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THE ECONOMIC LAW IN THE UKRAINE
– PRAGMATIC ASPECTS OF ECONOMIC ACTIVITY
Part I

In that case, can the Ukraine still be attractive for Polish entrepreneurs?

The market is still very attractive, but it needs to be entered in a wise way. Ukraine is not a country of easy financial gain. It is a country with long-range perspectives, rich in natural resources, and inhabited by enterprising people. They simply cannot fail to succeed.¹

1. THE MAIN LEGAL REGULATIONS APPLICABLE
TO POLISH-UKRAINIAN ECONOMIC CO-OPERATION

In view of Poland's membership in the European Union, a considerable part of the relations between Poland and Ukraine (especially those related to commerce), is regulated by agreements signed between the EU and the Ukraine. The crucial legal act determining mutual relations between the countries is the Partnership and Cooperation Agreement (PCA) signed on 14 June 1994 and entered into force on 1 March 1998. On the 29th of April 2004 Ukraine signed an additional protocol expanding the PCA's articles to new countries entering into the UE, including Poland. The legal basis of mutual economic relations is constituted by the following legal acts: the Agreement between the governments of Poland and Ukraine concerning the furtherance and the protection of investments signed on 12 January

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¹A. WOŹNIAK, T. SERWETNYK, *The Ukraine Won't Go Bankrupt*, "Rzeczpospolita", 14 April 2009.

1993,² the Convention between the governments of Poland and Ukraine for the avoidance of double taxation and the prevention of fiscal evasion affecting taxes on income and on capital signed on 12 January 1993,³ and the agreement on economic cooperation signed on 4 March 2005 by the government of the Republic of Poland and the Cabinet of Ministers of Ukraine.⁴

2. THE UKRAINIAN LEGAL REGULATIONS ON THE CONDUCT OF ECONOMIC ACTIVITY

The specific nature of modern economic law in Ukraine derives, among other things, from the fact that there is no single legal act which would contain all possible forms of conducting economic activity.⁵ Therefore, Ukrainian law comprises regulations on the forms of conducting economic activity (economic entities) by means of several legal acts, i.e. the Act of Law No. 435 – IV Civil Code of 16 January 2003,⁶ the Act of Law No. 436 – IV Economic Code of 16 January 2003⁷, and the Act of Law no. 1576 – XII on Business Organizations of 19 September 1991.⁸ Taking into consideration the regulations specified in the above mentioned legal acts, economic agents can be grouped into the following categories according

² "Dziennik Ustaw" [Journal of Laws] 1993, No. 125, item 575.

³ "Dziennik Ustaw" [Journal of Laws] 1994, No. 63, item 269.

⁴ "Monitor Polski" [Official Journal] 2006, No. 59, item 628.

⁵ Apparently, the Act which has crucial importance here is art. 42 of the Constitution of Ukraine which guarantees the citizens of Ukraine the right to conduct economic activity within the limits of legal regulations of the country, while art. 26 of the above mentioned Act extends this law to foreigners who legally reside on the territory of Ukraine (apart from exceptions referred to in detailed regulations).

⁶ *Cywilnyj Kodeks Ukrainy* wid 16 sicznia 2003, "Ofkijnyj Wisnyk Ukrainy" [Journal of Laws] 11 (2003), at 461. The New Civil Code, based on the Civil Codes of Holland and Germany, has been passed by the Supreme Council of Ukraine on the 16th of January 2003 and came into force on the 1st of January 2004, along with the new Economic Code and the new Customs Code; consequently, a portion of the old regulations has lost its validity or has been amended, e.g.: the Act of July 18 1963, *the Civil Code*, the Act of Feb. 7 1991 *On Entrepreneurship*, the Act of March 27 1991 *On Enterprises In Ukraine*. The new Civil Code is, alongside the Constitution, the most important legal act in the Ukraine, comprising seven books, ten chapters, five subchapters, ninety titles divided into paragraphs and one thousand and thirty eight hundred articles. All books (apart from the sixth which pertains to law of succession) regulate the issues related to economic activity.

