

KAZAKHSTAN

Legal Provisions

Compiled by: Tursyn BUKAYEVA

Trade Point Kazakhstan

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GENERAL REMARKS

This article gives an overview of the key issues in establishing and performing a business in Kazakhstan, including the available corporate forms and their applicable features; foreign investment incentives and restrictions; currency regulations; and tax and employment issues.

CUSTOMS, IMPORT AND EXPORT REGULATIONS

Trends in Customs Policy

Under Kazakhstan customs legislation, to clear goods through customs, declarants should pay:

- all relevant customs fees;
- import duties, according to the Eurasian Economic Union Unified Customs Tariff;
- export duties on certain goods, including petrochemicals. Export duty rates are set by the Kazakhstan government;
- excise duties on goods, including alcohol and tobacco products, gasoline, diesel, spirits, and certain vehicles, which are set by Kazakhstan tax legislation;
- 12% import VAT on customs value. According to the Tax Code, the taxable import value includes the customs value of imported goods calculated in accordance with Eurasian Economic Union and/or Kazakhstan customs legislation, and also taxes and customs duties payable to the Kazakhstan budget when importing goods, such as excise, customs duties and customs fees;
- special, antidumping and protective duties on certain type of goods based on Eurasian Economic Union (EAEU) and Kazakhstan legislation.

Kazakhstan is a part of the unified customs territory of the EAEU along with Armenia, Belarus, Kyrgyzstan and Russia. The EAEU, which came into being on 1 January 2015, envisages free movement of goods, services, capital and labor force within its borders. Under the EAEU, Kazakhstan allows the import of goods from Russia, Belarus, Armenia and Kyrgyzstan without customs clearance and duties.

The EAEU envisages unified customs legislation as well as tariff and nontariff regulations for imports from third countries. The EAEU establishes various types of customs clearance procedures, including the

release of goods for internal consumption, temporary import, reimport, customs warehouse, duty-free shops, transit, export and other customs procedures.

Goods imported from third countries and cleared through customs or produced/sufficiently processed in an EAEU member state are transported without customs control/declaration within the EAEU. However, since Armenia does not have common borders with other EAEU states, goods must be shipped between Armenia and the rest of the EAEU via non-member states under the transit customs procedure.

EAEU member states apply the Common Customs Tariff to goods imported from third countries. It determines the rates of import duties and the classification of goods. Under the Common Customs Tariff, rates of import duties, which are normally based on a percentage of the customs value of goods, can vary from 0% to 35% or are fixed in USD/EUR per unit of measurement.

Each EAEU member state sets its own rates of export duties. For the purposes of estimating export duties, a customs declarant should apply the rates of the EAEU member state in which goods are placed under the export procedure. Export duty rates in Kazakhstan can vary from 3% to 30% of customs value or are fixed in USD/EUR per unit of measurement.

The amount of fees for customs clearance is subject to regulation by the domestic laws of EAEU member states. In Kazakhstan, the customs clearance fee is €60 for the first page of a customs declaration plus €25 for each additional page.

The customs value of goods is determined based on the Agreement on the Determination of Customs Value, concluded by EAEU member states on 25 January 2008, which applies to goods imported from third countries into the EAEU.

Under some customs procedures, full or partial exemption from customs duties and taxes are granted to members of SEZ, holders of investment contracts and in other cases. There are also certain non-tariff regulations, such as those limiting or prohibiting the import or export of certain goods.

Import duties

Generally, Kazakhstan imposes customs duties on the import of goods into Kazakhstan. The rates of the duties vary depending on the type of imported item and are usually charged on the customs value of the item.

On 30 November 2015, Kazakhstan became the 162nd member of the WTO. According to Kazakhstan's schedule of concessions, within five years after accession to the WTO, Kazakhstan is expected to lower import duties by 2% to 5% on nearly 3,500 items or reduce them to 0%, depending on the type of goods.

To this end, the EAEU has adopted a list of goods (the Withdrawal List) that qualify for lower import duty rates than those set out in the Common Customs Tariff. The Withdrawal List currently contains 1,347 items, including pharmaceuticals, agricultural products, precious stones and metals, textiles, vehicles and others.

In line with its EAEU obligations, Kazakhstan has undertaken commitments not to allow goods on the Withdrawal List that are imported at lower customs duty rates from WTO members to be exported to other EAEU member states. Goods on the Withdrawal List that are imported into Kazakhstan should be imported either at WTO rates without the right of export to other EAEU member states or at Common Customs Tariff rates, if the goods will be exported to other EAEU member states.

