

Glinkowska, Beata; Chebotarov, Viacheslav

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Establishing a Business in Ukraine – the Initial Regulatory Organizational and Legal Aspects for Polish Entrepreneurs

Beata Glinkowska

Ph.D., The University of Lodz, Faculty of Management, Lodz, Poland
e-mail: beata.glinkowska@uni.lodz.pl

Viacheslav Chebotarov

Ph.D., Professor, Luhansk Taras Shevchenko National University, Starobilsk, Ukraine
e-mail: vena.lnu@gmail.com

Abstract

The inspiration to create this summary was research carried out on the Polish–Ukrainian internationalization of business activity conditions and their models. The article contains conclusions based on the authors' interviews with Ukrainian businessmen and government officials, as well as an analysis of legal acts related to establishing a business in Ukraine by members of the Polish business community. A reference to fundamental regulations is presented. The research shows that serious legal easements for starting a business in Ukraine have occurred. This is the first step towards building a positive atmosphere. However, there are many factors which often discourage Polish entrepreneurs to initiate foreign expansion towards Ukraine and, on this basis, beyond its borders. The governments of both countries should pay attention to them. In this context, the article contains initial provisions for improving the legislative base of Ukraine in the field of internationalization. For Polish entrepreneurs, the basic recommendations for establishing a business in Ukraine are justified.

Keywords: world's goods and raw materials markets, internationalization, foreign economic activity, enterprise, motives, barriers, business, establishing a business, foreign direct investment

JEL: F02; F23

Introduction

The main purpose of this article is to present the results of an empirical study by the authors on the problems of the systemic entry of Polish enterprises into Ukrainian markets for goods and services, followed by the prospect of internationalizing the activities of economic entities of the two countries in entering the markets of other countries.

An integral part of the research is the analysis of the regulatory framework of Ukraine for regulating the management of business entities in the sphere of foreign economic activity (such analysis for Polish companies acts as the basis for developing and implementing strategies and tactics for entering the Ukrainian markets).

The indicated empirical research is based on the theoretical, methodological, scientific and practical development of various aspects of internationalization carried out by the authors earlier – an understanding of its essence, prerequisites and stages of formation; consideration of the motives, barriers and models of internationalization; and a comparative analysis of the development of internationalization processes on the example of different countries (Glinkowska and Kaczmarek 2016a, 2016b).

The authors conducted the empirical studies themselves in several stages.

The first stage involved an initial survey and, subsequently, detailed surveys of the owners and managers of those Ukrainian enterprises that, to varying degrees, already have experience with Polish businesspeople (37 small, medium and large businesses in the Luhansk, Donetsk, Kharkiv and Kiev regions).

The second stage involves expert assessments of business trainers and analysts, in particular, from the Kiev-Mohyla School of Business, well-known and authoritative in the countries of Eastern Europe, who consult Ukrainian and foreign enterprises in the field of foreign economic activity.

The third stage involved detailed interviews with government officials at the level of oblast, district and united territorial community (voivodship – circuits – gmina) who have experience in the state support of business projects of Polish companies in Ukraine.

Finally, members of the scientific community of Ukraine (from the Institute of Industrial Economics of the National Academy of Sciences of Ukraine, the National Research Center “Institute of Agrarian Economics”, and Luhansk Taras Shevchenko National University), who specialize in issues of internationalization and foreign economic activity, discussed the preliminary results of the aggregated empirical research.

This study is a result of personal research conducted in Ukraine in June and July 2017. The authors also analyzed the rules indicated by respondents, the legal and organizational conditions, as well as guidelines available on the official Ukrainian websites which publish relevant laws, and on the website of the International Association of Polish Entrepreneurs in Ukraine in Kiev and the Polish-Ukrainian Chamber of Commerce in Warsaw. The selection of respondents was intentional. It resulted from such

