

Jurisdiction: Ukraine

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1. What is the general situation for foreign companies in your jurisdiction? (For example, common presence, difficulty to setup, restrictive system, open and welcoming jurisdiction?)

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Foreign companies in Ukraine may be viewed as either foreign investors making investments into the country, or as Ukrainian subsidiaries of foreign entities. Ukraine is generally an open and welcoming jurisdiction for setting up business; foreign companies are represented in different industries of the Ukrainian economy.

Foreign investors are generally treated equally with Ukrainian investors, including in terms of rights and obligations.

Overall, there are very few restrictions for foreign investors to do business in Ukraine.

2. What are the key laws and regulations that govern company law in your jurisdiction?

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The key legislative acts governing company law in Ukraine are as follows:

- a. the Law of Ukraine on Commercial Companies 1991;
- b. the Law of Ukraine on Joint Stock Companies 2008;
- c. the Law of Ukraine on Limited Liability Companies and Additional Liability Companies 2018, which will enter into force on 17 June 2018;
- d. the Civil Code of Ukraine 2003;
- e. the Commercial Code of Ukraine 2003;

- f. the Law of Ukraine on State Registration of Legal Entities, Individual Entrepreneurs and Public Organisations 2015; and
- g. Law of Ukraine on Holding Companies in Ukraine 2006.

3. What are the most common types of companies in your jurisdiction?

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The law provides for the following types of companies in Ukraine:

- a. limited liability company;
- b. joint stock company;
- c. private enterprise;
- d. additional liability company;
- e. general partnership; and
- f. limited partnership.

The most common types of companies used for business setting up in Ukraine are the limited liability company (Ukr. – *Tovarystvo z obmezhenoyu vidpovidalnistyu*) (“LLC”) and the joint stock company (Ukr. – *Aksionerne tovarystvo*) (“JSC”), as they allow the benefit of limited liability for their participants (shareholders).

An LLC is the most common and easily administered form of legal entity used in Ukraine because its establishment and operation is significantly less burdensome and time-consuming as compared to a JSC.

At the same time, a JSC may be preferable if the company plans to attract financing by way of proposing newly issued shares at a premium without the need for all the shareholders to contribute into the capital proportionally to the

amount of their stake. This is because, unlike in an LLC (the capital increases in which are usually performed at a nominal value), shares of a JSC are generally placed at the market price. Private enterprises are commonly used for businesses with insignificant amounts of transactions, and they do not have a proper legislative regulation, which makes them less attractive for foreign investors.

The remaining types of companies indicated above are usually set up only when this is explicitly required by law due to their general impracticality and additional liability to their participants.

A foreign company may also set up a representative office in Ukraine, which is an equivalent to a branch; however, a representative office does not have a separate legal personality and hence, the parent company will not have the benefit of limited liability for debts of the Ukrainian subsidiary.

4. How long does it take to set up a company in your jurisdiction? (For example, it could be as fast as X amount of time, average setup time and then as slow as Y amount of time based on your experience – are there any mechanisms to fast track setup?)

The registration of an LLC is quite easy and quick and can be completed within 1 (one) business day as of the moment of submission of all required documents with the State Register of Legal Entities, Private Entrepreneurs and Public Formations (the “State Register”) or in certain exceptional cases take a couple of days longer.

General average time for an LLC becoming operating in Ukraine is up to 2–3 weeks, including:

- a. preparation of documents for the company registration – 1–2 business days;
- b. submission of the documents to the State Registrar – 1–2 business days;

- c. registration of LLC as a value added tax (VAT) payer (if necessary) – 3–5 business days;
- d. opening of bank accounts – 10–14 business days;
- e. payment of equity – 1–2 business days.

The registration of a JSC is a longer process as compared to an LLC. Given the necessity of share issuance and registration of the share issue with the National Securities and Stock Market Commission (“NSSMC”), the whole process of JSC registration may take around 6 (six) months.