⁷ *Hospodarskyj Kodeks Ukrainy* wid 16 sicznia 2003, „Ofkijnyj Wisnyk Ukrainy” [Journal of Laws] 11 (2003), at 462.

⁸ *Zakon Ukrainy "Pro hospodarski towarysewa"* wid 19 weresnia 1991, "Widomosti Werchownoji Rady Ukrainy" 49 (1991), at 682.

to entity criterium: 1) natural person – entrepreneur,⁹ 2) legal entity¹⁰ as an agent of economic activity, 3) civil law partnership. In particular, the regulations concerning the forms of legal persons have been included in both the Civil Code and the Economic Code, while the rules on business organizations are particularized in the Business Organizations Act.¹¹ Due to the above mentioned factors, the Economic Code accounts for types of economic entities which are not included in the Civil Code. For example, the Civil Code enumerates two forms of economic agents which are legal persons: civil law partnership and production

⁹ All adult persons possessing unlimited ability to perform legal actions can be registered as a natural person-entrepreneur. Art. 55 of the Economic Code specifies that economic activity can also be conducted by foreigners who have registered as natural persons-entrepreneurs. According to the art. 51 of the Civil Code, unless stipulated otherwise by the Act of Law or determined by the content of relations, the economic activity of natural persons-entrepreneurs is regulated by the same laws which pertain to legal persons. This is confirmed by the fact that the registration of economic activity as a natural person-entrepreneur has been regulated by the same legal act which governs the registration of legal persons: the Act of 15 May 2003 on the state registration of legal persons and natural persons-entrepreneurs (*Zakon Ukrainy "Pro derżawnu rejestraciju jurydycznych osib ta fizycznych osib pidpryjemciw"* wid 15 trawnia 2003, "Ofkijnjy Wisnyk Ukrainy" [Journal of Laws] 25 (2003), at 1172).

¹⁰ According to the Civil Code of Ukraine, legal persons can be divided as follows: private corporations and public corporations. According to Art. 18 of the Civil Code, a public corporation is established under public authority organ act, whereas a private corporation is set up under the founding documents (e.g. corporation agreement, statute). Art. 83 of the Civil Code envisages that legal persons can be established as corporations, institutions and other forms encompassed within the article. At the same time, on the basis of Art. 87 of the Civil Code it can be assumed that a legal person is established on the day of their registration at the National Court Register. The liquidation of a legal person occurs in the consequence of liquidation or transfer of assets, rights or obligations to other entities – legal successors as a result of consolidation, enclosure, division, and transition. As inferred from Art. 110 of the Civil Code, a legal person is liable to liquidation in the following cases: under the decision of his or her partners or a body of legal persons authorized to make such a decision according to the founding documents, thereby also, after the period of time for which the legal person has been established, the achievement of aim for his or her establishment, and also in other cases envisaged in the founding documents, under the judicial decision on declaring the state registration of the legal person as void, thereby also in relation to violations committed during the registration which cannot be removed, and in other cases envisaged by the Act.

¹¹ There are several disparities in the detailed regulations concerning the functioning of separate types of corporations in comparison to the regulations of the Polish legal act of 15 September 2000, *Business Organizations Code* ("Dziennik Ustaw" [Journal of Laws] 2000, No 94, item 1037, as amended); e.g. in Ukrainian law there is no division of business corporations into personal partnerships and capital companies, and as a result all business entities in Ukrainian law possess legal personality.

cooperative,¹² while the Economic Code, apart from civil law partnership and production cooperatives, also refers to diverse types of enterprises.¹³

