medium farms. Their appeals were not successful. Some specialists argue that the government has deliberately made it difficult for small and medium-size farms to access funds by making application processes so tricky. For farmers, it is more important to have access to affordable lending and low-interest rates. The agrarian ministry has taken no responsibility and claims there are no problems with the distribution of state assistance, and nothing has changed except two new subsidy programs were added ([Dorontseva, 2019](#)). These are also aimed to help large businesses. Also, for 2019, the amount of state support for the agrarian complex was reduced from 5.9 billion to 5.7 billion UAH ([Dorontseva, 2019](#)). Despite these problems, the activities of agricultural holdings are profitable and open to foreign investment. Ukraine's agrarian sector is one of the key components of the national economy.

The prominent presence of agroholding in the Ukrainian agricultural sector is associated with several political risk factors, namely socioeconomic conditions, government stability, and corruption. The collapse of the Soviet Union created a class of wealthy oligarchs that were able to acquire substantial state assets, including land and form large corporations and agrohholdings. At the same time, rural populations were given plots of land, but they often do not have the resources to cultivate their land, so they lease it cheaply to agrohholdings. The lack of proper legislation regarding land coupled with the lack of a market for private land has allowed agrohholdings to prosper in Ukraine. These agrohholdings use their resources and political connections to influence the government and create policies that deter other investors or competitors from entering the agricultural sector in Ukraine. Foreign investors are deterred by

corruption in Ukraine, and especially in the agricultural sector, it is difficult to protect your investments, especially when foreigners cannot directly own agricultural land. From this chapter, we can conclude that the presence of agroholdings in Ukraine can be associated with several political risk factors for foreign investors.

### **Chapter III: Foreign Direct Investment in Ukraine**

This chapter will provide an overview of the investment opportunities in the Ukrainian agricultural sector as well as offer a general overview of the investment climate in Ukraine.

Ukraine's investment climate has some inherent strengths and weaknesses. Some internal strengths include:

- Continuing new positive transformations and structural reforms;
- 42 million skilled or educated people;
- 17 free trade agreements with 46 countries, including a Deep and Comprehensive Free Trade Agreement (DCFTA) and Association Agreements with EU;
- Strategic geographical position, in between Europe and Asia.

External strengths include:

- Increased trade flows between Europe and Asia;
- Oversaturated Western European markets and lack of available agricultural land;
- Increased demand for high quality Ukrainian agricultural products in Europe and other foreign markets.

The attraction of foreign investors under the current conditions depends on the internal capacity and the functioning of management mechanisms. Internal weaknesses of Ukraine's investment climate include:

- Developing the rule of law and corruption risk;
- Relatively low purchasing power of the domestic market;
- Large-scale migration of Ukrainians to EU;
- Dynamic political environment;
- Limited access to cheap financing;

- Obsolete infrastructure.

The main external weaknesses include:

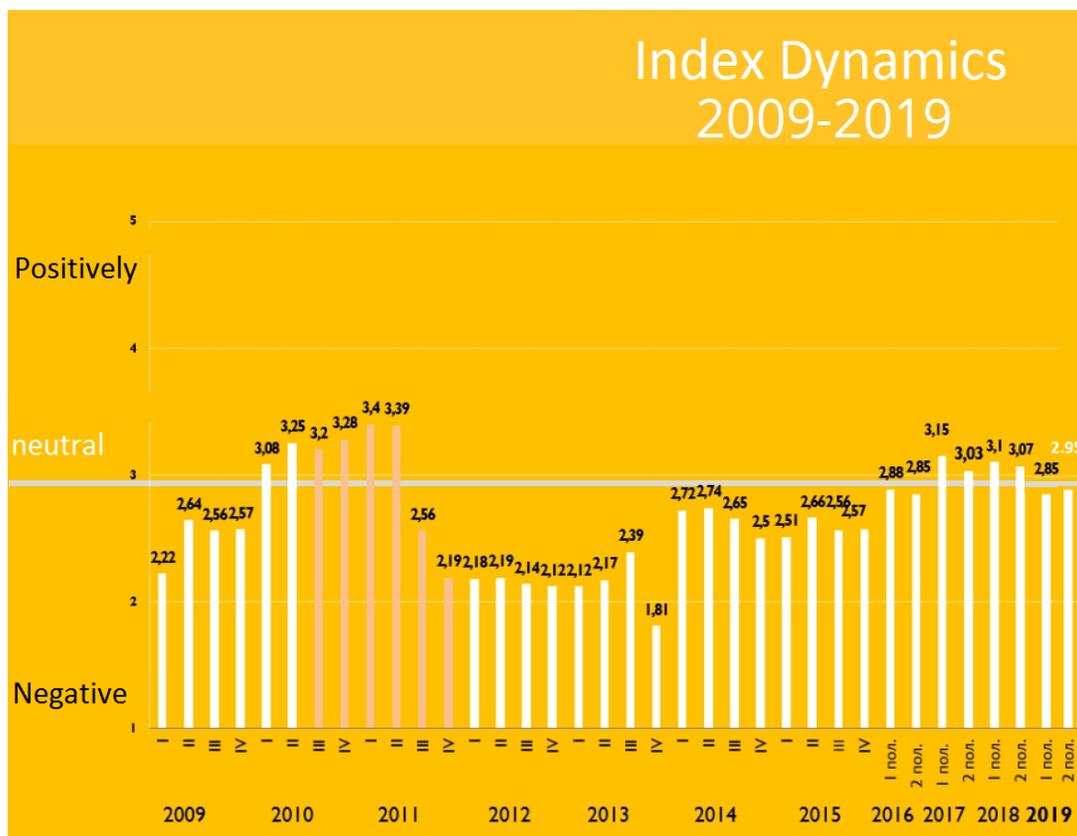
- Russian aggression against Ukraine;
- Global commodity price vulnerability for key Ukrainian exports in agri-food;
- The attraction of the Ukrainian labor force by neighboring countries to come to work for their economies ([Invest, 2019](#)).

From this starting point, a more in-depth discussion about investing in Ukraine can be carried out. The investment potential of Ukraine has not yet been realized, but it has the prerequisites for development. According to statistics, Ukraine is one of the largest countries in Europe (“[List of European countries by area](#),” 2020); it has rich natural resources (“[Economy of Ukraine](#),” 2020); and it is the largest country in Europe in terms of arable land (“[Land use statistics by country](#),” 2020). As noted at the symposium of the Food and Agriculture Organization of the United Nations, Ukraine ranks among the top countries in terms of quantity (“[Black soils in the world](#),” 2017) and quality of black soil ([Miroshnychenko, 2018](#)).

The chapter aims to study attractiveness of the Ukrainian agricultural sector in terms of investment opportunity. It will continue by suggesting methods for creating a favorable investment environment in the agricultural sector and enhance investment activity in Ukraine. Ukraine has “one of the richest concentrations of fertile black soil on the planet. More than 30 percent of the world’s reserves of chernozem or “black earth” lies within its borders. The soil contains approximately seven to fifteen percent organic matter necessary for quality crop production, compared to two to eight percent in other parts of the world” (Desa, 2018). Ukraine is the number one producer of sunflower seeds and exporter of sunflower oil ([Chelangat, 2017](#)).

Ukraine is also the number two global leader in overall grain exports, after the United States, and is number three in corn exports ([DeSa](#), 2018). Ukraine also has a favorable climate and proximity to key markets in both Europe and Asia. Ukraine also has a developed industrial sector. It occupies one of the leading places in the capacity of the gas transmission system ([Pirani](#), 2007). Ukraine is also one of the largest exporters of pig iron (“[Pig Iron Trade](#),” 2017) and ranks the fifth place in the world for the export of iron ore (“[Iron Ore Exports by Country](#),” 2020). Ukraine is the third-largest country in Europe in terms of nuclear power (“[Nuclear Power in the World Today](#),” 2020) and is in fourth place in Europe in terms of length of railways (“[List of countries by rail transport network size](#),” 2020).

Despite all the positive factors, there are negative factors that inhibit the economic growth of Ukraine. These include an unstable political system, conflict in Eastern Ukraine, imperfect legislative policies, and corruption. Due to these factors, Ukraine is considered a high-risk country for foreign investment ([Bogatyrev et al.](#), 2019). According to the Investment Attractiveness Index, measured by the European Business Association (EBA) semi-annually, Ukraine still has a negative score. This means it is not yet attractive to investors. However, this score has improved in recent years.



