

DOING BUSINESS IN UKRAINE
A PRACTICAL GUIDE DURING WARTIME CONDITIONS

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BUSINESS IN
UKRAINE**

**PRESENTED BY THE UKRAINE DEVELOPMENT TRUST
PART OF THE FOUNDATION FOR DEVELOPMENT
www.development-foundation.org**

**contact@development-foundation.org
WhatsApp +380 98 467 4579**

**Ukraine Development Trust
Krakivska Street 26
Lviv, 79000 Ukraine**

Mailing address:

**Nova Poshta #77
Svobody Avenue 5
Lviv, 79008 Ukraine**

Executive Chairman: Matthew Parish

Introduction

1. This is a short guide to the essentials of doing business in Ukraine. It is written by an international lawyer who is the Executive Chairman of the Ukraine Development Trust, responsible for this document, but it is not focused on legal details so much as practical guidance and cultural understanding needed for doing business in Ukraine and for investing in Ukraine. The author has over 20 years of experience of doing business in Ukraine and this guide is intended to be an assimilation of that experience. This is not legal advice and no substitute for legal advice.

Legal structures

2. In theory, if you want to do business in Ukraine you should operate through legal structures and there are several to choose from. However in practice, in wartime Ukraine this practice is uncommon as the procedure is bureaucratic and entails all sorts of tax complications that most Ukrainians prefer to avoid.
3. The LLC structure is the most straightforward for a foreigner to establish in Ukraine but it is complicated to establish one. It requires multiple steps. Firstly you must apply for a Ukrainian visa, in order to obtain a temporary residence permit. (You cannot apply for a temporary residence permit in Ukraine unless you have entered Ukraine on a visa.) Then you must apply for a taxpayer ID number at a regional tax office. Then you can hire a Ukrainian lawyer to establish a company for you of which (s)he is the manager. Then the company can enter into an employment contract with you, on the basis of which you can apply for a work permit. Once you have the work permit, you can replace the lawyer you have hired as director of the company with yourself and you have your own Ukrainian company controlled and owned by you.
4. However simple this sounds in theory, in practice it will take several months and require the intervention of Ukrainian legal counsel at every stage from applying for the visa to applying for the residence permit to applying for the tax ID number to registering the company to drafting a compliant employment contract to applying for the work permit. The stage at which you have a Ukrainian company of which you are the director may easily be six to nine months after you originally engage the Ukrainian lawyer, and you may have paid several thousand US dollars in legal fees in addition to all the official fees.
5. You must query the benefits of doing this when you can operate in Ukraine through a company registered abroad or you can simply act in your capacity as a private individual. Although some larger companies do operate through Ukrainian subsidiaries most business is done either in someone's personal name or via foreign legal entities. There are no obvious

advantages to operating through a Ukrainian legal entity during wartime circumstances. Instead there are only legal obligations, including the requirement to file annual returns and renewals about tax obligations and the like, and this will entail further legal bills that will be significant.

Banking

6. Ask yourself whether you really need to do any banking in Ukraine. Although it is possible to open a bank account in Ukraine merely by being present in the country (at least with some banks, including *Privatbank* when we last checked), there is no obvious advantage to doing so. If you are receiving revenues in Ukraine then it makes more sense to have those revenues paid via a Fintech mechanism directly to a foreign account. An exchange rate commission may be payable but it is not likely to be substantial in comparison with the inconveniences associated with banking in Ukraine.
7. The two FinTech companies that deal with Ukraine the most are Wise and PayPal and at the current time PayPal is waving transaction fees (that can be substantial) on all payments made to or from Ukrainian accounts. An account counts as Ukrainian for PayPal's purposes not if the bank account associated with the PayPal account is in Ukraine but if the PayPal account is opened in Ukraine, i.e. from a Ukrainian IP address.
8. International wire transfers both to and from Ukraine are exceptionally cumbersome or even impossible and should be avoided.
9. Many foreign banks and FinTech companies provide commission-free debit and credit cards for payments in Ukraine. You may link those cards, and FinTech accounts, with your foreign company and handle payments into and out of Ukraine in that way.
10. Be aware that cash payments in respect of substantial commercial transactions are quite common in Ukraine. You may be surprised by the magnitude of sums that are transferred using cash. Foreign currencies, in particular US dollars and Euros, are preferred. Swiss Francs are another common option.

Taxes

11. Most Ukrainian businesses do not pay tax. Taxation is often regarded as akin to government extortion. If you attempt to register a business you will be subject to periodic demands for arbitrary amounts of taxation and other fees, either directly or via your lawyers, unless you are registered as an NGO in which case these types of demand are less likely to arise.