3. COMMERCIAL COMPANIES AS ONE OF THE ORGANIZATIONAL-LEGAL FORMS OF CONDUCTING ECONOMIC ACTIVITY IN UKRAINE

The Civil Code defines a business organization as formed by two or more persons (partners) with equal rights to share. The crucial dichotomy in the division of business entities is their grouping into non-commercial and commercial organizations. The first group includes entities conducting economic activity with the aim of financial gain and the distribution of profits among the partners. They can only be established as commercial companies (full partnership, limited partnership, limited liability company, company with additional liability, joint stock company) or production cooperatives. The Civil Code characterizes a commercial company as a legal entity whose authorized capital is divided into shares, which are held by shareholders. Both a legal and natural person can be a shareholder in a commercial company. Additionally, Art. 167-169 of the Civil Code state that the founder and sole shareholder of commercial companies is the State, the Autonomous Republic of Crimea, or the bodies of local government. On the

¹² According to Art. 163 of the Civil Code of Ukraine, a production cooperative is a voluntary association of citizens established according to rules of membership, personal involvement in the activities done on behalf of the cooperative and common property of the members. The status of a cooperative stipulates for the participation of other persons in its productive activity on the basis of membership rules. Members of a cooperative bear subsidiary responsibility for the cooperative's liabilities to the extent delineated by the statute of the cooperative.

¹³ The Economic Code specifies the following types of enterprises: a private (personal) enterprise which belongs to one natural person, collective enterprises (which include production cooperatives), communal enterprises which belong to a body of a local government, state enterprises, and enterprises established in a mixed form of ownership. There is also a division into unitary and corporate enterprises (depending on the number of founders), as well as small, medium and large enterprises (in relation to the number of employees). If an enterprise is co-owned by a foreign natural or legal person who possesses at least 10% of shares, the enterprise is described as a foreign capital enterprise. On the other hand, an enterprise whose shares are owned in 100% by a foreign legal or natural person is considered as a foreign enterprise. A private enterprise, which can comprise one or more owners, is the most popular form of enterprise among investors. It does not have to possess any founding capital, and its structure, relations between the members and other issues are determined by the statute.

other hand, non-commercial organizations are characterized by their non-profit objectives.

The first type of commercial company is full partnership,¹⁴ defined by Art. 119 of the Civil Code as a commercial company whose shareholders have signed an agreement under which they conduct commercial activities on behalf of the company and unanimously bear subsidiary responsibility for its liabilities with all their assets. A given person can only be a shareholder in one full partnership. Unless they receive permission from other shareholders, a shareholder in a full partnership is not permitted to engage on his or her behalf or on the behalf of third parties in legal activities which resemble those organized in the partnership.¹⁵ In the event that this regulation is violated, a partnership is entitled to claim reimbursement for the sustained losses or the shareholder is to transfer the profits gained during the execution of such legal activities to the company. The name of a full partnership should include the names of the shareholders, the words “full partnership” or should specify the names of one or a few shareholders along with “Inc.” and the phrase “full partnership”. Unless otherwise stipulated in the agreement, a full partnership is managed by all shareholders.

Another type of commercial company specified in the Civil Code is a limited partnership which consists of two categories of partners: general partners, who conduct economic activity on behalf of the partnership and unanimously bear subsidiary responsibility for its liabilities with all their assets, and one or few dormant partners, who do not participate in the management of the partnership and only bear the risk of losing their investment share in the partnership. A limited partnership is formed on the basis of a founding document which is signed by all general partners. The Civil Code stipulated that a given person can be a general partner in only one limited partnership, and moreover, a general partner cannot be a shareholder in a full partnership.

The most common, effective, and optimal form of commercial company for foreign investors in the Ukraine¹⁶ is a limited liability company.¹⁷ The Civil Code

¹⁴ In the Polish legal system, the equivalent of a full partnership is a general partnership, although the principal difference lies in the fact that a general partnership, in contrast to a full partnership, does not possess legal personality, but only legal status.