Special rules on the import of materials and goods for of the EXPO-2017 are available on <http://www.ipm2016.kz/en/publications/>.

Export duties

Kazakhstan has reserved the right to continue to assess export duties on certain goods that are currently subject to export duty in Kazakhstan (petroleum and related products, remnants and scraps of ferrous and non-ferrous metals, elements of locomotive rolling stock, wool and domestic animal hides and others). However, from 1 January 2016, Kazakhstan will decrease export duties annually on certain types of goods in line with its WTO obligations.

In acceding to the WTO, Kazakhstan undertook a tariff obligation to switch to calculating the export duty rate for crude oil based on the formula under which the rate will be established on a monthly basis by the Ministry of National Economy of the Republic of Kazakhstan, based on the monthly average market price of crude oil.

CURRENCY REGULATIONS

Kazakhstan's currency, the Tenge (KZT), was introduced in 1993. In 2015, the economy of Kazakhstan was hit by a sharp fall of world price for crude oil – the main export product of the country, whose income in the national budget is 60 percent. The tenge came under pressure and had to be devaluated. The Government introduced a freely floating exchange rate for the currency later on. All in all, since February 2015, the tenge has lost more than half of its value against the dollar. As of October 2016 the prevailing exchange rate is approximately 332.6 KZT for 1 USD, 371.9 KZT for 1 EUR and 334.2 KZT for 1 CHF.

Under Kazakhstan currency control legislation, the subjects of currency relations are divided into:

- Residents (Kazakhstan citizens, foreigners and stateless persons with the right of permanent residence in Kazakhstan; Kazakhstan companies and their subdivisions; and diplomatic, commercial and other official representatives of Kazakhstan);
- Non-residents (foreign nationals, companies and their branches and representative offices, and international organizations).

Payments between residents can only be made in Kazakhstani Tenge (with some exceptions established by the law), whereas transactions between residents and non-residents can be made in any currency. The main regulatory authority for currency control is the National Bank. The control of exchange transactions is by registration and notification.

The registration regime applies to certain currency transactions between residents and non-residents, such as direct investments, financial loans, or payments for exclusive intellectual property rights, as well

as the transfer and receipt by residents of money or other property in fulfilment of a joint activity contract. Registration is only required if:

- The amount of a currency transaction resulting in property flow to Kazakhstan, and/or liabilities of the resident to return the property to a non-resident, exceeds US\$500,000;
- The amount of a currency transaction resulting in property flow from Kazakhstan, and/or liabilities of the non-resident to return the property to a resident, exceeds US\$100,000.

The notification regime applies to:

- Payments for the export/import of works and services, if the transaction amount exceeds 100'000 USD;
- Contributions to share capital exceeding 100'000 USD for residents and 500'000 USD for non-residents;
- Transactions with derivative financial instruments exceeding 100'000 USD;
- Acquisition of real estate by residents, if the sum of the transaction exceeds 100'000 USD, and acquisition of real estate by non-residents, if the amount of transaction exceeds 500'000 USD;
- The transfer of money and other property exceeding 500'000 USD in entrusted management to a non-resident, and exceeding 100'000 USD in entrusted management to a resident.

REGISTRATION PROCEDURE FOR PRODUCTS

Protection of Intellectual Property Rights

A number of state authorities protect and enforce intellectual property rights, including customs and justice authorities. The customs authorities maintain a special register of intellectual property rights. Owners of certain intellectual property objects (e.g., trademarks) can ask the customs authorities to include these objects in this register. This allows the customs authorities to suspend importation of any products bearing those registered objects for 10 business days. The customs authorities then alert the right holder of the importation to give it a chance to challenge the importation or request interim relief. If the owner does nothing in the 10-day period, the customs authorities lift the suspension. The justice authorities are responsible for initiating seizures of counterfeit products.

Registration of Medicines

Various medical items must be registered in Kazakhstan in the State Drug Formulary, launched in September 2016, for manufacture, sale or use in Kazakhstan. These include medicines, medical equipment and other medical products. Certain items are exempt from the registration requirement, such as medicines prepared in local pharmacies and medicinal substances produced in accordance with international guidelines known in the industry as Good Manufacturing Practice.

