

## Doing Business: Business Presence in Kazakhstan

20 July 2016

### **Business Presence in Kazakhstan**

#### **Introduction**

Kazakhstan legislation provides a variety of options for business presence in Kazakhstan. The business person can set up in Kazakhstan a representation office or a branch of a foreign company. It is also possible to incorporate a local company. The most popular are a limited liability company and a joint stock company whose liability is also limited by shares.

#### **Representative Office**

The representative office must be duly registered in Kazakhstan. After registration it may conduct only representative functions. It means that the representative office cannot sign business contracts, except contracts on administrative or office needs. Representative offices cannot exercise ordinary commercial activity.

#### **Branch of Foreign Legal Entity**

A branch of a foreign legal entity must be duly registered in Kazakhstan. A branch is a separate subdivision of a foreign company, located and registered in Kazakhstan. The branch may conduct all or part of its foreign legal entity's business operations. A branch does not constitute a separate legal entity and all legal risks expand to that foreign legal entity. The branch operates on its by-laws which is similar to the articles of association. They include name and location of the branch, as well as name and location of the legal entity, the branch's term, existence purpose and management. The by-laws of the branch do not constitute a commercial secret and should be available to the public.

#### **Limited Liability Company**

Similar to a company's other jurisdictions, a limited liability company (LLC) remains one of the most popular forms of business organization. Creditors cannot recourse their claims to shareholders of a limited liability company. The shares in an LLC are not treated as securities and do not fall under the securities market regulations. An LLC cannot be owned by a sole shareholder who has another sole shareholder. LLC shares are subject to a pre-emptive buy-out right of other shareholders before they transferred to a third party.

A limited liability company begins to incorporate the existence after its state registration. LLC activities are governed by its charter. This document is very similar to the articles of association. The charter lays down to a company's registered address, permitted activities, management and its powers, etc. The charter shall be available to the public.

The relations between shareholders of the limited liability company are governed by the foundation agreement. It is very similar to the shareholders agreement. The provisions of a foundation agreement constitute a commercial secret, and may be revealed to the state or official

bodies or third persons only at the discretion of the LLC's management, or in cases required by the legislation. A foundation agreement must include a decision on a company incorporation, its name and address; a list of names, addresses and bank details of its founders; rights and obligations of the participants (founders); capital amount; capital and in-kind contributions by the founders; their evaluation; provisions on additional contributions; shareholders' equity in the company; the procedure for distribution of net revenue. A foundation agreement may include any other provisions at the discretion of the shareholders. The terms of the foundation agreement are binding upon the shareholders, and are enforceable in the court. A limited liability company should have minimum authorized capital approximately US \$1 100. It should be fully paid within a year after its incorporation.

### **Joint Stock Company**

A joint stock company (JSC) is a legal entity with limited liability by shares and without recourse to shareholders. JSC may issue shares to raise a capital. Shares in a JSC are freely transferable, and the number of JSC shareholders is unlimited.

A JSC shares are regarded as securities and fall under Kazakhstan security legislation. A JSC becomes incorporated after its state registration. JSC may be incorporated by individuals, legal entities and governmental institutions. An individual or a legal entity can be a sole founder of a JSC.

A JSC can issue three types of shares, such as an ordinary share, a preferred share and a golden share. There are no share certificates. All shares are issued electronically and the Common Securities Registrar keeps all records about securities, owners and encumbrances.

The preference shares may not exceed 25 percent of the authorized capital. It does not give voting rights but secures a certain level of dividends to its shareholder, and JSC property in the event of its liquidation.

Ordinary shares are voting shares. They also give the right to receive dividends and the JSC's property in the event of its liquidation.

Also, the founders of a JSC may issue a golden share. The holder of a golden share may veto company decisions.

A JSC is able to issue bonds, options and derivative securities.

The minimal capital for a JSC is approximately US\$ 542 000. It should be fully paid within 30 days after its incorporation.

### **Corporate Governance**

The Joint Stock Companies Act reflects modern corporate governance practice. The JSC has a general meeting of shareholders as a top corporate body. Under OECD influence, the board of directors perform the same functions as in many Western European jurisdictions, it even plays more of a role in risk management and human resources issues.

The Executive body may either be a single executive or a management board.

With an aim to improve corporate governance, an internal audit committee is a mandatory body for a JSC.

### **Public Companies**

A JSC may receive the status of Public JSC if 30% of its shares belong to minority shareholders. Each minority shareholder may own not more than 5% of shares.

### **General Disclosure Requirements**

The Joint Stock Companies Act requires JSCs to conduct specific reporting and disclosure. A JSC must publish its annual financial statements in the mass media and disclose information on its major transactions. A JSC is also required to disclose information on its shares issue, its major

and interested-party transactions, its property pledge exceeding 5% of JSC assets, and JSC shareholding participation in legal entities. In addition, a JSC should report their shares to the National Bank placements on a semi-annual basis.

### **Takeover Disclosure Requirements**

The purchaser who acquires more than 30% shares in a JSC should prior notify such JSC and the National Bank. This notification must inform about the shares to be acquired, its price and other information related to the proposed acquisition. Otherwise, the purchaser should publish an offer to the remaining shareholders to purchase their shares at a price not lower than the average market price. This offer is valid for 30 days after the acquisition. The purchaser has 30 days to pay remaining shareholders who have agreed to sell their shares.

### **Regulation of the Securities Market**

Financial Operations require licensing. Legal entities obtain permission from the National Bank to be able to conduct such financial activities, as brokerage, dealing, custodial activities, portfolio management, transfer agent activities, pension fund management and the organization of trade in securities and other financial instruments.

Stock Exchange. There is only one licensed stock exchange on the territory of Kazakhstan, called the Kazakhstan Stock Exchange or KASE, which lists more than 100 companies.

©2011-2016 Synergy Partners Law Firm LLC. All Rights Reserved.

*This publication contains information on various legal and tax issues, and is intended for general guidance only. It may not reflect current legal developments. It does not constitute legal advice or opinion. It is not intended to be a substitute of a professional advice. Synergy Partners Law Firm can accept no responsibility for loss to any person acting or refraining from action as a result of any material in this publication. Synergy Partners Law Firm expressly disclaims all liability to any person concerning to any information contained in this publication. Any specific matter or individual case should seek to the appropriate legal or other professional advice.*