The investment attractiveness index of Ukraine in July-December 2019 increased by 0.1 points and amounted to 2.95 out of a maximum achievable score of 5. The EBA published survey results showed that 39% of respondents consider the investment climate neutral, and 37% - unfavorable. At the same time, 17% called the investment climate attractive, although, at the beginning of 2019, it was only 19%, and in the second half of 2018 - 25%. In addition to the above, the following factors were mentioned: the outflow of labor and capital, the slow de-bureaucratization of the business process, instability in the national bank, pressure from law enforcement agencies, and a possible breakdown of cooperation with the International Monetary Fund, as well as populism and frequent changes in government leadership ([EBA Investment Attractiveness Index, 2019](#)). Long-term investments are necessary to overcome these challenges or investor risks. Recent history shows that the national economies of most countries are not

able to quickly and effectively solve problems without financial support or investment from abroad ([Bogatyrev et al.](#), 2019). For example, South Korea, Taiwan, Singapore, and Hong Kong managed to create stable economies over a relatively short period through productive foreign investment in their economies. Sound economic policies, the attraction of foreign investment, the increase in exports, and industrialization of the economy have allowed these countries to adapt dynamically and quickly to changing global market conditions ([Bogatyrev et al.](#), 2019). The experiences of other countries help to formulate a judgment on the impact of investments on the development and maintenance of the agricultural sector in Ukraine. As far as this sector is concerned, it is long-term investment programs that are most important. In agriculture, the benefits of investment will not appear immediately. It may take several years until investors see a profit. Independent development strategies, without the attraction and effective use of foreign investment, do not typically bring the desired results ([Bogatyrev et al.](#), 2019). The volume of foreign investment depends on the level of economic development of the country. It also depends on how investments are protected by law and government policy, and this is an issue in Ukraine.

If we consider foreign investment as an injection of not only financial resources but also technology, logistics, and experience, we can confidently say that foreign investment will contribute to the economic development of the state. The participation of foreign investors can help ensure the effective use of national resources, reduce unemployment, increase the overall level of wages by changing the conditions of competition, etc. The inflow of funds into the economy will give an impetus to its stable growth ([Bogatyrev et al.](#), 2019). Therefore, an important task is the creation of favorable conditions for investment in Ukraine. Ukraine already has substantial investment potential.

Scientists and researchers offer several approaches to determining the nature and composition of investment potential ([Bogatyrev et al.](#), 2019). In addition to general factors such as state policy and the availability of a reliable legislative system for agriculture, specific aspects can also be determined. One of them is the natural and geographical potential - an assessment of the reserves of primary natural resources, an indicator of the geographical position to foreign trade outputs. Investment activity acts as a regulator of the impact on the scale and pace of production and social processes ([Bogatyrev et al.](#), 2019). An analysis of the views of scientists and researchers allows us to conclude that the investment potential of any country is a combination of opportunities and risks; the opportunities should outweigh risks for a good investment. Investment processes in Ukraine have some specifics ([Bogatyrev et al.](#), 2019).

Investments can have a significant impact on the development of the economy by improving the quality of life and changing social conditions. Many industries and countries try to create the most favorable conditions for attracting investments. This applies to both domestic and foreign investment ([Kulynych and Shirinyan](#), 2018). The desire to improve the investment climate in Ukraine is in itself already leading to positive changes. Agriculture is one of the main components of the Ukrainian economy. Ukraine has a relatively high level of employment in this industry ("[Ukraine - Employment In Agriculture](#)," 2020). The share of the agro-industrial complex in the GDP of Ukraine is significant. The development of rural regions directly depends on the development of the agricultural industry ([Kulynych and Shirinyan](#), 2018). It is necessary to develop critical proposals to stimulate the intensive economic growth of the national economy to increase the investment attractiveness of the agrarian sector of Ukraine ([Kulynych and Shirinyan](#), 2018). Also, growers need to keep production costs low in order to be profitable.

The results of an EBA survey indicate positive changes in the gradual stabilization of the political situation and the start of land reform. Some positive changes that can reduce the risks of investment especially for foreigners include the improvement of the tax and customs services, the launch of the Supreme Anti-Corruption Court, lower inflation, the abolition of limits on the repatriation of dividends, and the growth of purchasing power ([EBA Investment Attractiveness Index, 2019](#)).

Agriculture has an essential place in the global economy. It is ensuring national food security, the well-being of the rural population, and the high quality of life of most residents of urban areas. ([Kulynysh and Shirinyan, 2018](#)). Despite Ukraine's agricultural potential, it is not among the countries with an attractive investment climate. Although the ease of doing business in Ukraine has improved from 152 in 2012 to 64 in 2019 (“[Ease of Doing Business](#),” 2019), the rating of Ukraine for all other indicators has not changed significantly.

The agricultural sector in Ukraine remains one of the most attractive sectors for investment. Data for 2019 is published in the report of the State Statistics Service of Ukraine ([State Statistics Service of Ukraine, 2019](#)).

**Direct investment (equity) in the Ukrainian economy by type of economic activity  
in January – September 2019**

(data are given without considering the temporarily occupied territory of the Autonomous Republic of Crimea, the city of Sevastopol and part of the temporarily occupied territories in Donetsk and Luhansk regions)

	Volumes as of			
	01.01.2019		01.10.2019	
	thousand US dollars	as a percentage of the total	thousand US dollars	as a percentage of the total
<b>TOTAL</b>	<b>32,911,000.7</b>	<b>100.0</b>	<b>34,727,649.0</b>	<b>100.0</b>
<b>AGRICULTURE, FORESTRY AND FISHERIES</b>	<b>461,173.1</b>	<b>1.4</b>	<b>536,659.1</b>	<b>1.5</b>
Agriculture, hunting and related services	458,938.0	1.4	534,222.0	1.5
Growing annual and biennial crops	223,350.4	0.7	291,683.8	0.8
Cultivation of perennial crops	20,951.1	0.1	21,099.6	0.1
Plants reproduction	2,441.2	0.0	2,343.8	0.0
Livestock	164,598.4	0.5	167,791.0	0.5
Mixed farming	8,084.0	0.0	7,885.2	0.0
Support activities for agriculture and post-harvest activities	38,418.0	0.1	42,227.5	0.1
Hunting, catching animals and providing related services	1,094.9	0.0	1,191.1	0.0
Forestry and logging	1,974.0	0.0	2,138.5	0.0
Forestry and other forestry activities	634.7	0.0	612.8	0.0
Logging	802.0	0.0	947.1	0.0
Harvesting wild non-timber products	184.9	0.0	189.3	0.0
Provision of auxiliary services in forestry	352.4	0.0	389.3	0.0
Fisheries	261.1	0.0	298.6	0.0
Fishing	219.3	0.0	250.9	0.0
Aquaculture	41.8	0.0	47.7	0.0

Agriculture remains one of the engines of the Ukrainian economy; in the first nine months of 2019, Ukraine exported agricultural products worth \$15.6 billion (Ukrinform, 2020), and the share of the agricultural sector in the total structure reached 42% (Agropolit, 2017). Given that since 2014, despite all the negative factors, investments in the agricultural sector have increased by 81%, agriculture continues to be the engine of the economy and an extremely promising investment industry (Agropolit, 2018). At present, the agricultural sector is the best option in Ukraine for both small (from \$ 100 thousand) and large investments (up to \$ 100 million) (Businessviews, 2019). Also, the opening of the land market will increase investor interest in the Ukrainian agricultural sector and will increase the value of agricultural land (Unian, 2019). According to Taras Vysotsky, Deputy Minister of Economy of Ukraine, the average cost of a hectare will reach \$ 1,500 (Ukrinform, 2020), or even \$ 2,200 if not only residents of Ukraine can buy land (Agropolit, 2019). 2020 is the best time to buy agricultural products because prices will continue to grow.

One segment of the food market that the Ukrainian investor should pay attention to is poultry production. According to the US Department of Agriculture, Ukraine ranks sixth in the world in chicken exports. Between January and September 2019, poultry meat exports from Ukraine increased by 24.5% compared to the same period last year (Tarassevych, 2020). The constant increase in demand in the global market makes poultry farming one of the fastest-paying segments of the agricultural sector. In Ukraine, there are many cost-effective niche areas for poultry farming and production. Interested investors can acquire ready-made businesses for growing, slaughtering, and processing poultry.

The most substantial portion of investments in the agricultural sector of Ukraine is in the traditional cultivation of grain, which involves investments in the control of the land bank, and

the purchase of agricultural machinery, real estate, seed, etc. From the point of view of foreign investors, the most promising investments are investments in agricultural infrastructure, for example, investments in grain logistics. One reason for this is the poor state of logistics facilities, and outdated and worn-out infrastructure for storing and transporting grain, vegetables, and fruits. Entrepreneurs who plan to purchase already established agribusinesses in Ukraine need to hurry, because, after the opening of the land market, the value of agricultural enterprises may increase ([Tarasov, 2019](#)).

“Within the state, investment resources are gross savings in the gross domestic product, created during the year, minus current and personal consumption” (Bogatyrev et al., 2019). This indicator characterizes the result of the production activities of residents within the economic territory of the country. The study of this issue shows that the real gross domestic product (GDP) in 2018 compared with 2017 increased by 3.3%, but did not reach the level of 2011 (“[Ukraine GDP](#),” 2018). GDP calculations are based on international standards of the System of National Accounts 2008 ([UNSD, 2008](#)) and the European System of National and Regional Accounts 2010 (Bogatyrev et al., 2019).

Studies show that the Ukrainian economy has undergone dramatic changes since 2014. Armed aggression began in the territories of some areas of the Donetsk and Lugansk region. Russia annexed the Autonomous Republic of Crimea. These changes led to the fact that the country suffered losses in production facilities, encountered logistical problems, infrastructure was destroyed, and there were shortages of energy and raw materials, and critical industrial enterprises in the east were closed ([Bogatyrev et al., 2019](#)). The deterioration of the external economic situation was also associated with the accumulated internal problems of structural

development. Significant dependence on trade relations with Russia led to economic instability ([Fisher](#), 2019).

