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10 Questions to a Lawyer on Business Relocation to Kazakhstan

In light of geopolitical tension in the region and consequences of the anti-Russian sanctions, offices of many western companies have already relocated or consider a possibility of relocation from Russia to the Central Asian countries. Geographically favorable location, developed logistics hubs, low barriers to enter market, legal and economic advantages of the jurisdictions of Kazakhstan and the [Astana International Financial Centre \(AIFC\)](#), same as a possibility to stay in a familiar language environment are of great potential for both setting up of a representative office and migration of regional offices.

We have formed these 10 questions and answers based on our own experience gained in the course of supporting the relocations of offices of small companies and major corporations ranked by the Fortune 500. They will not help solving the issue of country selection or mitigation of the risk of such decision, but they will help you to prepare to relocation in a more efficient manner and reach smooth adaptation to a new market, as one can say, to reduce the "migration stress". Number of potential mistakes at the stage of company registration, opening of a bank account, obtainment of a payer number (BIN, IIN) and other procedures is not so great, but the fact of making such mistakes may either slow the process, or lead to a failure to ensure full-scope participation in economic activities.

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1. Can foreigners (including Russians) set up business in Kazakhstan?

Yes. According to the general rule, foreign legal entities and citizens may register legal entities in Kazakhstan. However, the Kazakhstan legislation provides for restrictions on shared participation of foreigners in the capital of local companies from certain economy branches (such as telecommunications, security activities, mass media, etc.).

2. What legal entity form should be selected when registering a company in Kazakhstan?

The most optimal form for carrying out commercial activities is a limited liability partnership (hereinafter, the "**LLP**"). Selection of LLP allows using the minimum charter capital, ensuring prompt and efficient controls over activities, implementing flexible management methods as compared with other forms of commercial legal entities.

Another, less widespread form of a legal entity, is a joint stock company (hereinafter, the "**JSC**"). JSC is selected in case a company pursues any specific objectives (e.g. attraction of funds by way of issuing shares, adherence to a complicated management system of JSC, etc.), as well as in cases expressly stipulated by legislation (e.g. to carry out banking and insurance activities).

Many regulations applicable with respect to JSCs are not relevant for LLPs, among which are (1) necessity to comply with a special procedure for certain transactions – major transactions and interested-party transactions, (2) control by the regulator with respect to the issue and circulation of shares and other aspects of the JSC's activities, and (3) obligation to disclose information, etc.

3. Is it required to disclose information on ultimate beneficiaries?

Information on ultimate beneficiaries is neither registered, nor specified in any state registers of Kazakhstan.

When registering a legal entity, founders of LLP are specified in the register of legal entities, which is kept by the registrar – State Corporation "[Government for Citizens](#)" NJSC (previously by the justice authority). This information is in free access on the e-Government portal ([eGov.kz](#)). Founders may instruct the Central Securities Depository to keep the register of participants. In this case, all subsequent changes in the composition of participants will not be shown to third parties on the e-Government portal, and such information may only be disclosed upon a request of the LLP itself or law-enforcement authorities or court. However, the primary data on eGov.kz will not be deleted and information on the person (founder) that set up the LLP will be available upon a request for a historical certificate of a legal entity.

When opening a bank account, LLP must also submit to the bank the documents with respect to the entire ownership chain up to the ultimate beneficiary – public company or individual, holding $\geq 25\%$ of shares or participatory interest in the ultimate legal entity.

4. What documents are required to register LLP and how much time does this process take?

List of required documents of a founder for the LLP registration:

	Russian national	Russian company	Foreign national	Foreign company
Copy of passport	NC	-	NC + apostille	-
Power of attorney	ND	Seal	ND + apostille	ND + apostille
Certificate of primary state registration number / abstract from the trade register or a similar document	-	NC (Rus + Kaz)	-	Apostille (Rus + Kaz)

Reference:

Apostille – apostilled or legalized document;

ND – notarized document;

NC – notarized copy;

Seal – sealed document;

Rus – translated into Russian;

Kaz – translated into Kazakh.

