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Setting up a business in Ukraine

The regulatory environment and terms of registering and doing business in Ukraine improve every year, which is evidenced by the steady rising of Ukraine's rank for conducting business in many international organizations. As of today, the scope of documents and terms of registration of companies in Ukraine is reduced and usually does not cause much difficulty. These changes alter the attitude of foreign investors to Ukraine and increase the presence of foreign business in the country.

The most popular types of business companies that have shown themselves to good advantage in the eyes of foreign investors is a limited liability company, joint stock company, representative offices of a foreign company in Ukraine and sole proprietorship.

4.1. Private entrepreneur

The easiest way to carry out an economic activity in Ukraine is registration of an individual, including a non-resident, as a private entrepreneur. Registration as a private entrepreneur means that such a person shall own business without establishing a legal entity. Information about the private entrepreneur is entered into the Unified State Register, it is public and may be verified at any stage of activity of such a person.

The main advantage of registering as a private entrepreneur is the option to choose the simplified tax system, which greatly facilitates financial reporting to the regulatory authorities and allows individuals to apply reduced fixed tax rates on income. However, this type of business is not for all market actors, as it sets certain limitations on the amount of allowable annual turnover, the number of employees and admissible activities.

Although carrying out economic activities as a private entrepreneur with or without use of the simplified tax system provides several advantages, one should not forget about liability related to the activities of an individual in such a legal status. Private entrepreneurs are responsible for liabilities associated with business activities for the full extent of their assets. At that, the Ukrainian law does not provide for apportion of property used by the entrepreneur

for his/her business activity from the bulk of assets owned by an individual. Therefore, on the basis of a court ruling a penalty may be charged on all the debtor's property, regardless of whether it is used for business purposes or not.

In any case, a private entrepreneurship is the most mobile way of doing business in Ukraine, which does not require complex preparation of financial statements.

4.2. Limited liability company (LLC)

In Ukraine, entities may be established with a view to go beyond the limits set out for carrying out economic activities by private entrepreneurs, reduce the risk of the investor's personal liability and be able to combine equity and assets to achieve common financial goals. The most common legal type of a legal entity for doing business is a limited liability company.

4.2.1. LLC registration

Registration of a limited liability company may be carried out in electronic form and, provided there are no comments from the state registrar to the documents submitted by the applicant, it shall be completed within one business day. If past experience is any guide, obtaining all registration documents, opening a bank account, obtaining a seal (if desired) and customs registration take about one week.

When registering a limited liability company, such a company shall comply with certain formal requirements: the founders of a limited liability company need to develop a charter (the main statutory document of a company), in which the name, location, activities, rights and obligations of the members, share size, the director's rights and obligations, authorized capital and profit distribution methods are specified. The founders shall appoint the director and determine the person in charge of the state registration with the state authorities in the protocol (minutes) on the company establishment.

The founders' presence while the charter and protocols being signed as well as at the registration procedure itself is not required. Signing statutory documents, registering the company, as well as receiving all the necessary documents may be exercised by an authorized representative on the basis of a notarized (legalized/apostilled) power of attorney.

4.2.2. Authorized capital

The legislation of Ukraine does not establish requirements for the minimum authorized capital amount of a limited liability company. The authorized capital of a limited liability company may be set up on the basis of the asset, non-asset and non-cash contributions. In case of contribution to the authorized capital in the form of assets or property rights, a monetary valuation of such items shall be carried out. In turn, the members' financial contributions are transferred to the bank account of the company.

4.2.3. Shareholders of the company

Shareholders of a limited liability company may be individuals and legal entities, including non-residents. In addition, these persons do not necessarily have to be located or reside on the territory of Ukraine. To confirm the data on the non-resident legal entities as sharehold-

ers, the state registrar shall be provided with an extract from the commercial, banking or other registry of the country of registration of such persons, which, if necessary, shall undergo the legalization or apostillization procedure.

A limited liability company may be established by one shareholder, and the sole shareholder of a limited liability company (an individual) may act as the director of the company. It is also worth mentioning that a limited liability company may not have another business entity as its sole member, which has a sole member in turn. The maximum number of members of a limited liability company is 100 persons.

