

Kazakhstan

New Law of the Republic of Kazakhstan on Private Business

General

On January 31, 2006 a new Law on Private Business (further – Law) was adopted in Kazakhstan. The Law became effective from the moment of its official publication on February 7, 2006. Simultaneously with putting the Law into effect the prior regulatory and legal acts on this subject, i.e., Law on Protection and Support of Private Enterprises, Law on the State Support of Small Business and Law on Individual Enterprises, became inoperative.

In the new Law an attempt was made to provide codification and improvement of all prior regulatory and legal acts in the field of private business activities taking into consideration entrepreneurship development during the years of market economy formation in Kazakhstan.

Law innovations in their essence are more intended for protection and support of enterprises. At the same time, the Law is also aimed at protection of the state interests and provision of national security of the Republic of Kazakhstan, in particular, through state administration of entrepreneurial activities.

The present Information Memorandum provides a brief review of the requirements of the new Law, which, in our opinion, are of the most importance.

Conceptual terms

The new Law in addition to the existing concepts of support and development of entrepreneurship provides for a number of new terms, such as:

- ! *Business - nursery* – a legal entity to be created in support of small business participants at the stage of their development by provision of production areas, equipment, and organizational, legal, financial, consultation and information services;
- ! *Industrial zone* – lands of nonagricultural use provided with lines of communication and allo-

cated by the state to private business participants for construction and operation of industrial facilities according to the procedure established by the Land Code of the Republic of Kazakhstan and other laws of the Republic of Kazakhstan;

- ! *Accreditation of associations of private business participants* – recognition by appropriate governmental bodies of the conformity of associations of private business participants with the established criteria of representing the interests of small business participants in expert councils on entrepreneurship;
- ! *Association of private business participants* – an independent business legal structure of a non-commercial organization created for protection of rights, legitimate interests of private business participants;
- ! *Expert council on entrepreneurship* – a consultative and advisory body to be created under central governmental and local executive bodies for obtaining expert's opinions from accredited associations of private business participants and interested noncommercial organizations on draft regulatory and legal acts affecting the interests of private business;
- ! *Centers for small business support* – legal entities engaged in training, information support, provision of consultation and marketing services, conduct of economic and technological examination of the projects of small business participants.

Introduction of the above notions is dictated by improvement of the system of state support of entrepreneurship. For example, business - nurseries are created with the aim of promoting creation and development of small business participants, provision of educational, marketing, advisory and other institutional and managerial services, assistance in their professional growth, access to information and expert resources, etc. Similar functions are imposed on the center of small business support.

Participants of private business

In contrast to prior laws the new Law subdivides the participants of private business not into five categories but only into three categories: participants of small, medium-size and large business. In accordance with the prior Law on Protection and Support of Private Enterprise, participants of private business were subdivided into participants of individual business, participants of micro-business, small, medium-size and large business. In the new Law individual businessmen are not a separate category but classified as participants of small and medium-size business.

Annual average number of employees and annual average cost of assets of a businessman as before remain to be the criteria for qualification of businessmen. Based on this, individual businessmen may be recognized as participants of small and medium-size business only on the basis of annual average number of employees.

Besides, the list of business participants which cannot be considered as participants of small business became wider; it includes participants, for example, of business related to production, processing and sale of petroleum, oil products, gas, electric and heat energy, wheat storage facilities and grain reception centers.

Provision previously provided in the RK Law on State Support of Small Business that legal entities' interest in the charter capital of a participant of small business to be created should not exceed 25 per cent is not available in the new Law.

Participation in the development of regulatory and legal acts

The Law enunciates an entirely new principle of state regulation of entrepreneurial activities – involvement of private business participants in examination of draft regulatory and legal acts affecting the interest of private business through accredited associations of the participants.

The Law determines the procedure of partaking of accredited associations of private business participants in the development of regulatory and legal acts affecting the interest of private business participants observation of which is a mandatory condition of their adoption. It is expected that associations purporting for being accredited will be created on republican, oblast, town and district levels. The procedure of accreditation will

be additionally determined by the RK Government.

It should be noted that the provision of the Law concerning businessmen participation in examination of regulatory and legal acts (Article 5) as opposed to the other provisions thereof is to be made operative from July 1, 2006.

Principles of state regulation of private business

Prior to adoption of the Law, the Kazakhstan legislation was based on the principle of non-interference in the activities of businessmen which was confined only to the matters which were exclusively in the competence of the state (law enforcement, defense and safety of society and citizens; tax, customs, currency, pricing and anti-monopoly regulation; social protection; observation of environmental, sanitary and fire protection standards).

New Law as the main goal of state regulation of business activities along with protection and support these activities provides for state administration thereof. The state administration, in turn, among usual measures (licensing, mandatory insurance, etc.) also implies state control and supervision which will be provided by appropriate control and supervisory authorities in twenty eight different spheres of business activities. List of spheres of control and of state authorities to be engaged in such control is provided in the Attachment to the Law. Besides, the Law contains a detailed description of the procedure of control of businessmen activities by control and supervisory authorities.

State support of private business

New Law provides for the procedure of creation and functioning of some infrastructure facilities of private business, such as centers for private business support, business – nurseries, technological parks, industrial zones and the other which basic purpose is support and development of private business participants.

Since creation of some of the above organizations is stipulated by the legislation, we believe that a number of regulatory and legal acts, which determine certain provisions of creation and functioning of such organization in greater detail, will be now adopted.

