

NEWSLETTER

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DOING BUSINESS

Foreign investors can obtain residence permits

On 23 May 2017, the Verkhovna Rada of Ukraine adopted the Law of Ukraine On the Amendment to Several Legislative Acts of Ukraine regarding Eliminating Barriers to Attracting Foreign Investment. The Law is entering into force on 27 July 2017.

The aim of the Law is to simplify the procedure for granting temporary residence permits in Ukraine to foreign investors, holding a substantial interest in a Ukrainian company but not employed by it.

Thus, the founders, shareholders or ultimate beneficial owners (controllers) of the Ukrainian companies, having entered Ukraine with the aim of controlling the activities of such companies, are entitled by the Law to obtain temporary residence permits in Ukraine under the following conditions:

- a foreign national is a shareholder, founder or ultimate beneficial owner (controller) of such a legal entity and is registered in the Unified State Register of Legal Entities and Individual Entrepreneurs;
- interest held by a foreign national, a stateless person or by a foreign legal entity as the ultimate beneficial owner of which the foreign national or stateless person is acting must be at least EUR 100,000 in the authorized capital of the Ukrainian legal entity at the exchange rate of the National Bank of Ukraine on the date of transferring foreign investment.

In order to renew the residence permit, foreign investors must prove:

- Employment in that company of at least three Ukrainian citizens who were employed not less than 6 months before filing the application for obtaining or extending the residence permit; or
- Payment by the company of corporate income tax amounting to at least fifty minimum wages for the last full financial year before filing the application for obtaining or extending the residence permit.

The residence permits granted to the founders, shareholders or ultimate beneficial owners (controllers) of Ukrainian companies shall be valid for the period of 2 years.

LABOUR LAW

Amendments to the procedure of issuing work permits for foreigners

On 23 May 2017, the Verkhovna Rada of Ukraine adopted the Law of Ukraine On Amending Several Legislative Acts of Ukraine regarding Eliminating Barriers to Attract Foreign Investment, which introduces major amendments to the Law of Ukraine On Employment. The Law shall enter into force on 27 September 2017.

In particular, the list of documents to be submitted for foreigners applying for a work permit has been amended. Now, the employer must submit the following documents:

- an application in which the employer confirms that the applicable Ukrainian laws do not require Ukrainian citizenship as a prerequisite for the position to be occupied by a foreign national and that such a position does not grant access to state secrets;

- a copy of the foreign national's passport (pages with personal data) with its translation into Ukrainian;
- a passport photo of the foreigner in colour of size 3.5 x 4.5 cm.

Depending on the category the foreign national belongs to, the following documents shall be additionally submitted:

- for all categories of foreign employees – a copy of the draft employment agreement with the foreign national certified by the employer;
- for employed founders (shareholders) or ultimate beneficial owners (controllers) of the legal entity – the employment office shall on its own collect the information on whether the authorized capital of the company has already been formed at the time of applying for the work permit;
- for graduates from the universities, listed in the top 100 of a renowned ranking of the world's best universities – a copy of the university diploma, duly legalized and translated into Ukrainian, the translation being properly certified;
- for foreign employees of artistic professions – notarized copies of the documents identifying the object of the copyright and (or) copyright-like rights of the author or certifying the copyright;
- for foreign IT professionals – the competent authority shall on its own collect the information on whether software development is included in the registered activities of the employer;
- for foreign posted employees – a copy of the agreement (contract) concluded between the Ukrainian company and the foreign company providing for employment of foreign nationals or stateless persons posted by the foreign employer to Ukraine to carry out a particular scope of work (service);
- for intracompany transferees – a resolution of the foreign company on the transfer of the foreign national or stateless person to Ukraine and a copy of the agreement on the transfer to Ukraine concluded between the foreign national or the stateless person and the foreign company, indicating the time period of work in Ukraine;
- for foreign nationals or stateless persons in respect of which a decision on granting refugee status or subsidiary protection has been taken – a copy of the decision on granting refugee status or subsidiary protection and of the document certifying claiming asylum in Ukraine.

The following documents have been removed from the list:

- a certificate of good conduct;
- a statement of the company confirming that applicable Ukrainian laws do not require Ukrainian citizenship as a prerequisite for the position to be occupied by a foreign national and that such a position does not grant access to state secrets (from now on the corresponding confirmation shall be stated in the text of the application);
- a diploma (except for the cases where the work permit is to be obtained by graduates from the universities, listed in the top 100 of a renowned ranking of the world's best universities);

- a medical certificate from a health care institution certifying that a foreign national does not suffer from chronic alcoholism, drug addiction or infectious diseases.

In addition, a new minimum pay rate is set for foreign employees:

- five statutory minimum wages (about UAH 16,000 per month in 2017) – for foreign employees in non-governmental organizations, non-profit organizations and educational institutions;
- ten statutory minimum wages (about UAH 32,000 per month in 2017) – for all other groups of foreign employees.

