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## Legal Alert - 14 November 2011<sup>1</sup>

### ELECTRONIC STATE REGISTRATION OF COMPANIES AND INDIVIDUALS-ENTREPRENEURS

In this Alert we summarize the latest developments on implementation of the Law "On Amendments to the Law of Ukraine "On the State Registration of Legal Entities and Individuals - Entrepreneurs" Concerning Electronic Registration" (hereinafter – the "**Law**"), which took effect on 14 August 2011.

The Law stipulates that the registration (incorporation) of legal entities and of individuals-entrepreneurs will be done by the State Registrar against presentation of electronic documents certifying creation of a legal entity or involvement of a person in an entrepreneurial activity. Also, instead of submitting a receipt certifying the payment of the registration fee, an electronic receipt attested with a digital signature will be submitted in this case<sup>2</sup>.

The registration of the changes to the data of individuals - entrepreneurs and changes to legal entities' founding documents will be done exclusively on paper.

The principal feature of the electronic document circulation is that the holders of electronic digital signatures ("**EDS**") will insert them in electronic documents instead of their own handwritten signatures and from the legal point of view the electronic documents will thus be deemed signed by these persons. The persons who will receive such documents will only be able to review them using a special key, but will not be authorized to make any changes therein.

The Order of the Ministry of Justice No. 2010/5 "On Approving the Procedure for Submitting and Circulating Electronic Documents to the State Registrar" dated 19 August 2011 took effect on 12 September 2011 (hereinafter – the "**Order**"). It specifies the procedure to be followed for the company or individual-entrepreneur to be registered under electronic conveyor.

#### **The electronic State registration of subjects of business activity is done as follows:**

- ✓ The individual who will file the documents electronically (Applicant) must get an EDS key certifying his signature, issued by a Certification Authority (CA) accredited with the State Service of Special Communication and Information Protection<sup>3</sup>. The EDS key, issued by Masterkey CA, costs 100,45 UAH per year, and provides for unlimited number of filings within this period. The EDS key is issued upon personal visit to the CA, presentation of the passport and Tax ID Certificate, and signing a services agreement.
- ✓ The Applicant pays state fee for company (170 UAH, approx. 22 USD) or individual-entrepreneur (34 UAH, approx. 5 USD) registration.

<sup>1</sup> This is an update of the Legal Alert dated 23 November 2010.

<sup>2</sup> This feature has not been implemented yet. A scanned copy of the paper receipt is filed instead.

<sup>3</sup> The EDS key must be compatible with the software EdrCards used by the State Registrar Service. Currently the EdrCards software accepts only EDS keys issued by Masterkey Certification Authority.

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- ✓ The Applicant downloads the EdrCards software provided on the website of State Registration Service of Ukraine on free basis and uses it to generate the application card and attest it with his EDS.
- ✓ The Applicant makes scanned copies of all paper documents stipulated by the Law, including a scanned copy of the receipt certifying the payment of the State fee, pursuant to the technical requirements of the State Registration Service. Then he uses the EdrCards software to attest the copies with his EDS and generate a package to be filed with the State Registration Service.
- ✓ The Applicant sends the package to the State Registration Service using the gate website for filing the registration requests (see below). He receives a unique password which he further uses to get access to any State Registrar's notifications which are accessed through the gate website.
- ✓ If a company is incorporated on the basis of an individual charter (as opposite to the model charter) the Applicant sends one original thereof to the State Registrar by registered mail. If the company is incorporated on the basis of the model charter, or if it is an individual-entrepreneur, no additional documents are sent to the State Registrar. If the individual-entrepreneur is 16 to 18 years old, a notarized consent of his parents/tutors is sent to the State Registrar by registered mail.
- ✓ The State Registrar checks for the electronic registration requests at least twice a day within business hours. The requests are processed on a first come – first serve basis. The State Registrar issues a receipt of registration request and the Applicant will see the relevant electronic notice on the gate website.
- ✓ The State Registrar carries out the required registration acts and puts the relevant electronic notice on the gate website. If there are grounds for denying the State registration, Applicant will see the relevant electronic notice on the gate website. He can obtain a paper copy of such denial upon request to the relevant State Registrar.
- ✓ The State Registrar sends to the legal address of the company or individual-entrepreneur the Excerpt from the Single State Register of Legal Entities and Individuals-Entrepreneurs, as well as the company's charter with a registration stamp (if any) not later than the next business day after the hardcopy of the company's charter is received.

Electronic documents in the State registration of legal entities and individuals - entrepreneurs are a positive development that will accelerate the registration. However, electronic reports will not replace completely the hard copy filings with the State Registrar nor prevent potential practical violations. Moreover, the system needs some time to become fully operational.

#### **Links:**

Masterkey Certification Authority: <http://masterkey.com.ua>

EdrCards software: [http://www.drsu.gov.ua/files/EdrCards\\_1.0.1.zip](http://www.drsu.gov.ua/files/EdrCards_1.0.1.zip)

Gate Website for Filing the Registration Requests: <http://www.drsu.gov.ua/show/1196>

#### **Disclaimer**

The content of this Legal Alert is not legal advice, but a general informational summary of the law. Resource to qualified legal counsel is always required for legal advice. Failure to make timely inquiries of legal counsel may cause important legal deadlines to be missed.