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Amendments to the Rules on Determination of Quotas, Terms and Procedure for Issuing Permits to Employers for Attraction of Foreign Employees to the Republic of Kazakhstan

General description

On March 14, 2006 the Government of the Republic of Kazakhstan approved amendments and additions to the Rules on determination of quotas, terms and procedure for permit issuing to employers for attraction of foreign employees to the Republic of Kazakhstan (hereinafter – the Rules on Issue of Permits).¹

The Decree of the Government of the Republic of Kazakhstan on Amendments and Additions to the Decree No. 836 of the Government of the Republic of Kazakhstan of June 19, 2001 (hereinafter – the Decree) was officially published in the newspaper *Kazakhstanskaya Pravda* dated March 21, 2006 and on expiration of 10 calendar days became fully operative.

Besides, on April 24, 2006 the Decree of the Government of the Republic of Kazakhstan was adopted, approving the Rules on making by an employers a guarantee and security deposit with the banks of the country of employment and its size (hereinafter – the Rules on Guarantee and Security Deposit).² In accordance with these Rules, the procedure of making a guarantee and security deposit to provide returning of a foreign employee back to the country of domicile is given in greater detailed in contrast to the prior procedure provided in the Rules approved by the Decree of the RK Government of June 25, 1999.

In this Information Memorandum we cite only those amendments to the procedure for attraction of foreign employees, which, in our opinion, are the most important and interesting for practical activity of companies:

Conceptual part

The Rules on Issue of Permits were amended as related to the conceptual part, including introduc-

tion of a new term – seasonal agricultural work, which are interpreted as agricultural work, which are being performed during a certain period (season) due to the natu-

ral and climate conditions. In this connection, the Rules are added with the relevant provisions regarding the procedure and terms for attraction of foreign employees for performance of the said agricultural work.

Exceptions from the Rules on Issue of Permits

The list of foreign citizens and stateless persons, who are not covered by the Rules on Issue of Permits, should be added with the following:

! foreign citizens and stateless persons engaged in teaching activity in the organizations of the general secondary, basic vocational, secondary vocational and higher education in the RK, in accordance with the international agreements of the RK on cooperation in the area of education, but not more than 25% of the staff of organization;

! oralmans (repatriates).

In accordance with the amendments, the stay term for foreign citizens and stateless persons on a business trip in the RK without obtaining a permit for attraction of foreign employees is increased from 45 calendar days to 60 calendar days per one calendar year.

The institution of attachment of foreign citizens to a legal entity of the RK without obtaining a permit was introduced into the Rules on Issue of Permits. However, in this connection that attachment conditions are described not clearly enough in these Rules, it may cause different complications in attachment realization in practice.

Procedure for obtaining a permit for attraction of foreign employees

! In accordance with the amendments made, in order to obtain a permit for attraction of foreign employees, an employer should apply directly to the authorized agency in the place of performing of labor activity by the foreign employee (such clarification was not available in the previous version of the Rules).

! List of documents to be submitted to the authorized agencies, is amended so that its certain provisions are given in greater detail, including provisions related to substantiation of the necessity to know foreign language and be aware of information on observation of special terms of permits.

! List of special terms imposed on an employer by the authorized agency of the RK in issuing a permit is made shorter (retaining of the existing working places is excluded), the remaining special terms are more detailed.

¹ Rules on determination of quotas, terms and procedure for issue of permits for attraction of foreign labor to the Republic of Kazakhstan, approved by the Decree No. 836 of the Government of the Republic of Kazakhstan of June 19, 2001

² Rules on making by an employer a guarantee and security deposit with the banks of the country of employment and its size, approved by the Decree No. 316 of the Government of the Republic of Kazakhstan of April 24, 2006.

- ! Procedure for certification of the lists of the attracted foreign employees by the RK authorized agencies is more detailed, particularly, as related to the deadlines for its implementation, what allows reducing the time of obtaining permit by an employer.
- ! List of documents required for submission of a list of the attracted foreign employees to the authorized agencies is classified depending on the category of the attracted foreign employee (1-4 categories). At the same time, HIV medical certifications are excluded from the list of the required documents.
- ! The ground is excluded from the Rules on Issue of Permits, i.e. in connection with refusal to a foreigner or a stateless person of entrance to the Republic of Kazakhstan, in accordance with the RK Law on Migration of Population, as a ground for refusal of attraction of a foreign employee.
- ! The following is excluded from the list of grounds for permit withdrawal by the authorized agency – failure to submit reporting documents stipulated by the Rules within 3 months.

Guarantee and security deposit

In accordance with the Rules on making a guarantee and security deposit, the procedure of making a guarantee and security deposit for providing re-

turn of a foreign employee back to the country of his/her domicile is changed as follows:

- ! The documents confirming guarantee and security deposit shall be submitted after obtaining a permit for attraction of foreign employees, for certification of the list of the attracted foreign employees. Earlier listed documents were submitted only for the purposes of obtaining a permit for attraction of the foreign employees;
- ! The deadline for making deposits on the employer's bank account is determined – within 2 months from the day of obtaining a permit for attraction of foreign employees;
- ! Obligatory terms of agreement between bank and employer for guarantee and security depositing are specified;
- ! Amount of deposit per one employee is specified in detail (cost of ticket to the nearest city of employee's country of domicile). At the same time, deposit amount per a CIS employee is specified separately. The deposited amount now does not include daily travel expenses;
- ! Procedure for receipt of a written consent of the authorized agency for departure of a foreign employee to the country of domicile is indicated.

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