criteria as the respondents' experience with registration, rules, regulations on foreign entrepreneurs (including those from Poland) starting a business activity in Ukraine, or their substantive knowledge on the subject. The interviews were preceded by a request and obtaining consent to carry them out; they concerned legal and organizational issues regarding Polish entrepreneurs starting economic activity in Ukraine. The information obtained from the interviews is original. Many of the documents analyzed are available only within Ukraine. The subject of the study is a continuation of empirical studies carried out by the authors on the internationalization of enterprises, the results of which have been successively presented in Polish and foreign publications for four years. Their fruit is an attempt to develop a model and strategy for the internationalization of Polish and Ukrainian enterprises. The authors have been conducting parallel research in Poland and Ukraine for the past two years. For this reason, the first section of this study is related to the approximation of the essence and definition of the internationalization process of enterprises, because the subject matter raised in the article is one of the threads related to this issue. Subsequent sections concern, directly, the threads raised in the topic. The research included legal, economic, international and cultural conditions for initiating and conducting business activity on the Ukrainian market.

Thus, the methodology of the research covers a set of specific methods of cognition. While processing the collected material, economic and statistical methods, for example, interviews, comparisons, and extrapolations were used. The identification and characteristics of the company's establishment in Ukraine are based on the use of system-structural analysis, this is due to the specificity of the country.

The output of the empirical research and analysis of organizational and legal aspects is intended to develop scientific, theoretical and practical foundations for starting a business in the Ukrainian market using data from research carried out by the authors on the problems and prospects of doing business in Ukraine, and opportunities for internationalizing Polish enterprises in the context of the potential difficulties and opportunities on the Ukrainian market.

The process of internationalizing enterprises – the essence

Along with the growing processes of globalization and liberalization, the expansion of foreign organizations, also called the internationalization of activities, is increasing. Enterprises start cooperating with other foreign companies or take their chances by opening branches/subsidiaries in foreign markets.

Since 1994, GDP has been gradually growing in Ukraine (to a greater or lesser extent in individual years). Against the background of Poland, Belarus and Russia, it is one of the major increases. Inflation also decreased significantly, from 20% in 1998 to 4.3% in 2004 (UKRAINE, A Guide for Entrepreneurs, 2005), although currently,

it is growing (around 12% at the beginning of 2017). The internationalization process is quite well described in the literature of the subject; however, approaches to its essence and definitions are diversified.

Pietrasieński emphasizes that the process of internationalization can be equated with the export and transfer of production (product transfer) outside the country (Pietrasieński 2005, p. 15). This approach is developed by many authors who perceive the analyzed process in both a narrow and a wide manner. The multitude of interpretations of the concept and the essence of internationalization results from the diversity of theoretical and practical concepts attempting to explain this process. Witek-Hajduk approaches the issue from a wide perspective. She identifies internationalization with its various forms, geographical expansion, processes, the participation of the company's assets abroad in its entire assets, the creation of a value chain, establishing contacts between organizations, and an "eclectic composition" (Witek-Hajduk 2010, p. 17). Meanwhile, Rymarczyk (2004) and Wiktor (1998) define internationalization as any kind of economic activity performed by an enterprise outside the country. Gorynia (2007) believes that internationalization occurs when at least one product of a given organization is linked to the foreign market. As far back as 1985, Piercy (1985) and Turnbull (1985) understood this process similarly, linking it with the movement of production, and its results, beyond the borders of the home country. Welch and Luostarinen (1988), Havnes (1994), and Calof and Beamish (1995) defined internationalization as the process of an increasingly extensive foreign expansion of enterprises, as did Strzyżewska (2005), who refers to increasing geographical expansion. Melin's approach (Melin, 1992), however, refers to the model of the sequential internationalization process, and he stresses the importance of the evolution in this process, which is also clearly emphasized by Johanson and Vahlne (1977). For Cuervo-Cazurra and Ramos (2002), the process of internationalizing is the way to change enterprises as a result of the company's involvement in foreign operations (both trade and investments). Przybylska (2005) is of the opinion that internationalization is the process of transforming a national enterprise into a multinational enterprise, and its scope, intensity and forms are determined by the company's strategy. Among the approaches to the essence and definition of internationalization, it is worth mentioning the view of Johanson and Mattson (1993, pp. 303–320): "internationalization is a process of gradual adaptation of operations, processes and functions of enterprises, as well as strategies, structure and employee attitudes to foreign determinants." Thanks to this, relationships and networks with foreign partners develop. Duliniec (2004) links internationalization with the involvement of company assets, including capital and human resources in marketing activities, addressed to recipients of goods and services in many countries. It refers not only to exports and imports but also to any activity outside the country. Pierścioneł (2017), however, refers its essence to the diverse relationships on foreign markets, which concern various elements of the value chain. Hollensen (2004) perceives this process in a similar way.

