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The least expensive way to enter the Ukrainian market is by retaining a reliable local agent: no need for company registrations, directors or accountants, and no local taxation. Simple, right? Like everything else in Ukraine, this seemingly easy task is can be a bit more complicated than it sounds and, therefore, requires attention in order to avoid common, but avoidable, problems. Below we summarize the key issues in finding a reliable local agent.

I. Definition of an agent

The Commercial Code of Ukraine (the “Commercial Code”) introduced a new type of intermediary services – *commercial intermediation* or *agency relations*, whereby any foreign or local business entity may retain the services of a commercial agent who provides intermediary services to business entities and individuals by acting on behalf of the party (the “principal”) requesting such services from the agent. On the basis of an agency agreement, the principal can retain constant control of all actions performed in its interest by an agent.

A commercial agent must be a duly registered natural person or legal entity which, pursuant to its authority based on an agency agreement, serves as an intermediary between a principal and a third party (customer, end user, etc.). In other words, an agent may not have a personal interest in the ultimate agreement reached between its principal and the third party other than those interests reflected in the agency agreement (commission, agency fee or remuneration, etc.).

II. Possible services that an agent can perform in Ukraine

Since an agent provides its services on behalf of the principal, an agent can perform all types of services that are not subject to licensing or other specific conditions established by Ukrainian laws. Thus, you should verify whether Ukrainian law prohibits commercial intermediation or whether a license is required to undertake the specific activity before concluding an agency agreement.

Generally, licenses are non-transferable in Ukraine and, therefore, a license holder may not hire an agent to undertake its licensed activity on its behalf. Some licensed activities include banking activity, securities trading, financial services, production and trade of tobacco



products and spirits, telecommunications, construction, etc. Overall, there are just over 30 types of activities subject to licensing in Ukraine. In addition, in some cases Ukrainian laws provide that a principal should meet certain conditions in order to be active in a particular sphere, such as having a registered presence in Ukraine, having a certain minimum authorized capital, employing qualified personnel, etc.

III. Practical steps in finding an agent

An agent in Ukraine may be found by:

- searching the Internet;
- upon someone's specific recommendation;
- use of the professional services of recruiting agencies; or
- participating in meetings organized by the Chamber of Industry and Commerce of Ukraine or its home country or the commercial section of the Embassy of the principal's home country.

The best way to find an agent is through the recommendation of trusted companies or persons who are familiar with the Ukrainian market. For that reason, many foreign companies entering the Ukrainian market should first speak with other companies from their home country, which have practical experience and reliable contacts in Ukraine.

Professional Qualifications. Using recruiting agencies for finding an agent allows you to find an agent with the required qualification in the shortest period of time; however, one should always carefully screen the recommended agent to make sure that such agent has the proper professional and personal/ethical qualifications and fits within the principal's "team" rules.

Background Research. At a minimum you should interview candidates, review the credentials (diplomas, former employment) and request background research of such agent. In all cases you need to verify the agent's status (especially, when finding an agent through the Internet). It is highly advisable to verify whether an agent is a duly registered subject of



entrepreneurial activity (private entrepreneur) or company, or was involved in questionable or disputable activities. You may request an on-line extract from the Unified State Register of Legal Entities, Individual Entrepreneurs and Public Organizations to check whether a company or entrepreneur is subject to liquidation or bankruptcy proceedings (<https://usr.minjust.gov.ua/>) or information from the newly available public registers for enforcement proceedings (The Automated System of Enforcement Proceedings – ASEP) and debtors (Unified Register of Debtors – URD). You may also contact the Chamber of Commerce and Industry of Ukraine (<http://www.ucci.org.ua/en/servnrg.html>) which provides a number of helpful services, including a database of reliable partners. You can request a certificate of good standing from the Chamber about any member.

Language Barrier. One obstacle in finding a good agent is the ability to find an agent that can clearly communicate with you. Not all Ukrainian businessmen are proficient in a foreign language and misunderstandings in communications may arise. Therefore, when screening agents, it is advisable to test their understanding of your preferred language of communication.

We recommend that you meet with candidates more than once to gauge the parties' expectations and develop a relationship of trust. You may also try several "single-task" or short-term transactions before concluding a long-term agency relationship involving multiple transactions and settlements.

IV. Legal aspects of cooperation

A. Signing of an Agency Agreement (Special Clause on Termination)

Agreements. One of the most important rules for any type of agreement in Ukraine is that it should be in writing and drafted according to the form and substance requirements of Ukrainian law. Agency relations entail two additional basic legal aspects: (i) the principal authorizes its agent to undertake specific actions on the basis of an agency agreement or (ii) the principal approves a transaction concluded by the agent in its interest.

