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1-st office: Obolonsky prosp. 23-A, Kyiv, 04205, tel. (+ 380 44) 467-99-99, 467-8-467,
2-d office: office 901-904, Esplanadna street 4-6, Kyiv, tel. (+ 380 44) 287-41-55, 287-39-51,
www.consulting-invest.com, e-mail: office@consulting-invest.com, esplanadna@consulting-invest.com,

Basic questions about private enterprises in Ukraine*

1. Private enterprise as an organizational legal form of enterprise

(According to explanations given in the official Letter of the State Committee of Ukraine on the questions of regulator policy and enterprise from 16.02.2005 № 912)

Among the organizational legal forms of subjects of economic activity, which are determined by Classification of the State classifier of Ukraine, ratified by the Order of Stateconsumerstandard ("Derzhspozhyvstandart") of Ukraine on May, 28 in 2004, is listed such an organizational legal form as "private enterprise".

According to the article 113 of the Economic code of Ukraine, articles 325, 326, 327 of Civil Code of Ukraine, a private enterprise is an enterprise, that operates on the basis of private property of one or a few citizens, foreigners, persons without citizenship and his (them) labour or with the use of wage labour. Private enterprise is also an enterprise, that operates on the basis of private property of legal entity.

Thus, private enterprise itself is an organizational legal form of legal person.

This form is popular among enterpreneurs, because in comparison with all other forms there are only a few laws regulating activities of legal person in such form, which leaves space for more economical freedom.

2. Registration of private enterprise

(According to explanations given in the official Letter of the State Committee of Ukraine on the questions of regulator policy and enterprise from 31.08.2005 N 7515)

According to Law of Ukraine "About state registration of legal entities and physical persons - businessmen" adopted 15.05.2003 № 755-IV (Hereinafter referred to as Law about registration) information about all legal entities must be entered in the Sole state register of legal entities and physical persons – businessmen, that is private enterprises the same as other subjects of economical activity are subject to state registration.

As by an active law are not foreseen the special features of creation of private enterprises, it is regulated by general norms of the Civil, Economic codes and other Laws of Ukraine.

At the article 24 of the Law about registration it is foreseen, that for conducting of state registration of legal entity a founder (founders) or authorized by them person must personally give such documents to the state registrar (to send by the certified mail with description of enclosure):

- the filled registration card for conducting of state registration of legal entity;
- copy of original or notarial certified copy of decision of founders or authorized by them organ about creation of legal entity in the cases foreseen by law;
- two copies of constituent documents;
- document, that confirms bringing of registration payment for conducting of state registration of legal entity.

* According to the legislation valid on 01.02.2007

In case if reservation of the name of legal entity was conducted also, except for documents which are foreseen above, it is also necessary to give operating reference from the Sole state register about reservation of the name of legal entity.

In the case, foreseen by law, except for documents listed above, additionally is to be given (sent) the copy of decision of organs of the Antimonopoly committee of Ukraine or Cabinet of Ministers of Ukraine about the grant of permission on the concerted actions or on concentration of subjects of economical activity.

In the case of state registration of legal entity, the founder (founders) of which is a foreign legal entity, except for documents which are foreseen above, a document about confirmation of registration of foreign person in the country of its location is additionally given, in particular excerpt from an auction, bank or judicial register which responds to request part sixth of the article 8 of this Law.

If documents for conducting of state registration of legal entity are submitted by the founder of legal entity, he additionally shows his passport to the state recorder.

If documents for conducting of state registration of legal entity are submitted by the person authorized by the founder (by founders) of legal entity, this person shows to the state recorder passport and gives document, that confirms his/her authority (for example, Power of attorney).

Documents which are given for conducting of state registration of legal entity are taken according to the description list, the copy of which in the day of receipt of documents is given (sent by the certified mail) out to the founder or authorized by him person with a mark about the date of receipt of documents.

The date of receipt of documents for conducting of state registration of legal entity is brought in to the magazine of consideration of registration actions.

In addition, according to a chapter 7 of Article 19 of this Law, not later than thirteen months from the day of presenting (sending by the certified mail) of the last registration card, which contains information about a legal entity, a legal entity is under an obligation to give (to send by the certified mail) to the state recorder the registration card of standard pattern about confirmation of information about a legal entity.

3. Founders

(In accordance with clarifications given in the official Letter of State Committee on the questions of regulator policy and enterprise from 31.08.2005 N 7515)

It is set by the article 325 of the Civil code of Ukraine, that physical and legal persons are the legal subjects of private property. Physical and legal persons can be proprietors of actually any property, with only exceptions separately foreseen by the legislation.

Coming from afore-mentioned, a private enterprise is created exceptionally on the basis of private, not any other (state, communal) forms of property of physical persons or legal entity; its founder can be one or more physical person(s), legal person(s) and even by one legal and one physical person.

3.1. How the proprietor of private enterprise can sell corporate rights to other physical person

According to ch. 2 of the Art. 656 of the Civil code of Ukraine property rights can be the object of sell-buy agreement. And if other does not derive from the character of these rights, in relation to a 'corporate rights' sale are used the general provisions of sell-buy contracts.

According to chapter 3 of the Article 29 of Law of Ukraine «About state registration of legal entities and physical persons-businessmen", the change of founder at the transfer of the right of founder to other person changes constituent documents. For registration of changes to these documents to the state recorder is to be given notarial witnessed document about the transfer right of founder.

So the sell-buy of corporate rights agreement has to be witnessed by notary.

In addition, in the Letter of the State Committee of Ukraine on the questions of regulator policy and enterprise from 20.06.2001 N 2-222/3825 it is marked, that there is no legislative obstacle to entering into civil legal contract from the transmission of private enterprise as such, for example purchase-sale of enterprise as an integral property complex.

4. Statutory fund of private enterprise and order of its creation

(According to the official Letter of State Committee on the questions of regulator policy and enterprise from 26.03.2004 N 1858)

Accordant to chapter 3 of the Article 62 of the Economic code of Ukraine an enterprise, if by Law is not set other, operates on the basis of Statute. As by the noted article to the private enterprise are not set the separate requirements to the constituent documents, we apply general rules.

On today's moment by an active law are not set the obligatory requirements in relation to a size and order of creation of statutory fund of private enterprise, therefore these questions are determined by a founder(s) until the law regulating it will be adopted.

As soon as the founder(s) have decided on order of creation and size of the statutory fund, such information has to be included in the Statute.

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For further information concerning such materials, please, contact Oleg Rachuk, Kateryna Krakhmalova, Law firm "Consulting-Invest", Kiev, tel.: (380-44) 287-39-51; 287-41-55; e-mail: esplanadna@consulting-invest.com
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