

## **New rules for registration of branches and representative offices of foreign companies in Ukraine**

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On 3 September 2024, Law of Ukraine No. 3257-IX On Amendments to Certain Legislative Acts of Ukraine on the Regulation of Activities of Separate Subdivisions of a Legal Entity Established in Accordance with the Legislation of a Foreign State (the "Law") dated 14 July 2023, will come into force.

The Law aims to create a favourable legislative framework that will regulate the legal status of separate subdivisions of legal entities, including branches and representative offices of foreign non-governmental and charitable organisations established under the laws of a foreign country, and will help to standardise, simplify and accelerate the procedures for establishing and terminating their activities in Ukraine.

The Law regulates the registration, activities and termination of separate subdivisions of legal entities established under the laws of a foreign country in Ukraine.

### **1. State registration of branches and representative offices of foreign companies in Ukraine**

The registration of representative offices and branches of foreign entities has been delegated from the Ministry of Economy of Ukraine to state registrars, which significantly increases the number of registration offices where documents can be submitted.

Related article: Representative office of a foreign company in Ukraine

In order to register the establishment of branches and representative offices of foreign companies, the following documents must be filed with the state registrar:

- an application for state registration of the establishment of a separate subdivision (branch or representative office);
- a decision of a foreign legal entity to establish a separate subdivision, which must contain information on the name of the separate subdivision, its location, head (in particular, surname, name, patronymic (if applicable) and date of commencement of powers), information on approval of the regulations or other constituent document of the separate subdivision;
- the decision of the National Bank of Ukraine on accreditation – in case a separate subdivision of a foreign bank is being registered;
- a document confirming the registration of the foreign legal entity in the country of its location (extract from the commercial, banking, or court register);
- the ownership structure of the foreign legal entity, as well as documents on the ultimate beneficial owner(s). In the absence of the ultimate beneficial owner of the legal entity, a note indicating the substantiated reason for its absence shall be entered into the application for state registration;
- a copy of the ID document confirming the citizenship (nationality) of the ultimate beneficial owner of the legal entity;
- regulations or other constituent document of a separate subdivision of a legal entity, which shall be in writing, stitched, numbered and signed by an authorised person of the relevant legal entity;
- a document on payment of the administrative fee (1 subsistence minimum for able-bodied persons, currently UAH 3,028 or about USD 75).

The review period for documents for registration of separate divisions in Ukraine has been reduced to 5 business days. However, a requirement has been added that only specially designated primary financial monitoring entities that operate solely (notaries, lawyers, auditors) may act as representatives for submitting documents for registration.

## **2. Procedure for liquidation of branches and representative offices of foreign companies**

A branch or representative office of a legal entity established in accordance with the laws of a foreign country shall be liquidated in Ukraine:

- by the decision of such legal entity established in accordance with the legislation of a foreign state;
- by a court decision on liquidation of a branch or representative office of a legal entity established in accordance with the laws of a foreign country - following a claim of the relevant state authority against the legal entity that established such branch or representative office;
- in other cases provided for by the legislation of Ukraine.

Liquidation of a branch and representative office of a foreign legal entity involves the following steps:

- notifying the state registrar on the liquidation of the branch or representative office;
- appointing a liquidation commission and a liquidator;
- conducting an inventory and inspections by the relevant state authorities;
- consideration of creditors' claims and their satisfaction;
- submission of documents to the archive;
- making an entry in the Unified State Register on the termination of a branch or representative office.

If there are insufficient funds to satisfy the creditors' claims, the liquidation commission shall sell the property of the branch/representative office. If the value of the property owned by a branch/representative office of a legal entity is insufficient to satisfy creditors' claims, creditors have the right to satisfy such claims at the expense of other property of the foreign legal entity in question.

The property vested by the foreign legal entity in the branch/representative office and remaining after satisfaction of creditors' claims (including, inter alia, taxes, duties, single social security contribution and other funds payable to the state or local budget, the Pension Fund of Ukraine, social insurance funds) shall be transferred to such legal entity.

### **3. Registration and accreditation rules for branches of foreign banks**

A foreign bank is entitled to open a branch in Ukraine under the following conditions:

- the state in which the foreign bank is registered has no significant reservations from the relevant international authorities regarding its compliance with international standards in the field of prevention and counteraction to money laundering and terrorist financing;
- banking supervision in the country where the foreign bank is registered, taking into account the information received by the National Bank of Ukraine (NBU), generally complies with the Core Principles for Effective Banking Supervision of the Basel Committee on Banking Supervision, in particular in terms of ensuring effective supervision on a consolidated basis;
- the legislation of the state in which the foreign bank is registered, according to the NBU's assessment in line with the procedure established by the NBU, does not contain provisions that may impede/restrict interaction between the NBU and supervisory/controlling authorities of such state and/or prevent the NBU from reactivating its supervisory powers over such branch of a foreign bank;
- the minimum amount of the branch's authorised capital at the time of its accreditation is at least UAH 120 million (approx. USD 2,885,000);
- a written undertaking by the foreign bank to unconditionally fulfil its obligations arising from the activities of its branch in Ukraine.

First, the foreign bank must be accredited by the NBU. For this purpose, the following documents must be submitted:

- a request from a foreign bank to open a branch indicating its location in Ukraine;
- a document confirming the state registration of the foreign bank in its country of origin;
- a decision of the authorised body of the foreign bank to open a branch;
- regulations on the branch approved by the authorised body of the foreign bank;
- information proving compliance of the head and chief accountant, chief risk manager, chief compliance officer, head of the internal audit unit of the foreign bank branch with the NBU requirements for professional suitability and business reputation;
- a copy of the charter of the foreign bank;
- financial statements of the foreign bank for the past 3 years confirmed by an independent auditor;
- written permission to open a branch of a foreign bank in Ukraine issued by a state or other authorised supervisory authority of the state in which the foreign bank is registered, or a written assurance from the foreign bank that there are no requirements for obtaining such permission under the laws of the relevant state;
- a notice from the authorised supervisory authority of a foreign state on supervision of the foreign bank's activities;
- a written commitment of the foreign bank to unconditionally fulfil its obligations arising from the activities of its branch in Ukraine;
- documents confirming the deposit of funds in the amount of the branch's authorised capital;
- a copy of the payment document confirming payment of the accreditation fee for a foreign bank branch set by the NBU;
- copies of internal regulations (their list) that regulate the provision of banking and other financial services, determine the procedure for internal control and risk management;
- information in the form prescribed by the NBU, which allows to conclude that the organisational structure and relevant specialists necessary to ensure the provision of banking and other financial services, banking equipment, computer hardware, software, premises in accordance with the NBU requirements are available;
- a business plan for 3 years, drawn up in accordance with the NBU requirements;
- documents specified by the NBU, which allow to draw a conclusion about the business reputation of the foreign bank;
- information determined by the NBU on the owners of substantial shares in the foreign bank.

After accreditation, the foreign bank must draft and submit to the state registrar the documents required for state registration of its representative office in the Unified State Register of Legal Entities, Private Entrepreneurs and Public Organisations, after which the foreign bank's representative office will be entered in the State Register of Banks. Such an entry is necessary for the representative office of a foreign bank to start its banking activities in Ukraine.