Registration is subject to expert evaluation by the National Center for Expert Examination of Medicines, Medical Equipment and Medical Devices to ensure the product's compliance with Kazakhstani quality, safety and effectiveness standards.

All medicines registered in Kazakhstan (for both imported medicines and medicines produced in Kazakhstan) and certain medical products are subject to quality and safety assessments by the National Center for Expert Examination of Medicines, Medical Equipment and Medical Devices.

STANDARDS, TECHNICAL RULES, LABELLING REGULATIONS

Under Kazakhstani labeling requirements, importing and selling certain goods without certain minimum information (i.e., name of goods, country of origin, date of production, name of the applicable standard, etc.) in both the Kazakh and Russian languages are prohibited.

TAXES

The main taxes applicable to Kazakhstan legal entities include:

- Corporate income tax: 10% to 20%;
- Value added tax: 0% to 12%;
- Excise tax: rates are per unit of taxed goods (alcohol, tobacco goods, gasoline, and so on);
- Individual income tax: 10% (5% for dividends);
- Social tax: 11%;
- Property tax: 1.5%;
- Land tax: depends on the land plot category;
- Transport tax: depends on the type of vehicle and engine volume;
- Rent tax on exports: 0% to 32% for export of crude oil and gas condensate, depending on the world price. 2.1% for coal. The object of taxation is the amount of exported crude oil, gas condensate or coal;
- Special duties on subsoil users: signature bonus, commercial discovery bonus, historical cost recovery charge;
- Taxes on subsoil users: minerals extraction tax, excess profit tax;
- Fixed tax: paid by companies using game machine without winnings, computers for gaming, bowling, carting and billiard tables;
- Gambling business tax: depends on the object of taxation (gambling table, gambling machine, and so on).

Non-tax resident

Local source income of non-residents is subject to taxation depending on the presence of a permanent establishment in Kazakhstan.

A non-resident is considered as having a permanent establishment if it has a fixed place of business through which it carries out business activities in Kazakhstan. Branches and representative offices of foreign companies are also considered as permanent establishments. When rendering services or works in Kazakhstan, a permanent establishment is present if the services or works are rendered through employees or other personnel hired by a non-resident for these purposes for more than 183 days in any consecutive 12-month period.

Permanent establishments of foreign legal entities acting in Kazakhstan are generally taxed in the same way as Kazakhstan companies.

Local source income of a foreign company operating in Kazakhstan through a permanent establishment is subject to corporate income tax at 20%. In addition, its net income is taxable at 15%. If there is no a permanent establishment, a non-resident business is liable to pay withholding corporate income tax at source at 5% to 20%. The terms of payment and rates of withholding corporate income tax depend on the presence of a double taxation treaty (convention) between Kazakhstan and the relevant country. In most

cases the tax agent (a company paying income to a non-resident) would be allowed to apply a tax exemption or tax reduction in accordance with the provisions of the respective treaty and the Tax Code, so that the income will be taxed in the non-resident country.

Kazakhstan has existing treaty (convention) for the avoidance of double taxation with Switzerland.

Tax Registration

All Kazakhstani and foreign legal entities that carry out activities in Kazakhstan through a permanent establishment (“PE”) must register with the tax authorities (a PE includes a branch, office, place of management, provision of services in Kazakhstan for a certain period of time, as well as an agent with contract signing authority). In addition, the registration requirement applies in certain other circumstances (e.g., where a foreign company owns immovable property or opens a bank account in Kazakhstan).

VAT

A European Union–style VAT applies in Kazakhstan. The VAT rate has fallen progressively from 20% in the late 1990s to 12% currently.

All taxpayers registered for VAT purposes are required to accrue VAT on their taxable supplies, and calculate and report their VAT obligations. Taxpayers are required to register for Kazakhstan VAT purposes if their total turnover in a calendar year exceeds 30,000 MCI (approximately US\$180,000).

The deadline for VAT registration is 10 business days after the end of the month in which the turnover threshold is exceeded. Penalties for non-registration are severe: up to 30% of turnover for the period of non-registration.

Even if an entity is not required to register for VAT purposes, it may usually do so voluntarily by applying to the appropriate tax committee.

Electronic invoicing

Effective from 1 July 2014, taxpayers may issue electronic invoices for VAT purposes on a voluntary basis. Electronic VAT invoices may be issued only by using the tax authorities’ official online system, which is specifically designed to receive and process electronic VAT invoices. From 1 January 2017, all VAT payers will be required to issue electronic VAT invoices.