Ukraine has chosen the course of European integration to reform the economy and expand ties with other countries. Since 2016, Ukraine has seen gradual economic growth ([Bogatyrev et al.](#), 2019). However, complicated relationships with a significant industrial and commercial partner continue to influence the crisis. Russia has imposed trade restrictions on the international transit of goods from Ukraine to the territory of the Republic of Kazakhstan and the Kyrgyz Republic ([Bogatyrev et al.](#), 2019). The aggravation of hostilities complicated the work of the mining and metallurgical complex and energy sector. In 2017, a ban on trade and the transport blockade in the eastern provinces was introduced ("[War in Donbas](#)," 2020). The movement of goods is temporarily suspended within the Donetsk and Lugansk regions ([OSCE](#), 2019). The deterioration of the situation with external prices in world markets also challenges Ukraine's economic policy.

However, despite these difficulties, Ukraine continues to move towards changing and improving economic attractiveness. Foreign and domestic investors find niches for investment. The situation has improved but to a small extent. Between January and March 2018, foreign investors from 76 countries invested in the Ukrainian economy. Investments are directed to the already developed areas of economic activity. The main strategic economic partners are EU member states. The volume of capital investments of Ukrainian enterprises from January to March 2018 amounted to 89 billion UAH, which is 37.4% more than the volume of capital investments for the corresponding period of 2017 ([Bogatyrev et al.](#), 2019). As a percentage, Cyprus is the main investor from all 121 countries who invest in the Ukrainian economy. Most investor countries are members of the European Union: the Netherlands, Germany, France,

Austria, Luxembourg, and the United Kingdom, as well as Russia ([Bogatyrev et al., 2019](#)). The leading areas of economic activity of Ukraine in terms of attracting investments in 2018 are industry - 34.1%, and agriculture, forestry, and fishing - 12.5% (“[Investment activities in Ukraine](#),” 2018). As for the regions, Dnepropetrovsk leads in attracting investments - 9.3%, Kiev - 4%, Odessa - 3.6%, Donetsk - 3.2%. Low investment attractiveness and undisclosed investment potential are in the Ternopil and Chernivtsi regions ([Bogatyrev et al., 2019](#)). Ukraine is sufficiently integrated into the global economy and is sensitive to microeconomic movements in foreign markets.

Data for 2019 published in the report of the [State Statistics Service of Ukraine \(2019\)](#) show the following dynamics:

**Direct investment (equity) in the Ukrainian economy by type of economic activity by section of countries of the world in January – September 2019**

(data are given without taking into account the temporarily occupied territory of the Autonomous Republic of Crimea, the city of Sevastopol and part of the temporarily occupied territories in Donetsk and Luhansk regions)

	Direct investment volumes on			
	01.01.2019		10/1/2019	
	thousand US dollars	as a percentage	thousand US dollars	as a percentage
<b>TOTAL</b>	<b>32,911,000.7</b>	<b>X</b>	<b>34,727,649.0</b>	<b>X</b>
<b>AGRICULTURE, FORESTRY AND FISHERIES</b>	<b>461,173.1</b>	<b>100.0</b>	<b>536,659.1</b>	<b>100.0</b>
NETHERLAND	27,261.8	5.9	31,276.5	5.8
RUSSIA	4,628.5	1.0	4,472.1	0.8
CYPRUS	147,250.0	31.9	222,772.6	41.5
GERAMANY	31,528.8	6.8	31,157.1	5.8
CANADA	228.0	0.0	244.6	0.0
US	19,118.7	4.1	18,764.8	3.5

Let's consider the list of countries of the world that made a direct investment in the agricultural sector of Ukraine. Cyprus is the leading investor in agriculture in Ukraine. For last year this country invests, on average, 41.5% of the total investment into the agricultural sector of Ukraine. Germany also makes a considerable investment — 5.8% ([Kulynych and Shirinyan, 2018](#)). These statistics can be a bit misleading because a large portion of investment from Cyprus comes from Ukrainian and Russian oligarchs who have offshored their money and business operations to Cyprus.

Another major investor in Ukraine is the Netherlands. Island jurisdictions within the Netherlands have offshore legislation and allow the registration of offshore companies. Secondly, the Netherlands is very actively investing in the agricultural sector of Ukraine. Foreign direct investment is the most rational and effective form of foreign investment. FDI leads to a long-term interest in an enterprise operating outside the economy of the investor ([Bogatyrev et al., 2019](#)). As noted earlier, long-term investment is more important in agriculture. Foreign direct investment can be made in legal entities of a particular country. In this case, the value of investments can be increased. If the sum of investments is more than 50%, it allows the investor to participate in the management of the enterprise. ([OECD, 2008](#)).

According to an interviewed economics professor from Kiev, the following areas of the agricultural sector pose the least risks for investment. First, production, sale, and import of seeds; second, investments in transport, distribution, and export of agricultural products; third, direct cultivation; finally, the last direction should be towards the development and improvement of financing and insurance systems. The professor discussed in detail the directions in which, in his opinion, foreign investment in the agricultural should go in the near future. First, investments must be involved in the creation of structures and firms that will advise small and medium-sized

agricultural businesses. Consultants should teach the organization and alternation of sowing, fertilizer application, effects on the soil, optimal selection of crops, determination of planting time, and the method of machining the soil. The second promising and less risky area is the creation of infrastructure to increase labor mobility during the harvest season. The challenge is to ensure that regions with high population density can easily ensure the movement of workers to those regions where assistance in harvesting is required. The third area is the development of infrastructure associated with minimizing the loss of agricultural products through effective packaging, transport, and storage mechanisms. Fourth, certification of agricultural producers, products, production conditions, equipment for entering international markets should be organized. Finally, investments should promote the development of agricultural cooperatives (O. Sapojkov, Economics Professor, personal communication, May 15, 2017).

International risk ratings reflect

“the state and dynamics of national economies. Information provided by the ratings can serve as a basis for assessing the level of investment potential and relative risk level in different countries and can serve as a benchmark for foreign investors and government authorities when developing investment policies. The Doing Business 2018 Survey shows that Ukraine has risen by four positions and is ranked 76<sup>th</sup>” ([World Bank](#), 2017).

In the first quarter of 2019, it rose 5 points and ranked 71st out of 190 countries included in the survey ([World Bank](#), 2018). Ukraine has shown the most significant progress in the following areas: enhanced minority investor protection; the trade-in auto parts simplified across borders; improved procedures for minor claims and pre-trial conferences; and a simplification of tax repayment ([Bogatyrev et al.](#), 2019).

According to the same document, Ukraine made obtaining construction permits more costly. The quality of roads and ports of Ukraine is terrible. This factor is a deterrent for some forms of investment. Currently, the Government of Ukraine continues to carry out reforms. These include the liberalization of currency legislation. The relative stabilization of the national currency has begun, and the rate of inflation is declining ([“Ukraine Inflation Rate,”](#) 2020). Ukraine is introducing effective methods to counter raider attacks ([Ukrinform,](#) 2020). Economic recovery and the development of electronic services, and a constant dialogue between the authorities and business are some effective ways of reducing risks for investors.

The Canadian government provides support for the development of Ukraine ([“Canada’s engagement in Ukraine,”](#) 2020). Many positive actions have been taken. However, many unfinished tasks must still be addressed. The lack of reform of the Ukrainian law enforcement system and the low level of crime detection, especially in the economic sphere, also negatively affect the investment attractiveness of the state ([Bogatyrev et al.,](#) 2019). According to the Ministry of Internal Affairs of Ukraine, 36,860 crimes were committed in the commercial area in 1992. By 2018 the number of crimes increased by 297.5% and amounted to 109,825 crimes ([Kofanova et al.,](#) 2019).

Other important challenges include unresolved issues with free circulation of land, inhibition of massive privatization, individual restrictions on the movement of capital, growth in the level of economic crime, and investor distrust in the judicial system. The influx of foreign direct investment in Ukraine will not be significant until these factors are eliminated.

Political uncertainty is associated with the new head of government, President Zelensky. The European Business Association semiannually surveys Ukrainian Top managers. According to the survey, 57% of respondents believe that the business climate in Ukraine is unfavorable. In

a previous study, only 40% of respondents were not satisfied with the current investment climate. The survey confirmed that Ukraine is still a profitable investment market, but 83% of respondents have noted a high level of corruption. 77% of respondents are concerned about rising levels of economic crime. 66% consider the lack of land reform and the presence of a shadow economy as the main problem ([EBA, 2019](#)). Despite this, 35% believe that Ukraine will be a profitable investment market soon. Improving the investment climate in Ukraine by improving the existing legal and organizational framework will help promote competitiveness of the domestic economy and attract more FDI ([Bogatyrev et al., 2019](#)).

