



**The Business & Law Readers Digest**

**Developments in Ukraine's  
Corporate Law**

Banking and Finance // Beverages Industry // **Corporate** // Corporate Dispute Resolution // Due Diligence // Employment // Financial Services // Insurance // Investments // Kyoto Protocol Implementation // Logistics // Mergers and Acquisitions // Natural Resources // Oil and Gas // Representative Office // Land // Ukraine and the WTO // Ukraine and Russia // Tourism



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## Introduction

Incorporation of companies in Ukraine is regulated by the Law on Business Companies of 1991, or the "Companies Act". The Companies Act sets out rules and regulations for the establishment of different kinds of companies in Ukraine. The Business Code of Ukraine and the Civil Code of Ukraine stipulate the most important aspects of incorporation and existence of companies in the country.

During the incorporation of a company, state registration is one of the essential steps on the way to carrying out one's own business. The procedure of the state registration of companies in Ukraine is regulated by the Law on State Registration of Legal Entities and Individual Businessmen of 2003, or the "Registration Act".

## Actual changes to the Companies Act

The year 2007 was notable for significant amendments to the Companies Act, which focus on its' compliance with the Business Code of Ukraine and the Civil Code of Ukraine.

In particular, the following amendments should be noted:

1. Definition of a business company. A business company is a legal entity, the share capital of which is divided into shares between its' shareholders.
2. Formation. A business company (except for partnerships) may be founded by a single shareholder.
3. Shareholders' rights. A shareholder has the right to dispose of

his share in the capital of a company and to securities confirming his participation in a company.

4. Valuation of contribution to the share capital. Valuation of the contribution of a shareholder to the share capital of a company is made under agreement between all shareholders of the company, unless an independent professional valuation is required by law.

### **Joint stock company (corporation)**

5. Requirements with regard to share capital.
  - a) Share capital may be decreased only after all creditors of a company have been notified.



The creditors are entitled to demand an advanced termination or performance of obligations, or recovery of losses.

b) Share capital must be decreased if, at the end of the second or any subsequent financial year, the value of assets will be less than the amount of the share capital. If the value of assets is less than the minimum amount of the share capital of a company as determined by law then the company must be liquidated.

6. Powers of the general shareholders meeting. It is fixed that the share capital of a company may be increased or decreased only by the decision of the general shareholders meeting.

7. Executive body of a joint stock company. The executive body of a joint stock company may be either collective (for instance a Board of Directors) or sole (Director).

### **Limited liability company**

8. Number of shareholders. The maximum number of shareholders in a limited liability company has been increased to ten.

9. Liability. Shareholders are liable collectively even if some of them did not pay or contribute their share in full.

10. Requirements concerning the charter. The charter of a limited liability company must include articles about the amount and formation of the reserve fund and transfer of shares.

11. Share capital requirements.

a) Before the state registration of a limited liability company each shareholder must pay or contribute at least 50% of his share.

b) Share capital may be decreased only after all creditors of a company have been notified. Creditors are entitled to demand an advanced termination or performance of obligations, or recovery of losses.

c) Share capital may be increased only after payment or contribution of shares by all shareholders in full.

12. Transfer of a share.

a) A shareholder has the right to dispose of or to sell his share (or a part thereof) to other shareholders, but not to a third person unless otherwise specified in the company's charter.

b) Other shareholders have the option of first refusal. If they do not use their option within a deter-



mined time then the share may be sold to a third person.

c) A share may be acquired temporarily by a company itself and sold to other shareholders or third persons within a year. Otherwise the share capital must be reduced by the value of such share.

13. Recovery. Creditors have the right to recover the personal debts of a shareholder from the part of a company's property only if the shareholder in question does not own other property sufficient to recover those debts. In this event creditors may demand that the company pays them a part of the value of the company's property, aporportional to the share of the liable shareholder.

14. Powers of the general shareholders meeting. The general shareholders meeting has the exclusive right to determine the forms of control over the activities of management and to establish appropriate control bodies.

### **General partnership**

15. Participation. A person may be a partner in only one general partnership.

16. Name. The name of a general partnership must include all

names of its partners or the names of certain partners followed by "and company".

### **Limited partnership**

17. Participation. A person may be the general partner of only one limited partnership. A general partner of a limited partnership may not be a partner of a general partnership.

18. Name. The name of a limited partnership must include all names of its partners or the names of certain partners followed by "and company".

19. Rights of partners. Partners have the following rights:

a) to receive a part of profits proportionate to their shares;

b) to act on behalf of the partnership on the basis of a Power of Attorney;

c) option of first refusal concerning the disposed share;

d) to withdraw from the partnership after the end of a financial year and to receive their shares;

e) to transfer their shares to other partners or third persons.



## Draft Law on Corporations

Among other significant events in Ukrainian corporate law during 2007, the draft Law on Corporations was passed by Parliament after the first reading. This draft law has both advantages and disadvantages, which we shall highlight.

### Advantages

1. A separate Law on Corporations, which regulates the stages of formation, activity and liquidation of corporations in Ukraine more comprehensively. In addition to certain articles of the Companies Act and the Civil Code, this law will positively influence the development of these types of company.
2. The draft Law helps to protect the rights of small stockholders through the following regulations:
  - a) a stockholder who has acquired a considerable holding of stock must propose to other stockholders to buy their stock;
  - b) stockholders should have an option to buy additionally issued stock;
  - c) upon the decision of a stockholder the corporation shall buy his stock, should he not agree with a resolution of the general stockholders meeting;

d) it is obligatory for the proposals of any stockholder to be included into the agenda of the general meeting.

3. Comprehensive determination of the exclusive powers of the general stockholders meeting should enable stockholders to more effectively influence material resolutions concerning the business of a corporation.

4. Detailed regulations for the distribution of dividends in connection with the exact payment procedures should help to avoid possible abuse in the future.

### Disadvantages

1. The draft Law provides for the existence of two types of corporations in Ukraine - public and private - which are very similar to the existing types of so-called 'open' and 'closed' corporations. The negative features of such separation are preserved. For instance, stock of a private corporation may not be offered to the public and must be distributed only among stockholders. However, stock is first and foremost a security, confirming that a legal entity or an individual has contributed some money into the business of a cor-



poration. If such a security may not be offered to the public it has in fact the same status as a certificate of a shareholder of a limited liability company, which is designated to confirm his contribution to the share capital of the company in full. In other words, there is actually no difference between a private corporation and a limited liability company.

2. It is proposed that the general management of a corporation's activities should be carried out by a Supervisory Board, and financial control should be undertaken by an Audit Committee. At the same time it is proposed that some corporations might exist without a Supervisory Board and an Audit Committee. Such contradictions may result in lack of control over

the activities of the executive body in the time between stockholders meetings, and lack of protection of stockholders' interests.

3. Regulations, which enable a corporation to prevent a person from acquiring a large holding of stock, are unsuitable for market requirements. In fact, under the regulations of the draft Law on Corporations stockholders should not be able to dispose of (sell) their property freely, and the potential buyers should not be able to acquire them freely.

Hopefully, parliamentarians will amend the draft Law on Corporations during the next readings in order to ensure the efficient regulation of activities of corporations in Ukraine and to contribute to business development as a whole.

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