In addition to the above-mentioned selected approaches to the essence of internationalization, it is worth quoting the Vice-President of the Chamber of Commerce and Industry of Ukraine, Aleksander Wiszniewski.¹ He said that internationalization is a complex process involving the analysis of opportunities and threats in foreign markets concerning a company's strengths and weaknesses in order to develop its own enterprises and achieve economic benefits.

The authors agree with Wiszniewski, stressing that the process can be an evolutionary, sequential (staged) process, as well as spontaneous and direct, resulting from various occasions, good knowledge of the market or random circumstances (Glinkowska, Kaczmarek 2016).

Registering businesses (and companies) in Ukraine

The general legislative base for regulating relations in the sphere of foreign economic activity, in particular, the internationalization of enterprises, is formulated by the Act "On Foreign Economic Activity".² It is fully harmonized with the modern economic law of the European Union.

Diverse regulatory issues of the mode and scope of registering economic activity are regulated by the Act of Ukraine "On the state registration of legal and natural persons – entrepreneurs".³ The establishment of a company in Ukraine (and its liquidation) is governed by a separate Act of Ukraine "on economic companies"⁴ as well as the provisions of the Civil Code and the Economic Code of Ukraine.⁵ According to the respondents, the act is outdated and cannot keep up with the dynamic process of internationalization. Recent changes in the above-mentioned acts took place in 2011–2012. However, over the next six years, globalization, the liberalization of the markets, Ukraine's preparations to join the European Union, and the war events in Donbas were reasons for significant economic and political changes that have not been reflected in the legal regulations. Legal regulations have, however, followed the war effort. Often, entrepreneurs and visitors to Ukraine do not realize that entry for foreigners into the territory of the Autonomous Republic of Crimea and to the city of Sevastopol is allowed only through designated control points, which are defined in the legal act, as "the mode of entry into the temporarily occupied territories of Ukraine and departure from them" (dated 4 June 2015). Of course, one should also have a passport and

1 Interview carried out with O.S. Wiszniewski, PhD, the first vice-president of the Chamber of Commerce and Industry of Ukraine.

2 <http://zakon.rada.gov.ua/laws/show/959-12> (accessed: 16 December 2018).

3 No. 755-IV of 15.05.2003; <http://msppu.org.ua/pl/info/warunki-prowadzenia/informacje-prawne/rejestracja-spolki-na-ukrainie> (accessed: 12 January 2018).

4 No. 1576-XII of 19.09.1991.

5 These provisions are also available online: <http://msppu.org.ua/pl/info/warunki-prowadzenia/informacje-prawne/rejestracja-spolki-na-ukrainie> (accessed: 12 January 2018).

special permit issued by the territorial body of the State Migration Service of Ukraine (PSMU) or by the territorial sub-unit of the PSMU. Representatives of the local government administration of the Lugansk oblast stressed that any potential Polish entrepreneur wishing to carry out market research or conduct personal interviews with entrepreneurs in that area must know this because administrative criminal responsibility is provided for unauthorized entry into the temporarily occupied territory. Analysis of Ukrainian statistical data shows that the limited liability company is among the most common organizational and legal forms of Polish enterprises in Ukraine. A survey conducted with members of the Kiev County State Administration shows that this is related to the fact that other types of companies (e.g. joint stock, limited partnership, full⁶ or with additional liability⁷) in the small and medium-sized enterprise sector (Ukrainian SME sector)⁸ do not have advantages in comparison with a limited liability company. These advantages are primarily the small initial capital and the entrepreneur's limited responsibility. Article 24 point 2 of the Act of Ukraine "On the state registration of legal and natural persons – entrepreneurs" regulates the process of registering a business activity. When the founder of a company is a legal person, a document confirming the ownership structure should be provided and, in special cases, also a permit of the Antimonopoly Committee of Ukraine. Foreigners are subject to the requirements of the foreign exchange legislation of Ukraine and the legislation on foreign investment in Ukraine. These are additional determinants which should be taken into account at the stage of establishing companies with foreign capital. Representatives of the public administration of the Luhansk oblast note that current Ukrainian law leaves unanswered some issues regarding the formal requirements for the preparation and submission of documents, hence, with such freedom, a broad and up-to-date knowledge of the legal rights of people registering such a company is necessary.⁹ During the interviews with respondents there was also no answer to the question about legal aspects of the transformation of some organizational and legal forms into others (e.g. the issue of transforming a civil partnership into a full company).