The time required to register LLP with State Corporation "Government for Citizens" NJSC is 1 business day. Opening of a bank account takes 7 business days or more, depending on each specific case and selected bank.

5. Can a foreigner become the head of a Kazakhstan company? Is it required for a company to have physical address?

Yes, a foreigner may be appointed as a chief executive officer (Director) of a local legal entity, in which case he/she will have to obtain an individual identification number (hereinafter, the "IIN") prior to LLP registration.

Qualification requirements to chief executive officers of LLPs are stipulated by the national [classifier](#) of occupations and Qualification [Reference Book](#) of positions of chief executives.

Strictly from the legal point of view, location of LLP (official address) must coincide with location of its executive body (chief executive officer) and be specified in its constituent documents. No sanctions are stipulated for a violation of the above rules; however, there is a risk of negative consequences of tax inspections. In case a tax inspector fails to find any LLP representative at the specified address, LLP will be VAT de-registered and will be placed in the list of unreliable taxpayers in connection with absence at the place of location.

However, these legislation rules were adopted many years ago and the present-day developments accordingly change them. In practice, there occur situations where a company has no physical address and uses the services of the legal address providers. Furthermore, in light of the fact that the labor legislation allows working remotely, there were many cases in our practice where top managers remotely managed from their countries of residence using the modern communication technologies, online banking and electronic

keys for submission of the tax and statistical reporting. In place, they hire a local accounting firm, which provides the legal address services and all required comments to governmental agencies in case of inspections.

6. Is it possible to hire a foreign employee? How can such employee's entry and stay in Kazakhstan be formalized?

Yes, citizens of foreign states may be employees at local legal entities in case they have work permits and work visas. The exceptions from this rule are (1) chief executive officers and their deputies in legal entities with 100% foreign participation; (2) heads of branches and representative offices of foreign companies; (3) citizens of the EAEU member states; and (4) special categories of foreigners.

For the purpose of continuous stay in the territory of Kazakhstan, a foreigner must undergo the registration procedure (obtainment of a temporary residence permit) with the migration authority of Kazakhstan. Employee must register within 30 calendar days of the moment of crossing the state border of Kazakhstan. The exception is the foreign employees who have work visas. All registration procedures with respect to such persons are performed when entering the country at the passport border control checkpoints.

Furthermore, local host party must notify the migration service concerning arrival of a foreigner in Kazakhstan. This must be done within 3 business days of the date of the foreigner's entry.

A notice may be filed in several ways:

- online, on the visa and migration portal (vmp.gov.kz);
- on paper directly to the migration service; and
- electronically, using the information system eqonaq.kz.

7. How shall we formalize labor relations with an employee?

To formalize labor relations with an employee (including chief executive officer) of LLP, and chief executives of local branches and representative offices of foreign companies, it is necessary to enter into an employment contract, which must meet the requirements of the Labor Code. For the purpose of automation of the process of recording information about employment contracts, labor activities and number of employees, Kazakhstan created the Unified Accounting System of Employment Contracts (UASEC). Information on entering into an employment contract is introduced into the UASEC within the timeframes established by legislation.

In connection with entering into an employment contract, LLP incurs all rights and obligations of an employer established by the Kazakhstan legislation with respect to an employee, including obligations on payment of salary to the employee. It is worth paying attention to the aspects, as follows:

- Employee will have to undergo the registration procedure in Kazakhstan with the assignment of IIN.
- Salary to an employee must be accrued and paid in the national currency (KZT) only, and its amount must not be lower than the minimum salary established by the

Kazakhstan legislation for a relevant calendar year. In 2022, the minimum salary is KZT 60,000 (approximately USD 138 at the official exchange rate of KZT 432/USD 1).

- Employee will fall under the effect of provisions of the Kazakhstan legislation on social security, including mandatory social insurance, mandatory social medical insurance (MSMI), and contribution of pension payments.