5. What are the main registration requirements for companies in your jurisdiction? What are the fees?

State registration of an LLC is free of charge. The recent updates in corporate legislation removed anti-chaining rules (where an LLC could not have a company as a sole participant, if such company is owned by a sole participant) and a restriction regarding the maximum number of participants in LLCs.

Notably, there is no requirement as to the minimum equity capital of an LLC.

Main registration requirements for a JSC are the following:

- a. a company cannot be a sole shareholder of the JSC, if such a company is owned by a sole shareholder;
- b. JSC cannot be entirely owned by shareholders – legal entities, the sole shareholder of which is one and the same person; and
- c. the minimum amount of JSC’s share capital shall be equal to 1,250 minimum wages envisaged by law (i.e., approx. EUR 125,000).

State registration of a JSC is free of charge. At the same time, fee for the registration of the share issue with the NSSMC constitutes 0.1% of the nominal value of all issued shares of the company but cannot exceed 50 minimum statutory costs of living which are currently equal to approx. EUR 2,788 in UAH equivalent.

For all companies undergoing the registration procedure, it is mandatory to disclose their ultimate beneficial owners (“UBO”), i.e., each individual who owns 25% or more of the company’s equity capital or votes, or has a determining influence on the decision-making process.

All foreign documents submitted for the company registration in Ukraine shall be duly apostilled or legalised in the country of their issuance and accompanied with the Ukrainian translation certified by a notary. Once all documents are duly prepared, an authorised representative of the applicant may submit them to the state registrar. There is no need to make any filings or registrations with tax authorities following the state registration of a company, as tax authorities will be automatically notified thereof by the state registrar. At the same time, in case the company wishes to be registered as a VAT payer or in case of reaching certain thresholds in its activity envisaged by the legislation (which require the registration as a VAT payer), the company shall undergo relevant registration procedure with tax authorities.

6. What are the main post-registration reporting requirements for companies in your jurisdiction? (For example, annual reporting requirements: what to file, to whom, is a company secretary required?)

Apart from industry-specific reporting requirements (banks, financial institutions, JSCs) which must submit specific regular and occasional reports to the state regulatory authorities (such as the National Bank of Ukraine, NSSMC, National Financial Services Markets’ Commission) and conduct a statutory audit, companies do not have any reporting obligations, unless registrable information is changed (e.g., the amount of equity capital is increased).

There are certain tax related reporting and filing requirements that companies must comply with:

- a. quarterly (by companies whose annual turnover for the previous year exceeds UAH 20 million) or annual corporate tax

filings with the Ukrainian tax authorities. The financial statements are filed to the tax authorities as an annex to the corporate tax return. Notably, the first reporting period for a newly established company is 1 (one) year;

- b. filings with Ukrainian tax authorities as income tax agent of the company’s employees (quarterly); filings with Ukrainian tax authorities as social security tax payer (monthly); also, the company should notify the tax authorities about the prospective employment in advance;
- c. filings with Ukrainian tax authorities as a VAT payer (if the company is registered as a VAT payer). Such filing is done on a monthly or quarterly basis, as applicable;
- d. filing of financial statements and other required reports depending on the type of the business activity and size of the business to the state statistics authorities (monthly, quarterly and annually).

7. Are there any controlling factors or restrictions on foreign companies in your jurisdiction?

In general, foreign and local investors are treated in Ukraine equally. The legislation stipulates that foreign investors may be restricted from certain types of business activity based on law in accordance with national security interests. Foreign investors should be aware of the following statutory restrictions:

- a. restrictions applied to either foreign or domestic investors. Based on the Ukrainian legislation, certain types of business activity may be carried out only by state-owned enterprises (for example, issuance of banknotes, carrier rockets manufacturing, etc.);
- b. certain specific restrictions (including industry-specific restrictions) applicable to foreign investors only. For example, foreign investors are not entitled to directly own agricultural land, and may only own land

designated for non-agricultural use; a foreign entity can own not more than 35% of shares in a news agency; residents of offshore jurisdictions (as defined by the Ukrainian Government) cannot own, directly or indirectly, broadcasting companies in Ukraine.

