

KAZAKHSTAN¹

I. Overview of Country

Kazakhstan is a unitary presidential republic; its legal system is based on continental (civil law) model. The hierarchy of laws and other enactments is defined by a special law². Many forms of associations are recognized in Kazakhstan. Two types of organizations are recognized under the Civil Code of the Republic of Kazakhstan³ – commercial (for-profit) organizations and non-commercial (non-profit) organizations. Article 23 of the Constitution of the Republic of Kazakhstan states that the citizens of Kazakhstan have the right to the freedom of associations. The same article establishes that military servicemen, employees of the national security service bodies, law enforcement bodies and judges may not be members of parties, trade unions or act in support of any political party.

Civil Code allows for-profit organizations to be organized as legal entities in the forms of state enterprise, joint-stock company, economic partnership (which includes most often used form of limited liability partnership and some more exotic forms of partnerships, like general partnership), and production cooperative. A legal entity which is a non-commercial organization may be formed as an institution, public association, joint-stock company, consumers' cooperative, foundation, religious association or in another form provided for by legislative acts (National Chamber of Entrepreneurs⁴, notaries' chambers⁵, advocates' bars⁶, auditors' organizations⁷, etc.).

The Civil Code also recognizes such organizations as representative office and branch office, which under Kazakhstan law lack legal personality and considered as separate units of a legal entity located outside of the entity's location. Any legal entity, commercial or non-commercial may establish representative offices and branch offices.

II. Registration Procedures

A. For-Profit Organizations

a. Laws

Law of the Republic of Kazakhstan dated April 17, 1995 No 2198 “On State Registration of Legal Entities and Registration of Records of Branch and Representative Offices” (hereinafter, the “**Registration Law**”) governs the issues of legal entity registration.

¹ The following memorandum was prepared by pro bono counsel for the ABA Center for Human Rights. It is intended as background information only and should not be relied upon as legal advice on a particular case. The views expressed herein have not been approved by the House of Delegates or the Board of Governors of the American Bar Association, and, accordingly, should not be construed as representing the policy of the American Bar Association.

² Law “On Regulatory Legal Acts” #213-I dated March 24, 1998

³ Civil Code of the Republic of Kazakhstan dated December 27, 1994

⁴ National Chamber of Entrepreneurs Law #129-V dated July 4, 2013

⁵ Notariat Law #155-I dated July 14, 1997

⁶ Advocates Law #195-I dated December 5, 1997

⁷ Audit Law #304-I dated November 20, 1998

Government's involvement in the incorporation/registration process is limited to verifying compliance of the entity that requests registration with the requirements of laws, issuance of the registration certificate, maintaining the records in relation to possible changes to the details of the registered entity and deregistration of entities. No involvement of governmental officers in incorporation meetings or board meetings is required for any type of entities. The nature of state registration is not granting permission or privilege, but rather a record-keeping function.

Limited liability partnerships (LLP) and a joint stock companies (JSC) are the two types of companies provided under Kazakhstan law which are commonly used for carrying out business activities. There is no particular limitation on the citizenship or place of incorporation of the founders (participants and shareholders) except for certain industries that are subject to foreign ownership restrictions, such as mass media and telecommunication.

LLP under the LLP Law⁸ is analogous to what is known as a limited liability company in many other jurisdictions. In order to establish an LLP, its founders must enter into a foundation agreement (effectively a participants' agreement) and charter, and register the LLP with the local department of the Ministry of Justice. An LLP may be also established by one founding partner but may not be formed by a single entity which is itself single owned. The minimum charter capital of an LLP is approximately US\$1,000 (excluding small business enterprises for which the minimum charter capital is zero) and must be paid up within a year from the state registration of the LLP.

The founders of an LLP have considerable flexibility in terms of the LLP's management structure. The law requires only two management bodies: (1) the general meeting of participants (i.e., the founders or partners) and (2) the executive body (i.e., the general director, president or management board, etc.). There is no particular limitation on the citizenship of the LLP executives aside from the general work permit regulations.

JSC is frequently the form of company used by investors for whom the identity of shareholders is not of primary importance and who seek other investors and funding. JSC formation and functioning is governed by JSC Law⁹. The powers of shareholders are therefore more supervisory in nature and most of the decision-making powers are vested in the board of directors. JSCs are subject to more strict internal procedures than LLPs, JSCs must regularly disclose certain information to their shareholders and the public such as disclosing financial and auditing reports at least annually, must keep records of all their related parties and make sure that decisions regarding deals with such related parties be taken by directors and shareholders who are not related to them.

