

## **Forms of Business Organizations in Kazakhstan**

In accordance with the Civil Code dated 1 March, 1995, foreign and local investors may establish their presence in Kazakhstan in a number of organizational forms, including full partnerships, limited/mixed partnerships, limited liability partnerships, (often referred to as limited liability companies), joint stock companies, representative offices, and branch offices. The most popular form of Kazakhstan legal entity for foreign investment is the limited liability company. A foreign company not wishing to establish a Kazakhstan legal entity may open either a representative office or a branch office.

### ***Full Partnership***

A full partnership is a separate legal entity that is distinct from its founders. There are no restrictions on the number of partners that a full partnership may have. Only individuals can be the partners in a full partnership. The partners have joint liability for partnership debt. A full partnership is managed by an executive body established by a general meeting of partners. The minimum charter capital for a full partnership is 25 times the monthly calculation index (MCI) (approximately £100).

### ***Limited/Mixed Partnerships***

A limited/mixed partnership is considered to be a separate legal entity distinct from its founders. It must have at least one partner with limited liability and at least one full partner with additional liability for partnership debts. The liability of limited partners is limited to the amount of their investment. An individual may only be a full partner in one limited partnership. Partners of full partnerships may not be full partners in limited/mixed partnerships. The minimum charter capital required for a limited/mixed partnership is 50 times the MCI (approximately £200).

### ***Limited Liability Partnerships***

A limited liability partnership is a legal entity that is distinct from its founders. It may consist of one or more participants. A limited liability partnership cannot be established and/or owned by a single participant if the latter, in its turn, has only one participant. The participant's financial liability is limited to the amount of its investment in the charter capital. This type of investment can be made either in a monetary form or in kind. Contributions in kind must be valued and are based on the agreement of all founders or on a decision made by a general meeting of participants. Where the value of an in-kind contribution exceeds 20,000 times the MCI (approximately £77,870), the valuation should be verified by an independent expert. The initial charter capital for a limited liability partnership amounts to 100 times the MCI (approximately £400).

### ***Joint Stock Companies***

On May 13, 2003 the President of the Republic of Kazakhstan signed the new Law on Joint Stock Companies (the "JSC Law"), which came into effect on May 16, 2003. The JSC Law treats many issues with regard to joint stock companies differently. The JSC Law makes no distinction between open and closed joint stock companies. In addition, the minimum charter capital of a joint stock company was increased to 50,000 times the MCI (approximately £195,000). The equity requirement for public companies (those with at least 500 shareholders) was increased to 1,000,000 times the MCI (approximately £ 3,893,350). Under the JSC Law, shareholders of a newly registered joint stock

company must pay the initial charter capital within 30 days from the date of legal registration of the company. As with limited liability partnerships, contributions to charter capital can be made either in the monetary form or in kind. However, for joint stock companies the value of any contribution in kind must be determined by a licensed appraiser.

Shares of joint stock companies are subject to state registration. The JSC Law requires that only an independent licensed registrar may maintain a registry of shareholders.

### ***Representative Offices***

Kazakhstan law permits a foreign company to establish a representative office in Kazakhstan in order to represent the interests of that company in the republic. Representative offices are not recognized as separate legal entities. Representative offices may be established for the purpose of gathering information, establishing business contracts etc. Therefore, the authorities take the view that a representative office should not take any commercial activities. “Commercial” representative offices should, therefore, be re-registered as branch offices.

### ***Branch Offices***

Branch offices, like representative offices, are not legal entities, but are divisions of the foreign legal entities that they represent. A branch office acts and assumes obligations on behalf of its head office and may carry out commercial activities.

### ***Consortium***

The Civil Code defines a consortium as a temporary association, in which legal entities combine certain resources and coordinate efforts to solve specific business issues. Consortium have features similar to those of full partnerships. They are not, however, considered to be separate legal entities. The revenue and expenses of a consortium are passed through to the participants. From a practical point of view, all of the participants in a consortium should register in Kazakhstan for legal and tax purposes. One of the participants in a consortium normally serves as the operator (manager) of the consortium.

## **Procedure of the Registration of Legal Entities in Kazakhstan**

In accordance with the Kazakhstan legislation the procedure of establishing of a Legal Entity includes the registration in Justice authorities, Statistic authorities and Tax authorities. The registration takes up to 10 business days from the moment of submission of all necessary documents to the local Justice Department. Copies of all documents will be forwarded to Statistical and Tax authorities by Justice Department. Then the company may have a seal and open a bank account. Kazakh law does not have any restrictions related to the number of bank accounts.

The documents that must be submitted to the Justice authorities for the registration of a wholly owned subsidiary include, but are not limited to, the following:

- Application (specific form).
- Charter or Memorandum and Articles of Association of the foreign legal entity acting as the founder of the local entity.
- Extract from a foreign trade register confirming the legal status of the foreign investor (e.g. a certificate of incorporation).

- Evidence that a decision has been made to create a company, such as the minutes of a founder's meeting.
- Certificate from the Kazakhstan tax authorities confirming absence of any outstanding debts of the founder(s) to the state budget of the Republic of Kazakhstan.
- Charter and Foundation agreement (if 2 or more founders) drafted in accordance with Kazakh legislation (3 copies).
- Copy of a lease agreement or similar document confirming that the company had secured premises in Kazakhstan from which to operate.
- Power of attorney issued by the founding company authorizing a designated agent to act as its representative.
- Copy of a bank payment order/receipt confirming payment of the state registration fee. The state registration fee is 20 MCI (approximately £ 78 for a current year)

The documents presented to the Justice Department shall be legalized or apostilled, notarized and translated into the Kazakh and Russian languages.

### **Representative Offices and Branch Offices of Foreign Legal Entities**

The procedure for the registration of a representative office or a branch office of a foreign legal entity is similar to the registration procedure for a Kazakhstan legal entity. The major difference is in the list of documents that should be filed with the Justice Department. It includes:

- Application for the registration of a representative (branch) office.
- Copies of the charter or memorandum and articles of association of the foreign legal entity establishing the office in Kazakhstan.
- Extract from a foreign trade register, confirming the legal status of the foreign investor (e.g. a certificate of incorporation).
- Minutes of the meeting/resolution of the board to open a representative (branch) office in Kazakhstan.
- Regulations of the representative (branch) office approved by the foreign legal entity (3 copies).
- Power of attorney for the head of the representative (branch) office.
- Copy of a lease agreement confirming the legal address of the office in Kazakhstan.
- Copy of a bank payment order/receipt confirming payment of the state registration fee. The state registration fee is 20 MCI (approximately £ 78 for a current year)

The documents presented to the Justice Department shall be legalized or apostilled, notarized and translated into the Kazakh and Russian languages.

(the above information was kindly presented by the Kazakh law company "GRATA". Address: 157 Shevchenko Street, Almaty, 480008, Kazakhstan, Tel. +7 (3272) 501 177, Fax +7 (3272) 776 925, [www.gratanet.com](http://www.gratanet.com))