The market for precision agriculture has great prospects. Precision agriculture refers to “the use of new technologies to increase crop yields and profitability while lowering the levels of traditional inputs needed to grow crops (land, water, fertilizers, herbicides, and insecticides)” ([N.Rogers, 2014](#)). Five years ago, only enterprises-owners of large land plots showed interest in precision agriculture, but now medium-sized enterprises and even individual farmers are trying this. This market is growing annually by 25%. Now its volume is not much more than 50 million dollars, but the potential is estimated at 300-400 million. Another popular direction of agro-investment is the sector of organic farming. Ukraine’s organic farming products are in steady demand in Germany, Switzerland, the Netherlands, Italy, Poland, the UK, Austria, France, Belgium, and Hungary. The potential investment in this sub-industry amounts to several hundred million dollars, with a possible annual revenue of about 130-180 million. ([Chmeruk, 2018](#)).

This chapter has analyzed the positive and negative aspects of the investment climate in Ukraine. Based on this analysis and using the results of other studies, some measures that should be taken to increase the investment attractiveness of the agricultural sector of Ukraine can be identified. In Ukraine, it is necessary to achieve compliance with the principles of corporate

behavior and business ethics. The policies must comply with applicable laws. The level of bank lending in the real economy should be increased. For this, the state needs to carry out an explanatory policy among the population, increase the number of professionals in this field, and create favorable financial conditions for solving this problem ([Kulynych and Shirinyan, 2018](#)). The state should facilitate the attraction of public funds for investment transactions. It would be nice to exempt from taxation the profit that is used to refinance business. The privatization process should be transparent. The state should promote the development of small and medium enterprises ([Kulynych and Shirinyan, 2018](#)). The restructuring system of inefficient large enterprises should have a scheme that can ensure speed and reduce costs. A maximum salary level should be set. In every possible way, it is necessary to promote the development of an effective banking system that focuses on the real economy. The insurance market should continue to grow. Only thanks to these and other measures can it be possible to increase investment in the agricultural sector of Ukraine and achieve intensive economic development ([Kulynych and Shirinyan, 2018](#)).

Ukraine should enter a position where investors will trust Ukraine and invest in it. The most important steps for achieving investor confidence in the agricultural sector are the reform of the land market and the development of an independent anti-corruption court. These two developments will send a serious message to the whole world that Ukraine takes reform seriously and is ready to work with investors ([Kim, 2017](#)).

In summary, Ukraine's investment climate, especially investment in the agricultural sector, is characterized by particular benefits and risks. Trade routes with Europe and Asia have improved in Ukraine, and they are profitable and cost-effective. Also, strong international financial support exists, including global institutions (IMF, World Bank, and the EU) and

bilateral agreements. The main assets for Ukraine are oversaturated European markets (overloaded capacities and lack of free agricultural land) and growth in demand in Europe and the world for high quality Ukrainian agricultural products (namely for food products, wooden products, etc.) ([Export Entreprises SA, 2020](#)). The weaknesses of Ukraine's investment climate will be discussed in more detail in the following chapter.

## **Chapter IV: Challenges and Risks for Foreign Investment in Ukrainian Agriculture**

In this chapter, we will examine in detail the political risks for investment processes in the Ukrainian agricultural sector. The chapter will explore some of the major challenges and risks faced by foreign investors. Further, this chapter will examine differences in political risks between different regions of Ukraine - south, north, east, and west. Finally, it will consider how complex relations with Russia affect the investment in Ukraine's agricultural industry. Ukraine's geography and territory are very attractive for agrarian activities and foreign investment in agriculture; however, the Ukrainian state and policies are far less appealing for foreign investors. The risks for investors are exacerbated in the agricultural sector. Other industries and sectors make it possible to more or less pull investments out in 2 to 4 years, or at least rely on their stabilization. Agriculture depends on natural conditions and harvest periods, and the payback period for investors is at least five years.

The attraction of foreign investors under the current globalized market conditions depends on the internal capacity of the country and the functioning of management mechanisms. Internal weaknesses of Ukraine's investment climate include: the residual effects of previous administrative policies, obsolete infrastructure, dynamic political environment, ineffective law enforcement, and the fact that the business environment is generally poor and difficult to understand, especially for foreign investors. This is due to raider attacks, corruption, limited access to cheap financing, large-scale migration of Ukrainians to EU, Russian aggression against Ukraine, political instability in the fuel market, global price vulnerability for agri-food products for key Ukrainian exports, and migration of the Ukrainian labor force to neighboring countries ([Invest, 2019](#)).

The current moratorium on land is one of the most prominent difficulties for investors in the agricultural sector. First, there is instability in concluding agreements on loans. Farmers can lease their land for up to 49 years. To get a sufficiently large plot of land, all adjacent landowners must agree to a lease; this is unrealistic. During fieldwork in Ukraine, a meeting was held with the head of an average agribusiness. This organization has about 6,000 land leases. This interviewee states that according to statistics, 300-400 landowners die every year. Many of the landowners in Ukraine are elderly people. As a result, rent must be constantly updated and renegotiated. This process proves difficult. Extending an inheritance and ownership of land is difficult and time-consuming. As a result, contract revision is a problem. There is a considerable risk that the heirs of land plots will refuse to renew the agreements (Anonymous Agro-Holding Manager, personal communications, June 7, 2017).

Secondly, there are many inaccuracies in the documentation for the division of land. This is another problem that agribusinesses and landowners are facing. Previously, on-site measurements were carried out using theodolites (geodesic and astronomical goniometer). This measuring device gives a sufficiently large margin of error. GPS is currently used for measurements. The results show that land plots overlap, and disputes over territories frequently arise. In this case, the registration process should be started again. This includes a collection of all documents, registration, certification, etc. In Ukraine, this is a long, time-consuming process that is not always productive (Anonymous Agro-Holding Manager, personal communications, June 7, 2017).

Third, the existence of neighboring farms with multiple owners poses a range of challenges for investors. Farmers are not united in cooperatives. This is not beneficial for them under current laws. Many rural residents illegally have land that they do not officially declare or

register in the national land cadastre. They do not pay any taxes on this land and cultivate large plots illegally. If someone comes to check, the farmers say they are helping a brother, godfather, matchmaker, or friend; to prove otherwise is close to impossible. Farmers do not want to pay taxes and do not pay deductions to any state funds. As a result of this, their profit is higher, and they can generate more crops for local populations (for example, grain). This leads to the fact that the local people are not consistent in their decision to rent land, especially for long term leases (Anonymous Agro-Holding Manager, personal communications, June 7, 2017).

Fourth, the moratorium does not allow any changes in the purpose of the land, so the transition to a more expensive culture in the absence of a sale is also impossible. This dramatically limits the activities of the agricultural enterprise and reduces interest for foreign investors ([M.DeSa, 2018](#)). Before launching the land market, consistent steps should be developed to control and implement reforms. Some reforms have already begun. Changes in the currency legislation ensured the stability of the hryvnia exchange rate. This is one of the priorities for a sustainable economy (Benedysiuk, 2019). This is already a great achievement. Law enforcement reform and judicial reform are ongoing, but too little has been done so far.

Lifting the moratorium on land sales will take time. A transitional period is required to amend the legislation, fill out the land register of property rights, and update information in the land cadaster. The data must be updated before accurate agricultural land transactions can occur. Almost all information about the land, owners, and properties are stored in land books. The places where the records are kept and their condition is terrible (Benedysiuk, 2019). Even information about landowners is not systematized. The information about who is alive and who is not is sometimes outdated and inaccurate. Transfer of these data to electronic registers is a required step. This is a huge job. The transition to an electronic information storage system will

significantly reduce the time for processing documents. Government reforms are already addressing this issue, but the process is slow (N. Maevskaya, land registrar, personal communication, Jun 5, 2017).

“Also, the question of what to do with joint objects/structures should be considered. Sometimes discrepancies arise between actual land plots and documents created many years ago. There are several bills regarding the lifting of the moratorium. However, none of them accurately discusses what should be done with irrigation systems, land reclamation, and other infrastructure problems. For example, some projects stipulate that these facilities will be managed by local communities” (Benedysiuk, 2019).

Boundaries between local communities and who will be in control must be determined. Tax Code amendments are also required. An integrated approach to the development and implementation of legal norms should be undertaken. If agricultural objects are transferred to one owner, the owner should try to get the maximum profit from them. Further, restrictions must be established to ensure regular work and equal conditions for farmers. Logistically, many things are difficult to regulate (Benedysiuk, 2019).

One of Ukraine’s most essential and historical assets is agricultural land. This sector of the economy is showing steady growth. To maintain sustainable development, the government must be cautious not to make any radical changes. Foreign investors must clearly understand what risks they may face. The land market won’t begin to function for another 2-3 years, even after the launch of land reforms. Projections for grain production predict a significant increase in production in Ukraine. Investors in agribusiness should also consider that it will be necessary to invest in transportation and storage infrastructure in the country to support the growth of the agricultural sector and increased crop outputs. The cost of transporting “grain from Ukrainian

farms to the Black Sea ports is still about 40 percent higher than the cost of comparable services in France and Germany, and 30 percent higher than the cost in the United States” ([World Bank Group, 2015](#)). These high costs are the result of subpar logistics, old equipment for rail transport, inadequate use of river transport, and insufficient capacity that leads to increased spoilage. In turn, this will lead to a decrease in profit or loss of potential annual income ([DeSa, 2018](#)).

