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ISSUES OF LIMITED LIABILITY PARTNERSHIPS ESTABLISHMENT AND REGISTRATION IN THE REPUBLIC OF KAZAKHSTAN

The Kazakh legislation provides for a number of the forms of incorporation for commercial organizations, such as full partnership, limited liability partnership, additional liability partnership, joint stock company, etc.

The most attractive form of incorporation for persons willing to launch their own business in Kazakhstan is a limited liability partnership (LLP). This is mostly due to the relatively simple procedure of legal entity establishment in this form, legal protection of the founders' rights (they are not liable under the LLP obligations and bear the risk of losses associated with the LLP activities within the value of their contributions) and minimum financial costs due to a small amount of LLP charter capital.

Although the existing practice demonstrates the popularity of LLPs (as evidenced by statistics, as of today, Kazakhstan has about 300,000 companies registered in this form of incorporation), the process of LLP establishment in the RK still has its problem aspects. In order to help avoid complications and possible errors in the course of LLP establishment and registration and take into account all the specifics of the law application practice, this article offers the readers a summary description of the LLP establishment procedure subject to legislative changes occurring in 2011–2013, focusing on the points of special concern. Beside this, the article contains certain proposals to improve the RK legislation, which, in the authors' opinion, would help resolve the existing issues in the sphere under consideration.

LLP Name

Pursuant to the RK civil legislation provisions, a legal entity has its name that allows distinguishing it from other legal entities. The legal entity possesses an exclusive right to use its company name.

In 2011, Article 38 of the RK Civil Code was added with the following provision: "the legal entity's name shall not duplicate, in full or in part, the names of legal entities registered in the Republic of Kazakhstan."

The expediency of this norm remains questionable, firstly because, as of the date of its introduction, Kazakhstan already had a great number of legal entities with relatively similar company names, which were not obligated to re-register and change the names after the abovementioned amendments to legislation.

Accordingly, this norm applies only to the newly established legal entities, which also poses certain difficulties with the choice of their names, since the legislation provides for no clear cut criteria for defining whether or not the legal entities' names are duplicating. As a result, the



registration authority officers decide at their discretion, and the resulting rejections of legal entity registration based on name duplication are not always justified.

In order to avoid rejection, it is recommended, before starting the LLP registration process, to inquire with the registration authority regarding the possibility of LLP registration under a certain name. According to law, the reply is to be provided within 15 calendar days. However, it should be noted that written inquiries yield no guaranteed result.

An alternative option for verifying the possibility of LLP registration under a certain name is to check the existing RK legal entities on the official website of the RK Ministry of Justice. At the same time, the service cannot take account of the semantic peculiarities of each legal entity names and their approximate similarity. Accordingly, the final check for the names identity is made by the justice authority officer when considering the application for legal entity registration.

The way out of the current situation could be to arrange for the possibility to check and reserve the legal entity name on the e-Government site. By all means, the peculiarity of this service is to be a guarantee for the applicant that, when submitting documents for LLP registration, such registration will not be rejected.

LLP Registration

In order to register an LLP, it suffices to submit the application attaching the state duty (approximately USD 66) payment receipt. Registration of an LLP with foreign participation differs only in that the foreign participant is additionally required to provide a legalized extract from the trade register certifying the foreign legal entity registration, or a copy of passport verifying the foreign individual's identity.

The process of registration is implemented by the registration authorities of the RK Ministry of Justice and takes one business day. Concurrently, the registration authority performs registration with tax authorities. The registration results in the issuance of the Legal Entity State Registration Certificate, which contains information on the legal entity's date of registration, business identification number (BIN), name and location.

The legal entity registration process is logically completed by the making of LLP seal and opening of the LLP bank account.

Recently, there has been a trend towards simplification of legislation in the sphere of legal entities registration. According to the World Bank's 'Doing Business' rankings published on 29 October 2013, Kazakhstan is ranked 50th, Kyrgyzstan – 68th, Russia – 92nd and Ukraine – 112th. Kazakhstan is also among the leading 50 countries (ranked 22nd) reforming their private enterprise regulation sphere¹.