Conditions. The fundamental conditions for any commercial agreement are its subject matter (i.e., agency – related actions such as market research, advertising, etc.), and its price and validity term. In addition to the sphere of activity, procedure of performance, and rights and



obligations of the parties, other provisions may include sanctions in case of contractual breaches (damages), the territorial coverage of the agreement (Ukraine or a specific region thereof), reporting requirements, and confirmation of the agent's authorities for each transaction.

Exclusivity. The Commercial Code divides agency relations into two categories: (a) exclusive and (b) non-exclusive. In case of exclusive agency relations, the agent does not have the right to be an agent for other parties within the limits provided by the said agreement. In non-exclusive relations, the agent has the right to act as an agent for other parties and the principal has the right to authorize other agents to perform similar tasks.

Power of Attorney. Under Ukrainian legislation, a principal must issue a power of attorney to an agent in order to carry out various actions provided by an agreement. Therefore, in addition to signing an agency agreement, the principal should also issue a power of attorney to the agent with the specific enumeration of the agent's authorities before the third parties.

Termination. In most cases, agency agreements may be terminated by mutual consent of the parties or by a court's decision on the demand of one party if the other party substantially violates the agreement. Conveniently, an agency agreement may also be terminated by simply revoking the agent's power of attorney.

B. Possible Payments Methods

Agency agreements shall determine the amount of the agent's fee, set forth a procedure for effectuating such payments, and other provisions related to settlements between the parties (e.g., additional payments/bonuses if the agent successfully concludes a transaction in the principal's interest).

An agent's fee should be paid after obtaining payments from the third parties under agreements concluded with the assistance of the agent. However, the parties are free to establish other payment procedures for the agent's remuneration.

In practice, the agent usually issues an invoice to the principal, who will pay the agent's fee by wire transfer of funds to the agent's bank account. Ukrainian law permits an agent to

receive foreign currency, provided that the agency agreement is concluded with a foreign principal.

C. Taxation

A Ukrainian agent will be subject to either the (a) simplified or (b) general tax system.

Simplified Tax System. In this case, the agent will pay a fixed percentage per month set by the relevant local authority on its net income received under agency agreements. There are four groups in the simplified tax system and the percentage of tax paid by the agent each month will depend upon which simplified tax group the agent elects and the region (city, village) where the agent works.

For agents, who are registered as individual entrepreneurs, the fixed percentage can be up to 10% of the minimum standard of living level for healthy individuals (first group) or up to 20% of the minimum monthly salary (second group). Both the minimum standard of living level and the minimum monthly salary are set on January 1st of each year once the annual state budget is passed by the Parliament and increase periodically throughout the year. Agents in the third group elect a tax rate of 3% or 5% of their income, depending on whether they independently pay value added tax or include value-added tax into the unified tax. The fourth group may only be elected by agricultural producers and, thus, may not be elected by agents.

Agents, which are legal entities (companies), may only elect the third group of the simplified tax system, depending on certain conditions. A legal entity may choose the third group if income does not exceed 5,000,000 hryvnias during the calendar year. In such case, the agent's tax rate will be either 3% or 5% of their annual proceeds, depending on whether they independently pay VAT (3%) or include VAT in their simplified tax rate (5%).

General Tax System. With respect to the general taxation system, an agent, which is a legal entity and elects this system, will be subject to taxation on its profit at the rate of 18%. Many legal entities-agents will also be subject to VAT if their activity is conducted on the territory of Ukraine and the total amount of their operations for the last 12 calendar months is over 1,000,000 UAH. The current VAT rate is 20%.



If an agent is an individual entrepreneur, but does not qualify for the simplified taxation system, then such individual will be taxed on their personal income at a rate of 18%. Such individual must also pay 22% as a unified social contribution (pension, disability, unemployment, professional illness). An individual agent under the general taxation system must pay at least 22% of the minimum monthly salary (currently 3,200 UAH) each month or 22% of actually received income per month, but on no more than 40,000 UAH per month (this ceiling will rise to 44,050 UAH by year's end).

In 2014, a war tax of 1.5% on the personal income of all individuals was introduced until December 31, 2014. However, the war tax has continued to be extended into 2017 until such time as the military actions in the eastern part of the country cease. Please note that this tax is applied to almost all types of income received by an individual and, if applicable, must be withheld by employers on behalf of their employees.

Since the Tax Code of Ukraine came into effect on January 1, 2011, many Ukrainian agents working on the territory of Ukraine with Ukrainian residents have suspended their activities under agency agreements due to the somewhat strict provisions of the Tax Code. However, in relation to agency agreements concluded between a Ukrainian agent and a foreign principal, the rules remain attractive for the parties and, therefore, local agents continue to work with their foreign counterparts without reservations.

D. Performance evaluation (auditing)

Since a commercial agent carries out its activity on behalf of a principal, it is vital for such principal to be aware of the agent's activity. Fortunately, the right of the principal to control an agent's activity is prescribed by law. Specifically, the agent must inform the principal regarding each transaction he/she/it assists and concludes in the interest of the principal. In addition, upon the principal's demand, the agent must provide a performance report.

