



FORMS OF DOING BUSINESS IN UKRAINE



Interstate Consultants Engineers Guild - 2023

CONSORTIUM

CONSORTIUM is a temporary statutory association of undertakings, set up for its members to achieve a joint economic goal (implementation of target programs, technical research or construction projects, etc.). Consortium uses the funds provided by its participating undertakings, centralized resources allocated for a relevant program funding, and funds acquired from other sources, following the procedure determined in its charter. Upon reaching the goal of its establishment, the consortium terminates its operations (Article 120, Economic Code of Ukraine)

As a rule, the Consortium is created for a 10-year period with the possibility of extending the term of its activity, as stated in the Consortium's charter.

In some cases, when the share of a foreign undertaking in the authorized capital exceeds 20%, prior to establishing the Consortium, its members are required to obtain a permit from the Antimonopoly Committee of Ukraine (AMCU) for coordinated actions.

Which practicalities should be noted to avoid breaking the law while registering the Consortium?

First: do the economic operators joining the coordinated actions include such actors which hold a monopolistic position, have exclusive rights or authorities from the governmental agencies, local self-governance bodies, etc.?

Second: if the share of the coordinated action participants in the markets where they are competing or can compete exceeds 15% and in other markets – exceeds 20%.

Third: can the consortium creation cause limitation, removal or prevention of the competition?

If the answers to these main questions are “yes,” it is necessary to apply to the AMCU.

The legislation enables the economic operators to choose a form of applying to the AMCU, in particular, there is application for obtaining AMCU's tentative conclusion on whether or not it is necessary to obtain a permit for the coordinated actions, whether or not such permit can be provided or refused. Issue of tentative conclusions provides the economic operators with an opportunity to receive the AMCU's conclusion within one month and confirm their own expert opinions that the permit is not needed or can be obtained as the coordinated actions will not be prohibited.

The fee for reviewing such application is approximately UAH 6,000.

Another form of application is a request for the coordination action permit. This procedure is more complex and lengthy and requires submitting a list of documents stipulated by the law.

The fee for reviewing such application is approximately UAH 12,000.

A permit for economic concentration is to be obtained in the following cases:

- considering control relations, the total value of assets or total amount of merchandise sales, including those abroad, of the concentration members for the past fiscal year, exceeds the equivalent of EUR 30 million calculated on the basis of the official currency

rate of the National Bank of Ukraine (NBU), which was set on the last day of the fiscal year. Simultaneously, assets value (total value) or amount of merchandise sales (total amount) in Ukraine of at least two concentration members, considering control relations, exceeds the equivalent of EUR 4 million for each member, which is calculated on the basis of the official currency rate of the NBU, which was set on the last day of the fiscal year; or

- total value of assets or total amount of merchandise sales in Ukraine for the past fiscal year of the company that is taken under control, or company whose assets or parts (shares, portions) are taken in possession or management and usage, or at least one of the founders of the newly established economic entity, considering control relations, exceeds the equivalent of EUR 8 million, calculated on the basis of the official currency rate of the NBU, which was set on the last day of the fiscal year. And simultaneously, the amount of merchandise sales of at least one concentration member, including abroad, considering control relations, for the past fiscal year exceeds the equivalent of EUR 150 million, calculated on the basis of the official currency rate of the NBU, which was set on the last day of the fiscal year.

Meanwhile, AMCU Decree No. 27-r of 12.02.2002 approves "Typical requirements for coordinated actions of economic operators for general exemption from obtaining the permit of the Antimonopoly Committee of Ukraine for coordinated actions of economic operators." The coordinated actions that comply with these Typical Requirements are allowed and do not need any permit of the AMCU.

The list of documents required from a foreign undertaking to create a Consortium:

1. An extract from the trade register of Member 1 (a foreign undertaking) certified in accordance with the law applicable in the country of Member 1;
2. A copy of the minutes of the Board meeting certifying the appointment of the Head of Member 1 (a foreign undertaking) and his powers, or another document certifying the appointment and the power of the Head to sign the documents - certified in accordance with the law applicable in the country of Member 1;
3. A copy of the charter of Member 1 (a foreign undertaking) certified in accordance with the law applicable in the country of Member 1;
4. Minutes of the Board meeting certifying the decision to create a Consortium with another undertaking.
5. Information on the final beneficiaries of Member 1 (a foreign undertaking) (in case of an individual – full name, date of birth, tax identification number, registration address, share size, if a legal entity - company name, address, identification tax number, share size);
6. The Power of Attorney from Member 1 (a foreign undertaking) executed in accordance with the law applicable in the country of Member 1 for a natural person – a citizen of Ukraine with a specified list of powers entitling them to sign documents in Ukraine on behalf of Member 1 (a foreign undertaking).

