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Procedure for Evaluation and Contribution of Intellectual Property Objects to the Share Capital of Legal Entities`



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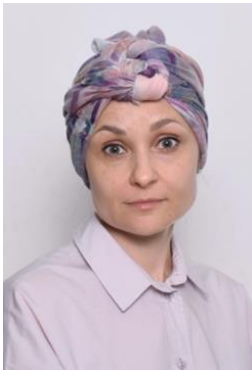
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We have been receiving frequent enquiries about possibility of monetization of intellectual property ("IP") when establishing companies in the Central Asia and the CIS.

This is an interesting question and we prepared a short brief with the help of our partners¹ from the so-called "nearest abroad". Unfortunately, we did not get answers from all the above countries; however, the following is what appears to be interesting.

The most attractive regime in the Central Asian countries belongs to Kazakhstan where you can invest and IP object in the share capital 20,000 monthly calculation indexes (73,840,000 KZT or now approximately US \$164,000) without estimation of independent appraisers (hereinafter we use the term *share capital*, although in some other countries the term *charter capital* is also in use). We understand some incorrectness of using the figure in the US Dollars, however for different CIS countries this is now probably the most understandable figure. If the value of

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property rights exceeds the above amount, it is required that independent appraisers prepare their report as to the IP value. Unfortunately, despite the large number of licenses issued for the evaluation of IP rights in Kazakhstan, there are just few real experts.

In Russia, like in Kazakhstan, exclusive IP rights can also be contributed to the share capital of a company (the Russian “OOO” or LLC is an analogue of the Kazakhstani LLP). The monetary value of property contributed for payment of shares in the share capital of a company shall be unanimously approved by decision of the General Meeting of participants. If nominal value or increase of nominal value of share paid by non-monetary contributions makes more than 20,000 Russian rubles (now about US \$219), an independent appraiser should evaluate the share. The nominal value or the increase of nominal value cannot exceed the amount determined by the independent appraiser.

Kyrgyzstan

In Kyrgyzstan there are no restrictions in evaluation of the IP objects for investing in an LLC (the same as an LLP in Kazakhstan). The monetary valuation of property contributed to the share capital when establishing a company is made by agreement between the founders. Although there are no restrictions on the limit value of the contributed property, in practice it is still recommended to call an independent appraiser.

Monetary evaluation of the property to be contributed as payment for shares at founding of a Joint-Stock Company is also made by agreement between its founders. Such a payment is made by founders at the price determined by the articles of association, however if the value of the shares of company acquired in this way is more than 20,000 Kyrgyz Soms (“KGS”, now about US \$225), a monetary evaluation by an independent appraiser is required. The charter of the company may contain restrictions on the types of property that may be used as payment for the shares.

Upon execution of the relevant transfer-and-acceptance agreement on investing an IP object, the said agreement should be filed for registration with the Kyrgyz Patent Office.

The state duty for such a registration is now about 10,000 KGS (about US \$112) and the services of an attorney are about US \$200. It is interesting that there are no restrictions

for LLCs on the value of contributed intangible property, but for JSCs there are. It would be logical that a larger amount of such investments should be allowed for JSCs than for LLCs, but it is not.

Uzbekistan

As far as we know, there is no practice of investing IP objects into the share capital in Uzbekistan. At least we know that attempts to contribute IP objects and thus to increase the share capital were refused by the authorized body though the current Uzbekistan legislation does not prohibit such investments of intangible assets. Monetary evaluation of non-monetary contributions to the share capital (charter capital) should be approved by the decision of the General Meeting of participants of the company on the unanimous basis. The relevant changes in the charter documents should be registered by the authorized registration body.

The value of IP object should be indicated in the minutes of the shareholders meeting, however an IP evaluation is quite complicated and in many cases requires advises of appraisers. In general when IP object is taken into balance, for example a trademark, then all costs associated with its creation and registration are evaluated, however it is certainly necessary to consider the other value components, such as for example awareness of the trademark and its reputation and other.

Belarus

Intellectual property objects may be contributed to the share capital of a business company (analogue of LLP or JSC in Kazakhstan), however the share capital of a business company may not be formed entirely by non-monetary contribution in the form of property rights.

At the same time, the value of property rights made as a contribution to the share capital of a business company may not exceed 50% of the share capital.

The charter of a business company may determine the types of property that may not be accepted as a contribution to the share capital of that company.

Evaluation of non-monetary contributions made to the share capital of a business company shall be carried out by the appraisers.

The procedure for making a non-monetary contribution to the share capital of an LLC (limited liability company) has its own features, primarily related to the type of property (including property rights) being contributed.

Only evaluated non-monetary contributions can be made to the share capital of an LLC (limited liability company). In other words, it is necessary to assess their value before contributing to the share capital.

In general, intellectual property rights can be made as a non-monetary contribution to the share capital of an LLC, for example, the right to use an invention, utility model or industrial design.

The assignment of property rights is recorded by an act of transfer-and-acceptance.

Turkmenistan

As far as we know there are no special instructions related to the procedure for contributing IP objects to the share capital of a company in the legislative acts of Turkmenistan. The share capital of a company is formed from the amount of contributions of its founders by means of the founders' contribution of money, as well as property, property and other rights having monetary value.

Contributions in property may be monetary funds in manat and (or) foreign currency, securities, other things, property rights or other rights having monetary value. The property contributed to the share capital shall be the property of the founder (participant) and their description shall be specified. The evaluation of the property contributions to be made must be agreed upon by the founders (participants) prior to the conclusion of the foundation agreement, while property rights to intellectual property objects are subject to mandatory evaluation by an independent appraiser regardless of their value. A joint venture may also be established on the basis of an agreement concluded between its founders.

It is interesting that the share of each founder in the share capital must be at least ten percent of the total value of the property.

Azerbaijan

Intellectual property objects are contributed to the share capital of a company pursuant to the company's charter. The founders themselves may determine, or initiate evaluation of such objects by appropriate experts and further approve the value by licensed auditors.

In Azerbaijan there is no legislative act providing procedure on the contribution of IP objects to the share capital, and there is no legislative act related to the procedure of independent evaluation of non-property rights when contributing them to the share capital.

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Tajikistan

Evaluation of non-monetary contributions to the share capital of a company made by shareholders and third parties accepted in a company shall be approved by decision of General Meeting of participants and should be accepted by all participants unanimously.

If nominal value (increase of nominal value) of share of shareholder of a company in the share capital of a company shall be paid by non-monetary contribution, such contribution shall be estimated by independent expert.

The nominal value (increase of nominal value) of share of shareholder of a company paid by such non-monetary contribution may not exceed the amount of evaluation of the said contribution determined by an independent expert. In case of making non-monetary contributions to the charter capital of a company, participants of a company and an independent expert within three years from the moment of state registration of a company or making corresponding changes to the charter of a company shall bear joint subsidiary liability for its obligations in the amount of overestimation of cost of non-monetary contributions in case of insufficiency of property of a company.

The charter of a company may establish types of property which cannot be contributed to the share capital of a company.

Armenia

Evaluation of non-monetary contributions made by founders (participants) of a company or the third parties accepted to a company shall be approved by the General Meeting of participants by unanimous consent. If the nominal value (increase of nominal value) of the participant's share in a company, paid by non-monetary contribution is more than 500-fold of the minimum wage (about US \$92,364), established at the moment of filing of documents for state registration of a company, such contribution is subject to evaluation by an independent appraiser.

In terms of the value of IP assets, currently Kazakhstan is the most attractive and we are happy to assist in attracting such assets to our country, with their estimation and further registration and use.