A big problem for any agribusiness company is that regulatory documents and other documents are always changing. The organization must carry out the same administrative work - registration, re-registration, conclusion of contracts for new models, and transition to new forms with the complete abolition of old ones. The legislation is not conducive to the normal conduct of business (Anonymous Agro-Holding Manager, personal communications, June 7, 2017). It is quite difficult to decide to invest if the rules in the country change every six months. Some investors are sufficiently strong that they can write rules for themselves and can be sure that they will achieve compliance from any government body in Ukraine. These include players such as Cargill Inc. But even such large investors invest quite limitedly compared to their capabilities. Until this issue is resolved, the attractiveness of investment in the agro-industrial sector of the Ukrainian economy will be low.

According to experts, neither war nor corruption, which politicians often like to use as excuses, are the main reasons for the weak investment climate. The main political risk is the unpredictability of government economic policies. Before investing, each investor draws up a business plan for at least ten years. It is difficult for investors to do this if there are changes almost every month in tax, customs, administrative and licensing policies. Businesses also face regular pressure and high taxes imposed by regulatory authorities. Many fear to invest a lot of

money in such an environment ([Novak, 2019](#)). The business environment in Ukraine is poor and difficult to understand.

Another major problem now is the lack of fair rules and security for investors. Foreign partners are categorically against doing business in “black” or “grey” zones ([Benedysiuk, 2019](#)). Doing business in “black” or “grey” zones means that foreigners must operate through Ukrainian companies or use Ukrainian partners to conduct their business and sign documents. This frequently leads to investors losing their money and assets because they are in somebody else’s name. The courts in these cases rule in favor of the Ukrainian individuals or companies who partnered with foreigners and then stole the investments. In Ukraine, it takes months to get all the required business licenses. Law enforcement practices are somewhat unclear to investors. For example, tax authorities began to introduce additional fees without good reason, trying to replenish the budget. The law enforcement system is indifferent and provides no support for foreign investors. Law enforcement practice is entirely unclear to foreign investors. Step-by-step changes are introduced into the legislation aimed at counteracting raider attacks, but they have little effect on actual rates of such attacks in the country. These are some of the main problems that prevent serious businesses from investing in Ukraine.

“Foreign investors are accustomed to the promises of senior government officials. In Ukraine, many statements have been made regarding the privatization of agricultural land and processes. Foreign partners showed great interest, and they began to actively investigate the situation, but were forced to stop due to the reluctance of government authorities to follow through with their statements” ([Benedysiuk, 2019](#)). Very often, government organizations do not want to cooperate with big business. Now the situation is slowly changing, but this remains one of the significant political risks for investors in the agricultural sector.

During my interview with a politics professor from the University of Chernivtsi, many of these previously mentioned issues were discussed. The professor expressed his point of view on the differences in risks in developed countries in comparison to Ukraine. In his opinion, risks in developed countries are associated, for example, with the introduction of new environmental standards, or changes in foreign policy, or instability in other countries and problems of access to their markets. In Ukraine, the risks are associated with changes in the conditions for doing business in the country. Ukrainian politics is very subjective compared to politics in most developed countries. The implementation of political processes depends on specific people in positions of power. In Ukraine, there is no clearly defined procedure, criteria, or principles. In Ukraine, the solution to most of the key problems that determine the conditions for the functioning of an agriculture business is limited to the participation of only a few political figures. In such circumstances, it is difficult to predict and determine political risks for investors. Risks are minimal in the short term because it is known who is involved, and it is clear how to act. In the long run, risks increase tenfold, because any other person can significantly influence the conduct of business. It doesn't matter if this figure belongs to one political party or another (B. Strilchuk, professor at University, personal communication, Jun 4, 2017).

In Ukraine, the legal framework provides little protection and does not properly support foreign investors. Two essential things are necessary for a business to function correctly. These are “effective courts and effective law enforcement agencies. If they function properly, many positive changes can be made. However, if these institutions do not work efficiently, even good laws will not work. No matter how good the legislative process may be, it will still not have the desired effect until property rights are adequately protected by the courts and law enforcement agencies” (Benedysiuk, 2019).

The tax burden, moderate corporate income tax, and standard salary taxes do not significantly differ between Ukraine and the rest of Western Europe. In reality, we see the business environment is improving in other neighboring countries, and government agencies are trying to help, but this is not the case in Ukraine. The government in developed countries provides security guarantees, which is not yet the case in Ukraine. It is not a matter of taxes, but of the conditions and guarantees of protection by the government (B. Strilchuk, professor at University, personal communication, Jun 4, 2017).

According to Jean-Jacques Herve, the former counselor to the minister of agrarian policy in Ukraine, Ukraine is not ready for land reforms and the lifting of the moratorium on the sale of agricultural land. In his opinion, the Ukrainian agricultural sector needs more investment, both foreign and internal. These investments should be transparent and somehow secured or insured. Unfortunately, this is not the case. Currently, there is a lack of confidence and trust for investors, especially foreign investors, who are not familiar with local customs and markets. It is vital to do more to establish confidence for investors, and this must come from the highest levels of power. Lifting the moratorium now, before other reforms to combat corruption and foster investor confidence, are complete, would likely lead to a takeover of large agricultural holdings and enterprises, who would acquire land at a cheap rate. To benefit investors and multi-national institutions who are developing Ukraine's agricultural sector, through lending or investing, Ukraine must engage in further cooperation with the European Union countries; this can be achieved through association agreements and free trade agreements. Currently, there are about 40 to 50 thousand private enterprises, with subsidies, operating in the Ukrainian agricultural sector (J. Herve, former counselor to Ukrainian Minister of Agriculture, personal communication, May 10, 2017).

Due to an unreformed judicial system, raider attacks are widespread. The main reasons for the existence of raiding are the lack of proper ownership rights, the lack of possibilities to buy land plots, the absence of reliable guarantees for protecting property rights in case of leasing, the lack of safeguards for protecting the rights of minority shareholders, the insufficient implementation of court decisions, and a lack of guarantees for investors. The presence of raider captures varies regionally; often raiders just claim all the grown crops and leave the land. People buy authorized weapons and begin to defend themselves. Contacting the police is not effective; using weapons and force is more effective (N. Maevskaya, land registrar, personal communication, Jun 5, 2017).

Farmers with small plots of land are more commonly victims of raider attacks. Usually, these contentious issues are resolved, but it takes time and energy. In this case, the land cadastre and registers contain information on graphs and coordinates, however, as mentioned earlier, this information has not been kept in digital form and is often outdated or inaccurate. Some legal procedures also exist to restore the original boundaries of land plots, however, due to inadequate legal and judicial systems, legal means of conflict resolution over land ownership are not very effective; courts will often rule in favor of local entities over foreign investors. To make matters more complicated, there are some regions where restrictive signs and land maps do not exist. There is the possibility of incorrect separation and poor adherence to boundaries; some farmers will move their boundary line further and further onto their neighbor's property over time. In general, people try to follow restrictive labels, put up fences, plant trees, etc. The right protection against raiding is a properly drawn up, digital, and registered land use agreement and land cadastre. In this case, there will be more legal mechanisms and means to repel raiding attempts (Anonymous Agro-Holding Manager, personal communications, June 7, 2017).

Currently, many raider attacks are repelled by force or threat of force. Landowners and farmers repel raiders by protecting their property with guns (O. Sapojkov, Economics Professor, personal communication, May 15, 2017). Legal means must be established to protect purchased lands. Disputes should be resolved by legal professionals in a timely matter. This would significantly increase investor confidence. These legal, judicial, and land register reforms need to be addressed before opening the land market to foreign investors. Under the current laws, Ukrainian landowners do not have full ownership rights to their land plots. The Ukrainian landowners who received land parcels from the government have the right to work on their land and to pass it down as an inheritance or lease it, but they can not sell it. The property should be registered with the state land register for the Ukrainian resident to make necessary land agreements and leases with foreign investors. If this were all done properly, it would allow for some insurance against raider attacks (O. Sapojkova, lawyer, personal communication, May 20, 2017).

There are also cases when inaccurate changes are made to the land register or when transferring data to electronic forms. Some people or companies get into the registration service database, pay a lot of money for it, and completely erase company information or enter false information. Everything is possible in Ukraine (B. Strilchuk, professor at University, personal communication, Jun 4, 2017). If the legislative and law enforcement system does not change, foreign investors will struggle to secure their investments. Most raiding that occurs in Ukraine today is through government agencies (O. Polivodskyy, lawyer, personal communication, May 15, 2017). Some specialists simply rewrite state lands in registers. This problem can be resolved in court, but it takes a lot of time and effort. This is possible only if there is an error or defect in the paperwork. If everything is in order with the documents, everything is done on time, and

legal representation is acquired, then challenging this type of raiding is difficult and unpromising (N. Maevskaya, land registrar, personal communication, Jun 5, 2017).