For the registration of the Consortium, the documents that are certified by a notary under Ukrainian law as follows require signature by Member 1 (a foreign undertaking):

1. Charter of the Consortium.
2. Minutes of the Board meeting certifying establishment of the Consortium.

Summary:

There are three registration options:

1. *Applying to the AMCU for tentative conclusions and registration of the consortium.*

Registration takes 30-40 business days.

Total cost of services is about UAH 60,000-70,000 (appr. USD 1800-1900) + contribution to the authorized capital, which is determined by the consortium members (from UAH 4,000 (appr. USD 100) and higher) including:

- cost of services - UAH 20,000 (appr. USD 500);
- application review at the AMCU - UAH 6,000 (appr. USD 150);
- cost of notarial services, translation, legalization in consular sections, and administrative fee for the registration – appr. UAH 40,000 (appr. USD 1000);
- contribution to the authorized capital as established by the consortium members – UAH 4,000+ (appr. USD 100+).

The authorized capital amount indicates the company's reliability.

2. *Applying to the AMCU for the permit for coordinated actions and registration of the consortium.*

Registration takes 80-90 business days.

Total cost of services varies approximately UAH 70,000-80,000. (appr. USD 1,900-2,000) + contribution to the authorized capital, which is determined by the consortium members (from UAH 4,000 (appr. USD 100) and higher) including:

- cost of services - UAH 25,000 (appr. USD 600);
- application review at the AMCU - UAH 12,000 (appr. USD 300);
- expenses for notarial services, translation, legalization in consular sections, and administrative fee for the registration – appr. UAH 40,000 (appr. USD 1000);
- contribution to the authorized capital as established by the consortium members – UAH 4,000+ (appr. USD 100+).

The authorized capital amount indicates the company's reliability.

3. *Registering the Consortium without applying to the AMCU, provided that the share of a foreign undertaking in the Consortium authorized capital is below 20 percent.*

The total cost of services varies approximately UAH 50,000-60,000.00. (approximately \$1,900-2,000) + the amount of the contribution to the authorized capital established by the Consortium members (UAH 4,000.00+ (approximately \$100+), where:

- the cost of services is UAH 25,000.00. (about \$600)
- expenses for the services of a notary, a translation, legalization in consular institutions and an administrative fee for registration – approximately UAH 40,000.00. (equivalent to \$1,000);
- contribution to the authorized capital as established by the consortium members – UAH 4,000+ (appr. USD 100+).

The authorized capital amount indicates the company's reliability.

Such cooperation form is the most beneficial in competition for contract awards, since synergy of material, technical and human resources enables the economic operators to enhance their chances for winning contracts for implementation of some projects and experiences of both companies are taken into consideration, which is an important aspect in biddings.

The association of undertakings is not liable for its members' obligations and the participating undertakings are not liable for the association's obligations.

Participating undertakings of the association reserve the status of legal entity independent of the association's organizational and legal form and are bound by the Economic Code of Ukraine and other laws regulating operations of companies.

A participating undertaking of the economic association has a right to:

- pull out from the association on a voluntary basis on conditions and following the procedure stipulated in the memorandum of association or charter of the economic association;
- be a member in other associations of companies unless the law, memorandum of association or charter of the economic association stipulates other terms;
- obtain information linked to the company's interests from the economic association, following the established procedure;
- receive a part of profit from the economic association's operations subject to its charter.

REPRESENTATIVE OFFICE

REPRESENTATIVE OFFICE OF A FOREIGN LEGAL ENTITY is a separate division of a foreign legal entity, which is based abroad and represents its interests on the territory of Ukraine. Representative office in no legal entity. It acts on behalf of the company that it represents.