On 23 May 2017, the Verkhovna Rada (the parliament) of Ukraine voted in favor of improving the conditions for establishing and running a business in Ukraine, and also for attracting foreign investments (financial and intellectual). For this purpose, Act No. 4541 "on amendments to certain laws of Ukraine in the scope of removing

6 A company in which the partners jointly conduct business and are jointly and severally liable for the company's obligations (with all their assets).

7 A commercial company in which the share capital is divided into shares whose amount is already established in the statute, and shareholders (in addition to liability to the sum of the share capital, if it is insufficient), bear additional (subsidiary) responsibility for the company's liabilities with their own property (in the amount provided for in the statute).

8 Small and medium-sized enterprises in Ukraine also use (as in Poland) the number of employees as their category indicator. These are the same quantitative thresholds.

9 Information verified at http://koda.gov.ua/oblderzhadministratsija/derzhavni_zakupivli (accessed: 12 January 2018).

barriers to attract foreign investment” was adopted. On 26 June 2017, the President of Ukraine signed this bill, and it was published the next day. This coincided with the research visit to Ukraine by the co-author of this study. In Ukrainian institutes, offices and chambers of industry, discussions were held on this subject, aimed at introducing adjustments of actions and documents to the provisions contained in the Act that had brought a number of changes to the normative acts of Ukraine, especially to the previously mentioned act “on the legal status of foreigners and persons without citizenship.” The respondents emphasized this. Information from the interviews showed that the adjustments would last up to six months. Among other things, they are reducing the number of documents it is necessary to obtain for a permit to employ foreigners, which is essential in the case of making decisions about the source of potential employees in Ukraine. The deadline for the examination of documents for obtaining permission to employ foreigners in one’s own foreign company was also shortened, and the period of validity of work permits varies from 6 months to 1 year, and to 3 years in justified cases. According to Bilous, this is a revolution that “will change many things both in privatization and in managing state property.”¹⁰ In the respondents’ opinion, the changes introduced by the new act are aimed at simplifying the procedure of obtaining a work permit, and they will enable companies to employ foreign specialists more efficiently and easily.

In addition to the “latest” law in Ukraine mentioned above, there is a new privatization law, which was also widely discussed, abolishing the division of privatization facilities from numerous groups into two categories: large enterprises, with assets of over 250 million hryvnia, and small ones. About 60 enterprises are included in the category of the “great privatization”. The State Property Fund wants to eliminate appraisers in the privatization and move to the free development of prices on the market. Hence, the majority of sales are to take place through electronic bidding platforms. The bill was submitted to the relevant ministries and departments, and the mass privatization is planned to be completed by 2020, about which the representatives of the administration are convinced. This will provide domestic Ukrainian companies, as well as businesses entering this market, with new opportunities and improved competition resulting from the reduction of barriers related to the monopolization of the market in a certain way.