¹⁵ The rights and obligations of shareholders in every commercial company are specified in Art. 116 and 117 of the *Civil Code* and Art. 10 and 11 of *On Commercial Companies Act*.

¹⁶ Foreign investors might be concerned by the fact that since 1 January 2009, Ukraine implemented regulations of the Legal Entities Corruption Law of 11 June 2009 which introduce responsibility of legal persons for corruption offences (*Закон України “Про відповідальність юридичних осіб за вчинення корупційних правопорушень”*) committed by a company partner, a member of a board of directors, or a founder in violation of the Criminal Code. A criminal proce-

defines this type of commercial entity as set up by one or more shareholders (natural or legal persons¹⁸), whose initial capital has been divided into shares amounting to a sum settled in the founding document, i.e. the Articles of Organization. Art. 52 of the Ukrainian act on commercial companies stipulates that the initial capital of a limited liability company should comprise no less than one minimal wage¹⁹ settled on the day of the registration of the company.²⁰ The shares for the initial capital can be provided by means of cash or in-kind contributions upon condition that at least fifty percent of the amount of respective shares for the initial capital is transferred by the shareholders on the temporary banking account as a non-cash contribution (by non-residents in foreign currencies) prior to the registration of the company, while the rest of the amount is contributed within the first year, starting from the day of the registration. If the shareholder does not meet the above obligation, he or she is required to pay 10% interest of the unpaid amount, unless otherwise stipulated by the Articles of Organization. It is characteristic for a limited liability company that the shareholders are liable for the debts of the company only to the extent of their investment shares. The company is managed by its structural units, the highest authority of which is wielded by the General Meeting of Shareholders. The executive body is constituted by a Director

ture is initiated by the public prosecutor, and the case is brought to trial before a common court of law (local court), in which the stated charges in a criminal case concern a corruption offence. According to the new regulations, a legal person can be penalized in the following ways: a fine (amounting to 255.000,00 UAH), a strict injunction not to do certain kinds of activities (for the period from three months to three years), confiscation of property, and liquidation.

¹⁷ The legal term "limited liability" denotes that in the case when a compulsory execution is levied on the assets of an indebted company, a shareholder loses only his or her shares, and the responsibility for company's liabilities (also in case of bankruptcy) is not extended on his or her personal assets. Similarly, shareholders in a joint stock company bear responsibility for a company's liabilities only to the extent of the value of their shares.

¹⁸ A limited liability company, as well as a joint stock company can both be founded by a single natural or legal person who consequently becomes a partner. Nonetheless, the above mentioned companies cannot be established solely by a one-person economic company (a joint stock company, a limited liability company or a company with additional responsibility).

¹⁹ The amount of a minimal wage in the Ukraine is settled each time in the Budget Law. In 2009 the levels of minimum wages have been set as follows: for the period from 1 January to 31 March 605 UAH, from 1 April to 30 June 625 UAH, from 1 July to 30 September 630 UAH, from 1 October to 30 November 650 UAH, and in December 669 UAH.

²⁰ The amount of the authorized capital in limited liability companies established in the Ukraine has been lowered from the equivalent of no less than one hundred minimal wages to one monthly minimal wage, under the Act of Supreme Council of Ukraine "On Amendments to Certain Acts of Ukraine Regarding Alleviation of Conditions of Doing Business in Ukraine" published and adopted on January 6th 2010.

or a Board of Directors, whereas the company as a whole is regulated by the Scrutiny Committee.