The participation of foreigners in the agricultural sector of Ukraine, as experience shows, is not always successful. Even if you invest a lot of money and establish a good business, as soon as you start making big profits, you will immediately begin to confront problems. Disputes and conflicts arise with tax agencies, local councils, and residents. It takes time and resources to overcome these challenges and risks. As a result, businesses are not growing. One of the lawyers that was interviewed provides several examples. She had some clients that rented a lot of land in the Cherkasy region. They were engaged in breeding seedlings of berries and growing berries: strawberries, raspberries, blueberries, strawberries. Cherkasy is a very fertile region for growing berries. Everything was fine while they were just growing seedlings and behaving like the local population. As soon as they began to purchase logistics equipment, and organized workshops for processing these berries, for safety and security, problems arose with the lease of land, with the tax office, and with customs. They entered Ukraine in 2007, but now they are out of business (O. Sapojkova, lawyer, personal communication, May 20, 2017).

To minimize risks, any foreign company should have at least 30% Ukrainian representatives. These representatives must be selected very carefully because it can either foster growth in the company or destroy it. For example, a large enterprise was created in Odessa. Elevators and terminals have been built here for the shipment of bulk goods and products; Switzerland built these terminals. Obeying advice, they accepted Odessa business people as partners. When everything began to work, Odessa entrepreneurs rewrote all property rights for themselves and drove the Swiss out. In 2009, there was a court hearing. Ukrainian courts failed to protect the investor or did not want to do this. Switzerland has tried to resolve this issue in

international courts for four years, but eventually got tired and gave up on this (O. Sapojkova, lawyer, personal communication, May 20, 2017).

All these issues represent political risk factors and can be attributed to issues of corruption. Corruption in Ukraine is multifaceted, widespread, and affects virtually all areas of investment. It starts with small administrative figures and ends at the government level. When the Soviet Union collapsed, the chairman of the village council offered people free land through privatization. People did not want to take the land. Now the situation has changed. People came to him and asked him to give them land. The chairman of the village council says that now there is no land. Previously, legislation encouraged people, even for free, to occupy land and cultivate the land. The land needed to be cultivated, not to be overgrown with weeds and everything else. Now the situation has changed, but the legislation remains. There was no demand before, and now there is a demand. It is still free, and there is not enough for everyone. Therefore, the chairman of the village council or a village council decides who will get land plots. If the chairman likes someone's eyes, money, or something else, he can say yes and give them land. He can also refuse anyone without any grounds and justify it by saying there is no more available land, whether this is the case or not. The issue with available land is a matter that can be dealt with through proper land registration.

The judicial system remains very corrupt, and there is legislative uncertainty. If there is uncertainty in a case, then each judge thinks he is right to make decisions, however they please. Bribes are often paid to have judges rule in favor of one party or the other. There is also widespread corruption at customs and border control offices. In the process of export or import of agricultural products, there is interaction with customs, and often, bribes must be paid.

Otherwise, shipments can be held for so long that agricultural products deteriorate (O. Polivodskyy, lawyer, personal communication, May 15, 2017).

According to the Corruption Perception Index (2017), compiled by Transparency International, “Ukraine ranked 130th out of 180 countries, placing it in the lower third of all assessed countries” (Desa, 2018). Lack of transparency, coupled with the government’s tendency to focus on short-term decisions rather than long-term corrections, are additional risk factors that should be considered. The government has taken the first steps in this direction but has not done enough ([DeSa, 2018](#)). An International Anti-Corruption Court may address some of these issues. The currently discussed and desired changes in the interaction of Ukraine and international organizations in the field of anti-corruption should be adopted. Contracts will create favorable conditions for relevant changes. But this does not mean that after reaching these agreements, everything will change the next day. It takes time, and people will need to understand these contracts and learn how to live with changes. There are very high hopes for an anti-corruption court and some of these hopes may be unrealistic. An improper institution only strengthens an imperfect system. If someone is interested in cooperation with Ukraine, then it is in their interest to create tools for monitoring the activities of local authorities. There will be no results without control and oversight (B. Strilchuk, professor at University, personal communication, Jun 4, 2017). A large percentage of the population believes that external pressure cannot affect the situation until the Ukrainian authorities cooperate and accept change, but that they currently do not want to (O. Ivanushin, personal communication, May 28, 2017).

In the time Ukraine has been an independent country, many oligarchs have emerged. Now they use most of the agricultural territories and have a considerable impact on the political processes in the country. It is in their interest to support corruption. It is difficult to fight the

oligarchs. Any struggle, as experience shows, only results in bloodshed or a lack of meaningful legislative changes. This only enriches the oligarchs and strengthens them. Shortly after the Ukrainian revolution in 2014, people understood that their energy was wasted. Revolutions often begin because people want to achieve some sort of change. In Ukraine's case, no real changes occurred after 2012, says Sapojkova (O. Sapojkova, lawyer, personal communication, May 20, 2017). Under current conditions, it will be difficult to prevent the purchase of land by the oligarchs.

To do this, antitrust laws have been developed and adopted. These laws must address market restrictions. Land ownership and distribution must be traceable. In Ukraine, there was a time when it was possible to sell shares locally. Many people sold their shares, received the money, spent it, and went to court with the desire to reclaim their land shares. This has also become one of the reasons for the extension of the moratorium. People are not ready for drastic changes, so everything should be done step by step. People at every stage must understand that all decisions have consequences and are often irreversible. There is still a high level of distrust of the government and law enforcement agencies. Such a phenomenon as the presence of oligarchs adversely affects investment policy.

High-interest rates on loans and hefty taxes also hinder the development of small and medium-sized businesses in agriculture. High rates are a consequence of high risks. Rates will not be much lower if Ukraine does not provide a qualitative reduction in global political risks. This should happen primarily due to a higher level of protection of private property and significant deregulation of business. The situation can be qualitatively changed by developing incentives to advance the fundraising system. Various funds intended to support small and medium enterprises, agricultural producers, and rural settlements should not be distributed

through the state legislative system. They should be distributed through private enterprises, which will help to develop entrepreneurial skills and increase entrepreneurial potential. For users of these grants, this will create a good credit history. If there is a good credit history, banks will accordingly lower rates for enterprises with a desire to take loans (B. Strilchuk, professor at University, personal communication, Jun 4, 2017). The first step has already been made. Many changes have occurred in recent years in the banking system. Usually, small and medium-sized agricultural businesses do not use loans. They try to solve problems and use only their own resources to do business. They will not rely on foreign investments because the situation can be out of their control. This represents another political risk for foreign investors. Farmers take loans, but they have a different business system. Farmers have many government-subsidized programs. They receive funding from the state, and they are confident that they can pay their loans back (Anonymous Agro-Holding Manager, personal communications, June 7, 2017).

Such small agricultural objects are susceptible to the slightest deviations from normal functioning. For them, the risks are weather, equipment breakdown during sowing or harvesting, and the acquisition of low-cost seeds. These are not political risks, but foreign investors will likely face them as well. In this case, the political risk for the investor is the lack of a legislative framework and regulations supporting business participants (for example, subsidies, and insurance). Only the right state policy can promote the protection of business and agricultural activities (Anonymous Agro-Holding Manager, personal communications, June 7, 2017).

Despite vast opportunities, Ukraine is not a secure place to invest. Another significant risk is instability on the eastern border and the presence of annexed territories. This unrest affects Ukrainian farmers in many different areas. Firstly, most areas under the control of the Ukrainian government have lost access to Crimea and several eastern provinces and vice versa. Secondly,

farmers in these affected regions lost access to the Ukrainian domestic market, and also to some international markets. It is difficult for them to access resources such as fertilizers and seeds. Investors in Ukraine's agricultural production sector should carefully consider how their capital might be affected by the ongoing civil conflict ([DeSa](#), 2018).

Farmers face the challenges that wartime causes; fields are mined, shells remain. The Ukrainian military is building defenses directly on the territory of farmers. Many people are killed, and many leave occupied areas. The market access and trade with Russia also suffers. Russia is the leading supplier of all nitrogen fertilizers. Russia does not refuse supplies, but Ukraine refuses to buy fertilizers from Russia. Now the market is being reoriented. (O. Polivodskyy, lawyer, personal communication, May 15, 2017). Now in the east of the country, there is a territory that is excluded from circulation. This has a negative effect because although the occupied territories are not very fertile, field crops were grown there: such as sunflower and grain. (O. Sapojkova, lawyer, personal communication, May 20, 2017).

There is regional specialization in Ukraine. Western Ukraine specializes mainly in animal husbandry and growing vegetables and berries. The center provinces engage in a wider range of agricultural activities. The south primarily grows wheat, corn, soy, and sunflower, along with some orchards. There were no vegetables in the east, but grain fields were abundant. Now they are not there. These regions are closed to foreign investment. Thus, we can summarize the regional differences. The climate for foreign investment is bad in the central regions, very poor in the southern areas, better in the western regions, and near impossible in the eastern regions. Foreign investors in eastern provinces are normally residents of the Donetsk region who have left and returned. Usually, they have some family that still resides in the region. If in the other areas, you can simply lose your property, in this region, you can lose both property and life.