Moreover, the parties may include a provision into the agency agreement granting the principal the right to periodically review an agent's documentation, records, data, etc., connected with the performance of the agreement.

V. Case studies: Cultural peculiarities in mutual cooperation



Ukrainians often wish to please their foreign counterparts by promising certain results; however, the principal should always check whether these results can be achieved on a legal basis without any future negative consequences for the principal's activity in Ukraine. One method of verification is the conclusion of agency agreements on a case-by-case basis in the very beginning of the relationship. If the agent's activity runs smoothly and he/she/it is able to reach specific targets or achievements, the principal may choose to conclude lengthier agency agreements in the future.

While Ukrainian people, in general, are open-hearted, this does not mean that they will not attempt to gain an upper hand for their own benefit. Given the above, it is vital for foreign companies to verify the actions of their Ukrainian counterparts, as corruption is widespread and some Ukrainians do not hesitate to solve business issues within the "gray" areas of the law. This peculiarity originates from the former Soviet Union where many issues were resolved by offering "facilitation fees". To combat these tendencies, a foreign party should discuss all related issues with its Ukrainian party, requesting honest and close supervision in all proposed steps to avoid any misunderstandings which may arise.

In all too many cases a foreign company negotiates with a Ukrainian partner without first obtaining proper professional guidance. At the beginning of cooperation, things often seem to run smoothly, but once a problem arises, it is more difficult to resolve after the fact. Proper professional assistance in reviewing and analyzing a transaction prior to conclusion can make the difference between success and failure.



VI. List of Recruiting Agencies in Ukraine providing the service of an agent search

1. WORLD STAFF ® - International Recruiting Company

- 1-M Bazhana Prospect, office 23, Kyiv, Ukraine
- ☎+38 044 503 38 03; Fax +38 044 503 38 01
- ua@worldstaff.com.ua
- www.worldstaff.com.ua

2. Executive Search Agency with full cycle SM Consulting

- 123 Prospect Peremogy, Kyiv, 03179, Ukraine
- ☎+ 38 044 3604400
- 📠+ 38 044 3604400
- job@smconsulting.com.ua
- www.smconsulting.com.ua

3. Brain Source International Recruiting Company

- 3, Sportyvna Square, 2 floor, Kyiv, 01601, Ukraine
- ☎: + 38 044 390 50 10 (06), fax: + 38 044 390 50 06
- 067-509-49-86
- (Also has offices in Lviv, Kharkiv and Odessa (see website))
- info@brain-source.com
- www.brain-source.com

4. Agency "RECRUIT - ALLIANCE" Recruiting Agency

- 16 Institutskaya Street, office 61, Kyiv, Ukraine
- ☎+ 38 044 2371696, + 38 044 2370512
- Also has offices in Donetsk, Dnepropetrovsk, Odessa and Lviv (see website)
- office@recruit-alliance.kiev.ua
- www.recruit-alliance.kiev.ua

5. ANCOR recruiting holding

- ☎+ 38 044 4951520



- ☎+ 38 044 4951528
- Also has offices in Dnepropetrovsk, Donetsk, Krivoy Rog, Lviv and Odessa (see website)
- info@ancor.ua
- www.ancor.ua

6. Business Resources

- 34 Lesy Ukrainky Blvd., office 43, Kyiv, 01133, Ukraine
- ☎+38 044 461 90 81
- office@b-resources.com.ua
- www.b-resources.com.ua

7. CDS Recruiting Services

- 32-38, Artema Street, # 1, Kyiv, Ukraine
- ☎+38 044 383 3723
- +38-067-465-02-05 (Beschastnaya Oksana)
- info@recruiting.com.ua
- www.recruiting.com.ua

8. ADECCO UKRAINE

- 4a, Verkhniy Val Street, Office 214, Kyiv, 04017, Ukraine
- ☎+38 (044) 220-11-55
- Fax: +38 (044) 220-10-55
- www.adecco.ua
- info.ua@adecco.com

9. MANPOWER

- 3 Lva Tolstogo Street, Kyiv, 01004, Ukraine
- ☎+38 (044) 594-55-05
- Fax: +38 (044) 594-55-06
- www.manpowergroup.com
- info@ua.manpowergroup.com

10. UNITED CONSULTING Exclusive Search Consultancy



- 9/2, Chervonoarmiyska Street, Office 34, Kyiv, 01004, Ukraine
- ☎+38 (044) 494-28-85
- www.ucon-int.com.
- cv@ucon-int.com

In conclusion, hiring a local agent in Ukraine is the least expensive (and most convenient) way to enter a difficult market. And when you hire your Ukrainian agent, you have to take into consideration various elements that include choosing the right person, structuring the agency agreement in compliance with Ukrainian legislation (including issuing full or limited power of attorney), the agent's legal and tax status, among other issues.