

COMMERCIAL LAW IN UKRAINE



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Business “feeds” the economy all year round. And so it is no wonder that the effectiveness of the legal means regulating economic activity directly influences the economy’s investment environment and potential.

In accordance with the *Commercial Code of Ukraine* “entrepreneurship is an independent, proactive, systematic, at one’s authority economic activity, carried out by economic entities (entrepreneurs) intending to achieve economic and social benefits and profit” (Article 42).

Unfortunately, commercial activity in Ukraine contains many risks. Contemporary business challenges continue so far in corruption, bureaucracy, insufficient protection of property rights. In 2011 official Kiev was trying to resolve these issues, which are painful for every businessman, but quite often didn’t even pay attention to the views of entrepreneurs.

Every person planning to launch his own business should resolve the following issues: how clear and logical are the rules of the game within the market? How much does the business process depend on the “good will” of the official? Are taxes reasonable? Is there political stability in the country? How quickly can an entrepreneur wind up his business?

Let’s clear up the aforesaid issues.

Business Start Up

Business incorporation in Ukraine can take about 24 days and this term, despite the numerous amendments to Ukrainian legislation in 2011, has hardly changed.

A number of legislative acts were approved in the spring of 2011 which were compelled to facilitate the business launching procedure.

Thus, according to the *On Amendments to Some Laws of Ukraine regarding the Number of Members of Limited Liability Company Act of Ukraine of 12 May 2011, No.3326-VI*, the legal maximum number of shareholders in a limited liability company (hereinafter — LLC) was increased from 10 to 100 persons.

Furthermore, legislators provided that in case of an increase in charter capital regarding the transformation of LLC to Joint Stock Company (hereinafter — JSC), the formation of the charter capital shall be carried out by the entity within 5 years.

The minimum size of the charter capital for a JSC is currently at least 1,250 minimum salaries (as of 1 December 2011 it amounted UAH 1,255 million), which is quite large sum of money for many shareholders. As to the minimum size of charter capital for the LLC, then from 6 June 2011 according to the *On Amendments to Some Legislative Acts of Ukraine on Simplification of Business Launching Procedure Act of Ukraine of 21 April 2011, No.3263-VI*, shareholders independently decide the size of the charter capital (hitherto the legal minimum size of the charter capital shall equal one minimum salary — about UAH 990).

Henceforth the charter capital can be paid within the first year from the time of state incorporation. This right concerns the LLC, state commercial enterprises, municipal unitary enterprises and commandite companies.

Specifically before the mentioned changes, members of the LLC should pay at least 50% of their contributions before state registration, and other non-paid contributions — within the first year of the company’s activity.

An innovation of the Act is the possibility to exclude from membership those participants who didn’t pay or partly paid their con-

ian courts and arbitration tribunals. LEXFOR is Ukrainian member of the Baltic Law Offices (BLO) — a network of law firms linking the Nordic countries, Baltic countries, Ukraine and Russia.

LEXFOR is a Ukrainian law firm specializing in contracts, corporate law, mergers and acquisitions, securities, investments and privatization, taxation, licensing, antitrust and competition law, custom regulations.

LEXFOR also focuses on legal protection of copyrights and trademarks, conducting anti-piracy and anti-counterfeit campaigns on behalf of multinational clients.

The firm’s attorneys have significant experience of litigation, representing clients in Ukrain-

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tributions within the first year of the company's activity. The *On Amendments to Some Legislative Acts of Ukraine on Cancellation of the Certificate of the State Registration of the Entity and the Sole Proprietor Act of Ukraine of 7 April 2011, No.3205-VI* canceled the legal entity and sole entrepreneur state registration certificate. From now on proof of an economic entity's registration is an extract from the Unified State Register.

Doing Business

Among the required attributes of a legal entity, in particular, is the availability of the seal. In the past every enterprise had to get from the Ministry of Internal Affairs of Ukraine (hereinafter — MIA) the permit on its production for its use. And so entrepreneurs wasted their time (the authorization procedure took about 3-4 days) and money (UAH 200-300).