Documentation and Procedures

EAEU legislation establishes a comprehensive list of documents required for customs clearance. The documents to be submitted to the customs authorities vary depending on the nature of the imported/exported goods, conditions of the transactions and other factors.

The customs value of imported goods is declared based on the value substantiated by appropriate supporting documents. The documents to support the declared information is relatively standard and typically includes contracts, invoices, shipping documents, certificates of origin of goods, necessary

licenses and permits, conformity certificates. The customs authorities strictly control the correctness and reasonableness of determining the customs value and method applied.

Temporary Import Relief

The “temporary import” customs regime may provide for the full or partial exemption from import VAT and import customs duties. Generally, the period of the “temporary import” customs regime may not exceed 2 years.

1) Partial Exemption: import VAT and customs duties are payable monthly at 3% of the import VAT and customs duties that would have been paid had the imported assets been imported under the “free circulation” regime (i.e. normal import).

2) Full Exemption: There is a list of goods allowed to be imported under the “temporary import” customs regime with full exemption. This extends to certain technological equipment, models, exhibition and advertising materials.

The maximum allowable term of “temporary importation” (2 years) may be extended up to 2 years or other periods, if specifically agreed with the Committee of the Customs Union. Upon termination of the “temporary import” customs regime, the goods must be re-exported from the CU or released under a different customs regime (e.g., “free circulation”, “customs warehouse”, etc.) with the obligation to pay applicable import VAT and import customs duties.

In case of classification under the “free circulation” customs regime, the import VAT and customs duties paid by installments should be offset-able.

Under the “temporary import” customs regime, imported goods should remain in their original state, except for changes due to natural wear or loss under normal conditions of transportation, storage and use. Only actions required to ensure safety, maintenance and other operations to maintain the imported goods in proper condition, are allowed.

COMMERCIAL LAW

Transfer pricing issues

Kazakhstan’s transfer pricing legislation has wide applicability for all businesses. The impact for subsurface users is particularly broad. The transfer pricing rules potentially apply to all cross-border transactions regardless of whether the parties are in any way related. In the case of subsurface users, it also applies to domestic transactions if they are related to cross-border transactions.

The law allows for the following methods of determining a market price:

- Comparable uncontrolled price method
- Cost plus method
- Subsequent resale price method
- Profit split method
- Net margin method.

There is no “safe harbor” allowed in terms of deviation from a market price, although the law does, in theory, recognize that there may be a range of market prices. In determining market prices under the comparable uncontrolled price method, adjustments to prices obtained from officially recognized sources

of price information are allowed in at least some cases, except where one of the parties to the transactions is tainted by association with a tax haven.

SETTING UP COMPANIES

Under the Civil Code, foreign and local investors may use a number of organizational and legal forms to do business in Kazakhstan, including general partnerships, LLPs, partnerships with additional liability, commandite partnerships and joint stock companies (corporations), as well as representative and branch offices. In this section, we expand on the four types of business vehicles that are most widely used in practice.

Joint stock companies (JSCs)

A JSC is a legal entity that is separate and distinct from its shareholders, i.e., shareholders are not liable for JSC's liabilities. It may have one or more shareholders. The minimum capital required for a JSC is 50,000 times the monthly calculation index (MCI) 6 (approximately US\$300,000).

Limited liability partnerships (LLPs)

The main difference between the two entities is that an LLP does not issue shares; instead, participants have interests in the partnership. An LLP may be formed by one or more participants. Generally, the participants of an LLP are not liable for the LLP's debts beyond the value of their contributions. The Civil Code envisages a number of exceptions to this rule.

The minimum capital requirement for an LLP is 100 times the MCI (approximately US\$600), with the exception of small businesses, for which the minimum is set at zero. Participants' interests are proportional to their contributions to the charter capital unless the foundation documents provide otherwise. Participants have preemptive rights to each other's interests.

Importantly, LLPs in Kazakhstan are separate legal entities that are distinct from their participants. As a legal entity, an LLP is subject to state registration and taxation in its own right; i.e., it is not tax-transparent.

Representative office

Kazakh law allows a foreign company to establish a representative office in Kazakhstan to represent its interests in Kazakhstan. A representative office protects and represents the interests of a foreign legal entity and carries out preparatory and auxiliary activities, such as marketing and advertising. Generally, a representative office may not conduct commercial activity. A representative office is not recognized as a separate legal entity.