The General Meeting of the Shareholders possesses full authoritative power provided that all of the shareholders holding more than 60% of votes are present. The decisions are made by the votes of the majority of shareholders, although some resolutions require the votes of shareholders holding more than 50% of votes (for example the resolution expelling one of the shareholders). A limited liability company creates a reserve fund amounting to 25% of the authorized capital and can establish other funds as well. The reserve fund is created by means of annual 5% deductions of the amount of net profit and is allocated to equalize the losses on the basis of the recapitulation of the fiscal year. At the same time, the company is authorized to use the reserve fund to elaborate and implement new long-range programs or in order to supplement its current assets. In case a shareholder decides to withdraw from the company, his or her legal successor or inheritor is entitled to the equivalent of the portion of the shareholder's assets, proportionate to the shareholder's investment in the authorized capital. A shareholder also has the right to sell or dispose in any other way of their shares in the initial capital in favor of one or more shareholders, the company or third parties. Shareholders are granted unqualified priority to buy the shares of the withdrawing member, proportionate to the amount of their shares. Providing that the shareholders do not avail themselves of the right of priority within a month's time since the withdrawing member's notification of the intention of selling the shares, the shares can be bought by a third party.

The law of Ukraine stipulates for setting up a company with additional responsibility whose legal status is similar to that of a limited liability company. Both forms of commercial organizations are managed essentially according to the same regulations. The Civil Code defines a company with additional responsibility as established by one or a group of shareholders, and whose initial capital is divided into shares amounting to a sum settled in the Articles of Organization. The difference between a limited liability company and a company with additional responsibility consists in the fact the shareholders in the latter type unanimously bear responsibility for the company's liabilities to the extent of the value of their shares contributed for the share capital, and in case the sum is insufficient, then additionally their personal assets are liable to the extent of the value of one common multiple of their shares for each of them. The limit of liability of the shareholders, as well as its character (partial or joint), is determined each time by the shareholders in the Articles of the Organization. To conclude, the company with additional responsibility is formed when the amount of the capital required

for the commencement of economic activity and the proper functioning of the company is considerably smaller than in order to secure the company's liabilities. In such event, it is not necessary to accumulate the whole sum of the capital at once, since the capital is secured not so much by the amount of legal reserve as by the introduction of the additional financial liability of the shareholders.

The joint stock company is, according to the Art. 152 of the Civil Code of Ukraine, an entity whose founding capital has been divided into shares of equal par value. The total par value of shares comprises the founding capital of the company whose minimal amount, as stipulated in the Art. 24 of Business Companies Act, cannot be smaller than the equivalent of 1250 minimal wages. At least half of the par value of the share capital has to be paid prior to the founding meeting of the shareholders, and the complete initial share value must be paid within one year's time since the company's registration. A joint stock company can be established by both natural and legal persons, and simultaneously, the legal regulations do not specify either the minimal or maximum number of shareholders. In case a joint stock company is formed by a group of people, they sign a contract which defines the general trends which are to organize the company's activities. The contract which commences the company is drawn in a standard written form. In case the founders of the company are natural persons, it is necessary to draw a notarized contract. The founding document of a joint stock company is described as the Articles of Association.²¹ The joint stock company is solely responsible for its liabilities with its assets, whereas the shareholders bear responsibilities only to the extent of the value of their shares. Nonetheless, the shareholders who have not paid off shares, are responsible for the company's liabilities to the extent of the unpaid value of the shares owned by them. At the same time, the persons comprising the company bear collective responsibility for the liabilities emerging until the moment

²¹ The Articles of Association in a limited liability company and in a joint stock company set out rights and obligations of the founders. The Articles should include, among other items: the name of a legal entity (or their separated unit) consisting of two elements, namely the designations an organizational-legal form and the proper name of the company, except that the proper name cannot contain the term "state" or proper names of The Ukrainian administrative bodies, as stipulated in resolution of the State Committee of Ukraine for Regulatory Policy and Entrepreneurship No 65 of 9 June 2004 (with amendments) "On Approval of Requirements for the Spelling of the Name of a Legal Entity or a Separated Unit Thereof," the place of residence, i.e. the town in which an entity was registered, the date of registration, the name of a person authorized to sign the documents, specified names of the founders, their personal data, a detailed description of the company's objectives (a general description such as "all activity conforming to the law of Ukraine is not permitted), the statement on the amount of the founding capital, and the scope of competence of the company's bodies."

