

## **Procedure to Incorporate a Company in the Republic of Kazakhstan**

### **Procedure**

In order to incorporate a Company, a properly completed application must be submitted to the Registrar. Two copies of the Memorandum and Articles of Association, translated into both Kazakh and Russian languages, should be attached to the application.

To incorporate a legal entity that wishes to carry out activities connected with banking and insurance (with the exception of insurance broking) the applicant must first obtain permission from the National Bank of Kazakhstan. This also applies to the incorporation of the branches and representative offices of banks as well as reinsurance organizations.

Regional banks that are neither branches nor representative offices are incorporated subject to the procedure defined in the banking legislation, and are not subject to state incorporation. Where the founder of a Company is another Company, the latter is additionally required to submit a certificate from the taxation authorities that it has no arrears on its taxes, duties or any other compulsory payments.

The incorporation of Companies that occupy a dominant or monopolistic position in the market, including natural monopolies, require the preliminary consent of the Monopolies and Mergers Commission.

Applications must be signed by the founder or the representative of the founder. All the documents must be certified subject to the established rules and must be attached to the application.

The incorporation of Companies with foreign shareholders follows the same procedure approved for the incorporation of Companies of the Republic of Kazakhstan, subject to the following additional submissions:

- A certified copy of the Company register or any other official document showing that the foreign Company is a legal entity subject to the legislation of a foreign country, with notarized translations in Kazakh and Russian;
- A copy of the passport or other document of the founder that certifies the identity of the foreign Company with notarized translations into Kazakh and Russian.

In addition, proof of the official address of the Company, its branches and representative offices will be required, along with the Company documentation showing that all taxes due from the Company have been paid. The foregoing will need to be submitted to the Kazakhstan Company Registrar.

Within ten days of the day of incorporation, the Registrar will inform the relevant local tax office.

## **Incorporating Branches and Representative Offices**

A duly completed application form signed by a legally authorised person, who is in the process of setting up a branch or representative office, will need to be submitted to the Registrar.

The following will need to be attached to the application form:

- The decision of the Company to set up a branch (or representative office) with the Company seal;
- Memorandum and Articles of Association of the branch (or representative office) with two copies in Kazakh, and Russian, approved by the Company;
- Copies of the Memorandum and Articles of Association and certificates of Company incorporation;
- Power of attorney (except for social and religious organisations) issued to the head of the branch (or representative office);
- Documents showing payment for the registration of the Company, at location of its branch (or representative office).

Documents for a foreign Company that is setting up a branch (or representative office) will need to be submitted with notarized translations in Kazakh and Russian.

Within ten days of the day of incorporation, the Registrar will inform the relevant tax authorities.

Founding documents that Companies are required to submit in order to be fully incorporated as Companies:

- Memorandum and Articles of Association, unless otherwise stipulated;
- The founding documents of business partnerships, joint stock companies and the incorporation of companies as associations (e.g. unions);
- The founding documents of business partnerships, joint stock companies, which are set up by a sole entity (sole trader) and other types of Company apart from those mentioned in part two of the existing law.

## **Contents of Company Documents**

A Company's founding documents must contain the information required by the legislation of the Republic of Kazakhstan, according to the type of Company. The Memorandum and Articles of a branch (or representative office) must contain the name, location, type of activity, the order of management and authorities of the head of the branch (or representative office), and the incorporation documents of the Company that is setting up the branch (or representative office).

## **Timing**

Incorporation and re-incorporation of small business Companies will be completed in no more than three working days; non-governmental organisations will be completed no later than ten working days from the date of submission of the application and the necessary documents.

Incorporation and re-incorporation of other Companies, as well as of branches and representative offices, will be completed within 15 days of the date of submission of the application and the necessary documents.

Where the full package of documents is not submitted, or if there are other deficiencies, or if there is a need to obtain an expert opinion on the documents, or in the case that there are other items that do not conform to legislation of the Republic of Kazakhstan, the period required for incorporation and re-incorporation may be longer.

### **Payment**

Incorporation, re-incorporation and termination of the activities of Companies and their branches and/or representative offices will incur a fee in accordance with the procedure set out in the Tax Code of the Republic of Kazakhstan.

### **Certificate of Company Incorporation and Re-incorporation**

The Registrar will issue to all newly created Companies a Certificate of Incorporation, and a certificate of re-incorporation to Companies that have been re-incorporated. The branches and representative offices will be issued a Certificate of periodical incorporation and a certificate of re-incorporation if they are re-incorporated.

The opening of a bank account is possible only by presenting the Certificate of Incorporation of the Company.

The issuance of a Certificate of Incorporation does not permit the commencement of activities that require a licence in accordance with the law of the Republic of Kazakhstan. A Company may enjoy the right to carry out licensed activities only from the time it obtains the relevant licences.

### **Accounting**

The relevant government statistical agency requires full information on all Companies in its Register, and will issue an identity code and accounting code to each.