Branch

A branch is a structural subdivision of a foreign legal entity that performs all or part of the foreign entity's functions and, in particular, can carry on commercial activity. A branch is not considered to be a legal entity separate from its foreign parent company (head office).

JOINT VENTURE OPPORTUNITIES

A foreign company can establish a business presence in Kazakhstan by either:

- Incorporating a company;

- Setting up a local branch or representative office;
- Buying a share (100% or less) in an already existing local company;

The most commonly used corporate vehicle in Kazakhstan is the LLP. LLPs are subject to state registration with the Ministry of Justice's local Departments of Justice. To register the LLP, the following documents must be submitted in paper to Population Service Centre (a state enterprise, responsible for providing certain state services) or in case of small or medium business electronically via the Electronic Government Portal (see website, www.egov.kz):

- Signed application. The application has a standard legal form;
- Receipt for payment of state duty (12'883 KZT or 69 USD (no state duty for small and medium sized businesses));
- Legalized extract from the trade registry or other legalized document, confirming that the founder foreign legal entity is a legal entity under the laws of the foreign state, with notarized translation into Kazakh and Russian;
- Copy of passport or other identification document of the natural person founder, with notarized translation into Kazakh and Russian;
- Power of attorney, if the application is submitted by a representative.

Prior to submission of documents for registration, it is important to ensure that director of the LLP has Individual Identification Number (IIN) and its founder – Business Identification Number (BIN). IIN and BIN are issued by the tax authorities, the procedure takes up to 5 working days.

The process of state registration is limited to one working day for large business and one hour for small and medium businesses. On registration, the LLP is assigned a unique BIN and provided with a registration certificate. No separate registration as a taxpayer is required. From the moment of state registration, the LLP becomes a legal entity of full legal capacity with rights and obligations. The foundation documents of an LLP are the foundation agreement (in case of two or more shareholders) and charter. It is possible to use a model charter. All interested parties are entitled to inspect the LLP's charter. The foundation agreement is a commercial secret.

A foreign company can also establish a branch to trade in Kazakhstan. Branches are subject to state registration (the procedure is similar to local companies' registration). The branch is governed by Kazakhstan legislation, including in relation to registration formalities, employment, taxation, reporting, licensing, currency controls, and so on.

Joint ventures between foreign and local companies and/or natural persons are also quite common in Kazakhstan, although the term "joint venture" is not used in the legislation. Joint ventures are typically established as LLPs. Another form of joint business activity between legal entities is the consortium, an unincorporated form of partnership, based on a contract for joint activity.

Sectorial restrictions

There are various conditions and restrictions on establishing a business in certain specific industry sectors.

Banks and insurance organizations in Kazakhstan can only be in the form of a JSC. State registration of banks and insurance organizations requires permission from the National Bank's Committee for Control

and Supervision of Financial Market and Financial Organizations. On registration, the bank/insurance organization must apply for a license.

The founders and shareholders of a bank/insurance organization can be natural persons or legal entities (residents and non-residents), except for legal entities registered in certain offshore jurisdictions (for example, Andorra, the Commonwealth of the Bahamas, Cyprus, Cayman Islands or Grenada). This limitation does not apply to non-resident banks/insurance organizations with a minimal rating from one of the rating agencies.

There are strict requirements for the management of the banks/insurance organizations, including their education, previous experience, professional reputation, and so on. Management appointments can only be made with the permission of the regulatory authority.

The minimum share capital of a newly established bank is KZT5 billion. The minimum share capital of a newly established insurance organization ranges from KZT1 billion to KZT1.6 billion, depending on the insurance sector.

Companies carrying out activity in the following sectors cannot be recognized as "small businesses": the processing of drugs, psychotropic substances and precursors; production and/or wholesale of excisable goods; storage of grain at crop reception centers; lottery, gambling; extraction, processing and realization of oil, oil products, gas, electrical and thermal energy; processing of radioactive materials; banking and insurance; auditing; professional activities in the securities market; credit bureau; security and weapons and ammunition.

PROMOTION OF INVESTMENT

Kazakhstan has signed a bilateral treaty on encouragement and mutual protection of investments with Switzerland on May 12, 1994 which became operative from May 13, 1998.

The principal state body overseeing investments in Kazakhstan is the Investments Committee of the Ministry of Investment and Development created in 2014 (<http://invest.gov.kz/>).