Any foreign company can establish a representative office in Ukraine.

Authorized capital - Absent.

Taxation - A foreign representative office pays 18% corporate tax and 20% VAT.

Funding - Simplified procedure to receive funds from the parent company. No need to conclude financing agreements.

Registration cost – official fee for the registration is UAH 2,270 (approximately USD 70).

Registration procedure – Two stages:

Stage 1: Ministry of Economy of Ukraine registers the representative office.

Stage 2: After the Certificate of Registration is issued, the representative office is registered in the statistics authority, tax service, and pension fund. Foreign nationals obtain employment permits under a simplified procedure by way of receiving service cards (ID cards) at the Ministry of Economy. The service card is basis for obtaining a permit for temporary residency in Ukraine (residence permit).

In all cases, a representative office carries out its operations in the name and on behalf of a foreign economic operator and only to the benefit of the foreign economic operator indicated during registration.

Documents for registration:

- application requesting to register a representative office (free form);
- extract from the commercial (bank) register of the country where a foreign economic operator has an officially registered company;
- certificate from the bank where the applicant has an official account;
- power of attorney for representative functions, which is executed in compliance with the law of the country where a foreign economic operator is registered;

The documents must be duly executed:

- notarized where they are submitted;
- legalized in consular sections;
- translated into Ukrainian language with the translation sealed with a stamp of an official translator.

The documents remain valid for 6 months after they are issued to a non-resident of Ukraine.

Summary:

Registration period: 30-40 business days.

Total cost of services is close UAH 60,000-70,000 (appr. USD 1500-1800) + contribution to the authorized capital, which is determined by the parent company (from UAH 4,000 (appr. USD 100) and higher) including:

- cost of services - UAH 25,000 (appr. USD 600);
- cost of notarial services, translation, legalization in consular sections, and administrative fee for the registration – appr. UAH 40,000 (appr. USD 1000);
- authorized capital contribution determined by the parent company (from UAH 4,000 (appr. USD 100) and higher).

The authorized capital amount indicates the company's reliability.

Liability for economic operations of the representative office under the concluded contracts and debts of such office lies with the foreign entity.

When participating in procurement biddings, only experience of the parent company is evaluated, which sometimes does not meet the Client's requirements.

SUBSIDIARY

SUBSIDIARY COMPANY (SUBSIDIARY) is a company whose sole founder is the other legal entity. The subsidiary depends on the founder which is its parent company.

Number of members – one (only one legal entity – parent company).

Amount of the authorized capital – not stipulated by the law.

Requirements for the authorized capital – contribution can be made in monetary funds, securities, other things, proprietary or other transferable rights which can be evaluated in money (Article 115, Civil Code of Ukraine).

Registered address – premises in a non-residential building.

Subsidiary is a full-fledged legal entity and independent payer of taxes, duties and other mandatory payments. It has its own balance sheet, bank accounts, and a stamp and bears independent liability for its obligations arising in the course of its operations. Companies that have subsidiaries in their structure submit consolidated financial reports together with financial reports on their own financial transactions.

Subsidiary can set up branches, representative offices, or establish other companies to which it will be a parent company.

Establishment, reorganization, liquidation, and approval of the charter lie within the founder's competence. Subsidiary is established under general rules of registering a legal entity. Charter is the document that serves as a basis for the subsidiary company's operations and regulates its rules, procedures and organization.

Subject to the Ukrainian legislation, subsidiaries are opened and registered in the governmental registration authorities where they are based.

Conclusion:

Registration period – up to 10 business days.

Total cost of services is UAH 30,000 (appr. USD 800) + contribution to the authorized capital, which is determined by the parent company (from UAH 4,000 (appr. USD 100) and higher) including:

- cost of services - UAH 5000 (appr. USD 130);
- cost of notarial services, translation, and administrative fee for the registration – appr. UAH 25,000 (appr. USD 600);
- authorized capital contribution determined by the parent company (from UAH 4,000 (appr. USD 100) and higher).

The authorized capital amount indicates the company's reliability.

Subsidiary is deemed a newly-established legal entity. When bidding in procurements, the experience, availability of staff, equipment, and material and technical resources will be assessed only in this newly-established company, which is a negative factor for a subsidiary participating in procurement biddings.