Important issues related to the difficulties in opening and running a business include the level of knowledge and understanding of the language, especially the legal language. Possible inaccuracies or misinterpretations of regulations, or the failure to comply with legal or notarial requirements, etc., may be the reason for there being complications with the registering of a company and how it functions. The requirements regarding the content of the company’s statute are contained in the Act on “Economic Companies in Ukraine”. This Act is the basis for the functioning of every legal person in Ukraine. As in Poland, opening a bank account in Ukraine and obtaining

¹⁰ <http://jakzalozycfirmenukrainie.com/prywatyzacja-na-ukrainie-prywatyzacja-ukrainskich-przedsiębiorstw/> (accessed: 13 December 2017).

a VAT payer's certificate is among the extra procedures necessary to register business operations. One should also take actions to register foreign investments in Ukraine and obtain "accreditation at the Customs Office" and get a work permit if a foreigner is employed. In Kiev, the process of opening a business takes about 7 to 10 days. Some types of business (as in Poland) require appropriate licenses. They are issued by special local authorities in peripheral cities or in Kiev. This involves additional fees, the amount of which depends on the type of business. Licenses in individual fields are issued by over 30 institutions, which are listed in the Ordinance of the Cabinet of Ministers (of June 27, 2003, as amended). The list of documents for submitting an application for a license is contained in the Ordinance of the Cabinet of Ministers of July 4, 2001.¹¹

The interview with Aleksander Wiszniewski confirmed the general conviction of many Polish entrepreneurs that the ability of foreign companies, including Polish ones, to perform specific services in Ukraine is very limited. The most important issues mentioned here were construction and legal services. However, foreign trade does not require a license.

Although subject matter of this study focuses on establishing a business in Ukraine, in the face of the complicated procedure of liquidating a company, it is worth making a few comments on this topic. The SME sector is poorly developed in Ukraine and often does not stand up to competition (for example, it is conducted illegally), as a result of which, the business activity comes to an end, and the owners have to start the process of liquidating the company. This process in Ukraine is quite lengthy and requires different proceedings. There are many stages including the choice of the liquidation method, its cause, purpose, the state of the balance, and the state of arrears. All activities should lead to the deletion of the company from the Ukrainian Register of Entrepreneurs. The general principles of liquidation are specified in art. 60 of the Ukrainian Economic Code.¹² Despite the war in the Donbas region and the lack of detailed legal regulations regarding the opening and running of business activities, as well as the existence of complicated liquidation procedures, the territory of Ukraine is an important market for Polish entrepreneurs. This applies in particular to such areas as agriculture, horticulture, and breeding. The mentality of Ukrainians is also changing in terms of them forming a positive assessment of entrepreneurs from abroad establishing a business in their country as well as Ukrainians going beyond the country's borders with their own activities. In the practical implementation of joint Polish-Ukrainian projects, Polish businesspeople would be wise to consider not only the proximity of the national business cultures of the two countries, but also the very noticeable transformation of the profile of the modern Ukrainian manager,

¹¹ <http://msppu.org.ua/en/info/warunki-prowadzenia/licencjonowane-reodzaje> (accessed: 13 January 2018).

¹² They can also be found on the pages at MSPPU, <http://85.223.147.166/pl/info/warunki-prowadzenia/informacje-prawne/likwidacja-spolki> (accessed: 13 July 2017).

who assimilates advanced practices of modern European management (Glinkowska, Chebotarov 2018).

Complicated procedures, legal sanctions due to shortcomings, often unclear administrative rules, and occasionally corrupt behavior mean that foreign entrepreneurs are afraid of direct investments in Ukraine. Those legal acts which came into force in the current calendar year should be an incentive to attract foreign capital. Nikolai Kisil, the Head of the Investments department of the Institute of Agrarian Economics National Scientific Centre, the author of many projects in the above-mentioned fields both in the sphere of small and large business (including at the inter-governmental level), believes that only the close cooperation of many countries, international trade exchange, cooperation networks and the open minds of the authorities and entrepreneurs provide hope and a chance for the contemporary and future economy.¹³

Conclusions

The respondents of the survey are of the opinion that improving the conditions for establishing and conducting business in Ukraine, and attracting foreign investments (financial and intellectual), simplifying the procedures for setting up a business activity, adopting amendments to laws, and launching privatization of large, state-owned enterprises, are a serious step towards facilitating the internationalization of enterprises in Poland and Ukraine. The investment risk in Ukraine is gradually decreasing, which is slowly becoming a reason for the increasing number of direct foreign investments on the Ukrainian market: from 120th place in 2002 to 93rd in 2004 (Euromoney 2004).¹⁴ However, much remains to be done to build favorable and transparent conditions for attracting Polish investors to Ukraine. This should be a challenge for the administration of both countries for the coming years.

