

Limited Liability Company in Ukraine

1. Introduction
2. Is it necessary to go to Ukraine to register an LLC?
3. Who can be an owner of an LLC in Ukraine?
4. How complicated is the procedure of LLC registration in Ukraine?
5. How long does it take to register an LLC in Ukraine?
6. Costs in connection with LLC registration
7. What is the minimum authorized capital of an LLC?
8. How are authorities distributed between bodies of an LLC?
9. Should the director be a Ukrainian?
10. Is it possible to limit the powers of a company director?
11. How is business activity of an LLC taxed?

B

A limited liability company is the most common form of business in Ukraine. The key advantages of an LLC include no minimum requirement for the size of the authorized capital, a fast registration procedure, and the participants' liability being limited to their contributions.

Is it necessary to go to Ukraine to register an LLC?

No, it is not. All actions needed for the registration of an LLC in Ukraine may be performed either by a foreign citizen personally or by his/her proxy acting based on a power of attorney, e.g. a lawyer. A power of attorney can be issued in the country of foreigner's residence.

Involving a proxy in the registration of an LLC may be the best option considering the active hostilities in certain regions of Ukraine and the risk of missile strikes.

A power of attorney can be issued either in Ukraine or abroad. Powers of attorney and other documents issued abroad require official certification (apostilization or consular legalization – depending on the country where the document was issued).

Who can be an owner of an LLC in Ukraine?

Foreigners have the right to be members and, hence, owners of LLCs. There are no limits in this respect, including the share size in the authorized capital. Thus, a foreigner can own 100% in the company's authorized capital.

However, a foreigner willing to be a member of an LLC must first obtain a taxpayer's registration number in Ukraine (such a registration number can be

obtained within 5 working days).

Both foreign legal entities and foreign nationals can be founders (members) of an LLC. The legislation of Ukraine does not set any limits or requirements on the number of LLC members. Thus, the company can have either one member or an unlimited number of members.

Company members are not liable for company's obligations and bear the risk of losses associated with company's activities only within their shares (contributions). Company members, who have not made contributions in full, are jointly and severally liable for company's obligations within the value of the unpaid part of relevant member's contribution.

How complicated is the procedure of LLC registration in Ukraine?

This procedure is quite simple and clear – it can be divided into the following steps:

- issuance of a power of attorney for persons authorized by LLC members to sign and register a charter of the LLC on behalf of its members;
- obtaining an extract from the trade/court register of foreign legal entities (if an LLC member is a foreign legal entity);
- obtaining a taxpayer's registration number in Ukraine for a foreign citizen, if he/she is a member or director of the LLC (such registration number can be obtained within 5 working days);
- signing of the charter and minutes on LLC registration (in some cases, an approval of the charter by the Antimonopoly Committee of Ukraine is required);
- state registration of the LLC;
- opening a current bank account;
- LLC registration with the customs (optionally or if necessary).

If a foreign company is to be a shareholder of the Ukrainian LLC, information on the ownership structure and ultimate beneficial owners of the LLC has to be provided. Besides that, notarized copies of the passports of such ultimate beneficial owners and information on their place of residence are provided. If notarization of the passport's copy is done abroad, such a document requires official certification (apostilization or consular legalization - depending on the country where the document was issued).

No consent of the spouse is required for LLC registration in Ukraine.

How long does it take to register an LLC in Ukraine?

Registration of an LLC in the state register can be done within 24 hours. Receiving all registration documents, opening a bank account, and registering an LLC with the customs can take up to several working days.

Costs in connection with LLC registration

There is no state fee for LLC registration. The cost of Ukrainian notary's services depends on the number of members (founders). A notary will usually charge a fee of about UAH 600 – approximately USD 20 for notarizing each signature of a member or translator, although the cost of notary's services may vary region-wise.

What is the minimum authorized capital of an LLC?

The minimum size of LLC's authorized capital is not determined by the legislation of Ukraine. Thus, the founders jointly determine the size of the shares at their discretion (optionally – their ratio).

This means that the authorized capital can theoretically be UAH 1 or an amount in the national currency of Ukraine, equivalent to EUR 1/ USD 1. But in practice, evaluation of an authorized capital amount should be based on the fact that the company needs initial funding (e.g., for payment of rent, salaries, etc.) to support itself.

The contribution of a company member may be in cash, securities, or other property. An in-kind contribution must have a monetary value approved by a unanimous decision of the members' general meeting.

How are authorities distributed between bodies of an LLC?

Company members assist in the company management (through the general meeting) and distribution of profits.

The general meeting of members is the company's highest body and can decide on any issues of the company. In particular, they make decisions on election of a director (board of directors) and the amount of their remuneration, distribution of company's net profit and payment of dividends, etc.

A director (board of directors) is accountable to the general meeting of members and the supervisory board of the company (in case it is created), arranges implementation of their decisions, and is responsible for managing company's current activities.

Company's charter may provide for organization of a supervisory board that will be delegated with some powers of the general meeting. The supervisory board controls and regulates activities of the company's executive body within the limits of its competence.

Should the director be a Ukrainian?

At the time of LLC registration – yes, but then (after about 2-3 weeks) a foreigner can become the director. This is because Ukrainian legislation allows foreign citizens to work in Ukraine only if they obtain a work permit.

An application for a work permit must be submitted by the employer, i.e. an already registered LLC, and not by a foreign citizen. A work permit in Ukraine is issued within 7 working days.

Thus, the director must first be a Ukrainian (this may be one of our lawyers). A foreigner may be appointed to the position of a director (general director) after receiving a work permit in Ukraine.

Is it possible to limit the powers of a company director?

A director (board of directors) is accountable to the general meeting of members

and supervisory board of the company (in case it is created).

Moreover, the powers of a company director are limited as follows:

- Company's charter may provide for creation of a supervisory board that controls and regulates director's activities. It is essential that a director (board member) cannot be a member of the company's supervisory board.
- A decision on a transaction, if its value exceeds 50% of company's net assets value, is made exclusively by the general meeting of members unless otherwise provided by the LLC charter.
- When elected to the position, a director (board member) must submit to the company a list of its affiliates, and in case of their change he/she is obliged to notify the company of such changes.
- Failure of a director (board member) to notify all company members of an existing conflict of interest is the basis for termination of an agreement/contract with such person by the company without payment of compensation.
- A director (board member) of the company may not carry out business activities as a private entrepreneur without consent of the general meeting of members or supervisory board of the company; be a member of a general partnership or a full member of a limited partnership; be a member of an executive body or supervisory board of another business entity operating in the field of the company's activity. Violation of this requirement is a basis for termination of an agreement/contract with such person by the company without payment of compensation.
- In cases provided by law, a director (board member) is jointly and severally liable to the company and bears subsidiary liability for company's obligations.

Company's charter may provide for other limitations on the powers of a director (board members). We recommend specifying the powers of a director (board members) carefully, in order not to hinder company's activities on the one hand, and to avoid possible abuse by a director (board members) on the other hand.

How is business activity of an LLC taxed?

An LLC may be a taxpayer:

- under the general taxation system (income tax – 18%), VAT (20%) or
- under the simplified taxation system – 5% of income (including VAT) or 3% of income (excluding VAT). However, it is necessary to keep in mind legal limitations for the registration of a company as a taxpayer under the simplified taxation system.

Note! Alternatively, a 2% rate may be applied during martial law; however, taxable transactions are deemed to be not subject to VAT.

For a comprehensive overview of the Ukrainian tax system, please check our publication Taxes in Ukraine.