the registration of the company at the National Court Register. The General Meeting and a Board of Directors are the authorized bodies of a joint stock company. For companies in which the number of shareholders exceeds fifty, a supervisory board must be appointed, yet in smaller companies the decision to appoint such a body depends on the will of the shareholders. Prior to Ukraine's adoption in March, 2009 of On the Joint Stock Companies Act No 514-VI of 17 September 2008, which was based on the On Commercial Companies Act of 1991, there existed only two types of joint stock companies:²² open (private) joint stock companies, whose shares were in free float,²³ i.e. they could be freely traded through share subscriptions or deeds of sale at the stock exchange,²⁴ and closed (public) joint stock companies in which the priority of purchase was given to other shareholders.

The civil law partnership (the literal translation from the Ukrainian is “partnership”) is a separate form of conducting economic activity in the Ukraine. This type of business entity is not encompassed by the law of Ukraine as a commercial company, and the regulations pertaining to its functioning have been stipulated in the Civil Code under the chapter “Liabilities”. The civil law partnership does not possess legal personality and is commenced by means of an agreement signed by the founders (partners – both natural and legal persons) in a standard written form. A civil law partnership is not accountable for state registration, yet it is listed in the State Tax Administration of Ukraine.

²² The “On Commercial Companies” Act shall remain in force within two years's time since the implementation of the “On Joint Stock Companies” Act, i.e., since 29 April 2011, with the exception of regulations which are incompatible with the „On Joint Stock Companies” Act.; after that time Art. 1-49 of “On Commercial Companies” Act will lose their legal force. Consequently, both open and closed joint stock companies have been granted a two-year transition period for the accommodation of the new regulations, including any necessary modifications in the founding documents. Notably, any changes in the registration documents of the company induced by the required adjustments have been exempted from charges collected by the state registration bodies.

²³ It should be emphasized that an open joint stock company could issue shares exclusively by private placement.

²⁴ A joint stock company which fulfills all the criteria allowing for the issue of shares, is under an obligation to publish data concerning annual reports, balance, book-keeping entries on profits and loss, as well as other data envisaged by legal regulations. As for the public offering of shares of Ukrainian companies, it should be stressed that the *First Securities Trading System* (PFTS) stock Exchange in Kiev, which operates since 1996, lists approximately a few hundred companies.

4. THE PROCEDURE OF REGISTRATION OF ECONOMIC ENTITIES IN UKRAINE

According to the legislative law of Ukraine, the commencement of an economic activity by legal persons and natural persons – entrepreneurs, as well as by representative bodies of the foreign business entities,²⁵ is dependent on the registration of a selected form of conducting economic activity at a suitable register. Apart from that, the registration is obligatory for contracts on corporate investment activities. The process of establishment and liquidation of a business entity is regulated by Act No 755-IV of 15 May 2003 on the state registration of legal persons and natural persons-entrepreneurs. It provides the basis for creation of the Single Register of Legal Persons and Natural Persons – Entrepreneurs.²⁶ The registration of business entities is conducted by state record-keepers who operate by the executive committee of the local government in the town district or in the Local State Administration (city or town) appropriate to the place of residence of the registering economic entity.

The registration of natural persons (individual entrepreneurs) and legal persons consists mainly in the act of enrollment on the Single State Register of Legal