In establishing a JSC the shareholders must prepare its charter and a prospectus for share issuance and the foundation agreement (if there are at least two founders). The foundation agreement terminates after state registration of the issuance of the JSC's shares. The JSC should be registered within 10 working days after all of the required documents were submitted. After its registration with the Ministry of Justice, the JSC must also register its shares with the regulator of the securities market, under a separate procedure. The minimum charter capital of a

⁸ Limited Liability Partnership Law #220-I dated April 22, 1998

⁹ Joint Stock Company Law # 415-II dated May 13, 2003

JSC is approximately US\$500,000 and must be paid up within 30 days from the state registration of the JSC.

JSCs must have a management structure comprising at least three tiers: (1) the general meeting of shareholders as the supreme body; (2) the board of directors as the management body; (3) a general director, president or management board as the body managing day-to-day operations. Unlike LLPs, JSCs do not have significant flexibility in the distribution of powers between the management bodies. The board of directors must consist of at least three directors and at least one third of their number must be independent directors. There is no particular limitation on the citizenship of the JSC directors and executives aside from the general work permit regulations.

Fee for state registration of a LLP and a JSC is approximately US\$80. The registration authorities are required to complete the registration of an LLP within one business day after all required documents are submitted. However, in practice registration usually takes several days. Registration of a JSC must be completed within 14 business days. In addition, newly established companies must comply with certain post-registration formalities, such as registration for VAT, obtaining a seal and opening of bank account. In overall it takes two or three weeks to establish an LLP and approximately two months to establish a JSC.

As an alternative to local companies foreign investors may establish a branch or representative office in Kazakhstan. Branch and representative office are recognized as separate divisions of legal entities, not legal entities themselves, and operate on the basis of by-laws approved by their parent companies. A representative office may represent the interests of the parent company and market its goods and services, gather information, and establish business contacts. A representative office should not undertake any commercial activities or execute transactions in its own name, while a branch may perform the functions of the representative office and, in addition, engage into commercial activities in the name of the parent company. In overall it takes two or three weeks to establish a branch or representative office and the fee for state registration is approximately US\$80.

Deregistration of a legal entity or branch/representative office is a cumbersome and lengthy procedure mainly because of a mandatory tax audit which is conducted before deregistration can be completed and waiting time associating with such audit.

b. Case Law

As Kazakhstan is a civil law country, court decisions on cases do not have any prejudicial value for anybody who is not a party to a specific lawsuit and are not the source of law. Also, there are no special databases of case law.

B. Not-For Profit Organizations

a. Laws

There are two laws which govern the issues of non-commercial organizations and registration: Law of the Republic of Kazakhstan dated January 16, 2001 No 142-II “On Non-commercial Organizations” (hereinafter, the “**NCO Law**”) and the Registration Law. While the NCO Law regulates the key issues specific to activity of non-commercial organizations, such as their forms, formation, reorganization and termination procedures, activity and governance,

relationships with the government, the Registration Law governs issues of registration of legal entities in general, irrespectively to their status of commercial or non-commercial entity. The Registration Law, however, contains certain provisions that are specific to private entrepreneurial entities and provisions specific to those entities who do not fall with the category of private entrepreneurial entities (this category includes the non-commercial entities and state entities).

The issues related to formation, reorganization and termination of such forms of non-commercial entities as public associations, religious associations and political parties, are also governed by special laws: Law of the Republic of Kazakhstan dated January 16, 2001 No 142-II “On Public Associations” (hereinafter, the “**Public Associations Law**”), Law of the Republic of Kazakhstan dated July 15, 2002 No 344-II “On Political Parties” (hereinafter, the “**Political Parties Law**”), and Law of the Republic of Kazakhstan dated October 11, 2011 No 483-IV “On Religious Activity and Religious Associations” (hereinafter, the “**Religious Associations Law**”). The Public Associations Law applies to all public associations (such as political parties, trade unions, other associations) and specifically does not apply to religious associations that are subject to the Religious Associations Law.