According to the Doing Business 2014 report, Kazakhstan has improved its position mostly due to reduction of time required to register an LLP with the justice authorities – from fourteen days to one business day. The number of documents required for registration has also been reduced from six to one document. Moreover, now when applying to the registration authority it is no longer necessary to confirm the LLP legal address, submit the LLP charter and obtain a certificate confirming absence of founder's tax arrears.

According to the latest amendments to legislation, it is now possible to register small business entities in a notification procedure, by filling out the electronic form on the e-Government web portal (<http://egov.kz>). The procedure is streamlined; however, this innovation has complicated small business entities registration for foreign founders who need to first obtain BIN (IIN) at the tax authorities and electronic signature at Public Service Centers.

¹ Website of the RK Ministry of Economy and Budget Planning (<http://www.minplan.gov.kz/pressservice/77/53161/>).

In this connection, it would be advisable to simplify the procedure of small business entities registration by foreign founders enabling them to submit the documents in hardcopies as normally done before, keeping the period for LLP registration at one business day.

Further steps to improve the registration-pertinent legislation could be reduction of the number of document translations to be prepared for registration. Taking into account that the Russian language is used alongside with the Kazakh language, it looks justifiable if the translations of foreign documents for registration purposes would be done in any language that suits the applicant. This novelty would largely save time and money for preparatory work, including document translation and notarization.

LLP Foundation Documents

The LLP foundation documents are the foundation agreement and the charter, which must contain statutorily mandated provisions and other provisions not contradicting the RK legislation.

As mentioned above, currently LLP charters are not required to be submitted to the justice authorities for registration. The said means that the justice authorities do not check the contents of the charters as to compliance with legislation, do not register them (i. e., do not put registration stamps on the charters) and do not provide the copies of charters at the request of the parties concerned.

Thus, the registration procedure has been significantly simplified, but on the other hand this allows bad faith participants in civil relations to easily change the contents of the charter. Besides, the parties concerned have no possibility to request from the registration authority a copy of the counterparty's charter, for example, in order to check the powers of a particular person to enter into transactions or perform other legal actions on behalf of the LLP.

It might probably be useful for the legislator to use foreign countries experience in regulating the procedure of legal entities registration. For example, the Russian Federation allows for submitting documents to the registration authority electronically, thus providing for the possibility to present them upon request of the parties concerned.

Today, LLP charters are not subject to notarization. The relevant changes were introduced in 2013 into the RK Civil Code and the Law on Partnerships with Limited Liability and Additional Liability. However, the legislator should have also brought in line with the above law the subordinate regulations, including Instruction on Performing Notarial Actions. For example, when opening the LLP bank account, the banks request a certified copy of the charter, but the notaries cannot notarize the copy, if the charter has not been notarized originally. Due to this, the LLP participants actually have to notarize the charters at the time of establishment and registration of legal entities, despite the absence of such requirement in the legislation.

It should be borne in mind that the changes have not affected the requirements concerning LLP foundation agreement, which is subject to notarization, with the exception of the foundation agreement of LLPs that are small business entities.

In summary, we would like to point out that within the framework of our firm's activities we regularly handle corporate law issues and legal entities registration matters (not just in the form of LLP, but also in other statutory forms of incorporation, including joint stock companies, the registration of which is much more complicated and also not devoid legal challenges) and are well familiar with the existing legal issues in this sphere. We are sure that practicing lawyers should not stay away from the process of legislation improvement and elimination of its existing gaps and contradictions. One of the possible methods of legal support in this direction is to prepare materials for clients with a view to their further participation in the work of initiative groups to improve legislation in this area, including through the Foreign Investors' Council under the RK President. At the same time, a practical and effective assistance to foreign investors could be introduction of a simple process of establishment and registration of legal entities in

Kazakhstan, with the participation of professional lawyers who will help take all the necessary preparatory steps to ensure that this process is finalized quickly and successfully, with a guaranteed achievement of the goals pursued.

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ⁱ * The article will soon be published in local and foreign periodicals.