



July 16, 2011

TO: Clients and Friends of the Firm
FR: Frishberg & Partners
RE: Company Registrations and Licensing Requirements: Simplification and Transparency at Last?

For nearly twenty years, the company registration process in Ukraine has been a bureaucratic nightmare due to an unnecessarily complex and archaic administrative system, which went as far as to require police permission to have a company seal. At last, someone in the government has wisely decided to bring Ukraine into compliance with modern world practices. In the first part of 2011, several changes for the better were adopted by the Ukrainian Parliament (known as “Verkhovna Rada”). Immediately below we provide you with some of these amendments.

1. Simplified Procedure for Registering Legal Entities and Individuals/Entrepreneurs

On April 21st 2011 the Verkhovna Rada adopted the Law of Ukraine “On Introduction of Amendments to Certain Legislative Acts of Ukraine to Simplify the Procedure for Establishment of Entrepreneurial Activity” (# 3263-VI), which became effective as of June 6th, 2011.

These amendments chiefly relate to the charter capital of legal entities, state registration and the procedure of submission of documents to the state authorities for purposes of registration. For instance, the law cancels the required minimum charter capital amount and the obligatory formation of a specific charter capital amount prior to state registration of a legal entity. Henceforth, a legal entity’s charter capital must be formed in full within one year as of the moment of its state registration. Consequently, there is no longer the need to open temporary accounts into which the founders once had to deposit at least 50% of the charter capital prior to the state registration of a legal entity.

2. Cancellation of Licenses for 23 Types of Economic Activities

On November 17, 2010 the Law of Ukraine “On Introduction of Amendments to Certain Legislative Acts of Ukraine with respect to the Limitation of State Control Over Economic Activity”, dated October 19, 2010, came into force and cancelled the licensing requirements for 23 types of economic activities, which were once subject to licensing requirements per Article 9 of the Law of Ukraine “On Licensing the Specific Types of Economic Activities”. The list of activities subject to licensing has now decreased from 66 activities to 42 activities. Specifically, these activities include carrying out topographic/geological works, cartographic works, tourism agencies, customs carriers, etc. The aim of this law is to promote Ukraine’s development and entrepreneurial activity and to limit state control over purely economic activities.

3. Introduction of Electronic State Registration of Legal Entities and Entrepreneurs

On October 19, 2010, the Verkhovna Rada adopted the law “On Amendments to the Law of Ukraine “On the State Registration of Legal Entities and Individuals-Entrepreneurs”, which will become effective as of August 14, 2011. These amendments were designed to permit the electronic state registration of legal entities and individuals/entrepreneurs.

The goal of such amendments is to establish the state registration of subjects of entrepreneurial activity via electronic documents, which will hopefully bring transparency to registration procedures and increase the guarantees related to the protection of ownership rights of legal entities and their owners. Hopefully, the Law will further simplify the registration procedure and decrease corruption by allowing the avoidance of direct contact between applicants and state registrars.

Electronic documents, which applicants will be able to submit for state registration must be executed in accordance with the requirements of the legislation in sphere of electronic documents, electronic document flow and electronic seal. Importantly, the amendments do not abolish the requirements of certification by Apostille or legalization for documents executed and issued outside of Ukraine. Thus, we presume that the state registrars will still require the eventual submission of original documents for foreign founders of local companies.

4. Introduction of the Model Charter

The Verkhovna Rada has also introduced amendments into the list of legislative acts related to the state registration of legal entities on the basis of a so-called “model charter” by way of adoption of the Law of Ukraine No. 3262-VI on April 21, 2011.

Specifically, p. 3 of Article 62 of the Commercial Code of Ukraine stipulates the following: “*A legal entity, unless otherwise provided by law, shall act on the basis of a charter or model charter. Legal entities, irrespective of the form of their ownership, organizational-legal form or their founding documents on basis of which they have been established and operate, shall have equal rights and obligations.*”

In accordance with the new paragraph 10 of Article 82 of the Commercial Code of Ukraine, in case a legal entity is established and operates on the basis of the model charter, the following information must be indicated in the founder’s (founders’) Resolution on establishment: data on the form of the legal entity, its name, legal address, scope of activities, the founder’s/participant’s (founders’/participants’) structure, the amount of charter capital, the amount of each founder’s/participant’s share, the procedure of introduction of the founders’/participants’ contributions, as well as information on carrying out the activity on the basis of a model charter.