The Ministry of Agriculture is responsible for the execution of agricultural projects (<http://mgov.kz/>).

The Ministry of Energy is also responsible for the execution of subsoil use contracts for mining and oil and gas projects (<http://energo.gov.kz/>).

The Kazakh Embassies abroad as well as JSC "National Agency for Export and Investment «KAZNEX INVEST» (<http://kaznexinvest.kz/en/>) play an active role in the attraction of the FDI in Kazakhstan.

Investment Law

In 2003 Kazakhstan adopted the *Law on Investments*, 6 which replaced the *Law on Foreign Investments* and the *Law on State Support for Direct Investments*. This law equalized the rights of foreign and domestic investors, while reducing or eliminating a number of the guarantees previously available to foreign investors. In particular, the *Law on Investments* eliminated guarantees against adverse changes in legislation (the so-called "grandfather" clause) and guarantees of international arbitration in the absence of an arbitration agreement. The *Law on Investments* retains the following investment guarantees: stability of contracts (with certain exceptions), free use of income, transparency of state investment policy, reimbursement of losses in the event of nationalization and requisition, and certain others.

State Support for Direct Investment

With the intent to promote industrialization and diversification of Kazakhstan's economy, the *Law on Investments* creates a system of benefits and preferences which supports direct investments in priority types of activity. These areas include production of certain types of equipment, pharmaceuticals and food, metallurgy, agriculture and construction). The full list of eligible activities is approved by the Government.

Local companies that carry out priority activities are eligible for the following benefits and preferential treatment depending on the circumstances:

- an exemption from customs duties on imported equipment required for investment projects (the exemption can be granted for up to five years);
- state grants in-kind (land plots, buildings, equipment, machinery, etc.).

Companies that are involved in high-tech projects with investment exceeding approximately 59.7 MIO USD are considered to be strategic investment projects and are eligible for the following benefits (in addition to those listed above):

- an exemption from property tax and land tax (for up to seven years); and
- if the investment projects are carried out in areas with a low level of social and economic development - industrial benefits, i.e., compensation or partial reimbursement of expenses for gas, electric power, purchase of a land plot and acquisition (construction) of facilities. The full list of strategic investment projects is approved by the Government of Kazakhstan.

To receive these investment benefits a local company must sign an investment contract with the Committee on Investments which sets forth, among other things, the investment commitments of the investor, the duration of the investment project, and the benefits granted. The investment contract should be registered by the committee in order to be valid.

In addition to these benefits, the Tax Code provides for an automatic right for local companies to accelerated straight-line tax depreciation of fixed assets (either before they are put into operation or within three years after that) where certain conditions are met. The taxpayer is not required to make any specific new investments (other than to acquire the assets) or to enter into an investment contract in order to obtain this right.

The Government has also introduced a number of financial support measures for entities which carry out activities in certain sectors (these largely correspond to the priority types of activity discussed above). The financial support measures include subsidizing the interest rate on loans and issuance of state guarantees with respect to bank loans.

One of the ways to invest currently in Kazakhstan's economy is to participate in the latest privatization program. The privatization in the fund's assets will diversify the shareholder structure of many key Kazakh enterprises, improve manageability and increase the quality of business processes. In total, it is possible to share the funds of 44 important strategic enterprises and 173 medium-sized and small companies (<http://privatization.sk.kz/en>).

Foreign investment restrictions

Telecommunications. Foreign individuals and legal entities cannot directly or indirectly own, use, dispose and/or manage more than 49% of the voting shares in a legal entity carrying out activity as an operator of intercity and/or international telecoms, or owning ground communication lines.

Aviation. The shares held by foreign individuals and legal entities in an airline company cannot exceed 49%.

Banks and insurance organizations. The founders and shareholders of banks/insurance organisations cannot be legal entities registered in certain offshore jurisdictions (for example, Andorra, the Commonwealth of the Bahamas, Cyprus, Cayman Islands or Grenada). This limitation does not apply to non-resident banks/insurance organizations with a minimal rating from the rating agencies.

Mass media. Foreign individuals and legal entities cannot directly or indirectly own, use, dispose and/or manage more than 20% of voting shares in a legal entity that owns Kazakhstan mass media or carries out activity in this sphere.

Pension funds. Foreign individuals cannot be shareholders of voluntary pension funds registered in Kazakhstan.

Security services. Foreign individuals and legal entities are not entitled to perform security services activities or be shareholders or trustees of private security organizations.