In February 2011 the MIA canceled the Order *On Approval of Instruction to Ministries and other Central Executive Bodies, Enterprises, Institutions and Organizations Business Association and Citizens on Issue of Permissions for the Opening and Operation of the Stamp-engraving Workshops, Production of Seals and Stamps, as well as the Procedure for Issuing Permits to Issue Orders for Stamps and Seals, and Approval of Terms and Rules of Doing Business with the Opening and Operation of the Stamp-engraving Workshops, Production of Seals and Stamps of 11 January 1999, No.17* which regulated, in particular, the acquisition of permits for seal and stamp manufacturing.

Thus, after the MIA's cancellation of the Order entrepreneurs can immediately start business upon ordering the seal.

In Ukraine doing business was impossible without having the respective license and permit.

Ukrainian authorities reduced the number of licenses and permits. Within one year the number of services and works subject to licensing was reduced from 2,268 to 2,046 and activities from 78 to 23. For example, instead of 165 licensed works in medi-

cine remained only one activity — “medical practice”, in construction out of 714 licensed types of works only 100 remain.

Now the types of activities and works of no threat to state security, life and health of people and which do not pollute the environment shall be made without obtaining licenses, permits, since there are national standards, building codes, technical specifications, international standards of quality and so on.

Winding Up a Business

Closing a business in Ukraine can last for years and is governed by regulations, in particular, the *Commercial Code of Ukraine*, the *Civil Code of Ukraine*, *On Restoration of Debtor Solvency or Declaration of Bankruptcy Act of Ukraine*, *On State Registration of Legal Persons and Natural Persons — Entrepreneurs Act of Ukraine*.

The *On Amendments to Some Legislative Acts of Ukraine on Ease of Legal Entities and Business Individuals — Entrepreneurs Termination upon their own Decision Act of Ukraine of 19 May 2011, No.3384* (hereinafter — Act No.3384), which targeted business closure simplification and shortening procedure in Ukraine, has been valid since 18 December 2011.

Now the creditors' claims period against the winding up of companies can last from 2 to 6 months after publication of the notice on the decision of termination of a legal entity. The State Registrar shall make an entry within the Unified State Register on suspension of the legal entity or termination of entrepreneurial activities by a sole entrepreneur on the principle of acquiescence. If after the expiry of the period for creditors claims, the tax authorities and/or Pension Fund of Ukraine has issued no statement about absence of debts on taxes, sole insurance deduction and insurance premiums or the decision to decline their issue, the head of the liquidation commission or the sole entrepreneur may submit documents for state registration of the termination to the state registrar within 10 working days thereafter.

Each individual creditor's claim, in particular, regarding tax payments, fees, the compulsory state social insurance sole deduction, insurance payments to the Pension Fund of Ukraine, social insurance funds shall be considered and then the respective decision shall be made on the relevant creditor claim, which shall be sent to the creditor no later than thirty days after receipt by a legal entity, which stops its activity.

Getting certificates on absence tax indebtedness, deductions and/or sole contribution on compulsory state social insurance, insurance premiums to appropriate funds and authorities could take a long time, so Act No.3384 has provided penalties for guilty officials for delays in issuing certificates ranging from 200 to 250 untaxed minimum incomes.

Act No.3384 provides 30 days for consideration, deciding and sending to each creditor a notice on its claims decision, and within 30 days the creditor becoming privy or not to such a disclaimer. Creditors may declare a lawsuit concerning economic entity disclaimer of their claims. So there is no need to confirm the liquidation balance sheet through an audit report, which costs UAH 5,000-10,000, get notarial certification of signatures on the liquidation balance sheet or the decision of termination of a legal entity, thereby saving another UAH 100-150 for each approval.

Only time and businessmen can duly assess those innovations in commercial law which were involved in 2011.

Timely and professional legal services are able to help businessmen minimize the negative consequences of changes in Ukrainian legislation.