However, the minimum wage requirements do not apply to the following groups of foreign employees: high-paid foreign employees (foreign nationals whose salary is set to at least 50 minimum wages), employed founders or shareholders or ultimate beneficial owners (controllers) of the legal entity, graduates from the universities, listed in the top 100 of a renowned ranking of the world's best universities, included in the list of university rankings, approved by the Cabinet of Ministers of Ukraine, foreign employees of artistic professions, foreign IT professionals.

The fee schedule for granting work permits has also been amended. From now on, the fee will depend directly on the subsistence minimum and the period for which the work permit is granted:

- six subsistence minimums (UAH 9,600 in 2017) – for work permits issued for a period of one to three years;
- four subsistence minimums (UAH 6,400 in 2017) – for work permits issued for a period of six months to one year;
- two subsistence minimums (UAH 3,200 in 2017) – for work permits issued for a period of up to six months.

Moreover, the term of work permits are to be defined depending on the category of foreign employees:

- for the duration of the employment agreement, but for a maximum of three years – for high-paid foreign employees, founders or shareholders or ultimate beneficial owners (controllers) of the legal entity, graduates from the universities, listed in the top 100 of a renowned ranking of the world's best universities, included in the list of university rankings, approved by the Cabinet of Ministers of Ukraine, foreign employees of artistic professions, foreign IT professionals;
- for the duration of a foreign economic agreement, but for a maximum of three years – for foreign posted employees;
- for the duration of the resolution of the foreign company on the transfer of the foreign national or stateless person to Ukraine and the agreement on the transfer to Ukraine concluded between the foreign national or the stateless person and the foreign company – for intracompany transferees;
- for the duration of the employment agreement, but for a maximum of one year – for all other foreign employees.

The law also regulates conditions of taking a second job. Thus, if a second job is taken by a high-paid foreign specialist, no work permit is required, provided that the duration of the employment agreement for the second job does not exceed the duration of the work permit granted for the main occupation.

All other foreign employees may, in addition to the main occupation for which the work permit has been granted, take a second job without a work permit to replace a temporarily absent employee, provided that simultaneous occupation of several positions does not exceed 60 calendar days within one calendar year.

In all other cases, holding several concurrent positions with the same or different employers is only possible if a work permit for each position is obtained.

RENEWABLE ENERGY

Heat generation from renewable energy sources: new rules

On 15 April 2017, the amendments to the Law of Ukraine On Heat Supply came into force, providing for amending the procedure of setting tariffs for heat produced by plants (including heating plants, thermal power stations and combined heat and power plants) from renewable energy sources. In particular, the amendments refer to heat supply to consumers financed from the state and local budget (administrative buildings, kindergartens, hospitals, schools, etc.).

The main advantage of the new regulation is the possibility of replacing natural gas with renewable energy sources and increasing the tariff for the "alternative" heat supply.

From now on, the tariff for such heat will be set at 90% of the tariff for heat generated from natural gas (for the needs of the respective category of consumers). If the company does not produce heat from natural gas, the tariff is set at 90% of the weighted average tariff for the heat produced from natural gas.

The weighted average tariff for the heat generated from natural gas is approved on a quarterly basis by the Ukrainian State Agency for Energy Efficiency and Energy Saving. Companies generating heat from renewable energy sources shall submit an application to local self-governing bodies indicating the rate of the tariff to be set. If, within 30 calendar days from the date of receipt of the application, the self-governing body does not set the tariff rate or does not state a reasonable refusal to do so, the respective tariff shall be deemed approved (the principle of "tacit consent").

The tariffs for the heat produced from renewable sources approved until 15 April 2017 (date of entry into force of these amendments to the Law) shall continue to be applied until 31 December 2020 and may only be adjusted at the request of the respective heat generating company.

The Law of Ukraine on the electricity market enters into force

On 11 June 2017, the Law of Ukraine On the Electricity Market entered into force. The law is aimed at complying with Ukraine's obligations under the Treaty establishing the Energy Community and the Association Agreement between Ukraine, of the one part, and the European Union, the European Atomic Energy Community and their Member States, of the other part, and focuses on the implementation of legislative acts of the Energy Community in the energy sphere.

The Law provides for the legal and organizational separation of distribution and transmission of electricity from other activities in compliance with the requirements of the Third Energy Package, which is a prerequisite for economic competition on the electricity market.

In accordance with the recommendations of the Energy Community Secretariat, the Law provides for replacing the Cost Imbalance Allocation Fund with a new mechanism to support feed-in tariff electricity producers.

The Law provides that the entire amount of electricity generated from renewable energy sources shall be procured by a guaranteed buyer. The expenses of the guaranteed buyer associated with such a procurement shall be reimbursed by the transmission system operator. The obligations of the guaranteed buyer may be assigned by the Cabinet of Ministers of Ukraine to any market participant.

