

Legal Alert – 24 October 2011

**UPDATE ON REGISTRATION OF LEGAL ENTITIES
BASED ON THE MODEL CHARTER**

As we reported earlier, the Law of Ukraine "On Amending Some Legislative Acts of Ukraine Concerning the Introduction of the Principle of the State Registration of Legal Entities on the Basis of the Model Charter" (hereinafter – the "**Law**") took effect on 28 August 2011.

The Law amends the Commercial Code and Civil Code, as well as the Law of Ukraine "On Registering Legal Entities and Individuals-Entrepreneurs" and the Law of Ukraine "On Economic Societies". The Law allows a simplified incorporation of a legal entity on the basis of the model charter, i.e. without approving an individual charter.

In order for the simplified incorporation to take full effect in practice, the Cabinet of Ministers of Ukraine must adopt "Model Charter" Regulations, which are currently pending. We closely monitor the adoption process and will immediately send an update when it happens, but so far only drafts of model charters for private enterprises and limited liability companies were posted on the website of the Ministry of Economic Development and Trade for public discussion at http://www.me.gov.ua/control/uk/publish/article/system?art_id=169130&cat

Nevertheless in anticipation of expected adoption of the "Model Charter" Regulations, we offer the summary of the new simplified state registration (incorporation) procedure of selected legal entities based on the model charter. The simplified procedure will become a viable alternative to the existing standard incorporation procedure, which is based on an individual charter.

According to Article 1 of the Law of Ukraine "On the State Registration of Legal Entities and Individuals-Entrepreneurs", as amended by the Law, **model charter** is a standard founding document approved by the Cabinet of Ministers of Ukraine, which is used for the purposes of setting up and carrying out activities of legal entities of respective corporate forms; it contains the statutory rules concerning legal status, rights, responsibilities and relations involved in the creation, management and economic activities of legal entities.

The Law stipulates that a private law legal entity can be created and operate on the basis of the model charter. The founders (participants) of such legal entity can act on the basis of the model charter after they submit the relevant decision to the State Registrar and fill out a card made in accordance with the corresponding sample.



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Part three of Article 62 of the Ukrainian Commercial Code (“**UCC**”) as amended by the Law states that unless the law prescribes otherwise, an entity can operate on the basis of either an individual charter or a model charter, having equal rights and responsibilities, irrespective of ownership form, corporate form and the founding documents on the basis of which they were created and operate.

A new part five of UCC Article 56 states that if generally a *subject of business activity* is created on the basis of the model charter, the resolution concerning its creation, which shall be signed by all founders, shall contain the legal entity name, goals and subject matter of economic activities, and information concerning the activities carried out on the basis of the model charter.

A new part 10 of UCC Article 82 states that if specifically an *economic society* is created on the basis of the model charter, the resolution concerning its creation, which shall be signed by all founders, shall contain the society type, name, seat, activity subject matter and goals, founders and participants, charter (compound) capital amount, each participant's ownership interest, procedure for making their contributions, and information concerning the activities carried out on the basis of the model charter.

The original, a copy or a notarized copy of the resolution is submitted together with the rest of the documents for the purposes of carrying out the State registration of an entity, but the charter (which is based on a model charter) itself does not need to be submitted.

The Law implies that the model charter must be used in its entirety. Should any changes be made to the model charter, such revised model charter is no longer treated as the model instrument and becomes an individual charter.

The simplified procedure based on the model charter is available not for all types of legal entities. In particular, given that the Law made no amendments to the Law "On Joint-Stock Companies", joint-stock companies cannot operate on the basis of the model charter. There are no drafts of model charters for the additional liability companies or other types of private law legal entities. Finally, full partnerships and special partnerships generally do not require a charter because they operate on the basis of a foundation agreement.

The introduction of the model charters is an ambiguous development. On the one hand, it offers a simplified incorporation procedure, reducing incorporation costs and efforts. On the other hand, various practical problems may arise for companies operating on the basis of a model charter because it may not cover the needs of all founders, does not take into account individual specifics, and may cause ambiguities with regards to withdrawal from a company, participants' ownership interests split-up, founder profit sharing, etc. Therefore, a decision whether to incorporate based on a model charter should be made based on individual circumstances in each particular case.

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