The registering authority for all types of legal entities is the Ministry of Justice (with the exception of legal entities-participants in the Regional Financial Center of Almaty City, which are registered by the National Bank of the Republic of Kazakhstan). It receives all registration petitions with the necessary attachments, reviews them and if all required formalities are in order, issues registration certificates.

The registration time frame depends on the type of the entity to be registered, but it is clearly defined in the Registration Law¹⁰.

For example the documents for registration of a branch office of an overseas legal entity typically would include:

1. An application for registration (signed and stamped on behalf of the legal entity);
2. A resolution of the legal entity establishing a branch (signed and apostilled) with a notarized translation to Kazakh and Russian;
3. Regulations of the branch office that need to be drafted in accordance with the Kazakhstan law (signed and apostilled) with a notarized translation to Kazakh and Russian;
4. An extract from the Commercial Register confirming the legal status of the legal entity (Certificate of good standing or similar) (signed and apostilled) with a notarized translation to Kazakh and Russian;
5. A document confirming that a legal entity is registered with tax authorities of the country of legal entity indicating a tax registration number of the legal entity.

¹⁰ The Law “On State Registration of Legal Entities and Branches and Representative Offices” #2198 dated April 17, 1995

6. A power of attorney to the head of the branch office (signed and apostilled with a notarized translation to Russian and Kazakh).
7. A power of attorney authorizing an individual to register the branch office and complete all other applicable formalities.
8. A power of attorney issued by the head of the branch office authorizing an individual to apply for an individual identification number (obligatory in Kazakhstan) to be assigned to the head of the branch office.
9. A notarized and apostilled copy of the passport of the head of the branch office (translated into Kazakh and Russian).
10. Notarized and apostilled copies of the passports of all participants of the overseas legal entity (if a legal entity is owned by another legal entity (entities), then the identification numbers of the legal entities like Business Identification Numbers (BIN) or the overseas equivalent).
11. Registration fee payment confirmation.

For registration of non-commercial organizations the timeframe is 14 days, except for political parties, which are registered within one month.

Government's involvement in the registration of non-commercial organizations is similar to that of for-profit organization and is limited to verifying compliance of the entity that requests registration with the requirements of laws, issuance of the registration certificate, maintaining the records in relation to possible changes to the details of the registered entity and deregistration of entities. No involvement of governmental officers in incorporation meetings or board meetings is required.

Generally there are no restrictions as to the nationality of the founding members of a non commercial organization except for political parties (a foreigner may not be a political party member). The legislation on trade unions allows foreigners to be members of a trade union.

Deregistration takes place upon decision of the legal entity, or may be compelled by the state through judicial procedure (e.g., in case bankruptcy or if the legal entity committed violations which under law may result in termination of its activity, or if the legal entity is defunct for more than one year, etc.) The lawsuits regarding forced termination of a legal entity are subject to the same procedural rules as any other civil lawsuit.

b. Case Law

As Kazakhstan is a civil law country, court decisions on cases do not have any prejudicial value for anybody who is not a party to a specific lawsuit and are not source of law. Also, there are no special databases of case law.

C. Analytical comparison of the legal process of registration

A notable dissimilarity in the registration procedure for commercial legal entities and non-commercial legal entities is difference in registration timeframes. However, it does not appear to be a result of authorities' intention to impede the activity of the non-commercial entities, but rather a result of government's efforts to expedite and simplify the registration procedures for businesses.

Some other dissimilarities are intrinsic to the nature of entities, and are justified by legitimate motives (like the prohibition to foreigners to be political party members).

III. Tax Laws

A. For-Profit Organizations

a. Laws

Taxes payable in Kazakhstan by for-profit organizations include corporate income tax, value added tax (VAT), excise tax, subsoil use taxes, social tax, land tax, property tax, vehicles tax, registration fees and other fees. The corporate income tax rate for tax residents is 20%. A branch or a representative office of a non resident is subject to full-scope taxation similar to taxation of Kazakhstan residents. In particular, it would be subject to Kazakhstan corporate income tax, branch profits tax (tax on net income after corporate income tax), VAT, social tax, property tax and vehicle tax. Certain tax preferences are provided to legal entities working in:

- Special Economic Zones (SEZ). Companies in SEZs are exempted from the corporate income tax and enjoy land, property and use of land tax advantages;
- Areas where excise duty is imposed (tobacco and alcohol) to build up the production sector of the economy;
- Agriculture and fishery sectors of the economy.

