

Legal Alert – 4 February 2011

THE DOCUMENTS CERTIFYING THE OWNERSHIP STRUCTURE OF FOUNDERS OF NEWLY INCORPORATED COMPANY IN UKRAINE



As we informed in our Legal Alert dated 21 August 2010, during the initial incorporation of a company, if the Founders are non-resident legal entities it is now required for them to disclose their ownership structure to the extent of beneficial owners (individuals with substantial shareholding)¹. Such Founders must also file with the State Registrar the documents certifying the ownership structure.

According to recommendations of a competent authority², for the State registration (incorporation) purposes such documents are:

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72, Velyka Vasylkivska Street
Suite 14, Kiev 03150
Ukraine
Phone: [380] (44) 207-1060
Fax: [380](44) 207-1064

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Washington, D.C. 20007
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Phone: [1] (202) 338-1182
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* Excerpt from a commercial (or bank or court register) certifying the Founders' ownership structure that allows to identify the individuals - substantial shareholders in the Founders. The excerpt must be legalized in compliance with the established procedure.

* Written application from each Founder with the information about the individuals - substantial shareholders in this Founder. The written application must be signed by an authorized person, attested with the Founder's seal (if it possesses the seal).

There is an exception to the above requirement: where the individuals - substantial shareholders cannot be established, a written application (assurance) must be submitted by a Founder stating why the information about the individuals-substantial shareholders cannot be provided (e.g., the laws of its country do not stipulate that such documents can be issued, or the Founder is a public company with numerous shareholders, etc.). The written application must be signed by an authorized person, attested with the Founder's seal (if it possesses the seal).

In practice State Registrars are currently being guided by these recommendations. At the same time there are several initiatives pending to amend the above requirement and make it less burdensome for legitimate investors. So far in practice in many cases the Founders are trying to take advantage of the exception and present an application explaining the reasons why the ownership documents cannot be presented.

Disclaimer

The content of this Legal Alert is not legal advice, but a general informational summary of the law. Resource to qualified legal counsel is always required for legal advice. Failure to make timely inquiries of legal counsel may cause important legal deadlines to be missed.

¹ Substantial shareholding means direct or indirect ownership of 10 or more per cent in the charter capital, 10 or more per cent shares or voting rights in a legal entity, direct or indirect control of the legal entity.

² Letter of the State Committee of Ukraine for Regulatory Policy and Entrepreneurship No. 16499 dated 22.12.2010.