Business registrations

12. Although in theory under Ukrainian law various types of business require certain sorts of registration, in practice few businesses undertake this type of registration with the government as it virtually inevitably involves corrupt payments of a kind that, as a foreign citizen, the domestic law of your home country may criminalise even if you make the corrupt payment abroad.
13. Official registration of your business also increases the likelihood of miscellaneous attempts at extortion of an official nature (e.g. government officials, or people associating themselves with the government, threatening to revoke your licence(s) unless various types of illicit payment are made).
14. We hope and expect that this will change in the future as Ukraine progresses towards Euro-Atlantic integration; but this is the reality at the current time. Most Ukrainians engaging in business keep their business registrations and licences to a minimum to avoid government harassment.

Contracts

15. Ukrainians believe as a whole that formal written contracts of the sort that typify many complex western business relations are a form of fraud designed to deceive third parties, such as the government, as to the nature of the underlying transaction. This is a hangover from the Soviet period. As such, do not bother with complex negotiated or prepared contracts unless there is some specific purpose associated with the government as to why you need to have a complex piece of contractual documentation in place.
16. The courts are incapable of enforcing written or oral contracts and you should not attempt to engage the Ukrainian courts under any circumstances.
17. Again we hope this will change in the future but at the current time it is the regrettable reality and all Ukrainians know it.
18. Once a deal has been negotiated - at least, its fundamental terms - Ukrainians on the whole are honest and tend to stick to the bargains they have negotiated, understanding always that difficult circumstances may cause a contract to need to be renegotiated at a later stage so always bear this in mind. It goes without saying and is expected that any contract may require renegotiating later if the economic or political position of one of the parties changes.

19. Ukrainians often have a “Russian roulette” style of contractual bargaining”: they don’t negotiate much. One party decides what the other is likely to accept, and they make an offer accordingly. The other side then accepts it or rejects it, and the deal is made or broken. Positional bargaining - making an offer overly generous to you and waiting for the other side to counter-offer - doesn’t work well in Ukrainian society. It is regarded as deeply suspicious by a lot of people. So know your contractual counterpart and your commercial context well before making a contractual offer.
20. Emails are often used to document agreements. If someone is writing an email, it probably means they intend to enter into formal relations or they are offering to do so. This standards in contrast to written contracts with signatures and stamps, etcetera, that are regarded as fictitious or fraudulent in substantial part.
21. Ukrainians distrust telephone communications related to business. This is a hangover from the Soviet era, in which records of telephone conversations could be used to misdescribe or misreport what was actually said. Things should be discussed in person or via email if the intention is to create formal relations.
22. Ukrainians like to know the person they are dealing with, so meetings in person are important. They often mix business and pleasure, so social events may be a prerequisite to or part of formal relationships.
23. Where a contractual dispute arises, contracts are generally enforced using force.

Immigration

24. On the website of the Ukraine Development Trust, www.development-foundation.org, you will find a series of advice notes on visas and residence permits for immigration to Ukraine. Unless you wish to establish and manage a company or be formally employed in Ukraine (see above), immigration regulations are not a compelling issue for doing business in Ukraine unless you wish to spend more than 90 days in any 180 day period in Ukraine. As a practical matter, you can do business in Ukraine irrespective of your immigration status in the country.

Listings, flotations and share ownership

25. Share ownership is a concept barely understood in Ukraine and wide share ownership is virtually unheard of. Do not attempt to structure a business venture by having multiple shareholders in a company or you are looking for a sticky ending to your venture.

26. Nor should you seek to raise finance in such ways. It simply will not work, unless of course you float a company or issue bonds in another country and that company conducts operations in Ukraine.

Joint ventures

27. A joint venture with a Ukrainian partner should be discussed as a series of straightforward bullet points and recorded in an email; see the discussion of contracts above. Make joint venture agreements simple. Ukrainians do not understand concepts like “best endeavours” or “reasonable endeavours”. Just state who is responsible for what and how revenues and profits are split, in your documentation.

Accounting

28. Ukrainians are used to keeping two sets of accounts: one for the authorities and one that reflect commercial matters as they really are. Therefore if you see a set of accounts that do not reflect what you believe you agreed with a Ukrainian counterpart, do not immediately become hostile; meet them in person with the documentation and ask them what the purpose of this documentation is or what it means.

29. Genuine accounts tend to be very simple and are often kept in paper or handwritten form rather than electronically. Discuss with your Ukrainian counterpart how accounts are to be kept. Be open with them.

Facilitation payments

30. Although we advise you never to participate in facilitation payments, they are a fact of life in Ukraine in dealing with governmental authorities who will often want payments or commissions on deals in respect of their participation in them. Stay away from such things and let your Ukrainian counterparts deal with government officials. Do not attempt to do so yourself and do not let your side of the financial accounts be polluted with mysterious payments that may be going to government officials.