²⁵ The registration of a foreign representative of an entity (accreditation) consists in acquiring a registration certificate from the Department of Foreign Representation of Ministry of Economy and European Integration of Ukraine. The registration fee is 2.500 USD. The documents attached to the registration form (extract from the commercial register, bank register or court register of the country of origin of an entity-representation founder, the affirmation of bank account number of a foreign entity issued by an appropriate bank, the authorization statement for executing representative functions in the Ukraine, issued according to the laws of the country of registration, in particular indicating the scope of authority and with the signature of the person which authorizes a foreign representative) are to be prepared within a maximum of six months' time before the initiation of registration proceedings at the Ministry of Economy of Ukraine. The decision on the confirmation of registration or its repudiation is to be issued within sixty days since the submission of the application. Provided that the decision is positive, a certificate confirming the registration of a foreign representative is issued. The Ministry of Economy of Ukraine should be informed about all changes concerning the data on the registration certificate, as well as those concerning employed foreigners, and an entity's eventual declaration of bankruptcy or insolvency. Similarly, contracts on investment activities are registered by Ministry of Economy or by its authorized bodies, commonly district administrations.

²⁶ The data recorded in the Single State Register is public, except for those specified in detailed regulations. The data is distributed by appropriate local bodies which register as excerpts from the register or by means of statement verifying existence or lack of data in the register. Provided there are no inconsistencies, the data is available within five days' time since the submission of the application. The procedure of obtaining data is regulated by resolution of the State Committee of Ukraine for Regulatory Policy and Entrepreneurship No 97 of 20 October 2005 "On Approving Standard Legal Acts on Matters of Distribution of Information from the Single Register of Legal Persons and Natural Persons-Entrepreneurs."

Persons and Natural Persons – Entrepreneurs.²⁷ After the registration, the state record-keeper issues a registration certificate.²⁸ The founding documents, along with amendments, which are filed in the state register, should be prepared in Ukrainian (or in the original language with a notarized translation done in the Ukraine), and signed by the founders (partners).²⁹ The signatures of the founders should be witnessed by a notary. The documents can also be sent as a registered letter in which case the signature of the applicant on the registration form should be authenticated by a notary. After obtaining the registration certificate issued by a state record-keeper, a new economic entity is also amenable within then day time to registration at the following bodies: the Single Centralized Register of Companies and Organizations of Ukraine under the State Statistics Committee of Ukraine, the Register of Tax Payers under the State Tax Administration of Ukraine, as well as appropriate social insurance funds (Pension Insurance Fund, Fund for State Social Insurance against temporary loss of ability to work and expenses resulting from birth or burying, Fund for Social Insurance against accidents at work and occupational diseases, and Fund for State Social Insurance Against Unemployment).³⁰ Furthermore, in cases when a natural person-entrepreneur employs workers under a service contract, it is necessary to register the contract at the local office of the State Employment Center of the Ministry of Labor and Social Policy of Ukraine within a week's time from signing the contract and appropriate to the residential

²⁷ All amendments to the founding documents of a legal person, as well as the change of a name and/or first name, and/or the first name of the father or the address of a natural person-entrepreneur are to be introduced into the Single State Register under the regulations of obligatory state registration.

²⁸ The registration fee charge by a state record-keeper amounts to 170 UAH.

²⁹ Recurrently, the registration of a legal entity in Ukraine established by a representative of a legal entity from Poland, involves the legalization (apostille) of the Polish documents submitted for registration. In particular, the administration of Ukraine demands that the documents certifying an entity's registration in Poland (an excerpt form the State Court Register) and other founding documents are notarized, translated into Ukrainian by a certified translator, and verified by the Embassy of Ukraine in the country of registration of an entity. Such demands are groundless, due to the fact that both Poland and Ukraine have signed the "Convention Abolishing the Requirement for Legalization of Foreign Documents", as well as the "Agreement on Legal Assistance and Legal Relations in Civil, Family and Criminal Cases."

³⁰ Regarding Fund for State Social Insurance against temporary loss of ability to work and expenses resulting from birth or burying, the Fund for Social Insurance against accidents at work and occupational diseases, and Fund for State Social Insurance Against Unemployment, natural persons-entrepreneurs become contributors to the above mentioned funds only from the time of the registration of the service contract with an employee. This, however, does not delimit the right of the employee to his or her contributions for those funds. In that case the employee has to express his willingness to become a contributor for those specific funds.

status of an economic entity.³¹ The registration procedure is completed when an economic entity opens a bank account³² and acquires the permit necessary for the production of seals and stamps under foreign capital from the local body of the Ministry of Internal Affairs.