Foreign investors should also take due account of requirements of the Ukrainian competition law, in particular those obligations, under certain conditions, to obtain a merger clearance from the Antimonopoly Committee of Ukraine (“AMC”). Given the relatively low thresholds which, once met, necessitate obtaining an approval of the AMC for a transaction, acquiring shares or assets in Ukraine should be carefully considered in terms of antitrust and competition law.

8. What is the typical structure of directors (or family management structure) and liability issues for companies in your jurisdiction?

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A director or members of the board of directors (or directorate) headed by the Chief Executive Officer (“CEO”) of a Ukrainian company is a company’s executive body (sole or collective, respectively), the exact composition and competence of which is set out in the company’s statutory documents.

In general, directors can be subject to civil, administrative, and/or criminal liability for violations committed in person. The sole director or a member of the executive body becomes liable in case of damages or losses caused to the company by his/her actions or inactivity. Besides, in any such cases, the authorities of the member of the executive body can be terminated at any time, or the relevant person may be temporarily removed from the performance of his/her functions.

Administrative or criminal liability applies depending on severity of a specific violation. For instance, tax evasion, money laundering, grave violation of labour laws, or securities fraud can lead to criminal penalties including

imprisonment. Administrative liability can be imposed for violations, such as conducting business without required permits/ licenses, failure to comply with currency control regulations, breach of safety rules, etc., and it usually has the form of insignificant monetary penalties.

Upon entrance into force of the Law on LLCs in June 2018 new respective requirements will be enacted. In particular, a member of the executive body or a director will have no right to act as a private entrepreneur or a manager of other company operating in the same area of activity without the previous consent of shareholders or a supervisory board of the given company. Breach of this rule may lead to the termination of the contract with a relevant person. Besides, the supervisory board (as a new management body which can be introduced in an LLC) will be authorised to control and regulate the activities of the company’s executive body.

9. What is the minimum number of directors and shareholders required to set up a company in your jurisdiction? Are there any requirements that a director must be a natural person?

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Since the executive body may exist as either a sole (director) or collective body (board of directors or directorate headed by the CEO), a director or CEO of the company should be in place for the company registration as a legal entity. Only a natural person can be the director or a member of the board of directors of a Ukrainian company. The initial director can only be a resident of Ukraine. After the company is registered, the director can be changed to a non-resident provided that a work permit and a residence permit are obtained.

As regards the minimum number of shareholders, an LLC and JSC can be established by 1 (one) person.

10. What are the requirements on how shares are offered in your jurisdiction?

In Ukraine shares are issued by JSCs only. Shares of a JSC may be offered at the stage of incorporation as well as in the course of the company's activity by way of increasing its equity capital by means of either private or public share placement, depending on the type of JSC (private or public), respectively. Incorporation procedure requires founders to agree on the type, number and nominal value of each share in the company's capital, perform placement of shares among the company's founders and apply for the registration of the share issue with the NSSMC. In case of share placement within the procedure of the authorised capital increase based on the relevant decision of the general shareholders meeting of a JSC, existing shareholders of a JSC have pre-emptive rights for the acquisition of the newly issued shares, unless these rights have not been withdrawn by the majority of shareholders holding not less than 95% shares of a JSC.

The Law on Simplifying Business Activity and Attraction of Investments by Securities Issuers 2017, has abolished previously existing separation of share placement procedures into private and public ones. Public placement may now be undertaken not only in the course of the new securities' issuance, but also in respect of already issued securities. The acquisition of shares within share placement takes place based on the relevant agreement between an investor and a JSC.

11. What are the key laws and regulations on employment in your jurisdiction that companies should be aware of? Are there any aspects of employment law that are heavily regulated?

The main normative acts regulating employment in Ukraine are the Labour Code of Ukraine and the Civil Code of Ukraine (in case of contracting freelancers).

There are two ways of hiring employees in Ukraine:

- a. based on the labour agreement; and
- b. by means of contracting person based on respective civil-law agreement (for freelancers).

Most common types of labour agreements are:

- a. labour agreements for indefinite term;
- b. fixed-term labour agreements; and
- c. labour contract.

