

Business in Ukraine

legal aspects

Operation “Non-resident” or Optimal variant for a foreign investor

Examples of companies that risked being first in opening their business and now successfully operate on the territory of Ukraine are among the most convincing arguments in favor of foreign companies’ investments to the economy of Ukraine prospectives. The following companies can be mentioned in this respect: Italian company IVECO, founder of CJSC Iveco-Motor Sich, Swedish company Baltic Beverages Holding AB that invested in OJSC Slavutich Beer and beverages works, Korean company Daewoo Corporation, etc.

A lot of companies with foreign investments in different organization business forms operate in Ukraine. Foreign entrepreneurs show more and more interest every day to possibilities of opening their business on the territory of Ukraine. Notion of non-resident in Ukrainian legislation is most clearly defined in the sphere of tax legal relations. Pursuant to article 1.16 of the Law of Ukraine “On profit tax of companies”, legal entities and their structural divisions which are situated outside Ukraine and are created and operate in accordance with other state legislation are deemed non-residents in Ukraine.

There are no limitations pertaining legal form of business entities that are created by non-resident in Ukraine. The following organizational legal forms are most popular: limited liability companies, joint stock companies, and subsidiaries.

Companies in all legal forms should have a statutory fund in the amount, determined by a founder, though no less than determined by the legislation. The common feature of all of them is that all legal forms of companies are created on the basis of decision taken by property owners’ or a body authorized by them. The practice shows that two founders are enough to register limited liability and joint stock companies in Ukraine. There are no limitations as to distribution of shares between them in Ukrainian legislation: ratio up to 99% to 1% is quite possible. Also there occurred cases when one of founders is a legal entity and the other one is an individual.

Founders of business entity created in Ukraine should appoint the head of a new entity (head of the board for joint stock company, or director or general director for subsidiary and limited liability company).

The fact that statutory fund of a limited liability company should be formed during one year from the date of state registry is a peculiarity of Ukrainian legislation. Lest this condition is fulfilled, the founder should pay a penalty in the amount of 10% per annum from the amount that was not paid, if not otherwise provided by statutory documents.

Minimal amounts of statutory fund are fixed for different types of companies in the following amounts:

- limited liability company: in the amount of 100 minimal wages, that is UAH 37,500 or approximately USD 7,500. Each of founders herewith has to pay 30% of the contribution prior to the date of state registration;
- joint stock company: in the amount of 1,250 minimal wages or UAH 468,750 ths. or approximately USD 93,750. It is necessary to subscribe for at least 60% of shares for state registration. At the same time, at least 30% of nominal share cost should be paid before the date of foundation meeting convocation. All shares should be distributed between founders for closed joint stock company.
- minimal amount of statutory fund for subsidiaries is not fixed.

Joint stock companies along with limited liability and private companies are most popular forms of business in Ukraine. Therefore you should pay attention at these two forms of business while choosing organizational and legal form of the company. A special heed should be paid to a limited liability company, because its minimal statutory fund in accordance with the current legislation can be relatively small if compared with the minimal statutory fund of a joint stock company.

Certain peculiarities of different organizational and legal business forms would be further considered.

Procedure of creation and further activities of **joint stock companies** is complicated by necessity to register shares' emission in a due order, to maintain shareholders' register, to submit additional reports, as well as to observe a procedure of general shareholders' meeting convocation that is prescribed by legislation (following terms, publication of an announcement in newspapers, etc.)

Overwhelming majority of joint stock companies in Ukraine are companies, created in the process of large state enterprises and collective farms privatization with dozens or hundreds of shareholders. Any shareholder in an open joint stock company herewith has the right to sell shares that s/he owns to any legal entity or individual any time. Other shareholders cannot influence such sale. It can result in undesirable changes in the list of shareholders.

Shares in closed joint stock companies cannot be distributed by subscription, sale, or quotation on exchange. They are distributed among founders, and the order of their further distribution is prescribed by founding documents of the company. As a rule, a multistage order of transferring ownership rights for shares is envisaged in these types of companies with the purpose to secure maximal stability of closed joint stock companies' shareholders. In particular, a shareholder that decided to transfer the block of shares or its part to another owner, is obligated to propose this block to all other shareholders. S/he will have the right to propose the stock to the third parties only in case the rest of shareholders refuse to purchase them, provided conditions of a transaction would not be better than those proposed to other closed joint stock company shareholders.

As opposed to joint stock companies, **limited liability company** has a mechanism of control over changes in a list of founders. Other founders of the company have preemptive rights to purchase a share. Participants have the right to alienate the share to the third parties only if other founders reject the proposal to purchase it. Division of a statutory fund into shares allows to react to amendments of changing Ukrainian legislation promptly. Limited liability company has more flexible management system if compared with a joint stock company.

Subsidiary company has an optimal scheme of its activities' management, because all corresponding decisions are taken directly by a mother company (there is no necessity to call a meeting of participants/shareholders). Meanwhile, Ukrainian legislation still did not stipulate regulation of subsidiary companies' activities in the state. As soon as its statutory fund is not divided into shares, all limitations, imposed by Ukrainian legislation at non-residents' activities in Ukraine are extended for this organizational business form.

The closest connection to a mother company, as it is the only founder/owner of a subsidiary, is an advantage of subsidiary company creation in Ukraine. Besides, subsidiary company is responsible for obligations of the founder, while the founder is responsible for obligations of a subsidiary exclusively in the amount of its contribution to the statutory fund. To add, Ukrainian legislation does not contain a norm stipulating a minimal size of a statutory fund, which means that its size is determined exclusively by decision of a founder.

In case the organizational form of subsidiary company is selected during creation of a company, control over the company activities and management are simplified, because all decisions that are necessary to be fulfilled by a subsidiary are taken by a founder independently. At the same time, it is necessary to conduct a meeting of founders in compliance with all limitations envisaged by legislation (observance of terms, prior to which participants of the meeting should be informed about calling of a meeting, presence of participants, manner of voting, distribution of votes necessary for taking a decision, etc.) in limited liability company and joint stock company to take a decision that is obligatory for execution.

Taking into account all abovementioned, limited liability company is an optimal organization form of doing business for foreign investors, which is most spread in Ukrainian residents' business as well. It provides possibility to make repartitions of participants' shares in the statutory fund as opposed to subsidiary, and does not demand to maintain shareholders' register and to submit quarterly reports on shares as prescribed in a joint stock company.

Entrepreneurs often face problems which cannot be efficiently solved without professional assistance in the process of creation and state registration of a business entity in Ukraine. State information center Derzhzovnishinform makes its contribution into achievement of priorities, set in business by clients, applying broad capacities and legal experience. Lawyers of Derzhzovnishinform will on a highly professional level guide a non-resident client through such stages of legal entity creation in Ukraine as:

- *opening of a representative office of an international company, as well as creation of new subjects of entrepreneurial activities on the territory of Ukraine;*
- *preparation and maintenance of documentation necessary for registration;*
- *elaboration of foundation documents; and*
- *consultations on the issues of non-resident activities' optimal variants on the territory of Ukraine.*

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