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Establishing Limited Liability Partnership with participation of a non-resident in Kazakhstan



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In Kazakhstan there are several types of legal forms for doing business. The limited liability partnership (hereinafter - LLP) is the most common form of commercial legal entity.

To establish an LLP in Kazakhstan involving a foreign company or a non-resident individual, it is required:

1. to register with the tax authority as a taxpayer.

Obtain an individual identification number (IIN) for the founder and the first director (if both individuals are non-residents), and if the founder is a legal entity then it is required to get a business identification number (BIN).

2. After obtaining the IIN/BIN, an electronic digital signature (EDS) can be obtained for the founder/founders (not a mandatory procedure, however it greatly simplifies the registration procedure, as it is possible to submit documents for registration online via www.egov.kz service).

3. together with obtaining the IIN/BIN and EDS, the founder must:

3.1 Determine *the name of the LLP*

It is necessary to check the name of new LLP with the names of registered legal entities for similarity as pursuant to the Article 1020.3 of the Civil Code of the Republic of Kazakhstan, a company name similar to company name of already registered legal entity may not be used to the extent that it may lead to confusing similarity of legal entities and misleading of

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consumers. In addition, if a trademark that is identical or confusingly similar to the company name applied for is already registered in Kazakhstan, the company's registration can, at least in theory, be challenged, so a trademark register search is also necessary. Similarly, a trademark registration can also be challenged if there is already a trademark with an earlier priority.

Until 29 December 2021, the Article 19 of the Law No. 151-I of 11 July 1997 on Languages in the Republic of Kazakhstan contained a provision providing that the names of joint, foreign organizations must be transliterated in the Kazakh and Russian languages. This provision has now been excluded.

There are special requirements for the name of certain legal entities, in particular the name of a microfinance organization must necessarily contain the words "microfinance organization" or the abbreviation MFO, the name of a credit partnership or a pawnshop must necessarily contain the words "credit partnership" or "pawnshop" accordingly (Article 13 of Law No. 56-V of 26 November 2012 On Microfinance Activities).

3.2 Determine *the size of the share capital*

The authorized capital can be zero for small businesses, for medium and large - not less than 100 monthly calculation ratio (for 2023 – 1 MCR is 3 450 KZT, accordingly 100 MCR is 345 000 KZT which is approximately US \$745).

For reference - Small business entities in Kazakhstan are individual entrepreneurs and legal entities with an average annual number of employees not exceeding one hundred people and an average annual income not exceeding three hundred thousand MCR, established by the law on the republican budget and effective as of 1 January of the relevant financial year.

There are exceptions for the amount of the share capital; in particular, for payment organizations and organizations carrying out microfinance activities, the amount of the minimum share capital is determined by the legislation of the Republic of Kazakhstan. For example, according to the Resolution No. 192 of the Board of the National Bank of the Republic of Kazakhstan dated November 14, 2019 On approval of prudential standards and other obligatory norms and limits, methods of their calculation for organization, carrying out microfinance activity the size of the share capital for microfinance organization is 100 000 000 (hundred million) tenge (~ 215 000 USD).

Contribution to the share capital of LLP, in accordance with the Article 23.3 and 23.4 of Law of the Republic of Kazakhstan dated April 22, 1998 No. 220-I On Partnerships with Limited and Additional Liability can be rights to the results of intellectual activity, but at the same time, it is not allowed to make a contribution in the form of personal non-property rights and other

intangible benefits. If the value of such contribution exceeds the amount equivalent to ~148,000/149,000 USD (20,000 MCR - 69,000 in 2023 ~148,000/149,000 USD), its assessment has to be confirmed by an appraiser, however the parties may agree among themselves on a lower value and simply declare it in the statutory documents.

Interestingly, IP objects can be put on the balance sheet and even depreciated in value, which in our view is inconsistent with the usual increase in value, for example of a trademark when the time of its use increases.

3.3 Determine *the legal address*.

Currently, when registering a LLP as a small business entity, it is not required to provide location documents, it is sufficient to provide information on the rented property: the exact address as well as the registered address code (RAC).

3.4 Decide *on the types of activities*, including choosing the main activity to be selected under classification of economic activities when registering.

As there are a number of restrictions on activities for LLPs with foreign participation, it is necessary to review this issue carefully. In particular, companies with foreign participation are prohibited from carrying out all types of security activity. Also, foreign individuals, legal entities and stateless persons are prohibited from directly and (or) indirectly owning, using, disposing of and (or) managing more than 20 percent of shares (stakes, units) of a legal entity that owns a mass media enterprise in the Republic of Kazakhstan or carries out activities in this field. There are other restrictions on activities for LLPs with participation of the non-residents.

4. After receipt of the BIN/IIN, the package of documents required for state registration of the LLP is prepared - the application for state registration, the decision/minutes on the LLP establishment, the charter, if there is more than one founder - the foundation agreement, and the order for the first director.

The charter must be unanimously approved by the general meeting of founders and signed by all founders or their authorized representatives; currently it is not necessary to certify the charter at the notary's office. When registering an LLP, the charter is not submitted to the authorized body.

Small, medium and large entrepreneurship entities established in the legal form of an LLP may carry out their activities on the basis of a standard charter by submitting an application for state registration of business partnerships carrying out their activities on the basis of a standard charter during registration.

The memorandum of association of an LLP, which is a small or medium-sized business entity is drafted in a simple written form, and for large business entities - is subject to mandatory certification at the notary's office.

Non-resident should additionally submit to the registration authority:

- A copy of a legalized extract from the commercial register or other legalized document certifying that the founder as a foreign legal entity is registered under the legislation of a foreign country with a translation* into the Kazakh and the Russian languages certified by the notary;

-A copy of a passport or other document certifying the identity of a foreign founder** with a translation into the Kazakh and the Russian languages certified by the notary;

*All copies certified by the notary should be apostilled.

According to the Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters (Minsk, 22 January 1993) an apostille is not required for documents from the Republic of Azerbaijan, Moldova, Armenia, the Russian Federation, the Republic of Belarus, Tajikistan, Turkmenistan, Uzbekistan, the Kyrgyz Republic and Ukraine.

*** According to the Article 40 of the Law No. 477-IV of 22 July 2011 on migration, the establishment of legal entities and participation in the charter capital of commercial organizations by means of membership of legal entities by foreigners who have not obtained a visa to enter as business immigrants are prohibited.*

5. Registration fee

Small and medium-sized businesses are exempt from paying the registration fee when registering an LLP, while a registration fee of 6.5 MCR is set for large businesses.

6. The timing of registration will depend on the chosen type of business entity.

In particular, when registering a LLP belonging to the type of a small business entity with a non-resident individual, the registration period, taking into account receipt of IIN shall be about 3 working days.

The Certificate of State Registration of Legal Entity and entry of Record Registration of a Branch, Representative Office shall be confirmation of the appropriate registration.

7. After registration of the LLP, EDS should be obtained in the name of the first director

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The EDS can be obtained either offline by power of attorney or online directly by the first manager.

8. The final stages of registration will be opening of a bank account and conclusion of an insurance agreement on obligatory insurance of the employee against accidents at work. Moreover, in case of online registration one may choose a bank and an insurance company at once by submitting online all necessary documents for opening a bank account and concluding an insurance agreement.

The list of documents and deadlines are minimal for the standard registration procedure, without taking into account additional requests from the state authorities.