Employment contracts shall be executed solely in writing. Non-residents employed in Ukraine have the same labour rights as Ukrainian residents and are allowed to work in Ukraine based on preliminary obtained work permit and a residence permit.

Employers are obliged to pay the following taxes on behalf of their employees before salary payment:

- a. personal income tax in the amount of 18% of the salary base;
- b. military tax in the amount of 1.5% of the salary base; and
- c. social security tax – 22% payable on top of the salary base (at the cost of the employer).

Termination of employment by an employer is possible only for a limited number of reasons outlined by law, such as failure to perform employee's duties, inconsistency of an employee with the performed job, absence at work for more than three hours without a valid excuse, etc. Directors and other company officers, however, can be dismissed any time, and the employer would usually be obliged to pay out a severance payment for such dismissal.

12. What is the nature of the corporate governance regime in effect in your jurisdiction? What agencies or government bodies regulate corporate governance?

Corporate governance is by and large regulated by the constituent documents, as well as by the NSSMC regulations relating to public and private JSCs. The regulations provide for certain reporting obligations, maintaining certain information on the company's web-site, requirements for composition of the supervisory board of a public JSC, etc.

13. Does establishing a company in your jurisdiction grant any kind of residency rights? Are there any conditions that in order to receive these residency rights (if applicable) one must partner or establish a joint venture with a local (e.g. a citizen of your jurisdiction)?

Ukrainian legislation provides the possibility of granting temporary and permanent residency permits to foreigners, each of such permits being granted based on relevant grounds.

Unless there are grounds for permanent residency (immigration) permit being obtained by a foreign shareholder of a Ukrainian company (which are usually not applicable in the overwhelming amount of cases), the latter may be eligible for the obtainment of the temporary residency as a result of the company being established in Ukraine.

The most relevant ground for issuance of the temporary residency permit to a foreign shareholder/founder of a Ukrainian company is employment with a Ukrainian company (including as the company's CEO), subject to preliminary work permit obtainment by the company for such individual.

The valid basis for obtaining a permanent residency permit is investing into the equity capital of a Ukrainian company, the amount of funds equivalent to not less than EUR 100,000

(without necessarily being in the employment with such company).

A temporary residence permit is issued for a period of one to three years and is subject to extension for the same period of time. If a foreign individual does not have legal grounds for an extension of a temporary residence permit, he/she has to terminate its registration at the address of his place of living within 7 days and leave the country.

To receive the residency permit, a person shall firstly obtain the Ukrainian long-term visa and complete several formalities with the State Immigration Services of Ukraine.

14. When is a company subject to tax in your jurisdiction? What are the main taxes that may apply to companies in your jurisdiction?

Resident entities are taxed in Ukraine on their worldwide income. Non-resident entities are taxed on their taxable income derived from the source in Ukraine. A branch or a permanent establishment of a non-resident entity in Ukraine is considered a separate entity for tax purposes. The legislation exempts from taxation an income of non-residents based on international agreements on technical and humanitarian assistance.

The main taxes applied to companies in Ukraine are the following:

- a. corporate profit tax at the general rate 18%. Small enterprises and agricultural producers that meet special criteria may be subject to a simplified tax regime based on which their profit will be taxed at a lower rate;
- b. VAT levied on the supply of goods and services within the custom territory of Ukraine and on import and export of goods and auxiliary services under export or re-export customs regimes, as well as international transport services. The standard rate of VAT is 20% for supplies within the custom territory of Ukraine, as well as imported

goods and auxiliary services. A 7% VAT rate applies to supplies of pharmaceuticals and healthcare products. Exported goods and auxiliary services are subject to 0% VAT rate;

- c. withholding tax on income (e.g., dividends, royalty, interest) payable by a Ukrainian company to a non-resident. The general rate of withholding tax is 15% and may be lower based on relevant double tax treaties; and
- d. social security tax at a rate of 22% payable by the employer on the amount of remuneration paid to an employee.

