



ukrainian legal group
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UPDATE ON THE DEREGULATION MEASURES

The Government of Ukraine ("GOU") – the Verkhovna Rada (the "Parliament") and the Cabinet of Ministers - continue developing and enacting measures in the sphere of deregulation of business activity and improvement of the regulatory regime (customs, public procurement and other sectors).

In this Alert we offer a brief overview of the key business deregulation measures pending or enacted within the past several months.

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I. Enacted Deregulation Measures

- Electronic State Registration of Legal Entities and Individuals-Entrepreneurs:

The procedure of State registration (incorporation) of Legal Entities and Individuals - Entrepreneurs via electronic registration is finally functional. Please see our Legal Alert dated 14 November 2011 for more details on the features and procedure to be followed: http://www.rulg.com/leg_alerts.asp

- Reinstatement of Free On-Line Access to the Single Register of Legal Entities and Individuals-Entrepreneurs:

The GOU, starting in 2008, provided free on-line access to certain data of the Single Register of Legal Entities and Individuals-Entrepreneurs, which allowed any person to quickly verify the legal existence of any company. In January 2011 the access to the Register was closed due to the termination of the relevant regulation. The new Order of the Ministry of Justice "On Organizing Access to the Data of the Single Register of Legal Entities and Individuals-Entrepreneurs", which took effect on 9 September 2011, provides for legal basis of on-line access to certain information (name, registration number, existence, etc.) from the Single Register of Legal Entities and Individuals-Entrepreneurs. On-line Register access was enabled in October 2011 on the website of the State Company "Information and Resource Center": <http://www.irc.gov.ua/ua/Poshuk-v-YeDR.html>. The information is in Ukrainian only.

- Incorporation of Legal Entities Based on a Model Charter:

An option to use a Model Charter, approved by the Cabinet of Ministers, will become available during incorporation of a Legal Entity. At the same time, the founders of a Legal Entity will still have an option to develop their own original Charter. This measure would simplify the incorporation process for those founders who opt to use a Model Charter, but certainly such Model Charter might not be suitable for every business. The Cabinet of Ministers did not yet

¹ This is an update to the Legal Alert dated Alert dated 22 May 2011

approve any Model Charter. The draft Model Charters for a Private Enterprise and a Limited Liability Company were developed and posted on the website of the Ministry of Economic Development and Trade on 15 July 2011. Please see our Legal Alert dated 24 October 2011 for more details http://www.rulg.com/leg_alerts.asp

- Reduction of Number of Licensing Authorities:

The Cabinet of Ministers, pursuant to the earlier enacted reduction of licensed activity types and following the President's reform of the executive authorities system has enacted Regulations No. 798 dated 27 July 2011 amending the list of the licensing authorities. The number of the authorities empowered to issue licenses to subjects of economic activity was reduced from 39 (in 2010) to 34.

- Additional Opportunity to Get Registered as VAT Payer:

Pursuant to the Law "On Amendments to the Tax Code of Ukraine and Some Other Legislative Acts of Ukraine Regarding the Improvement of Certain Rules of the Tax Code of Ukraine" adopted on 7 July 2011 a Ukrainian company may voluntarily apply for VAT payer registration, if its authorized capital or balance sheet value of its assets exceeds 300,000 UAH (37,000 USD).

Earlier the Tax Code indicated only two options to get registered as VAT payer:

- Mandatory registration as a VAT payer if the total amount gained as a result of goods/services delivery operations exceeds 300,000 UAH (37,000 USD).
- Voluntarily registration as a VAT payer in 12 months after the State registration (incorporation) of the company, provided that the requirements established by law are observed.

Therefore, the law now allows the company to be registered as a VAT payer in the course of company incorporation, provided the conditions thereof are met.

- Filing Tax Reports Electronically:

Optional electronic (digital) tax reporting was first introduced back in 2004. It was also included as one of the ways of tax reporting in the Tax Code (along with the filing in person and by mail). In practice in September 2011 Tax Authorities in certain regions (notably, Kiev) refused to accept the reports filed in a form other than digital.

Digital reports require purchase of a special digital key and the software that can sign reports and file them electronically with the Tax Inspectorate in the approved form. Also, a digital key must be registered with the Tax Inspectorate.

As a deregulation measure, it has both positive and negative aspects. A positive aspect is avoidance of long queues in the Tax Inspectorates while filing in person.

The negative aspects of the digital reports are:

- Reporting companies are required to pay commercial companies, accredited with the Administration of State Service on Special Communications and Information Protection, a fee (annual subscription) for the digital key and the relevant software. We note that demonstration versions of the software allow basic functionality – to sign electronic documents.
- Reports pass through several transitional gates before being delivered to the Tax Service.
- Reporting companies receive an electronic confirmation of the delivery of the documents to the Tax Service, but are unable to control actual delivery.

- Communicating With Tax Authorities Electronically:

Pursuant to the Law "On Amendments to the Tax Code of Ukraine and Some Other Legislative Acts of Ukraine Regarding the Improvement of Certain Rules of the Tax Code of Ukraine" adopted on 7 July 2011, electronic correspondence with tax authorities is allowed provided that the requirements of the legislation concerning electronic signatures are met.

II. Pending Deregulation Measures

- Simplification of Licensing Procedures:

Ukraine has burdensome procedures for filing license documents. Some of these documents are filed with the licensing authority several times while the data indicated therein is already present in various State registers. Bill No. 9022 will abolish the requirements to file with the licensing authorities the documents certifying the company's State registration because such information is available in the Single State Register of Legal Entities and Individuals-Entrepreneurs. The Bill passed the first reading on 18 October 2011 and will be prepared for the second reading.

- Amending Law on Foreign Currency Settlements Procedure:

Ukraine has a special regime for settlements in foreign currency. Pursuant to Law "On Foreign Currency Settlements Procedure" dated 23 September 1994 foreign parties to the foreign economic contracts have to make payments to the Ukrainian residents' accounts for purchased goods/services within the term of 180 days after actual delivery of goods/performance of services by Ukrainian residents. In case the payments fail to arrive within 180 days, Ukrainian residents are subject to financial sanctions. This requirement, which was introduced back in early 90-s to prevent capital flight, in addition to generally being a major inconvenience, has several inconsistencies, e.g. "proceeds" is not defined, there is a discrimination in defining grounds of the term breaks (e.g. filings with foreign arbitration tribunals will not break the 180 days term, while filings with International Arbitration Court under the Ukrainian Chamber of Commerce and Industry will), etc.

The Bill No. 9117 registered with the Parliament on 7 September 2011 intends to solve the inconsistencies, but unfortunately does not cancel this archaic and burdensome requirement.

- Cancellation of a Corporate Seal as a Mandatory Attribute:

Ukraine has an archaic requirement for a corporate seal as a mandatory attribute of every legal entity. In order to be valid most of the documents, including contracts, need to be attested by the corporate seal. Abolishing these requirements would be a welcoming development considerably simplifying and modernizing business operations.

A new Bill "On Amendments to Certain Legislative Acts of Ukraine Establishing the Principle of carrying out Business Activities by Private Law Subjects without Using Seals" initiated by the Cabinet of Ministers, to replace the earlier rejected one, was registered with the Parliament on 16 September 2011 and awaits Parliament's consideration.

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