### **Re-incorporating a Company, its branch or representative office**

The following documents should be submitted to the Registrar:

A signed and sealed copy of the Resolution that changes the original incorporation, a notarised copy of the revised Memorandum and Articles of Association, and proof of payment of all outstanding duties and taxes.

In the event that new Directors Shareholders have become involved in the re-incorporated Company, the Registrar will require proof that all duties and taxes that are due are paid and up to date.

In the case of natural monopolies the special consent of the Monopolies and Mergers Commission will also be required.

The liabilities of all participating parties in a re-incorporated Company must be clearly set out in a separate schedule.

A fee will be payable to the Registrar.

The Registrar will inform the tax and state statistics agencies within 10 days of the re-incorporation of the Company and any other relevant information such as a change of address.

Any re-incorporation that involves changing the Memorandum and Articles of Association of Companies in the banking or insurance and re-insurance sector will need to comply with the relevant legislation in these fields.

Branches and representative offices must be re-incorporated in the event that their name changes.

### **Procedure for Winding Up a Company**

Upon receiving a request to wind up a Company the Registrar will check to see that its closure is in conformity with the law.

Providing that there are no infringements of current legislation, the Registrar will give notice of the closure of a Company within 10 days. The winding up of a joint stock company can be formalised only with the relevant certificate showing the nullification of the shares. The winding up of Companies with potentially dominant positions in certain markets will occur with the prior consent of the Monopolies and Mergers Commission.

The state statistics agencies must be informed within 10 days of the winding up of a Company.

Termination of a Company's activities occurs from the moment it is entered in the Company Register.

### **Procedure for Winding Up a Branch or Representative Office**

A branch (or representative office) will be removed from the Company Register providing that there is a valid Resolution of the parent Company accompanied by the original Certificate of Incorporation (or re-incorporation) including the rules governing the subsidiary, and proof that no duties and taxes are outstanding, for which the relevant certificate will be required from the local tax office.

### **Preferential Investment Terms**

Preferential investment terms are granted under the Investment Act of 8<sup>th</sup> January 2003 under which a level playing field has been created for both foreign and domestic Companies.

The investment law is divided into two parts, the first of which sets out the investment regime. The second part contains the regulations that govern the way the state supports such investments.

The law defines investment as being the same as any other type of property (except consumer goods), including leased items, or items that add capital value to the Company or other assets that add value to the Company over time.

The investment law provides for investment tax preferences, exemption from Customs duties and the granting of funding from the State.

### **Granting Preferential Investment Terms**

Preferential investment terms are granted so as to create a favourable investment climate for the development of the economy and to stimulate the growth of new and existing industries, and attract new technology.

Preferential investment terms may be granted providing that an investment:

1. Is considered to be a priority by the Government;
2. Are to be made in new industries, or to expand existing industries, or to introduce new forms of technology.
3. Is accompanied by evidence showing that the investor possesses the financial, technological and logistical know-how to effect the investment.

Preferential investment terms are granted on fixed assets inside the Republic of Kazakhstan and for its ultimate benefit.

### **The Procedure for Granting Preferential Investment Terms**

Preferential investment terms are granted by way of a Contract between the Investments Committee of the Ministry of Trade and Industry of Kazakhstan and the Kazakhstan-incorporated Company.

Companies wishing to receive a grant should submit an application to the Investments Committee with the following documentation:

1. Notarised copy of the Certificate of Incorporation;
2. Notarised copies of the Accounts;
3. Notarised copy of the Memorandum and Articles of Association;
4. A Business Plan set out according to the requirements of the Investments Committee;
5. Documents showing the feasibility of the project;
6. Documents confirming that the amount of funding being applied for is sufficient to complete the project.

### **The Substance of Preferential Investment Terms**

The granting of preferential investment terms means that in practice the following is true:

With respect to Corporation Tax, investors injecting capital into new industries or the expansion or modernisation of existing ones will be granted the right to deduct from the total

income of the cost of being introduced into exploitation main funds with equal shares depending on the durations of preferences.

With respect to Land Tax, investors will be exempt from payment of taxes on those sites that are being used for the purposes of the investment.

The granting of customs preferences means exemption from Customs Duties for newly imported equipment and spare parts.

The legislation also envisages that investors may be granted State funds to be used by the investor. Grants may take the form of plots of land, buildings, facilities, equipment and technology, computer equipment, measuring and regulating tools, transport (with the exception of cars) and other necessary items. The maximum size of a State grant is 30% of the total value of the assets of a Company. In case if the estimated cost of the requested natural grant exceeds above limit then a legal entity of Kazakhstan will have the right to acquire the requested property by covering the difference between its estimated value and the maximum volume of the state natural grant.

Investment preferences are granted on the basis of an agreement signed with the Investment Committee of the Ministry of Industry and Trade of Kazakhstan.