5. Cancellation of Special Permits for Production of a Corporate Seal

In the past, prior to completing the registration procedure of a local entity, the entity in question would be required to apply to a special division of the police to obtain permission to create the ever-important and infamous company seal. Once permission was granted, the registering company would then need to apply to a specially licensed company to request production of an official corporate seal. To the delight of those who require simplified and quick company registrations, the requirement to obtain a special permit for production of a corporate seal has been recently cancelled. The corresponding Order of the Ministry of Internal Affairs No. 5, dated January 11, 2011, “On Recognition of the Order of the Ministry of Internal Affairs No. 17 dated 11.01.99 as Invalid” became effective as of February 21, 2011.



As briefly noted above, once state registration was in its final stages, legal entities had to spend about one (1) week to obtain the permit on production of a corporate seal and actually receive the corporate seal. Such permission could be obtained only in the authorities of the Ministry of Internal Affairs of Ukraine. This sometimes caused delays in a company's ability to officially sign documents and enter into transactions. After the adoption of the aforementioned order, legal entities and entrepreneurs will no longer have to spend their time and money to obtain a special permission on production of a seal within the permission system authorities. This is yet another step to decrease direct contact with local authorities and curb potential corruption for those newly registered companies which urgently require a corporate seal in an accelerated manner.

Hopefully, the next step will be the cancellation of the obligatory use of a corporate seal by legal entities on all types of official documents, including routine utility bills, minor service invoices, etc. There is a specific draft law on the table, which provides that corporate seals will be for informational purposes only and the necessity of their usage will be independently determined by companies and entrepreneurs.

6. Cancellation of Registration Certificates

On May 7, 2011 the Law of Ukraine No. 3205-IV "On Introduction of Amendments into Certain Legislative Acts of Ukraine on Cancellation of the Registration Certificate for Legal Entities and Individual-Entrepreneurs", dated April 7, 2011, came into legal force and effect. This law relates to the cancellation of state registration certificates of all types of business entities.

Specifically, in accordance with the amended Law of Ukraine No. 755 ("On State Registration of Legal Entities and Individuals-Entrepreneurs") legal entities and individual entrepreneurs will no longer be provided with state registration certificates. In place of the issuance, replacement or introduction of notes into state registration certificates, state registrars will issue to legal entities and entrepreneurs extracts from the Unified State Register of Enterprises and Organizations of Ukraine (hereinafter the "Unified State Register"). It also foresees the introduction of amendments into the record files on legal entities or private entrepreneurs, which are available in

the Unified State Register and/or indicated in extracts from the Unified State Register, and other registration acts provided by the Law of Ukraine No. 755, such as a change of legal address, founders/participants, etc.

Thus, the records from the Unified State Register will now be the sole means of confirming the valid state registration of a legal entity or private entrepreneur for purposes of registration of the said entities/individuals as taxpayers (both corporate tax and VAT).

The Ukrainian Tax Authorities state that those legal entities or individuals-entrepreneurs, which have been created and registered before July 1, 2004, must submit their registration cards to the state registrar by March 3, 2012 in order to include their corresponding records into the Unified State Register in accordance with the Law of Ukraine No. 2390-VI, dated July 1, 2010, “On Introduction of Amendments to the Law of Ukraine “On the State Registration of Legal Entities and Individuals-Entrepreneurs” with Respect to Simplification of the State Registration Mechanism of Terminating Subjects of Entrepreneurial Activity”.

7. Cancellation of Business Trip Certificates

On June 21, 2011 the Ministry of Finance of Ukraine released Order No. 738 “On Approving the Termination of Order of the State Tax Administration No. 260, dated July 28, 1997,” which cancels the State Tax Administration’s requirement for the submission of business trip certificates when employees of Ukrainian entities arrive from business trips within and outside of Ukraine.

At last, there is no need to issue and stamp the so-called “business trip certificates,” which would constantly lead to misunderstandings between the employers and Tax Authorities about expenses for business trips of their employees. The business trip certificates would require the employee to carefully “sign in” and “sign out” of all places of destinations on business trips. Henceforth, the only document which confirms a business trip of an employee is the internal order that must be issued by the company’s Director, which should include personal information about the employee, the purpose of his or her business trip, dates, etc.



FRISHBERG
& PARTNERS
ATTORNEYS AT LAW

10 Gorky Street, Suite 8
01004 Kiev, Ukraine
Tel: +38(044) 585-8464; 585-8465
Fax: +38(044) 235-6342; 289-1406

office@frishberg.com.ua
www.frishberg.com

In combination, the above steps should eliminate many of the inefficiencies that have plagued the company registration process. And this is certainly welcome news for any business owner.