8. Is the charter capital required for LLP and how can it be formed?

The minimum charter capital for LLP, which is a large-scale or medium-scale business entity, is 100 MCI¹ (KZT 306,300, which is equal to USD 710). Starting from 2015, Kazakhstan cancelled the obligation to make initial contribution to the charter capital when registering LLP, which is a small-scale business entity. The charter capital is formed within one year of the date of state registration.

The charter capital of LLP must be specified in tenge. However, funds may be transferred in any currency, for which there is a bank account opened in the LLP's name. Such money may remain on such currency account. Nevertheless, on the day of sending the money to pay the charter capital, it will be necessary to convert the amount into tenge, which must correspond to the amount of the claimed charter capital, and on the day of crediting the money the accountant must correctly reflect the received funds on the balance subject to the exchange difference. In case of negative exchange difference, it will be necessary to place an additional amount to the account, whereas positive exchange difference is executed by a contribution to the LLP's property and is subject to the corporate income tax at the rate of 20%.

9. How can we open a bank account for a company?

Any person, including a non-resident, may open an account with any second-tier bank of Kazakhstan (for your convenience, the list of banks can be found by clicking the below link²). Unfortunately, escalation of geopolitical tension in the region affected the procedure for considering documents for opening of accounts in Kazakhstan.

To date, opening of a bank account is the most complicated issue for the newly established companies. Banks have started checking potential clients more thoroughly, and decisions to open accounts for legal entities with foreign participation are made directly by central divisions.

Now we can see many rejections (without explaining any reasons) to open accounts for non-residents without registration of legal entities in Kazakhstan.

However, there are no restrictions on the legislative level or in available official acts of National Bank of Kazakhstan on the opening of accounts by non-residents or residents that have non-resident founders.

Given the situation, each bank decides on its own policy on the opening of accounts by companies with foreign participation.

¹ In 2022, the monthly calculation index (hereinafter, the "MCI") is KZT 3,063.

² <https://www.gov.kz/memleket/entities/ardfm/financial-organizations/24?lang=ru>

First of all, local banks are not interested in the administration of the non-residents' accounts, which are actually opened only to convert and transfer currency abroad. In this case, if a client has no intention to store money on an account, cannot confirm legality of origin of such money, and mentions considerable expected transfers in a questionnaire, the probability of rejection will be much higher.

Registration of a Kazakhstan legal entity, presence of a real office, sufficient charter capital for doing business definitely increases the chances of successful account opening. During the recent months we got clear understanding of which banks often groundlessly reject applications and what ones are loyal to new clients, and how a company can undergo a compliance check to successfully open an account.

10. What are the rules for currency operations?

Currency operations³ between residents and non-residents are performed without any restrictions but in compliance with certain requirements.

According to the general rule, all payments between residents must be made in the national currency, same as all obligations under contracts between residents must be expressed in tenge.

However, if LLP entered into a contract with a foreign counterparty, payment under contracts is also possible in a foreign currency. In this case, the LLP will fall under the requirements of the currency legislation.

Local banks notify National Bank of Kazakhstan of the performed currency operations for the amounts equal to or exceeding a specific threshold (USD 50,000). If the contract price exceeds the equivalent of USD 500,000, such contract will be subject to special monitoring.

To organize and exercise monitoring over currency operations special record numbers are assigned to contracts. According to the general rule, obligation to register currency contracts is imposed on the servicing second-tier banks, through which currency operations are performed.

When performing any banking operations with a partner from the Russian Federation, we recommend checking in advance the presence of the counterparty's bank in the sanction lists, because presence in such lists will be a reason for local banks to reject operations. For your convenience, here is a reference to an official service allowing to search for companies in the sanction lists <https://sanctionssearch.ofac.treas.gov/>.

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³ According to the Kazakhstan legislation, currency operations are operations connected with the transfer of the right of ownership and other rights to currency values and use of currency values as a means of payment. Foreign currency is a currency value.