

TO: Clients and Friends of the Firm

FR: Frishberg & Partners

RE: Subjects of Entrepreneurial Activity and Unified Window

The procedure for the registration of subjects of entrepreneurial activity requires significant time and expenses when compared to such procedure in other countries. To assist, on February 22, 2006, the Parliament approved the Law of Ukraine “On the Introduction of Amendments to Certain Laws of Ukraine” regarding the introduction of the procedure of registration of subjects of entrepreneurial activity (hereinafter the “Law”).

Pursuant to the Instruction of the President of Ukraine of June 1, 2005, the necessary measures should have been taken for the introduction of a procedure for the registration of subjects of entrepreneurial activity according to the principle of the “unified window”. The implementation of a “unified window” is undoubtedly necessary as it is dictated by the requirements to simplify the complex and ineffective procedure of state registration which advances the entrepreneurial community and is connected with the necessity of bringing Ukrainian legislation into correspondence with European standards.

The legal regulation of activity within the realm of the state registration of subjects of entrepreneurial activity consists of the norms of the laws of Ukraine “On the State Registration of Legal Entities and Natural Persons-Entrepreneurs”, “On Mandatory State Social Insurance from Accidents in the Industry and Professional Illness Causing Loss of the Ability to Work,” “On Mandatory State Social Insurance in Case of Unemployment,” “On Mandatory State Pension Insurance” and “On Mandatory State Social Insurance in Connection with the Temporary Loss of the Ability to Work and Expenses Resulting From Birth and Burial”. Amendments are introduced to these laws in connection with the necessity of the conformance of legislation for the realization of the “unified window” principle.

The Law of Ukraine “On the State Registration of Legal Entities and Natural Persons-Entrepreneurs” was passed in 2003 and legally introduced the validity of the “unified window” principle. However, due to the non-compliance of the Law with other legislative acts which provided a different procedure for registering subjects of entrepreneurial activity, introducing amendments in their registration matters or discontinuing the activity of such subjects, the “unified window” principle still cannot be realized.

The “unified window” principle was developed in order to simplify the procedure of the state registration of subjects of entrepreneurial activity leading to a minimum expense of time and money.. From the point of view of the entrepreneur, he or she it must go through the registration procedure and all post-registration procedures in one place in a maximum of two stages. The first stage is the submission of documents and the second stage is the receipt of documents. After these two stages, the entrepreneur may commence activities.

However, while the Law “On the State Registration of Legal Entities and Natural Persons-Entrepreneurs” provides for the obligation of a state registrar to inform the bodies of statistics, the state tax service, the Pension Fund of Ukraine and the social security funds regarding the conducting of registration activities on the basis of which an entrepreneur is placed in the register, the situation is different in practice.

The entrepreneur gathers the documents and goes to the state registrar, who carries out registration activities and issues a certificate on state registration. Thereafter, the entrepreneur starts with the procedure. For issues related to registration and removal from the register, one must appeal to each of the above-mentioned bodies. One must make copies of all documents, receive certificates from these bodies, receive permission for a seal, etc. In some cases, notarized copies of documents must be submitted pursuant to the corresponding procedure, as originals are not accepted.

There are also “technical” problems due to the large amount of people, who wish to obtain the status of a subject of entrepreneurial activity, combined with bureaucracy and red tape in the registration bodies. Needless to say, these problems protract the procedure even further. In addition, the registration bodies do not accept applications every day. Thus, the “unified window” usually only exists on paper. In some regions outside of Kiev, however, the “unified window” has actually proved successful and more or less functions in a formidable manner.

It is worth analyzing the Law in order to clarify how it affects relations connected with the state registration of subjects of entrepreneurial activity.

One of the main provisions of the Law is the simplification of the procedure for registering subjects of entrepreneurial activity. Theoretically, there is no need to personally appeal to each of the bodies in which registration on the books is necessary. Such registration will be carried out on the basis of a registration card, and the subject of entrepreneurial activity will have contact exclusively with a state registrar. The Law provides that registration in the relevant registers will occur no later than the working day following the day of receipt by the registering bodies of information from the registration card provided by the state registrar. Importantly, for natural persons, who are not subjects of entrepreneurial activity but use hired labor, registration is also mandatory. However, such persons are obliged to appeal to the relevant registration bodies with a simple petition.

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