The state legislative and executive authorities of Ukraine, first of all at the national level, should adapt the internal regulatory acts of commercial law to the norms and standards of the European Union to a much greater degree. Ukrainian enterprises must meet not only the conditions of The Small Business Act for Europe (SBA) but also the current relevant regulatory legislation of a United Europe – “Europe 2020”, the strategy proposed by the European Commission.

In this regard, one of the important tasks of the state regulatory policy of Ukraine in the field of small and medium enterprises is to adopt a set of measures and mechanisms to stimulate the internationalization of small enterprises. Initially, it would be advisable to single out the following measures: the formation of a favorable institutional environment for micro-enterprises and small enterprises; consider the needs

¹³ Data obtained as a result of personally conducted research (the visualization of Nikolai Kisil).

¹⁴ <https://poig.parp.gov.pl/files/74/81/105/ukraina.pdf> (accessed: 14 January 2018).

of small enterprises by government bodies; simplify access to financial resources for small enterprises; and optimize the taxation policy towards small enterprises.

Ultimately, the adoption and practical use of the set of proposed measures will do more than simply form the basis for Polish businesses to invest in the Ukrainian economy. It is also vital for Ukraine as it will allow it to more effectively realize the great potential opportunities opened by the Agreement on Deep and Comprehensive Free Trade Area (DCFTA) signed in 2014 with the European Union.

For Polish entrepreneurs, when entering the Ukrainian market, it would be advisable to take into account the priority of the Ukrainian industries in terms of achieving the level of profitability that is being set out. According to the results of our research, this priority can be built as follows.

1. Agriculture (above all, organic) and the food industry.
2. IT.
3. Light industry (tailoring and footwear in different price segments).
4. Service (including auto repair and logistics).
5. Alternative energy (in all forms).

At the same time, Polish companies should take into account the geographical aspect. So, on the basis of institutional peculiarities, in the early stages, the so-called local projects and investments will be most appropriate in the southeastern regions in individual enterprises. In the central and western regions, Polish-Ukrainian business contacts in contemporary conditions can be brought to the level of particular clusters (for example, in the agro-food sector, vegetable, meat and grain food clusters might be as for efficiency).

Prospects for the further development of the topic under analysis

Discussions on the study of the aspects of the possibility of Polish enterprises establishing a business on the Ukrainian market, in practice, on the creation of foreign direct investments are objectively determined by their general insufficient theoretical and methodological level of elaboration of the given issue for all countries. The authors have submitted proposals to the relevant ministries in Poland and Ukraine to improve the process of popularizing information on internationalization and foreign direct investment. It is also necessary to liberalize regulations improving the flow of resources between the two countries.

The authors have identified similar empirical and regulatory studies to identify the motives and barriers for the implementation of joint projects of Polish and Ukrainian enterprises in the markets of other countries, including the countries of the European Union, Central Asia, the Mediterranean and the Middle East.

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Streszczenie

Zakładanie działalności gospodarczej na Ukrainie – wybrane aspekty organizacyjno-prawne

Inspiracją do napisania niniejszego opracowania są równolegle prowadzone badania warunków internacjonalizacji działalności gospodarczej i jej modeli w Polsce i w Ukrainie. W artykule zawarto kluczowe zagadnienia z przeprowadzonych wywiadów oraz wnioski z analizy dokumentacji aktów prawnych związanych, w szerokim znaczeniu, z zakładaniem biznesu na Ukrainie. Przytoczono także nazwy dokumentów związanych z podstawowymi regulacjami w tym względzie. Z wykonanych badań wynika, iż nastąpiły poważne ułatwienia prawne dla zakładania działalności gospodarczej na Ukrainie. Jest to pierwszy krok w kierunku zbudowania korzystnej atmosfery. Istnieje wciąż jednak wiele uwarunkowań, które często zniechęcają polskich przedsiębiorców do ekspansji zagranicznej w kierunku Ukrainy i to nad nimi rządy obu krajów winny się pochylić.

Słowa kluczowe: internacjonalizacja, biznes, zakładanie działalności, bezpośrednie inwestycje zagraniczne