The foregoing tax preferences could also be given to the legal entities participating in strategic and priority projects.

b. Case Law

As Kazakhstan is a civil law country, court decisions on cases do not have any prejudicial value for anybody who is not a party to a specific lawsuit and are not source of law. Also, there are no special databases of case law.

B. Not-For Profit Organizations

a. Laws

A non-commercial entity is subject to provisions of the same legislation (the Tax Code) as a commercial entity. A non-commercial entity is distinguished from a commercial entity in that its certain types of income (membership fees, grants, donations, interests on deposits) is not taxed, subject to compliance with requirements to maintain non-commercial nature (the entity should have no purpose of generating income and should not distribute income or property

between its participants). If a non-commercial entity fails to comply with these requirements, it is taxed as a commercial entity. The types of income which are not listed in the Tax Code as exempted, are taxed in general manner. All other taxes, like VAT, social tax, property tax and vehicle tax are payable by a non-commercial entity on equal grounds with a commercial entity.

b. Case Law

As Kazakhstan is a civil law country, court decisions on cases do not have any prejudicial value for anybody who is not a party to a specific lawsuit and are not source of law. Also, there are no special databases of case law.

C. Analytical comparison

No disparate treatment that would be attributable solely to a non-commercial status of an entity may be identified. The exemptions allowed to non-commercial entities are reasonable and justifiable; moreover, a commercial entity may enjoy certain tax exemptions comparable to exemptions granted to non-commercial entities, if it carries out activity in a publicly important sector (medicine, scientific, cultural, social protection, education, etc.) Non-commercial entities are not discriminated in terms of accounting and/or taxation procedures, as the same tax administration procedure apply to all entities irrespectively to their nature.

IV. Financial Transaction Laws

A. For-Profit Organizations

a. Laws

i. Foreign Investment/Foreign Funding Laws

The Investment Law #373-II dated January 8, 2003 is intended to govern foreign investment and promote investing in Kazakhstan. Foreign funding of Kazakhstan economy is welcomed by the government.

ii. Political Contribution Laws

Funding of political activities from foreign sources is prohibited (Please see Section IV(B)(a)(ii) for more details), thus only for-profit organization without foreign participation in it may make a donation to a political party.

b. Case Law

As Kazakhstan is a civil law country, court decisions on cases do not have any prejudicial value for anybody who is not a party to a specific lawsuit and are not source of law. Also, there are no special databases of case law.

B. Not-For Profit Organizations

a. Laws

i. Foreign Investment/Foreign Funding Laws

Under Article 35 of the NCO Law the allowable sources of NCO funding are defined quite broadly. These include contributions from founders; donations in money and in property; income from sale of goods, works and services, in cases allowed by legislation; dividends and interest on deposits and securities; other income not prohibited by law.

A non-commercial organization generally may be financed by sponsorship from foreign states, international and foreign organizations, and foreign individuals. A non-commercial organization receiving such financing must file reports on using the funds to the fiscal authorities. Branches and representative offices of foreign non-commercial organizations must annually publish information on their activity, disclosing their founders, property, sources of income and expenditures. Financial information, information on property, staffing information is specifically declared non-privileged information by NCO Law.

ii. Political Contribution Laws

Political parties are prohibited from receiving financing from foreign sources. In case of such financing (as well as receiving any other prohibited donations), a political party may be liquidated through judicial procedure.

b. Case Law

As Kazakhstan is a civil law country, court decisions on cases do not have any prejudicial value for anybody who is not a party to a specific lawsuit and are not source of law. Also, there are no special databases of case law.

C. Analytical Comparison

While Kazakhstan government welcomes and promotes foreign capital influx into the economy, it clearly has strong negative views as to financing political activities from foreign sources. This is justified by legitimate national security interests. Non-commercial organizations that are not political parties can be financed by foreign sources, however, certain requirements related to transparency of such financing and spending are established.

V. Auditing/Reporting Requirements

A. For-Profit Organizations

a. Laws

LLPs are not required to have their annual or any other financial statements audited except when such auditing is required by industry regulations. LLPs have virtually no requirements for disclosure of information to the public and third parties. The participants though must keep the LLP informed about all their affiliates.