Customs and excise

31. The import of vehicles into Ukraine is complex. It is essential that pre-import paperwork is undertaken, and also that paperwork transferring ownership of the vehicle to a Ukrainian citizen or entity is completed once the vehicle has entered Ukraine. If you drive a vehicle into Ukraine and then depart Ukraine without the vehicle, then should you re-enter Ukraine at a later date and you are stopped by the Police you may be detained by the Police in respect of

legal violations committed that involve the vehicle (such as speeding tickets, drink driving offences, motor accidents, etcetera).

32. The export of vehicles from Ukraine in respect of which the paperwork is not in your name is virtually impossible in wartime conditions. It is also very difficult to transfer ownership of a vehicle in the name of a Ukrainian vehicle or entity into your name as a foreigner so as to drive it out of the country.
33. Import and export of anything that might be classified as weaponry is heavily regulated and you should seek legal advice on how to do this. You will also have to comply with the relevant regulations of the neighbouring state. Comprehensive searches of vehicles and persons for weaponry are becoming increasingly common. Incidents known of at the beginning of the war, when imports of matériel were overlooked, are no longer valuable as guidance. Any import or export that might be considered as having a single-use military purpose requires licences and this regime is enforced. If you are caught trying to import or export matériel without a licence you may be arrested and detained at the border. There seems to be a rule that one civilian drone per person can be imported without a licence. Even large knives may be confiscated upon search at the border, treated as weapons.
34. Export of Ukrainian agricultural produce to the European Union is the subject of constant political fluctuations and licensing is in force which will require specialist legal advice mostly available in Kyiv. The same is true of the export of alcohol. Import of alcohol is common but is taxed and requires licences.
35. Ukraine has her own complex system of sanctions relating to goods and entities with connections to Russia and Belarus, and these are in many cases substantially more severe than those imposed by the European Union. If there is any connection of your business with Russia or Belarus, you need to take specialist legal advice on Ukrainian sanctions legislation.

Legal advice and representation

36. The quality of lawyers in Ukraine is generally quite high and prices are reasonable by international standards. However different law firms have different specialities and their abilities to serve their clients effectively depends in large part upon their personal connections with government officials in any particular field. Therefore it behoves a person seeking legal advice to select their Ukrainian legal counsel with the utmost care.
37. The Ukraine Development Trust can advise on suitable Ukrainian legal counsel for any particular transaction if so requested.

Real estate

38. In principle real estate can be purchased by non-Ukrainian citizens with residence permits, as well as by Ukrainian legal entities. You do not need a Ukrainian legal entity to purchase real estate on your behalf. However in practice a large proportion, and perhaps even the greater majority, of Ukrainian real estate that you may be interested in purchasing is state-owned or socially-owned property; and the process of regularising cadastral records to show long-term possessors of real estate as owners with the legal entitlement to sell the land has not really begun in Ukraine. Therefore the risk you face is that the person purporting to sell the property to you does not in fact have the legal right to sell it.
39. Moreover there may be historical claims to the title that precede the Soviet era of nationalising properties of people deemed enemies of the state. Therefore it is possible to purchase property only to find a residual claim by a person purporting to have had their land illegally nationalised during the period of the Soviet Union. Ukraine has no adequate current legal regime for addressing such claims.
40. None of this is to say that buying property in Ukraine is out of the question; but it is fraught with legal risks. Even if those risks may be more theoretical than practical, nonetheless they need to be thoroughly assessed by competent real estate counsel and standard security measures need to be taken on purchase of new property, such as changing all doors, windows and locks so as to prevent break-ins by persons purporting to hold legal rights. Also bear in mind that the courts in Ukraine are notoriously corrupt and therefore nuisance lawsuits on the part of persons purporting to exercise legal rights in respect of real estate you have purchased as a foreigner can never be excluded and they may need to be defended in the context of an incompetent and corrupt legal system.

Land use and zoning regulations

41. As a practical matter there are no regulations operative at the current time although a theoretical regime of land use regulations exists. If you own the land, you can do anything you want with it. However the challenge is coming to own the land, in particular because the vast majority of land continues to be state-owned.

Political interference

42. Ukraine has historically had a tradition of requiring foreign investors of any size to enter into partnerships with Ukrainian political figures; you could not achieve much without an affiliation with one of the “Oligarchs” or someone around them. However that is now largely disappearing and Ukrainian commercial culture is far more open to outsiders than it used to

be. Expect at least formal adherence to European standards of the four freedoms (of persons, goods, services and capital) and be prepared to complain if these standards are not being adhered to.

43. Ukraine's movements to join the European Union give prospective investors in the country substantial leverage in demanding European standards of treatment of their investments.

44. Ukraine is a party to a series of bilateral investment treaties with other countries which remain in force notwithstanding wartime conditions. However be aware that Ukraine has never lost a bilateral investment treaty arbitration claim against it, although Ukraine has been sued many times.