

Practical aspects of setting up and running a business in Kazakhstan



Due to its strategic priority and policy of trying to create a favourable and positive investment climate that is capable of updating itself to meet frequently changing market conditions, Kazakhstan has become one of the most attractive countries for investors in the CIS.

The experienced Deloitte Kazakhstan legal team has its finger on the most recent developments in Kazakhstan law, and to that end they actively take part in numerous roundtables and initiate changes or additions to normative and legal acts to fill in the gaps in legislation.

The result of this is that Deloitte Kazakhstan lawyers have the extensive experience and practical knowledge required to help investors set up and manage their business, and also, when necessary, close it.

For the purpose of this article, we would like to share some of the latest trends in how the authorities apply the law in practice when registering and also closing companies in Kazakhstan.

Both individuals and legal entities may set up a business (register a company) in Kazakhstan. However, foreign individuals, due to the current wording of the relevant laws and regulations, face additional administrative and bureaucratic difficulties.

For example, the authorities may refuse to register a company where the founder is a foreign national, quoting the Migration Law, which prohibits foreign nationals who have not received a «business immigrant» visa from contributing to the charter capital of commercial organisations as a partner in a legal entity.

The term «business immigrant» was introduced in 2012, but Kazakhstan consulates offering visa support around the world still



do not issue M4 category («business immigrant») visas. In other words, a Catch 22 situation is created where foreign nationals cannot open a business without a category M4 visa, which as things stand at the moment, they cannot actually receive.

For this reason, foreign nationals intending to register a company in Kazakhstan are forced to obtain a business visa, even if they do not meet the criteria, putting themselves at risk of violating migration laws and subsequently incurring an administrative fine or even administrative arrest.

The Deloitte Kazakhstan legal team is often requested to help in the process of changing company executives. What seems like a fairly simple process can actually turn out to be relatively for a number of reasons.

To register a change of company executive, applicant should apply to the tax authorities with an application form and any relevant documents. State registration regulations used to include a requirement for legal entities and branches to notify the registrar of a change of executive. This is no longer the case. However, if the name of an executive is changed in the tax base, the same change is not made to the National Register of Business Identification Numbers («National Register») resulting in a data discrepancy, which can have repercussions.

Therefore, we recommend you notify the registrar of any change to company executives so that the same change can be made in the National Register. As there is no legal requirement to notify the registrar, there is no notification deadline nor accountability for delaying notification.

Investors setting up or running a business in Kazakhstan often need to hire foreign experts to work in Kazakhstan. Legally, every foreign expert hired to work in Kazakhstan needs a work permit, for which employers are generally responsible, but certain categories of foreign nationals may apply for a work permit themselves. The work permit procedure is complex and, in practice can take a lot of time.

Work permit guidelines and conditions require employers to submit a work permit application together with the relevant documents, such as education certificates, either through the State E-Licensing Data Base or in hard copy.

However, the authorities do not always accept education documents from foreign nationals in support of courses shorter than the Kazakhstan standard of four years, and demand supporting documents for a four-year course. Again, as legal requirements differ from country to country, and this is true for the duration of further education courses, Kazakhstan law includes no minimum study period for foreign nationals.

Compliance may be determined during the procedure for recognising education documents received abroad, which is based on a convention for recognising higher education in Europe (Lisbon, 1997) and is carried out after a work permit is received.

However, issues exist not only when setting up and running businesses in Kazakhstan.

More often than not companies wishing to terminate activities in Kazakhstan have to undergo a liquidation process, which for legal entities or branches can be quite complex especially if foreign nationals are working for the company in question.

Cases exist when companies that have voluntarily decided to close a legal entity cannot complete the liquidation process as they cannot provide a certificate confirming the closure of bank accounts which is needed to receive a certificate of no outstanding tax liability.

To receive confirmation of the closure of bank accounts, companies undergoing liquidation need to close all of their bank accounts including guarantee deposit accounts which companies have opened to ensure that the foreign nationals depart Kazakhstan once their work permit expires. To close these deposit accounts, companies need to receive the agreement of the labor authorities. The later issue their approval if a travel ticket has been issued or a copy of payment for the ticket of the employee(s) leaving to his or her permanent country of residence is provided.

The labor authorities can also demand the provision of other document for foreign nationals and as many companies tend not to keep requested documents in relation to foreign nationals hired, they cannot submit them and consequently cannot obtain the authorities' consent to close guarantee bank deposits.

In the majority of cases, without closing their guarantee deposits, companies undergoing liquidation processes cannot close their current bank accounts and complete the liquidation procedure.

Opening a business in Kazakhstan, running it and subsequently closing it, irrespective of the type of business, raise a variety of challenges, and in this article we have tried to touch on the most topical issues that companies face when operating in Kazakhstan.

Current and also new investors, due to their lack of understanding of Kazakhstan law and its application, may lose not only time, but also material resources when trying to correct any issues they may come up against.

The Deloitte legal team has huge experience in all of the above issues and is ready to help companies avoid a range of time-consuming challenges when setting up and running a business in Kazakhstan.

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