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THE ECONOMIC LAW IN THE UKRAINE – PRAGMATIC ASPECTS OF ECONOMIC ACTIVITY Part I

S u m m a r y

The article presents the specific nature of the economic law of Ukraine, in particular the laws concerning commercial companies. The author delineates the modern day economic legislation of Ukraine, characterizes respective organizational-legal forms of conducting economic activity, including those which are considered most optimal for foreign investors and which operate also in

³¹ The registration of a service contract is necessary in order to introduce appropriate information in the book of employment of the employee. Significantly, in case a given service contract is registered without an employee present, his or her signature on the contract should be verified by a notary.

³² Prior to the registration of a legal person, the bank opens a temporary account in order to transfer at least 50% (in some cases 30%) of the value of the authorized capital determined by the founders.

After the shareholders transfer 50% of the authorized capital, the bank transforms temporary account into current account on the proposal of a legal person. It should be stressed that the State Tax Administration of Ukraine is to receive within three days' time an appropriate form sheet personally delivered by the legal person or by means of a registered letter informing about opening and closing of a banking account.

cooperation with Ukrainian entrepreneurs. Additionally, the organizational-legal regulations on obligatory state registration of economic enterprises are analyzed in detail. A separate portion of the article is devoted to selected aspects of Ukrainian tax law, employment laws, and residency laws, acknowledging also the dangers awaiting foreign investors, among others the pressing problem of “corporate raiding” i.e. illegal and hostile takeovers of the functioning companies, and the helplessness of the juristic system when it comes to protection of enterprises in the Ukraine. The scope of the article does not allow a broader view on the issues related to economic activity in the Ukraine, instead it attempts to encapsulate pragmatic benefits and dangers concerning business investments in the Ukraine.

Key words: economic law of Ukraine; economic activity; registration of economic enterprises; organizational-legal forms of conducting economic activity.

PRAWO GOSPODARCZE NA UKRAINIE
– PRAGMATYCZNE ASPEKTY DZIAŁALNOŚCI GOSPODARCZEJ
Część I

Streszczenie

Artykuł przedstawia specyficzną naturę prawa gospodarczego Ukrainy, w szczególności zaś prawa dotyczącego spółek komercyjnych. Autor opisuje współczesną legislację Ukrainy, charakteryzuje, odpowiednio, organizacyjno-prawne formy prowadzenia działalności gospodarczej, w tym te, które są uważane za optymalne dla inwestorów zagranicznych, także tych, którzy działają we współpracy z przedsiębiorcami ukraińskimi. Ponadto dokładnie przeanalizowane są regulacje organizacyjno-prawne dotyczące obowiązkowego zarejestrowania przedsiębiorstw gospodarczych. Oddzielną część artykułu autor poświęca wybranym aspektom ukraińskiego prawa podatkowego, prawom dotyczącym zatrudnienia i zamieszkania, przyznając również, że istnieją niebezpieczeństwa dla inwestorów zagranicznych, między innymi naglący problem „drapieżnego inwestowania”, tj. nielegalnego i wrogiego przejmowania funkcjonujących spółek i bezradność systemu prawnego, jeśli chodzi o ochronę przedsiębiorstw na Ukrainie. Zakres artykułu nie pozwala na szersze spojrzenie na problematykę związaną z działalnością gospodarczą na Ukrainie, natomiast krótko opisane są pragmatyczne korzyści i niebezpieczeństwa związane z inwestowaniem w biznes na Ukrainie.

Słowa kluczowe: prawo gospodarcze Ukrainy; działalność gospodarcza; rejestracja przedsiębiorstw gospodarczych; organizacyjno-prawne formy prowadzenia działalności gospodarczej.

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