

Starting IT-company in Ukraine

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Starting an IT company in Ukraine, foreigners should take into account several features to successfully start and run an IT business in Ukraine.

1. LLC registration in Ukraine

A limited liability company (LLC) is the most popular legal structure in Ukraine among both residents and non-residents.

Documents submitted by the applicant for state registration of LLC are as follows:

- an application for state registration of a legal entity;
- a copy of the original (notarized copy) of the founders' decision on the establishment of LLC;
- a charter of the company (notarization of the participants' signatures is recommended);
- an ownership structure following the form and content determined by the legislation of Ukraine;
- a document confirming the foreign body's registration in the country of its location (extract from the trade, banking, court register, etc.) in the case of establishing a limited liability company in Ukraine by the foreign legal entity's founder (founders);
- a notarized copy of the document certifying the ultimate beneficial owner of the LLC;
- a power of attorney for persons authorized by the LLC's participants to sign and register the charter on their behalf. Powers of attorney and other documents issued abroad require official certification (apostille or consular legalization – depending on the country of the document's issuance).

2. Economic activity types

In a limited liability company's charter, as well as during the actual registration of a limited liability company, it is very important to correctly select and indicate the activity types that correspond to the Classifier of Economic Activities (KVED). The basic KVEDs commonly used in the IT business include:

62.01 – Computer programming; 62.02 – Consulting on informatization; 62.03 – Computer hardware management activities; 62.09 – Other activities in the field of information technology and computer systems; 63.11 – Data processing, information posting on websites and related activities; 63.12 – Web portals; 63.99 – Provision of other information services not included in the other groups.

Besides, depending on the specifics of a particular company, other KVEDs may be added.

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3. Tax system

When registering an IT company, a general or simplified tax system should be immediately chosen depending on the amount of planned income.

IT legal entities are entitled to choose a simplified tax system of group III, recommended to entities with total calendar year income not exceeding 1,167 minimum wages established by law on 1 January of the tax (reporting) year. Currently, it is about UAH 7 million (about EUR 218,000).

The rate of the single tax for the III group taxpayers is:

1) 3% of income for VAT payers; 2) 5% of income – in the case of VAT inclusion in the single tax.

4. Opening the bank account and authorized capital payment

After LLC's registration in the Unified State Register (USR), the LLC's director applies to the bank branch to open a current account.

Note! The presence of the director is a prerequisite for opening an account, as he/she acts on behalf of the company and is entitled to sign all the documents. The director will also need to sign a "list of persons who are entitled to manage the account under the legislation of Ukraine", certify copies of documents and receive an access to the client-bank system (different banks have different client-bank systems).

Required documents:

- a passport and identification code of the director (originals);
- an order for the director's appointment (original);
- Minutes (decision) on the director's appointment (original);
- a description of documents from the state registrar (original);
- a LLC's seal (if available);
- an ownership structure following the established form.

Some banks also require:

- passport copies of final beneficial owners (if any);
- a copy of the extract from the trade register of founders of non-resident legal entities.

When opening accounts, non-residents usually prefer verified banks with foreign investment, which have many branches in Ukraine and abroad. Such banks are open to a constructive dialogue, they don't mandate unnecessary documents, including when opening accounts.

The account's type depends on the needs of the company, the currency that will be transferred to the account (only hryvnia, or also foreign currency). In general, it is more convenient for non-residents to open a multi-currency account.

The following should be taken into account regarding the authorized capital:

- it is not necessary to indicate the amount of the authorized capital in the charter, it can be indicated only in the minutes of the founders' general meeting; if the authorized capital amount was indicated in the LLC's charter, it is necessary to submit to the state registrar the charter in a new edition every time the decision on its change was made;
- the problems with crediting funds to the company's account may arise if non-resident founders indicate the authorized capital amount in the charter (minutes) in hryvnia, as they transfer funds in foreign currency and the convertible amount in hryvnias on the transfer date and on the date of crediting to LLC's account may vary. As a result, Ukrainian banks refuse to credit funds to the account of a Ukrainian LLC, referring to the lack of legal grounds for such a credit, as the amount to be credited does not comply with the constituent documents. This can be avoided by specifying in the charter (minutes) the equivalent in foreign currency (for example, USD or EUR) and transferring this amount as authorized capital in foreign currency.

5. Employment of a foreigner as a director

If the founders want a foreigner to become the director of a Ukrainian LLC, they must first receive a work permit for him/her (excluding foreigners who are not obliged to receive a permit under Ukrainian law). In this regard, the current director of the company must submit documents to the State Labor Service following the list:

1) an application in the prescribed form; 2) copies of the foreigner's passport pages with personal data along with the Ukrainian translation, certified under the established procedure; 3) a foreigner's color photograph of 3.5 x 4.5 cm size; 4) a copy of a foreigner's employment agreement (contract) draft, certified by the employer.