Moreover, the Law introduces the liability of the feed-in tariff electricity producers for imbalances (the deviation of the actual volume of delivered electricity from the daily charts of electricity delivery for the following day) and establishes a special procedure for imbalances compensation.

Electricity market organization

The main aim of the Law is to ensure the reliable and safe supply of electricity to consumers, taking into account their interests, minimizing the electricity supply costs by defining the organizational structure and principles of functioning of the electricity market, the basic foundations and prerequisites for its reform at the legislative level.

The Law provides that the electricity market shall consist of the following parts:

1. bilateral contracts are contracts between two market participants outside the organized market segment, except for contracts for electricity supply to consumers;
2. day-ahead market is an electricity market segment where the electricity is traded for the delivery on the day following the day of trading;
3. intraday market is a market segment where the electricity trading takes place around the clock after closing of the day-ahead-market and during the day of real time delivery of electricity;
4. balancing market is a market organized by the electricity transmission system operator for the purpose of ensuring sufficient electricity supply capacity necessary for real-time balancing of generation volumes and electricity import, consumption and electricity export, regulation of system restrictions in the

united energy system of Ukraine as well as financial regulation of electricity imbalances;

5. market of ancillary services is a system of relations arising in connection with the purchase of ancillary services by the transmission system operator from the providers of ancillary services;
6. retail market is a system of relations arising between electricity consumers and electricity suppliers in the process of electricity supply, as well as relations with other market participants who provide electricity supply related services.

The Law adds a new player – traders – to the list of market participants. According to the Law, a trader is defined as any entity that buys electricity exclusively for the purpose of reselling it, except for selling to consumers. Traders shall sell and purchase electricity under bilateral (direct) contracts on the day-ahead or intraday market. The presence of traders on the electricity market should have a positive effect on the market liquidity and contribute to limiting significant price fluctuations on the market.

The Law also provides for a transition period (up to 24 months from the date of the Law entry into force) during which the necessary technical, organizational, economic and regulatory preconditions for the establishment and smooth functioning of the Ukrainian electricity market shall be created.

System of special obligations

The Law introduces a system of special obligations to ensure the public interest protection in the functioning of the electricity market.

Special obligations include, *inter alia*:

- purchase of electricity at the feed-in tariff;
- provision of universal services – supply of electricity to residential and small non-residential consumers which ensures their rights to be supplied with electricity of certain quality;
- serving as “last hope” supplier – assigned electricity supplier who, in certain circumstances, may not refuse to enter into a contract for electricity supply for a limited period of time with a consumer;
- payment of compensatory payments;
- provision of ancillary services at the price set by the National Commission for State Regulation of Energy and Public Utilities (Regulatory Body).

Special obligations to be imposed by the Cabinet of Ministers of Ukraine or the Regulatory Body on the market participants shall be clearly defined, transparent, non-discriminatory and temporary.

Support of reconstruction of several combined heat and power (CHP) plants

The final provisions provide that the Cabinet of Ministers of Ukraine shall pass a resolution on the temporary support of reconstruction of several combined heat and power (CHP) plants. However, the decision on the support for each individual CHP plant shall be made subject to the following conditions:

- the cost of electricity generated by the CHP plant without reconstruction and/or modernization must be higher than the market price;
- absence of alternative sources of thermal energy in the heat supply area of the CHP plant;
- availability of feasibility study based on the results of the CHP plant technical condition audit regarding the feasibility of the CHP plant reconstruction and/or modernization in comparison with the construction of new alternative thermal energy sources;
- availability of feasibility study regarding the reconstruction feasibility in comparison with the construction of new alternative thermal energy sources.

DLF PUBLICATIONS

The Polish issue of Taxes in Ukraine 2017



This brochure is a joint publication of DLF attorneys-at-law and the Department of Trade and Investment Promotion of the Embassy of Poland in Ukraine, dealing with general information about tax rates, objects and bases of taxation in Ukraine, as well as peculiarities of taxation of certain categories of taxpayers, non-residents, in particular (as of 1 July 2017).

[View the Polish issue of Taxes in Ukraine 2017 \(pdf\)](#)

[View the English issue of Taxes in Ukraine 2017 \(pdf\)](#)

The Polish issue of Trademark protection in Ukraine



This brochure is a joint publication of DLF attorneys-at-law and the Department of Trade and Investment Promotion of the Embassy of Poland in Ukraine, providing a general guidance on legal protection of trademark in Ukraine, in particular with regard to the process and requirements for proper registration, possible court actions for protection, fair use conditions, criminal, antimonopoly, and customs aspects of trademark usage.

[View the Polish issue of Trademark protection in Ukraine \(pdf\)](#)

[View the English issue of Trademark protection in Ukraine \(pdf\)](#)

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This newsletter is intended to provide a brief overview of current changes to the Ukrainian legislation and should not be viewed as legal advice. For more details or if you would like a specific advice, please, e-mail the named contact persons or use our contact form.

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