4.2.4. Liability of the shareholder

Opting for a limited liability company as a legal type of business activity in Ukraine is attractive primarily due to the fact that shareholders are not liable for the obligations of the company. The shareholders assume the risk of loss related to the company's activities within the scope of their contributions.

However, it should be noted that in the event of a shareholder's personal debt, such as in case of his/her failure to satisfy creditors' claims by his/her other assets, an enforced collection of the property of a limited liability company proportionate to the share of such a shareholder in the authorized capital is allowed. Thus, personal debts of a shareholder of a limited liability company may lead to cessation of her/his participation in the company.

4.2.5. Governing bodies

The governing bodies of a limited liability company are the general meeting, the audit commission and the director. The supreme body of a limited liability company is the general meeting. The general meeting of shareholders determines the company's main activities and appoints the director of the company in charge of management over the company's operational activities.

The director on behalf of the company shall sign any contracts. Therefore, upon the appointment of the director, the charter and the employment contract shall clearly stipulate the powers of the director in order to prevent abuse on his/her part.

The audit commission may be established to monitor the director's activities in a limited liability company. Results obtained by the audit commission based on its inspection shall be submitted to the general meeting.

4.2.6. Funding of activities

Upon establishment, as well as at further stages of a limited liability company's activity, its funding may be carried out in several ways. This shall be done primarily by its shareholders' contributions to the authorized capital, non-repayable financial assistance from the company's shareholders or by providing a credit/loan by any of the shareholders to the company. The Ukrainian law does not stipulate limits on the amount of credit that may be provided by shareholders to their company, but the shareholder granting loans shall take into account peculiarities of taxation of such loans and adhere to thin capitalization rules, as well as consider the requirements of the currency regulation of Ukraine, if such a loan is granted by a non-resident.

4.3. Joint stock company

Another legal type that protects members against any personal liability for the company's debts is a joint stock company. The legal regulation of joint stock companies is very similar to the limited liability companies' regulation. However, joint stock companies have their own features, such as an amount of the authorized capital (the minimum amount equals to approximately USD 76,000), the requirement to register and submit reports to the National Commission on Securities and Stock Market.

It should be noted that the joint stock company registration procedure is more complicated than that of a limited liability company. To establish a joint stock company the founders shall make notification of intent to create a joint-stock company, subscribe for shares, hold a statutory meeting and carry out a joint stock company state registration with a number of regulatory authorities.

A joint stock company is also distinguished by the special requirements to the content of the charter. The charter shall contain information on the types of shares issued, their nominal value, ratio of different types of shares, the number of shares purchased by the founders, consequences of default on the redemption of shares, the term and procedure for annual payment of dividends at the end of a year, etc.

4.4. Representative office of a foreign company

A foreign company may exercise certain activities in Ukraine without establishing a legal entity. Such activities are carried out through representative offices of a foreign company in Ukraine, acting on behalf of the foreign company they represent. A representative office of a foreign company does not have its own charter, as it acts as a separate unit of a foreign company. A head of a representative office acts under the power of attorney issued by a foreign company.

The procedure for registration of a foreign company representative office significantly differs from the procedure of business entities registration. Thus, the Ministry of Economy of Ukraine carries out registration of representative offices by adopting a decision on registration within 60 working days. The state duty for registration of a representative office of a foreign company in Ukraine totals USD 2,500.

Foreign companies open their representative offices in Ukraine usually for the purpose of non-commercial activities, such as representation of their interests, data collection, market analysis or monitoring.

4.5. Mergers and Acquisitions

Additionally, one may enter the Ukrainian market by purchasing shares in an already established company in Ukraine. The main advantage of the purchase of shares in an existing company is the fact that it has already built a management structure, it has assets necessary for its activity, contractual relationships with partners and customers, as well as experience in specific areas and a certain market share. To reduce the risk of hidden liabilities a purchaser needs to conduct a detailed legal and financial audit (due diligence) of the firm.

When purchasing a stake in a Ukrainian company one needs to remember to follow the provisions of the Ukrainian antimonopoly law.



M&A transactions in Ukraine: antimonopoly aspects

This brochure provides a detailed description of the legal basis for the antimonopoly control over economic concentrations in Ukraine, incl. the structure and functions of the controlling authorities and principles of their functioning, liability for breach of antimonopoly law, etc.

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