All JSCs must hire independent licensed auditors to audit their annual financial statements. JSCs are also subject to certain reporting requirements, e.g., they must publish their annual audited financial statements and information regarding major and related party transactions and they must report to the regulator of the securities market regarding their related parties. JSCs also must: (a) publish on the internet resource of the depository of financial statements

information about their corporate events; and (b) keep their shareholders and investors informed about a quite extensive list of issues. Share prospectuses include specified information regarding the JSC (e.g., the composition of the board of directors) and must be updated (i.e., amendments must be filed with the regulator observing a certain procedure). If the shares are listed on the Kazakhstan stock exchange, the reporting requirements will extend to disclosing any information regarding important events (e.g., decisions of the general meetings of shareholders).

b. Case Law

As Kazakhstan is a civil law country, court decisions on cases do not have any prejudicial value for anybody who is not a party to a specific lawsuit and are not source of law. Also, there are no special databases of case law.

B. Not-For Profit Organizations

a. Laws

Non-for profit organizations technically are not required to be audited (except for ones which are formed as JSCs), however, in accordance with Article 41 the NCO Law a non-commercial organization which received donations from a foreign state, or a foreign/international organization, must provide report to fiscal authorities on use of these funds. A Kazakhstan branch of an international or foreign non-commercial organization must annually publish in mass media a report on its activity, including information on its founders, property, sources of funding and expenditures .

b. Case Law

As Kazakhstan is a civil law country, court decisions on cases do not have any prejudicial value for anybody who is not a party to a specific lawsuit and are not source of law. Also, there are no special databases of case law.

C. Analytical Comparison of disparate treatment as applied, please include as well.

Auditing and reporting requirements are different for different types of commercial organizations. JCSs are subject to greater scrutiny which is justified by public nature of JSC; more closely held businesses, like LLPs are not subject to audits.

Non-commercial organizations technically are not required to be audited, but there are certain reporting requirements, and NCOs that receive funding from non-Kazakhstan sources are subject to greater reporting requirements.

All commercial and non-commercial entities are subject to the same accounting and tax reporting requirements, and the difference in reporting burden occurs naturally due to difference in forming the funds of each type of organization.

VI. Penalties for Non-Compliance

A. For-Profit Organizations

a. Laws

i. Civil

A legal entity could be forced into the liquidation under the Civil Code (a) on grounds of bankruptcy; (b) when court finds that a legal entity was not registered in accordance with the Kazakhstan laws; (c) absence of a legal entity at the registered address, and the absence of key participants (shareholders) and officers of the legal entity for more than a year; (d) gross violation of the Kazakhstan laws (acting without license when possession of a license is mandatory or conducting activities that contradict charter aims); and (e) other violations of the Kazakhstan laws.

An order for the forced liquidation could only be given by the court. In addition, in certain cases a legal entity could be forced into a reorganization and bankruptcy.

ii. Criminal

Criminal liability does not apply to legal entities (only applies to individuals).

iii. Administrative

The Administrative Code¹¹ is the only source of administrative penalties for both individuals and legal entities in Kazakhstan. For-profit organizations could face the following administrative penalties:

1. Reprimand.
2. Administrative fine (the most used type of penalty for legal entities).
3. Confiscation of the object that was used for the administrative wrongdoing.
4. Cancellation of a special right.
5. Cancellation or suspension of a license.
6. Suspension or ban of activities of a legal entity.

The for-profit organizations could be punished by the court or by state authorities for environmental, tax, fiscal, corporate and other offences that could be committed by a legal entity. The administrative penalties for foreign legal entities are same as for Kazakhstan legal entities.

B. Not-For Profit Organizations

a. Laws

i. Civil

¹¹ The Administrative Code #235-V dated July 5, 2014

Not-for profit organizations are subject to the same penalties as for for-profit organizations for the same violations under the same provisions of law.

ii. Criminal

Criminal liability does not apply to legal entities (only applies to individuals).

iii. Administrative

Not-for profit organizations are subject to the same penalties as for for-profit organizations for the same violations under the same provisions of law.

C. Analytical comparison

All types of legal entities are subject to the same laws and sanctions for the same violations. No distinction is drawn between foreign and domestic entities in terms of penalties.

D. Statistics on actual penalties for each group (if, available)

Not available.