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Peculiarities of Business Entities in Ukraine

Ukraine belongs to the civil law system. However, almost for each business form, which exists in the US or UK legal system (the common law systems), there is its equivalent in the Ukrainian system. Here is the chart that correlates the names of the different business forms in the US, UK, and Ukraine.

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| --- | --- | --- | --- |
| US | UK | UA | |
| Sole Proprietorship | Sole Proprietorship | Фізична особа-підприємець (ФОП/FOP) | |
| General Partnership | General Partnership | Повне товариство (ПТ/PT) | |
| Limited Partnership | Limited Partnership | Командитне товариство (КТ) | |
| Limited Liability Company (LLC) |  |  | |
|  | Private Limited Liability Company (LTD) | Товариство з обмеженою відповідальністю (ТОВ/TOV) | Приватне акціонерне товариство (ПрАТ/PrAT) |
| Corporation | Public Limited liability Company (PLC) | Публічне акціонерне товариство (ПАТ/PAT) | |
| Державне акціонерне товариство (ДАТ/DAT/National PLC) | |

The first form to be examined is a sole proprietorship or *фізична особа-підприємець (ФОП).* There is only one owner who has unlimited personal liability for the obligations of the business (Commercial Code of Ukraine, art.33). There are no legal differences between the owner and business; that is why the owner receives all the profits from the business, and pays off all the debts (art.35). The owner is taxed for all the profits; however, the entity itself is not taxed. In order to register a sole proprietorship in Ukraine, it is necessary to obtain registration cards for the Unified State Register of Sole Proprietorships (in Ukrainian *Єдиний державний реєстр про державну реєстрацію фізичної особи підприємця*), Pension Fund, and local tax office (The Law of Ukraine on the State Registration of Legal Entities, art.11). A sole proprietor manages the business as he or she wants, and contributes whatever capital needed. There are no differences between sole proprietorship in Ukraine, the UK or US.

A general partnership or *повне товариство (ПТ)* needs at least two people as its founders. According to the Ukrainian law, a person can be a participant of the one general partnership (Commercial Code of Ukraine, art.39). All the partners are equally liable for the entity, regardless the amount of capital each of them contributed. In other words, a creditor has a right to demand money from any of the partners of from each partner at the same time. Entity is not taxed as the profits and losses are passed through to the general partners. One of the key documents needed for the formation of a general partnership is the founding agreement that stipulates the terms of its functioning (art.42). A Ukrainian equivalent of general partnership has almost no differences with the British or American one.

A limited partnership or *командитне товариство (КТ)* differentiates two types of partners, general and limited ones. For the formation of a limited partnership, at least one general and one limited partner are needed (art.55). General partners rule the business on behalf of the partnership, and have secondary liability for the obligations of the limited partnership. General partners have relations with limited partnership that are very similar to relations between general partnership and its partners. For this reason, some Ukrainian law can be applied both to general and limited partnerships. There is confusion in Ukrainian law about limited partners. In the same article, it is said that limited partners are participants of a limited partnership, and then it is stated that limited partners do not participate in any activities of a partnership. Obviously, it is a bad wording; the authors of this article meant that limited partners do not participate in the management of a limited partnership, but they do contribute to the capital of the partnership, and are entitled to receive shares of the profit. Limited partners have limited liability to the obligations of a partnership.

Other forms of business entities in Ukraine are slightly different from the ones in the UK and US.

There are two forms of business entities that correspond to the UK’s private limited company (LTD). These are *товариство з обмеженою відповідальністю (ТОВ/TOV)* and *приватне акціонерне товариство (ПрАТ/PrAT).*

*TOV* and *PrAT* are similar since both of them use private share offering (shares are entitled to a limited circle of people). Moreover, the Ukrainian law indicates that both of the business entities cannot have more than 100 shareholders.

*TOV* and *PrAT* have some differences. First, the law regulates differently the ability of the entities to change their nominal capital. Issuing of new shares for a *PrAT* needs to be registered by a state regulator (State Securities Committee) that has a right to reject registration if it detects any violation of procedure (art.149). A *TOV* do not have to involve the committee in this process. It creates a big advantage comparing to a *PrAT*, since the *TOV* does not interact with a bureaucratic hierarchy, and is able to change its nominal capital very quickly. There is no equivalent of such regulator or committee in Europe of the US. Second, according to the Ukrainian law, one of the owners of a *TOV* can always withdraw his or her part of capital, if he or she decides to leave the business. However, shareholders of a *PrAT* do not have such a right; all they can do is to sell their shares either to the company or to other shareholders.

Some Ukrainian scholars have argued that they do not see the necessity of separating of these two kinds of business entities. I believe that soon a new business reform will be introduced in Ukraine that will unify the conceptions of *TOV*s and *PrAT*s, since the differences between them are insignificant. Moreover, this change will bring Ukrainian legislation system closer to the European one.

*Публічне акціонерне товариство (ПАТ)* corresponds to a public limited liability company (PLC). The company can involve in both public and private share offering. In order to operate legally, a PLC in Ukraine has to go through the listing procedure (art.123). In other words, the business must be registered in a stock exchange. Consequently, any operation regarding shares of a company must be done on the stock exchange that has this company listed. PLCs in Ukraine have the same requirements regarding auditing as in the UK and US; they have to be audited annually, and audit reports have to be publically accessible.

After the fall of the Soviet Union in 1991, a lot of enterprises in Ukraine were privatized. Some of them that are strategically important for the state were left after its control; in other words, the state became the only shareholder of some businesses. Such company operates as a PLC: the owner is not involved in day-to-day activities of the business; there is a body (State Property Fund of Ukraine) that is chosen by the Cabinet of Ministers in Ukraine for managing the company.

Although Ukraine belongs to civil law system, it has the classification of the business entities that is very similar to the British one. There are some discrepancies in the Ukrainian law regarding different business forms, but it should be normal since the Ukrainian legal system is very young, and it needs experience to develop itself. Hopefully, in next decades Ukraine will manage to improve its Commercial Code and other legal acts.

Works Cited:

*Commercial Code of Ukraine*. Vol. 436-15. Kiev: Supreme Council of Ukraine, 2014. Print.

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