The lawyer whom I interviewed did not have clients in the eastern regions. The only company that was close to the eastern territories was a French corporation that plants seeds. It continues operating in Ukraine despite significant capital investment loss. The seeds this company produces are in high demand, so the business has not suffered nearly as much as traditional farms in the region, which were engaged in growing crops. It is a subsidiary of a huge international company. Troubles that arise in Ukraine are often covered up and kept out of the media. However, it is also widely believed that the environment in the country, especially in the Donbas, is not the primary concern of investors (O. Polivodskyy, lawyer, personal communication, May 15, 2017). The likelihood of a large-scale military conflict is not very high in other regions of the country. There are other countries where the situation is similar to Ukraine, for example, Moldova or Israel. Both Moldova and Israel have had challenging histories with military conflicts and land changing hands. However, they have no significant problems in terms of attracting investment in their agricultural sectors and promoting economic growth ([Benedysiuk, 2019](#)).

Another interesting distinction is, who is considered a foreigner and who is not. If a foreigner has been living in Ukraine for 15 years, has a Ukrainian wife, believes that he is Ukrainian, then is this person a foreigner? These people have resident status in Ukraine. According to immigration law, they also have the right to permanent residence in Ukraine. It makes no sense to consider them foreigners. However, they still cannot purchase agricultural lands. There is one formal criterion - whether a legal entity is registered in Ukraine or not. This criterion also governs whether the land can be sold to this person/organization or not.

Foreign companies must have all the introductory documents, land management, and then wait until the local council determines the price at which they are ready to sell the land. If you do

not discuss it with them, the price will rise. A foreign company can buy agricultural land only if it enters into a relationship with a Ukrainian company. A Ukrainian company should have at least 50% ownership, which is very risky for foreign investors. Investors get around this by partnering numerous Ukrainian companies with minority shares; for example, two companies with 20% and one with 10%. This reduces the risk of takeover and meets the Ukrainian ownership requirement. More complex structures are created, and if everything works some risks are mitigated (O. Sapojkova, lawyer, personal communication, May 20, 2017).

In the interview with the political science professor at the University of Chernivtsi, another political risk was discussed. This risk is associated with the implementation of reforms aimed at liberalizing the business environment. A large number of populists are in power, which can result in adverse interference with the agricultural activities of a particular company or practice. This is a dangerous political risk (B. Strilchuk, professor at University, personal communication, Jun 4, 2017).

Ukraine must also pay back very large external loans. This may undermine the stability of the balance of payments and the exchange rate of the national currency. The International Monetary Fund is ready to allocate money for specific actions that guarantee the irreversibility of positive reforms and socio-economic changes in Ukraine. The attractiveness of the agricultural sector for foreign investors depends on how this situation is resolved.

Another political risk is associated with logical unevenness and incomplete reforms of local self-government. Now there is a process of decentralization. Decentralization is mainly administrative, although some resources are also transferred. These resources will be allocated locally, but the rules for transferring funds are not well established. This can lead to the fact that the infrastructure supporting agricultural activities, namely fuel, roads, transport

communications, etc., may be left unfunded. This will lead to the destabilization of regular work in the agricultural sector and, consequently, to lower profits (B. Strilchuk, professor at University, personal communication, Jun 4, 2017).

In turn, many people consider that, in addition to internal problems, global trends unfavorable for Ukraine add oil to the fire. As a result of changes in the global environment, large investors have been trying to withdraw their capital from profitable but risky countries with emerging markets, like Ukraine, to quieter harbors. This means that there is competition for investment, and Ukraine is losing this fight ([Ustenko, 2019](#)).

One of the ways to reduce risks is state subsidies for generating new jobs; the state should provide ready roads and electricity networks, cheap loans to new businesses, etc. Grants are still needed - because, in Ukraine, the investor himself must build everything - all local infrastructure from scratch, including communications infrastructure and often transport routes. Ukraine is globally uncompetitive in the fight for investors. Grants can act as an investment in the modernization of the economy. In the European Union, support for agribusiness is an order of magnitude higher than in Ukraine. For a \$100 new investment, when setting up production in Croatia, an investor receives \$50 in compensation for creating these jobs, and in Hungary, an investor gets up to \$70. Poland, over the past 15 years, has become the second-largest economy in Europe after Germany, due to the creation of industries for which they recruit workers predominantly from Ukraine ([Wilczec, 2020](#)). It is necessary to tie the business to the country. The state should be one of the co-investors and co-guarantors of these investments, at least in the form of partial compensation for investments. The Ukrainian state currently deters investors in the agricultural sector through the non-existence of a land market, and compensation is certainly not provided for investors.

The government is implementing investment reforms, and trying to simplify the process of starting a business. But while there are tax breaks for agriculture, but they are insufficient. Also, imported capital goods are exempted from customs duties. Free trade and association agreements with developed countries is a step in the right direction for Ukraine. They indicate that these countries have an interest in conducting business with Ukraine and purchasing Ukrainian products despite political risks. It also raises the quality of products in Ukraine, which are now being produced to meet international standards. The investment climate in Ukraine is improving in recent years, but there are still substantial political risks associated with foreign investment in the Ukrainian agricultural sector. Further, until the moratorium on the sale of agricultural land is lifted and new legal mechanisms to protect land and investments are introduced, the Ukrainian agricultural sector is a risky place for foreign investors. Despite these risks, the Ukrainian agricultural sector provides many opportunities and can be very lucrative for some.

## Conclusion

Analysis of the collected and available data on Ukraine's agricultural land laws and their effects on foreign investment provides several conclusions. First, several advantages offer "potential opportunities for increasing the investment attractiveness of Ukraine's domestic economy for foreign investors. Among them are the following: advantageous geopolitical location; high level of natural resource availability; high-skilled workforce; capacious consumer market" ([Bogatyrev et al., 2019](#)). However, foreign capital is not directed to the agricultural sector for a number of reasons including corruption and the moratorium on the sale of agricultural land. The current government has begun reforming land laws, but the process is slow and so far unsuccessful. There are numerous issues that must be addressed before an efficient private market for agricultural land can be formed.

Some of the challenges include too many small private owners who cannot efficiently farm their land. These owners do not want to get rid of it because agricultural land is currently undervalued in the Ukrainian market; lifting the moratorium on the sale of this land will lead to a rise in the price of land. On the other hand, leasing these lands to agroholdings leads to a concentration of monoculture farming and poor use of land, resulting in the degradation of soil. Companies that lease the land are not concerned with the long-term effects of monoculture farming; fieldwork has revealed that soy is becoming the most common crop. Lifting the moratorium, although necessary, does not come without challenges and consequences. To reduce the possible negative results of lifting the moratorium, for example, the accumulation of land in the hands of oligarchs and large foreign agri-businesses, there must be strict limits and restrictions on agricultural land sales.

Ukraine faces some similar challenges to other transitional post-Soviet states; however, it has fallen behind these neighboring countries for a variety of reasons. First, there is a drastic divide between eastern and western provinces in terms of agricultural processes. Many reasons for this divide are historical and challenging to overcome. In the eastern provinces, many communities still engage in inefficient “kolhoz” style farming. In contrast, the West has adopted more modern agricultural practices. Still, Ukraine faces other issues such as monoculture farming, a decline of small and medium farms, and concentration of land controlled by agroholdings. It is important that Ukraine’s government not rush implementation of land reforms before addressing corruption, land mapping and distribution, restrictions to prevent land grabbing, and workers’ organizations. Workers’ organizations and unions are required to ensure that there will be fair labor standards and pay for agricultural workers and rural populations. Currently, there is a massive migration of young people out of Ukrainian villages to larger cities or neighboring EU countries.

Development of the agricultural sector through foreign investment can promote the use of new technologies, construction of roads and infrastructure, and adherence to internationally recognized standards and wage laws for agrarian workers that can benefit local rural populations and agricultural investors. This thesis concludes that Ukraine should lift the moratorium on the sale of agricultural land; foreign investment in the agricultural sector should grow substantially once a private land market for agricultural land is created. However, lifting the moratorium must be accompanied by laws to prevent land grabbing and allow for small and medium-size farms to coexist with large foreign agro-companies and agroholdings. If land reforms and other necessary steps are taken, the government can foster growth and efficiency in the agricultural sector and promote regional and economic growth in rural regions.

Ukraine faces several challenges in terms of political, social, and security issues. Some of the most prominent domestic political risks include corruption, currency instability, and uncertainty in the rule of law. All these problems impede the emergence of an attractive investment environment, despite the attractiveness of Ukraine's vast resources, its favorable location and reform trajectory. Ukraine should focus on increasing attractiveness for investors to promote further foreign investment and adequately direct the flows of capital. Ukraine should try to put an end to the conflict in eastern provinces as soon as possible. Although the conflict in the east has little direct effect on agricultural processes, especially in western provinces, the ongoing hostilities in the Donbas region remain a key issue facing the country. This conflict indirectly affects the investment climate in the country in general.

Ukraine also faces problems with populism. Symptoms include endless slogans and ruthless talk of change without any attendant action. Ukraine desperately needs to go beyond the framework of declarations and begin to carry out reforms. The country needs to become much more efficient and transparent to promote investor confidence. This applies to everything from trade regulations to the development of a stable tax system and development of an accurate and up to date land register. It is necessary to create a competitive and transparent banking system in Ukraine, one that offers investors some form of protection on their investments. Even though Ukraine needs significant international investments, there are still not enough tools to protect the interests of foreign investors. In recent years, numerous investment promotion initiatives have been taken, however, as mentioned earlier, not enough is being done. Progress with respect to state guarantees or other forms of protection has not been achieved; only very large agri-companies and agro-holdings have been able to mitigate certain political risks, for example, raider attacks. Guarantees should be provided to investors at the local and national levels as soon

as possible. This should happen simultaneously with the cleansing of Ukrainian courts and the legal system. Judicial transparency is critical to Ukraine's long-term investment appeal.