15. How does the competition law in your jurisdiction regulate companies?

The following are the main laws governing competition issues in Ukraine:

- a. the Law of Ukraine on Protection of Economic Competition 2001;
- b. the Law of Ukraine on Protection Against Unfair Competition 1996;
- c. the Law of Ukraine on State Aid Provided to the Business Entities 2014.

The AMC is a regulatory authority empowered to monitor compliance of market participants' activity, as well as state aid programmes and the public procurement procedures in accordance with the legislation pertaining to competition.

Ukrainian legislation introduces several main areas of competition protection. The first area relates to the prohibition for companies to act in a mutually agreed or collusive way, establish restrictive conditions of activity for other market participants and abuse their dominant position in the market. The second area includes merger control rules. Generally, companies are free to perform a merger until the conditions for mandatory AMC clearance are met. Finally, the law prohibits the unfair competition, in particular, spreading misleading information on the goods the company produces or sells, misuse of the business reputation of the other company, etc.

Additionally, in 2017 the concept of state aid was introduced in Ukraine. The Law of Ukraine on State Aid Provided to the Business Entities indicates that the vast majority of measures undertaken by Ukrainian government to support particular companies are not allowed if they do not have a rational ground, are not objective and/or establish groundless preferences. In this case AMC acts as a supervising authority and assesses the admissibility of respective state aid programmes.

16. What are the main intellectual property rights companies should be aware of in your jurisdiction?

Like other European countries, Ukraine protects copyright and related rights, trademarks, patents, industrial designs (both registered and not), geographical indications, topographies of semiconductor products, plant varieties, confidential information and trade secrets. The legislation is influenced mostly by several important treaties, such as the Paris Convention for the Protection of Industrial Property, the Berne Convention on the Protection of Literary and Artistic Works, the Convention establishing the World Intellectual Property Organization, Madrid Agreement, the TRIPS Agreement, Hague Agreement and EU-Ukraine Association Agreement.

17. Does your jurisdiction have laws or regulations that govern data privacy?

Ukrainian Parliament adopted a wide range of acts governing data privacy, namely: Personal Data Protection Law 2010, Law of Ukraine on Information 1992, Law of Ukraine on State Secrecy 1994, Law of Ukraine on State Service of Special Connection and Information Protection 2006, Law of Ukraine on Electronic Commerce 2015, and Law of Ukraine on Cyber Security 2017.

The Personal Data Protection Law was intended to implement the protection of individuals with regard to the processing of personal data and

on the free movement of such data. Moreover, the underlying regulatory instruments were also elaborated, such as the Standard Procedure of Personal Data Processing; Procedure of Monitoring Compliance with Data Privacy Legislation by the Ombudsman; Procedure for Notification of the Ombudsman in relation to Sensitive Personal Data Processing. It is highly anticipated that the General Data Protection Regulation requirements will be implemented this year by Ukraine.

18. Are there any incentives to attract foreign companies to your jurisdiction?

Under the general rule, foreign companies operating in Ukraine via their Ukrainian subsidiaries or as foreign investors are treated equally to Ukrainian investors. Foreign investors are entitled to various incentives proposed by Ukraine, in particular:

- a. more than 70 bilateral investment treaties which set out obligations of Ukraine with respect to the treatment of foreign investors and the mechanisms for resolving disputes arising on this basis;
- b. 75 bilateral double tax treaties entered into by Ukraine with other countries;
- c. a number of free trade agreements aimed at removing customs barriers to the movement of goods and services between Ukraine and other countries;
- d. privileges and guarantees for foreign investors under the foreign investment legislation (the protection against changes in the legislation, protection against nationalisation, guarantee for compensation and reimbursement of losses, guarantee in the event of termination of the investment activity, guarantee of profit repatriation, etc.);
- e. certain tax incentives, in particular the release from taxation until 2021 of the newly established taxpayers which have an annual income of UAH 3 million or less and meet

respective requirements, as well as some other tax incentives;

- f. state guarantees for the companies participating in the privatisation procedures;
- g. exemption from custom duty of the import of assets as an in-kind contribution into the equity capital of a Ukrainian entity, unless such assets are disposed within three-year period; and
- h. gradual liberalisation of the currency control regulations, in particular the possibility of cross-border dividends' payment to foreign investors for all previous years up to the year 2017 inclusive, in the amount not exceeding USD 7 million or its equivalent per month.

