

# **ORDER OF OPENING OF THE LEGAL ENTITY (THE BRANCH OF FOREIGN LEGAL ENTITIES)**

## **Opening of a representative office and branch in Kazakhstan**

Opening of a representative office in Kazakhstan. Registration and forms of entrepreneurship in the Republic of Kazakhstan.

Often, local businessmen, when developing their business in Kazakhstan, as well as foreign legal entities when expanding their business outside their country, in our case to the Republic of Kazakhstan, are asked what form of entrepreneurship to use to get more income and minimize the risks of their business. There are several forms of commercial entrepreneurship: individual entrepreneurship, limited liability partnership (LLP), opening of branches / representative offices of legal entities and joint-stock company (JSC). In this series of articles, we will talk and consider each form of entrepreneurship, since it is very important to know the basic aspects of the introduction and development of business in the Republic of Kazakhstan for representation and branch in Kazakhstan.

### **Opening of representative offices / branches of a legal entity**

Before proceeding to the issue of opening, registering representative offices and branches of a legal entity, it is necessary to consider the terms and meaning of the representative office and branch. According to paragraph 1, 2 of Article 43 of the Civil Code of the Republic of Kazakhstan,

1. A branch is a separate subdivision of a legal entity located outside its location and carrying out all or part of its functions, including functions of representation.
2. A representative office is a separate subdivision of a legal entity located outside its location and carrying out protection and representation of the interests of a legal entity that performs transactions and other legal actions on its behalf, with the exception of cases provided for by legislative acts of the Republic of Kazakhstan.

Representation carries out its representative functions and protects the interests of the parent company. Employment of activities aimed at making a profit is envisaged, but not the main goal / creation of a Representative Office. The branch, in addition to representative functions, may carry out some or all of the activities carried out by the parent company, including the licensed detail, and carry out activities aimed at making a profit.

State registration of legal entities and registration of branches and representative offices is carried out in order to:

certification of the fact of creation, reorganization and termination of the activities of a legal entity, as well as creation and termination of activities of branches and representative offices;	registration of established, reorganized and terminated legal entities, as well as established and terminated branches and representative offices on the territory of the Republic of Kazakhstan;	maintenance of the unified state register of legal entities and the register of branches and representative offices;	realization of information on legal entities, their branches and representatives
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In order to register a legal entity, branches and representative offices of non-residents in Kazakhstan, an application is filed with the registration authority in the form established by the Ministry of Justice of the Republic of Kazakhstan, and the constituent documents specified in Article 7 of the Law are compiled in the state and Russian languages, which are provided in triplicate.

Registration of legal entities with foreign participation, as well as their representative offices and branches is carried out in the manner established for the registration of legal entities of the Republic of Kazakhstan. Except for the documents stipulated by this procedure, unless otherwise established by international treaties ratified by the RK, additionally must be submitted:

- a legalized extract from the trade register or other legalized document certifying that the founder-foreign legal entity is a legal entity under the legislation of a foreign state, with a notarized translation into the state and Russian languages;
- a copy of the passport or other document certifying the identity of the founder of a foreign individual, with a notarized translation into the state and Russian languages.

Simultaneously, a document certifying the location of the legal entity, branch and representative office of the foreign legal entity, as well as a receipt or document confirming the payment of the fee for state registration of legal entities and registration registration of branches and representative offices is provided to the registration authority.

When state registration of branches and representative offices of legal entities, as

well as when they receive a duplicate of the certificate of state registration, a fee is collected in the manner determined by the Tax Code of the Republic of Kazakhstan.

When registering a representative office and branches, it is always necessary to take into account and calculate licensing issues, that is, the possibility of the subsequent registration of a license, if the main type of business activity is licensed according to the legislation of Kazakhstan. And of course, one of the most important issues is the issue of further taxation, payment of local taxes in Kazakhstan and payment of taxes through the parent company of a branch and a representative office of a non-resident of the Republic of Kazakhstan.

#### Subsidiary in Kazakhstan.

Another form of doing business in the Republic of Kazakhstan is the registration of a subsidiary company, that is, a limited liability partnership with a limited liability company with the participation of a non-resident legal entity or a non-resident individual. It should be noted that the legislation of the Republic of Kazakhstan does not fix such an organizational and legal form of the legal entity as a Subsidiary. However, registration of LLPs of limited partnerships with the participation of foreign persons as founders is common, while a registered LLP with foreign participation is equal and is a Kazakh LLP, as it is registered in the territory of the RK. Such an LLP enjoys the same scope of rights and obligations with any Kazakhstan LLP, has the right to also use special tax regimes, which we will discuss further.