As can be seen from the conclusions made in the previous sections, structural economic and legal reforms in the country must be undergone before the agricultural market can reach its full potential, and foreign investor confidence can be achieved. Ukraine has shown a slow yet progressive pace in the implementation of such reforms. A robust legal framework is being created following international standards. It includes a system of bilateral investment laws and provides protection of property rights for foreign investors and guarantees of their adherence on a fair and legal basis. Economic transformation is slowing due to a fuzzy separation of powers between the legislative, executive, and judicial branches of government. Reforms are also hindered by an overly centralized economy, abuse of power by state bodies, fear of foreigners entering the country, and overcomplicated bureaucratic procedures. All this keeps foreign citizens and companies from investing in Ukraine. Over the past two years, Ukraine has taken some important steps. These steps are positive signals to the international investment community about the prospects of investing in the Ukrainian economy. The country has switched to a more liberal model of currency regulation. This model involves the use of risk-based tools instead of administrative ones. The Verkhovna Rada adopted the law "On Amending Certain Legislative Acts of Ukraine Regarding the Promotion of Investment Activities in Ukraine" ([Law Of Ukraine, 2019](#)).

Important next steps include providing more transparency for investors. It is necessary to adopt laws that simplify the conduct of business and facilitate the obtaining of licenses and certificates for the quality of agricultural products. For example, introduce online registration of legal entities with simplified identification and verification; simplify registration procedures;

draw up standard contracts and documents; and ensure the provision of such services for free. Bureaucratic procedures and inefficient administration processes in many areas of business, especially in terms of taxation, should be reduced. It is necessary to improve the legal activities of regulatory authorities. Incomprehensible rules and explanations regarding the preparation of tax reporting and making payments also make it difficult to do business. The hasty introduction of new regulations and the lack of time to adapt to them are a constraining factor for normal functioning. There are also imperfections in the electronic reporting system and misreporting of the number of payments that do not optimize business activities. That is why it is important to accelerate the transition to electronic document records and management; this can ensure publicity and transparency of decision-making, and also improve land inventory management. Foreign partners are depressed by the situation with bribery and corruption in the country. Investors do not trust the court or legal mechanisms for conflict resolution.

Bilateral investment agreements struck between Ukraine and other states that are ratified by the Verkhovna Rada are part of Ukrainian domestic investment legislation (Tegipko, 1999). They carry equal legal weight as court decisions and effect internal investment laws. The supremacy of international agreements has been established in Ukraine. This allows large investors to

“create more favorable conditions for themselves than those provided by national law.

Ukraine has bilateral agreements with a large number of countries, which indicates the interest of the international community in investing in the Ukrainian market. The provisions of the Ukrainian agreements on the protection of foreign investment with other states overlap with the principles of investment activity outlined in national legislation.

This is additional evidence pointing to the compliance of Ukrainian legislation to promote investment through international law and agreements” ([Tegipko](#), 1999).

The allocation of significant financial assistance and credit resources from foreign states and international economic and financial organizations, namely, the EU, the US, and the IMF, is intended to stabilize the financial system of Ukraine. In turn, such a precedent should attract the attention of international private investors to the Ukrainian economy. The opening of the land market will attract many promising companies to look at Ukraine as a potential partner or location for investment. Right now, investments are needed for the agricultural market to reach its potential and reach a new stage in its development. The basis for enhancing the investment activities of foreign investors in Ukraine should be an active and coordinated policy in both the public and private sectors of the economy geared to raising capital. It is necessary for the government and private companies to publish reports on the current investment opportunities in Ukraine, both at the level of strategic national projects and private investment projects. To implement this task at the state level, it is necessary to attract professionals from the field of the private investment banking industry. Corporate structures need to think about strengthening their own investor relations departments, and medium-sized businesses should turn to professional agencies and investment companies specializing in attracting capital.

An active change in the geopolitical course of Ukraine towards Europe should contribute to the establishment of economic ties and access to foreign capital, but Ukraine should not neglect the potential of Russian business, despite the problematic relationship with Russia. A new priority for the development of foreign economic relations of Ukraine should be investment cooperation with China. Ukraine did not use the opportunity to attract Chinese investment until very recently, as official statistics show ([Zeneli and Haluhan](#), 2019). Chinese investment in the

coming years may speed up legislative actions towards opening a functioning land market and can foster general growth and development in the Ukrainian agricultural sector and rural regions.

Along with the problems of the investment climate in Ukraine, there are also imperfections in the legislative system in the field of direct investment, low transparency in business activities, and limited attractive investment opportunities. It will be a significant challenge to improve investment literacy and the development of entrepreneurship in Ukraine, from students graduating from economic departments of universities to entrepreneurs who already run businesses in Ukraine and high-level specialists in attracting and managing investments.

In summary, the political risks and internal weaknesses of the investment climate in Ukraine are:

- Lack of political will and understanding among the leadership at the central and regional level, especially in the field of strategic investment;
- High level of corruption. Shadow economy;

Lack of guarantees of ownership;

- Lack of professional specialists capable of drawing up investment projects and business plans, accompanying and managing projects;
- Lack of regular cooperation with international rating agencies;
- Low adaptation of Ukrainian legislation to European standards;
- Non-compliance of the Ukrainian banking system with international standards; limited access to cheap financing;
- Inconvenient regulatory system, the complexity of tax administration, the difficulty of obtaining permits;

- Political instability;
- Outdated infrastructure, poor management in the management of housing and communal services;
- Ineffective mechanisms for protecting the rights of investors;
- Negative investment image of Ukraine and the region;
- Relatively low purchasing power of the domestic market;
- Attracting Ukrainian labor by neighboring countries to work in their economy;
- Dynamic political environment;
- Russian aggression against Ukraine;
- Vulnerability of world commodity prices for the main Ukrainian export (agri-food products).

Ways to improve the investment climate of Ukraine include:

- Improving the regulatory framework in this area and stable "rules of the game";
- Implementation of international standards systems in banking, financial, judicial, managerial and other areas;
- Anti-corruption measures and control in communication with investors. Protecting the rights of investors at the state level. Providing incentives in priority investment sectors, including agriculture;
- Promoting the use of innovative practices and latest technologies for farming;
- Active participation in transnational and international investment projects;
- Conducting marketing research in the field of attracting investments to Ukraine, monitoring of global investment flows and analytical studies;
- Attracting world-class specialists to Ukraine to develop investment attraction strategies.

Looking back at the research questions addressed in this thesis, we can draw the following conclusions. First, the current laws on agricultural land in Ukraine are not yet attractive to foreign investors, however, the dynamic changes in Ukraine over the past nine months indicate that the situation will change dramatically with the repeal of the moratorium on the sale of agricultural land. This will favorably affect investment policy and the attractiveness of the Ukrainian agricultural market. This will open up enormous opportunities for foreign investors in the agricultural sector. Secondly, non-economic risks exist for multinational enterprises investing in the agricultural sector of Ukraine, namely a civil conflict concentrated in the eastern regions and Crimea, and an unreliable legislative framework for investors doing business in Ukraine. Thirdly, foreign investment can bring huge benefits to agriculture for Ukraine: introduce high technologies for growing raw materials on Ukrainian agricultural lands; modern technology; improve infrastructure and roads; implement well-established methodology and logistics for doing business; and increase sales markets and promoting Ukrainian products in the global market. It will help to create additional jobs in the agricultural sector and bring the salary of workers to a certain level in accordance with international standards. It will encourage some people who have left Ukraine in recent years to seek income in nearby countries to return. Foreign investment can enhance the efficiency of the Ukrainian agricultural sector and stimulate regional and national economic growth, bringing Ukraine closer to standards acceptable abroad. Fourth, multinational enterprises can reduce the risks of investing in the agricultural sector of Ukraine because they have experience in various countries with different investment policies, and most often have legislative or other insurance for such activities. They have a huge chance to get the expected profit and contribute to economic growth in Ukraine, since Ukraine is attractive for investments, has great potential, and is only entering the stage of providing stable

opportunities for foreign investors. Finally, removing the moratorium on land sales is insufficient by itself; Ukraine should also continue to liberalize the land market in the coming years, taking into account the interests and needs of both the local population and potential foreign investors. This, in turn, will improve the economic growth of Ukraine, receive the expected return for investors, and promote global food security.

Foreign investors are waiting for the opportunity to begin investing in the rich resources of Ukraine. Creating a favorable investment climate will promote prosperity and regional and national economic growth in Ukraine. Ukraine's outstanding potential and vast opportunities in the agricultural sector could make Ukraine one of the most attractive markets in the region, and many potential foreign investors have shown their willingness to begin working with Ukrainian partners as soon as favorable conditions are created for this.

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