Currency control. Acquisition by a foreign individual or legal entity of a 10% or more share in a local legal entity is subject to registration at the National Bank, if the sum of the transaction exceeds US\$500,000.

ENTRY CONDITIONS, WORK PERMITS, RESIDENCE PERMITS, LABOUR LAW

The Law of the Republic of Kazakhstan “*On Migration of Population*” (the Law on Migration”) adopted on 22 July 2011 establishes the following categories of immigrants arriving for labor activities:

- Foreign employees, i.e., immigrants attracted by employers to conduct labor activities in Kazakhstan;
- Business immigrants, i.e., immigrants conducting entrepreneurial activities in accordance with the legislation of Kazakhstan;
- Seasonal foreign employees, i.e., immigrants attracted by employers to conduct seasonal work that is performed during a definite period (season) in view of the climate and other natural conditions, but for no more than one year.

The Law on Migration establishes definite conditions for the arrival and stay in Kazakhstan of each of these categories of labor immigrants, including, among other things, confirmation of financial solvency allowing them to leave Kazakhstan for their country of permanent residence upon expiration of their permits, information on previous convictions, (iii) medical confirmation allowing them to perform work in Kazakhstan in a particular specialty.

Work permits

At the beginning of November, 2016, Kazakhstan has announced about tightening of conditions for hiring foreign employees and entry of the respective amendments to the Regulations of hiring foreign employees

(hereinafter referred to as the Regulations) into force is expected in Kazakhstan effective from January 1, 2017.

A number of planned modifications were excluded from the final version of the Regulations based on frequent discussions. The summary of the major modifications in the new version of the Regulations entered into force on January 1, 2017, is:

- Exemptions from getting a Work Permit for Directors of the branches and representation offices;
- Privileges for small branches and representation offices;
- Changes in the Work Permit Procedure under the intra-company transfer;
- Exceptions in paying fees for Work Permit issue. Regulations and conditions for issuing and (or) prolonging the Work Permits to the employers to hire the foreign employees, and for intra-company transfer (approved by the Order issued by the Acting Health and Social Development Minister of Kazakhstan No. 559 dated June 27, 2016)

Foreign citizens can enter Kazakhstan for work purposes independently or by invitation of the employer.

There are two types of work permits:

- For foreign employees, issued to employers (which applies in most cases);
- For independent employment, issued to employees (for certain professions).

The terms and procedure for obtaining work permits depends on the category of employee:

- First category: directors (other executive managers) and their deputies.
- Second category: heads of subdivisions.
- Third category: specialists.
- Fourth category: qualified workers.

Certain categories of non-residents can work without a special work permit. These include, inter alia:

- Citizens of Customs Union states (Russia, Belarus, Armenia, Kyrgyzstan).
- Directors (heads) of branches and representative offices of foreign legal entities.
- Members of sea, river, air, railway and motor-car crews.
- Non-residents with Kazakhstan residence permits.
- Business-immigrants staying in Kazakhstan under a business visa not longer than 120 calendar days during one calendar year period.

From January 1, 2017 issue of a Work Permit to engage the foreign employees will be chargeable. A tax levy for issuing Work Permit will be charged to employers subject to the approved fee rates for issuing and (or) prolonging the Work Permits to engage the foreign employees in Kazakhstan. Rates amount depends on the type of economic activity, it varies from approximately Euro 850 to Euro 1,100 for a foreign top management employee (first category employee). In this case, Work Permits to engage the foreign employees under the intra-company transfer will be issued free of charge.

The number of foreign employee permits is fixed for each year as a percentage of the economically active population, with a number of employees for certain priority projects and with numbers depending on the countries of origin.

Work permits may be issued if there is inability to meet the demand for labour in the domestic labour market, subject to the following ratios:

- The number of Kazakhstan citizens must be at least 70% of the employees of the first and second categories;
- The number of Kazakhstan citizens must be at least 90% of the employees of the third and fourth categories.

Work permits are issued for a period of one to three years with the possibility of extension. Foreign employees can apply for a work visa after obtaining a work permit.

SOURCES OF INFORMATION AND LINKS

www.zangerlf.com

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www.zakon.kz

Date: The 31st of March 2017

Author: Tursyn BUKAYEVA, Trade officer of the Trade Point Kazakhstan

Author's address: 62 Kosmonavtov Street, 8F, Astana