An employer can receive a work permit for a foreigner subject to the salary payment of not less than 10 minimum wages, which currently amounts to UAH 60,000. (approx. EUR 1,870).

Thus, a foreigner cannot immediately become a director of a newly created LLC in Ukraine. Therefore, when registering an LLC, first a citizen of Ukraine should be

appointed as a temporary director, who will be able to submit documents to obtain a work permit for a foreigner. Commonly, a residence permit is received for the foreigner in Ukraine.

6. Office rent

As the LLC has not yet been established, it cannot rent an office on its own behalf. At the same time, when registering in the USR, it is necessary to specify the address of the LLC. Commonly companies resolve this situation by renting a legal address for registration, and after registration signing a lease agreement and, consequently, changing the location address.

If the office is found and a lease agreement needs to be urgently signed so that the premises are not leased to a third (other) person, the lease agreement can be concluded with a trustee, and after the LLC's registration such a lease agreement can be renegotiated with the LLC (there are different ways to replace the lessee in the lease agreement).

7. Legal relations of LLC and employees

When concluding employment agreements with IT employees, it is important to pay attention to the following:

- job titles must comply with the current National Classifier of Ukraine DK 003: 2010 "Occupational classification", approved by order of the State Committee of Ukraine for Technical Regulation and Consumer Policy No.327 dated 28.07.2010, otherwise the employer risks a fine for labor legislation violation, and the employee – to lose seniority to receive a pension. It should be noted that the current Occupational classification in Ukraine does not always contain the exact name of the professions existing in the IT-sphere, so companies are forced to choose from those that are closest to the modern profession, for instance (with codes):

2131.2 – Computer Communications Analyst
2131.2 – Computer systems analyst
2131.2 – Computer data bank analyst
2131.2 – Operating and application software analyst
2131.2 – Software and Multimedia Analyst
2131.2 – Computer Systems Engineer
2131.2 – Computer Software Engineer
2131.2 – Research Engineer in Computer Systems and Automatic Control Engineering
2131.2 – Designer of computer systems
2132.2 – Software Engineer
2132.2 – Programmer (database)
2132.2 – Application developer
2132.2 – Software programmer
3121 – Technician-programmer
3121 – System Administration Technician
3121 – Information Technology Specialist
3121 – Software Development and Testing Specialist
3121 – Specialist in computer program development, etc.

- IT companies in Ukraine are developing in a dynamic competitive environment, so it is important to carefully specify the terms of the agreement on trade secrets, confidential information, and non-competition to ensure the stability of the company's position in the market;
- since the performance of duties under the employment agreement in the IT company is often associated with the creation of intellectual property, it is necessary to provide in the agreement the procedure for transferring intellectual property rights to the IT company for the appropriate remuneration to avoid the employees' copyright infringement.

8. Legal relations of LLC and subcontractors (PE)

IT companies in Ukraine, in addition to employees, often involve private entrepreneurs (PE) as subcontractors in the provision of their services. When concluding agreements with private entrepreneurs, one should pay attention to the following:

- since the activities of private entrepreneurs (as well as employees) under the contract with the IT company are closely related to the creation/use of intellectual property, the contract should regulate the transfer of copyrights and/or related intellectual property rights and their payment; it is also recommended to sign the act of acceptance and transfer of copyright and related rights;
- the issues of trade secrets, confidential information, and their non-disclosure, as well as non-competition, should be regulated in detail in the same way as with employees;
- there is a risk that business relations between the LLC and private entrepreneurs will be recognized as labor relations, which entails penalties to the IT company, as well as an additional charge of a single social contribution (22%), personal income tax (18%) and military duty (1.5%).

The courts point out that the characteristic features of labor relations are:

- systematic payment of salary for the labor process (rather than its result);
- internal labor regulations obedience;
- performance of work by profession (position), defined by the current National Classifier of Ukraine DK 003: 2010 "Occupational classification", approved by order of State Committee of Ukraine for Technical Regulation and Consumer Policy No.327 dated 28.07.2010;
- employer's obligation to provide the workplace;
- compliance with the rules of labor protection at the enterprise;
- provision of services exclusively for one Customer, etc.

Therefore, contracts with private entrepreneurs should not contain signs of employment agreements, but should meet the legal requirements for business contracts:

- the contract with PE, as a business contract, can't be indefinite, but must be concluded for a definite period;
- the contract shouldn't contain a direct ban on the provision of services for other customers;
- provided services must be transferred under an act of provided services/an acceptance and transfer act or other similar act;
- it is necessary to develop a payment system enshrining it in the contract (or its annex) by types of services (works) provided (performed) by the PE following the PE registration in the KVED;
- a contract should provide for the PE's liability due to the improper or delayed provision of services, as well as for breach of confidential information non-disclosure, and non-competition agreements.