

Interim director of a Ukrainian company

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1. Why to appoint an interim director?

Foreign companies and investors setting up a business in Ukraine often face the issue of interim directorship. This is due to the fact that, according to the current Ukrainian law, a foreigner cannot become a director without obtaining a relevant work permit. An application for a work permit shall be submitted to a labour office, signed by an acting director of an already registered Ukrainian company.

Therefore, a Ukrainian citizen or a foreigner holding a permanent residence permit in Ukraine is first temporarily appointed as a director. Formally, i.e., in legal terms, s/he is registered as a director of the company and bears all usual rights and duties of a permanent director. However, it is important for foreign founders to consider crucial organisational and legal consequences entailed by the appointment of such a temporary director.

2. Keeping accounting records

Under the Ukrainian law, all companies must keep accounting and financial records. Accounting must be carried out continuously from the day of registration of an enterprise until its liquidation.

The owner, i.e., the founder of the company, is responsible for organising accounting. It is the owner who shall ensure proper organisation of the accounts. This is possible in several ways, in particular:

1) one of the best options is to introduce a position of (hire) an accountant into the staff of the Ukrainian enterprise or to create an accounting department headed by a chief accountant;

2) an auditing or accounting firm can be engaged (based on an accounting service contract).

3. Interim director's remuneration

Since an interim director of a Ukrainian company is an employee, according to Ukrainian law a salary should be accrued and paid to him/her. At the same time, it is obligatory to comply with minimum wage guarantees. A director cannot refuse to receive a salary.

3.1. The amount of an interim director's salary

The salary may be minimal. Minimum wage is the minimum amount of remuneration at the monthly (hourly) rate of works performed by an employee, currently set at UAH 6,500 (approx. USD 156).

In other words, legal entities using hired labour must accrue and pay their employees, including the (interim) director, at least 6,500 UAH (approx. USD 156) per month. Failure to comply with this rule is punishable by a fine of UAH 13,000 (approx. USD 313).

The Ukrainian legislation provides for cases when it is possible to pay less than the minimum wage – for the time actually worked. This is allowed in case of part-time employment.

3.2. Timing of salary payment

As for salary payments, it must be taken into account that according to the current legislation of Ukraine, salaries must be paid as follows:

- on working days;
- twice a month;
- at intervals not exceeding 16 calendar days;
- no later than seven days after the end of the period for which payment is made.

3.3. Salary taxation

Each employer as a tax agent must withhold (deduct) personal income tax (PIT) at the rate of 18% and the military duty at the rate of 1.5% on every salary payment to a director.

In addition, an employer must accrue and pay the single social contribution (SSC) in the amount of 22% of a director's salary to the state budget of Ukraine. At present, the minimum SSC amounts to UAH 1,430 (approx. USD 35).

4. Registration of a permanent director

Once a foreigner (e.g., a founder of a Ukrainian company) obtains a work permit in Ukraine and is appointed as (permanent) director of the company, the relevant changes are made in the Unified State Register of Legal Entities (hereinafter, the USR). But registration in the USR is not sufficient for a complete transfer of powers to a new director in the financial and tax sphere.

For this purpose, the new (permanent) director must register with the bank where the Ukrainian company opened its current accounts and obtain electronic keys for filing financial statements.

Note: both the registration of a (permanent) director with a bank and the issuance

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of electronic keys require personal presence of the director. Under current Ukrainian law these actions cannot be performed on the basis of a power of attorney or remotely from abroad.

Accordingly, to avoid blocking activities of a given Ukrainian company, the foreigner appointed as its director should plan his trip to Ukraine in a timely manner, upon obtaining a work permit in Ukraine.