

## Ukraine: new regulations allow the postponement of military service for employees in "critical companies"

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In late January 2023, the Cabinet of Ministers of Ukraine approved two new regulations: (i) a new procedure for the "reservation" of employees eligible for military service, and (ii) a procedure for defining the undertakings (companies and enterprises) critical for the functioning of the Ukrainian economy and ensuring the vital activities of the population during the special period ("critical companies").

### Who can be "reserved" and what does "reservation" mean?

The term "reservation" in this case means the postponement of call-up for military service during mobilisation for a period not exceeding six months.

**The most important novelty of the relevant regulations for private business is that "critical companies" should reserve 50% of their employees who are eligible for military service.** Moreover, in the case of a justified necessity, even more than 50% of such employees can be "reserved". Importantly, CEOs and their deputies of "critical companies" should be reserved regardless of their military rank, age and military specialties.

### Which legal entities can be considered "critical companies"?

Generally, a legal entity can be considered a "critical company" if it satisfies three or more of the following criteria:

1. absence of arrears in the payment of unified social contribution;
2. the average salary of the employees in the company for the last calendar quarter is not less than the average salary in the region for the fourth quarter of 2021 (according to the State Statistics Service);
3. the company is a resident of Diia City;
4. the total amount of taxes, duties, payments accrued, withheld and paid to the state and local budgets (except for customs duties) during the reporting tax year exceeds the equivalent of EUR 1.5 million;
5. the amount of foreign currency receipts (except for loans and borrowing) for the reporting tax year exceeds the equivalent of EUR 32 million;

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6. the company is of strategic importance to the economy and security of the state in accordance with *the list of state-owned objects of strategic importance for the economy and security of the state*, approved by the Resolution of the Cabinet of Ministers of Ukraine of 4 March 2015, No. 83;

7. the company is important for national economy or for meeting the needs of the territorial community. The criteria for determining if a company is important for a sector of the national economy or meeting the needs of a territorial community are established by the authorities expressly specified by the Cabinet of Ministers of Ukraine.

Compliance with three or more of the above criteria should be confirmed by the relevant documents (e.g. a bank statement or tax authority certificate).

### **How can an entity be recognised as a critical company?**

In order to be officially recognised as a "critical company", the legal entity should submit to either the competent Ukrainian governmental authority or agency (depending on the sector in which the company operates), or to the local administration, in the place where the company is registered (the "Authority") the following documents:

- the request to have company recognised as a critical company;
- copies of documents confirming that it complies with three or more criteria for recognition as a critical company; and
- documents confirming that the company duly submitted tax reporting for the last calendar quarter.

Based on the provided data, the Authority then can recognise the legal entity as a critical company or refuse such recognition.

**If the legal entity is recognised as a critical company, its status should be confirmed at least once a year.** For this, the procedure identical to the one for the recognition of the legal entity as a critical company applies.

### **How to reserve employees once the legal entity is recognised as a critical company?**

Once the legal entity is recognised by the Authority as a critical company, the following procedure of reservation applies:

1. the critical company should submit to the relevant Authority:

- a list of employees for reservation in the required form,
- a certificate confirming the number of employees responsible for military service,
- the relevant justification;

2. the Authority should review the list and submit it for the approval of the General Headquarters of the Armed Forces of Ukraine (Security Service of Ukraine, Foreign Intelligence Service);

3. the approved list should be sent by the General Headquarters of the Armed Forces of Ukraine (Security Service of Ukraine, Foreign Intelligence Service) to the Ministry of Economy of Ukraine;

4. the Ministry of Economy of Ukraine will make the final decision on the reservation of employees.

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