

Opening business in Ukraine: things to remember

Authors: Olena Losevska, Anna Hodakovska
International Law Offices (<http://www.interlegal.com.ua>)

Being a law firm focused on foreign investment we have been frequently asked the same issues such as:

- "Most acceptable type of a legal entity for starting business in Ukraine?"
- "Governing the foreign capital company"
- "Employment Agreement"
- "Work permit for foreign citizens"
- "Checking a business partner in Ukraine"

So, to meet the interests of investors we drafted short advice with FAQs.

"What is the most acceptable type of a legal entity for starting business in Ukraine?"

The main thing you should know, that there is neither the best nor the worst type of a legal entity. *All company types are equal in conducting business and taxation in Ukraine.* The circle of legal entities which can conduct some specific type of activities (for example, banking, securities activity and pawning) is strictly limited by the Ukrainian legislation. The difference between the types lies in management, responsibility of owners, and the share capital.

The most popular and comfortable company types in Ukraine are **Private Limited Company (PLC) and Limited Liability Company (LLC)**. It is important to highlight the fact that the LLC can be found with 100 per cent of foreign investments and can be owned either by the only one person or several persons. Following our practice we shall conclude that the most popular type of a legal entity with foreign investment is LLC. This form allows solving all typical assignments of the foreign owner such as: conducting business in Ukraine through the company under control, repatriation of incomes, limitation of responsibility, etc. We would like to mark that the Ukrainian legislation on foreign investment provides protection of foreign investment independent from the type of the legal entity.

All business entities with the status of a legal entity shall be officially registered by the Registrar at the place of residence of a business entity.

The following documents, in particular, should be produced for registration:

1. The statute;
2. Registration card, serving as an application for official registration;
3. A copy of the owner's decision to create a legal entity;
4. Document attesting the payment of the official registration fees.

In case an owner is a foreign legal entity, an extract from the trade, bank or court register must be produced to certify registration of an investor in the country of origin. Also a company statute (articles of association) and a power of attorney (proxy) demonstrating the individual

who will represent a company in Ukraine with reference to establishment of a legal entity are recommended to have. These documents must be duly approved according to the legislation of the country of issue, translated into Ukrainian and legalized abroad. If the owner of the LLC is a foreign natural person, such a person has to obtain a Ukrainian identification code of a taxpayer. This procedure can take about 10 days.

The LLC share capital is equal to 100 minimal wages. To the end of 2007 this makes about 9000 USD. The LLC share capital can be formed either with property or with cash. The Ukrainian legislation prescribes that the 50 per cent of the share capital must be paid up before the official registration process is started. The LLC owners who have more than 60 per cent of the share capital have formal management power under the company. The capital must be fully formed during one year after the official registration.

We should note that the PLC share capital doesn't have such legislative prescriptions. So, there are no legally binding obligations for the PLC to amount the share capital or period of its contributions.

As the practice shows the share capital shall be not less than the amount necessary to cover all the company's expenses (director's salary, office rent, telephones etc.) for a few months until the company becomes a self-supporting one.

"How to govern a foreign capital company in Ukraine right?"

The Ukrainian legislation prescribes tangled management system for the LLC. **The management system can include the Board of Directors, the Sole Director, and Revision Commission.** Following our practice we can conclude that cases when your director in Ukraine is to be dismissed can cause serious problems for the company. The matter is that your Ukrainian director is an employee under the local legislation and is protected by the current practice in Ukraine.

Often in the Ukrainian practice a director who doesn't agree with the owner's decision on dismissing holds the seal and original documents of the company, thereby, makes difficulties for the company's work and the process of appointing a new director. Sometimes a director enjoying rights uses the company's funds against the owner (for example, paying for his own legal services, advisers, etc.). In rare cases an unscrupulous director uses such methods of "corporate blackmail" as involving clients and partners of the company into the conflict. Sometimes a director addresses mass media with the purpose of extending the facts about "injustice and arbitrariness" from the owner's side.