19. What is the law on corporate insolvency in your jurisdiction?

The law of Ukraine on Restoring Debtor Solvency or Declaring a Debtor Bankrupt 1992, provides for the possibility of initiating insolvency proceedings against the debtor by the creditor or the debtor itself, in case the amount of undisputable outstanding debt within three concurrent months of the maturity date is not less than UAH 960,000 (approximately USD 37,000). There are several procedures that may be applied to a debtor in the course of insolvency proceedings, namely:

- a. disposition of the debtor's property;
- b. financial recovery of the debtor; and
- c. liquidation of the debtor.

Initiation of insolvency proceedings usually triggers a moratorium on the satisfaction of certain creditors' claims. Some agreements concluded within a year prior to insolvency proceedings, as well as during the insolvency proceedings, which put the debtor in insolvent position, can be invalidated by the court based on application of the receiver or an unsecured creditor. The receiver is appointed randomly from a respective court database and performs the functions of a controlling body over the debtor. The receiver may request the court

to remove the executive body of the debtor if it does not act in the interests of solvency of the debtor.

The recovery manager is, as with the receiver, appointed randomly from a court database. Its functions include development of a recovery plan, obtaining creditors' consent for the plan, submission of the plan to the court for approval and performance of the plan. If the earlier stages are unsuccessful, the court shall appoint liquidation of the debtor whereby its assets will be sold, management and employees will be dismissed, and the debtor will be wound up.

20. Have there been any recent proposals for reforms or regulatory changes that will impact company law in your jurisdiction?

The biggest reforms in company law of Ukraine is the Law on LLC which will enter into force on 17 June 2018. The law provides for more flexible regulation of corporate relations of an LLC, namely possibility of conclusion of shareholders' agreements by participants of LLC, provision of irrevocable power of attorney (only in relation to corporate matters), possibility to establish a supervisory board in an LLC, etc.

The Law of Ukraine on Privatisation of State and Municipal Property entered into force in March 2018 and establishes two different privatisation procedures:

- a. auction for large privatisation objects (which value of assets exceeds UAH 250 million (approx. EUR 7,800,000)); and
- b. online auction for small privatisation objects.

The new law provides the following state guarantees for investors participating in the privatisation process:

- a. disputes arising from privatisation SPA can be settled in the international arbitration;
- b. large privatisation objects' SPAs may be governed by English law (except as regards

ownership rights transfer which are governed by Ukrainian law only); and

- c. the state is to provide reliable and complete information on each privatisation object.

Some categories of investors are excluded from the potential purchasers of privatisation objects:

- a. aggressor state(s) and companies of which the aggressor state or its resident is the ultimate beneficial owner;
- b. individuals being citizens or residents of the aggressor state;
- c. companies and individuals and their related persons that are subject to sanctions under the Law of Ukraine On Sanctions; and
- d. companies registered in jurisdictions claimed to be non-cooperative by FATF, or companies whereby 50% or more shares of which is owned by a company registered in such jurisdiction.

21. Are there any features regarding company law in your jurisdiction or in Asia that you wish to highlight?

Company law features include concepts of squeeze-out and sell-out for joint-stock companies. Recently introduced escrow accounts with local Ukrainian banks comprise a new convenient tool which may be utilized in the course of restructuring shareholders' structure, within M&A transactions and in some other cases. Further to this, in 2018 corporate (shareholders) agreements were also introduced into the Ukrainian legislation which provide for the possibility of agreeing voting rules or rules of managing the company in a particular way; acquisition or disposal of participatory interests (shares) on the terms agreed by the parties; and refraining from selling participatory interests (shares) until the occurrence of certain circumstances as defined by the agreement. The law contains a number of requirements applicable to such agreements.

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