#### LLP, procedure for registration of LLP, taxation, liquidation of LLP

All LLPs, including LLPs with IU on the basis of the legislation on private entrepreneurship (Article 6 of the Law "On Private Entrepreneurship") can be recognized as a small, medium, or large business entity.

The subjects of small business include a LLP with an average annual number of employees of no more than 100 people and an average annual income of not more than 300,000 times MCI.

Medium business entities include a LLP with an average annual number of employees of more than 100, but not more than 250 people, and an average annual income of over 300,000 times MCI, but not more than 3,000,000 times MCI;

The subjects of large business include a LLP with an average annual number of employees of more than 250 people, and an average annual income of over 3,000,000 times MCI.

MCI - monthly calculation index - 2121 tenge for 2016god.

You can register LLP in the following ways:

1. On the web portal of "electronic government", the submission of a notification (for LLP to the MSP) / application (for LLP not SMP) online; It is necessary to have a digital signature - an electronic digital signature of the founder
2. Through the PSC, a clear order

The deadline for the registration of a private limited company is no later than one working day following the day of the filing of the notification / application for commencement of business.

The Charter of LLP and the Founding Agreement of LLP (LLP with several participants) are not presented at the state registration, but their presence is stipulated by the requirements of the legislation (Articles 13.14, 17 of the Law "On Partnerships with Limited and Additional Liability"),

Initial size of the authorized capital:

LLP SMP - The minimum amount of the authorized capital is determined by zero level.

LLP not SMP - Not less than 100 MCI

Algorithm for the implementation of the investment project

From the beginning of the implementation of the investment project to its full completion, the entrepreneur passes the following procedures:

Obtaining a land plot

After the entrepreneur presented his project, he initiated a letter addressed to the oblast / district authorities about the intentions of the investment project, the process of recognizing this project as an investment project is launched, by submitting it to the Regional Coordination Council for consideration.

The table below shows step-by-step measures for obtaining a state act on a land plot.

A task	Responsible	Date
The basis (protocol RKS, the recognition of the project as an investment)	UPIIR	1 month

Statement	1 day
Land commission  (formalized in a protocol of the city / district akimat)	5-30 days
Land Initiator project	7 days
Decree of akim of Akimat the city, district	5-30 days
Receiving the State. act on the land CHS (and his registration in the CSC)	7 days

After the initiator starts to develop an architectural planning task, having received the following documents:

A task	Responsible	Date
Getting those conditions on communication	Subjects of natural monopoly	7 days
Conducting of dosimetric control (parallel to obtaining technical specifications)	Of the Ob. SES	2 days
Obtaining the conclusion of the sanitary-epidemiological service (in parallel with the receipt of technical specifications)	SES, Consumer Protection Department.	15 days
Architectural planning task	Architecture / CSC	7 days

Then it goes on to develop the project documentation, on average it takes about 5 months.

A task	Responsible	Date
Development of a draft design	Investor	15 days
Passage of the town-planning council of the region	Of the Ob. Architecture	1 month
Approval of a draft design	r-naya Architecture	15 days
Development of design estimates (PSD)	Investor	10-60 days
Passage of the State. expertise (depending on the project, it is possible to pass a private examination)	Gos. examination / private examination	45 days

After all the project documentation is developed and approved, the initiator receives notification of the beginning of construction and installation works and proceeds to

them.

A task	Responsible	Date
Receiving notification of the beginning of construction works	GASK	3 days
Construction and installation work	Initiator / general contractor	6-24 months
Act input (receipt of an act of commissioning)	Initiator	

Information about second-tier banks (links to sites) -

Banks of the second level

Bank

8 (727) 259 6900

Zhilstroysberbank

8 (712) 232 0303

Nurbank

8 (712) 220 0802

Czobo Ortalyk Nurbank

8 (712) 232 0964

VTB Bank (Kazakhstan)

8 (712) 258 6521

Eurasian Bank

8 (712) 225 0581

Branch of Halyk Bank

+7 800 080-00-59

Bank of Astana

Halyk Bank

+7 800 080-00-59

ForteBank Branch

8 (712) 245 5293

Asia Credit Bank

8 (712) 255 8061

"The Caspian Sea". Nurbank

8 (712) 228 0272

Sberbank branch

8 (712) 258 6600

Zbor "Keremet" Nurbank

8 (712) 236 3458

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