In every case a complex of measures from the owner's side may be worked out, which aims at saving the work of the company. It is better to work up such "cautions" beforehand and fix them among the clauses of the employment contract concluded with the director, paragraphs of your statute and other internal documents of the company in Ukraine.

In our practice we recommend owners to organize and ensure an access to the current papers of the company from the very beginning and on the base of these materials to provide control for the main aspects of the company's activity.

In any way one can develop and choose forms and methods for the maximum protection of the

owner's interests and assets of the company in every specific situation. That's why we don't sell companies, we open business.

"Is an Employment Agreement obligatory in Ukraine?"

Employment relations in Ukraine, between an employee and an employer, are regulated by the **Employment Agreement (Contract)** providing that an Employee has to perform work stipulated by the agreement and to adhere to the internal organization order; and an Owner has to pay salary to the employee and provide worthy working conditions for the employee.

As usual, the Employment agreement is executed in writing. But the written form is unessential for it. It is considered to be executed since the moment the employee starts obligation performance.

Contract is a version of an Employment agreement that is executed for a certain term and applicable for the certain kind of employees. The Employment Contract is always executed in writing.

Pursuant to Article 40 of the Labor Code, *an employer may terminate an employment agreement before its expiration only in a limited number of cases*, including, but not limited to: staff redundancy; the employee's systematic failure to fulfill his or her employment duties; the employee's insufficient qualifications or deteriorating health condition; the employee's unjustified absence from the workplace for more than three consecutive hours during one working day; and a number of others. Article 36 of the Labor Code provides, however, that a labor contract (as opposed to an employment agreement) may also be terminated for any grounds specified in the contract.

An employment Contract executed properly and in time will help to avoid possible hardships in corporate relations.

"Is it necessary for foreigners to receive work permits?"

Due to the Ukrainian rules any foreign national intending to be employed in Ukraine must, before his or her commencement of such employment, apply for and obtain a work permit. **Work permits are issued to foreign nationals** by the relevant Ukrainian employment center, provided that: there are no qualified Ukrainian nationals in the relevant sphere who are suitable for the position in question; or there are significant grounds for the employment of foreign nationals as specialists. It should be noted that the applicable Ukrainian legislation does not provide a definition of the term "significant grounds". At the same time, a document outlining such grounds should be filed, together with other required documents, with the relevant employment center. Presumably, the education and expertise of the foreign national in the relevant area will be taken into account in evaluating whether to issue a work permit to such foreign national employee. It is important to know that the right to work is valid during a year.

"How to choose a business partner in Ukraine?"

If you want to be secured and provide proper obligation performance, it is reasonable to pay attention to the preparatory stage of negotiations. We don't speak about due diligence which is a very good tool but not always applicable. Just find out some ordinary data about your

possible Ukrainian partner that will assist you to make a decision. Let's see *what official information can be given by the State Registrars in Ukraine*:

1. *Full name and registration address.*
2. *Share capital amount. Shareholders and year of incorporation.*
3. *Officially registered moveable property and real estate.*
4. *The amount of employees.*
5. *Working capital circulation.*
6. *Officials of the entity who have powers to act on its behalf.*

We would recommend entrusting your contract to professionals. Experienced lawyer or auditor will help to get all necessary information about your partner and to secure proper contractual fulfillment. Note that in Ukraine a usual arbitration clause that does not contain all necessary information may be considered invalid, and you will lose a chance to protect your interests.

And probably the final advice... Try to ensure compliance with the law to the best extent possible while setting up and operating your business in Ukraine. Have a good business in Ukraine!

International Law Offices

2/4, Observatorny lane, Suite 57, Odessa, 65014, Ukraine

Tel. +38 (048) 715-58-55/ (0482) 33-75-28/ (0482) 33-75-29 | Fax +38 (0482) 49-69-25

E-Mail: losevska@interlegal.com.ua | www.interlegal.com.ua

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