

Determining the powers of a Ukrainian director

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1. Powers of a Ukrainian director

A director of a Ukrainian limited liability company carries out day-to-day management of the company's activities and makes decisions on operational matters. In particular, he/she represents the company in relations with third parties (state authorities, contractors), enters into contracts on behalf of the company, arranges and oversees accounting, hires and dismisses employees, and is responsible for the company's compliance with the law.

A director is appointed and dismissed by the general meeting of shareholders. The company's charter may impose additional requirements or procedures for the appointment or dismissal of a director.

Related article: Limited Liability Company in Ukraine

A director has the right to act on behalf of the company without a power of attorney, representing its interests in all organisations and institutions. A director cannot be deprived of the right to represent the company's interests as defined by Ukrainian law, which may have a negative impact on the company in terms of possible abuse of power. However, a director's powers of representation may be limited by clearly defining them in the charter (with the corresponding information entered into the Unified State Register).

The general meeting of shareholders may restrict the rights of the executive body (director) to perform certain transactions. It is advisable to include in the charter a provision stating that certain transactions of the director require prior written consent of the general meeting of shareholders. Examples of such transactions include obtaining loans, credits and other borrowed funds or providing them to third parties, as well as entering into and terminating contracts or amicable agreements for an amount exceeding a certain threshold. It is also recommended that opening and closing of bank accounts should require prior approval of the general meeting of participants.

An agreement entered into by a director in excess of his or her powers set out in

the charter may be declared void.

2. The 'four eyes' principle

Restrictions on the director's representative powers can also be achieved through the implementation of the 'four-eyes' principle, which should be set out in the company's charter by requiring a second signature of other members of the executive body (management) for transactions specified in the charter. Such a restriction should also be entered in the Unified State Register.

3. The first and second signature

The right of the first and second signature in a Ukrainian LLC is regulated by the company's constituent documents, in particular, the charter and resolutions of the general meeting of shareholders.

Below we will discuss the persons who have these rights.

3.1. Right of first signature

The right of first signature usually belongs to the director, unless otherwise provided by the charter or a resolution of the general meeting.

This right enables the director to sign important documents and contracts on behalf of the company without the need for further approval.

The first signature most often applies to the following documents:

- bank documents;
- agreements (legal transactions) with third parties;
- official applications to state authorities;
- financial documents (balance sheets, reports, tax statements).

A company director receives this right automatically as the company's executive body. The company's charter may stipulate that the right of first signature is also granted to other persons (e.g., directors of the directorate in the case of a collegial executive body).

3.2. The right of second signature

The right of second signature is usually reserved for the person responsible for the company's financial or accounting matters. This can often be the chief accountant or other person responsible for finance.

The second signature is used for additional control over financial transactions and provides an additional level of security when signing documents.

This right may also be granted to other persons, such as interim directors, members of the management board or heads of relevant departments.

The company's charter or other (internal) documents may specify who has the second signature and in what cases it should be used (e.g., for financial documents, banking transactions).

3.3. Setting out the right of signature in internal documents

Setting out the right of first and second signature in company documents is an important aspect of arranging the company's work and controlling its activities. This right is regulated by the company's charter and other (internal) documents, such as the regulations on the executive body or the regulations on financial control.

An LLC charter is the main document that regulates the company's activities, namely, it establishes:

- who has the right of first signature (usually a director or general director);
- who has the right of second signature (this may be the chief accountant, financial director or other person responsible for financial transactions);
- restrictions and conditions on the use of the signature right (e.g., which documents or transactions require both signatures).

The charter can clearly determine:

- which documents only require the first signature;
- which documents require both signatures (e.g., for transactions involving significant amounts or for signing financial documents);
- the mechanism for delegating the right of signature to other persons (e.g., interim directors or other employees under a power of attorney).

If the company has a collegial executive body (management), the powers of first and second signature may be regulated in more detail in the regulation on the executive body. This document defines the powers of all members of the executive body and the decision-making procedure.

The right of first signature usually belongs to the company's director, and the right of second signature to the chief accountant or other person responsible for financial matters. However, these rights may be extended or modified in accordance with the company's charter and internal resolutions.

3.4. The first and second signature with a bank

The first and second signature with a bank is a mechanism used for additional control over the company's financial transactions. It ensures the process reliability and transparency by involving two persons in signing important financial documents or payment orders.

The first signatory is usually the company's director or other officer in charge of the company's management. This person has the authority to sign most documents on behalf of the company, including agreements, contracts, and bank payment orders.

The first signature carries the most weight in financial decision-making.

The company's charter or other (internal) regulations specify who has the right of first signature and when this signature can be used.

The second signature usually belongs to the chief accountant or financial director, or another authorised person who may not be the company's employee.

In order for a foreign citizen to exercise control over the financial transactions (accounts) of a company in Ukraine, he or she must be included in the list of account managers with the right of the second signature.

A power of attorney or a resolution of the general meeting of shareholders may serve as the basis for inclusion in the list of account managers with the relevant powers.

After the company submits the aforementioned documents to the bank, the foreign citizen who has been granted the right of the second signature must be identified, i.e. come to the bank's branch in Ukraine in person with his or her foreign passport.

If a foreign citizen is outside Ukraine and is unable to enter the country for identification, it may be possible to undergo such identification at a foreign branch of the bank where the company opened an account, if such a branch is available in the foreign citizen's country of residence.

After identification and submission of all required documents, the authorised person will be entered into the company's signature card and will be granted access to the Client-Bank system.

In the future, in order to make payments and transactions on the company's accounts, it will be necessary to have the payment signed by both the first (director) and the second signature (authorised person). Without the second signature, the payment will not be carried out, which is how the control function is implemented.

The advantages of the first and second signature system are as follows:

- Security: the second signature adds an additional level of security, as important decisions are not made by a single person, but with the approval of another person.
- Control: the second signature helps to ensure financial control over major transactions and avoid possible risks of abuse or unauthorised use of funds.