

## Establishing a local company with foreign participation in the Kyrgyz Republic: specific features for the foreign founder

One of the first steps for a foreign investor after deciding to start a business in the Kyrgyz Republic is the creation of a local company. It should be noted that the legal entities registration system in the Kyrgyz Republic is not that complicated. Taking the overall 70<sup>th</sup> place from 190 countries in Doing Business 2019 ranking, the country takes a rather high 35<sup>th</sup> place in the «starting a business» category.

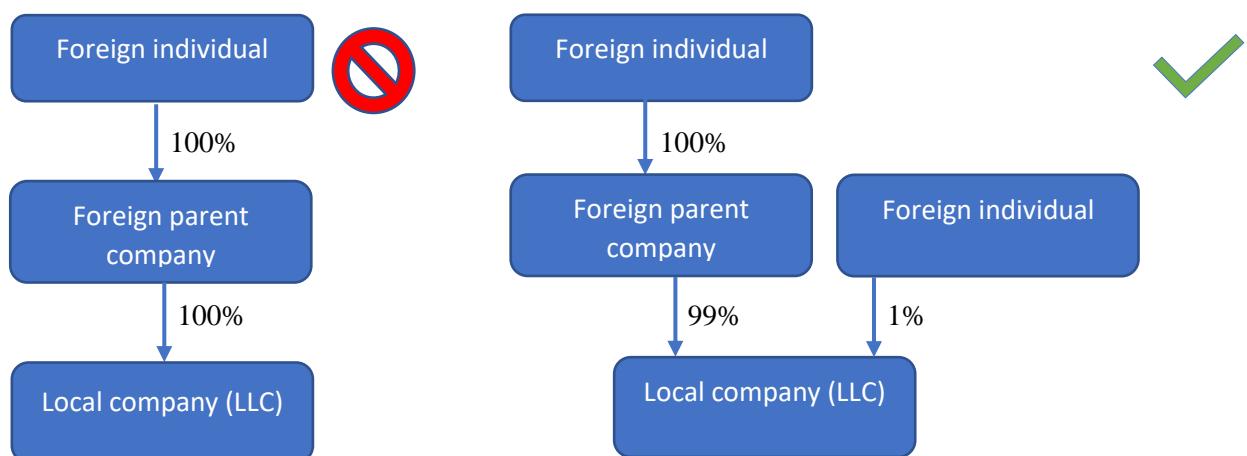
Generally, to register a local legal entity a foreign founder must submit to the Ministry of Justice of the Kyrgyz Republic (registration authority) the following documents:

- Application for registration;
- Resolution on incorporation of the local entity;
- Extract from the state register of legal entities in relation to the founder (foreign company) / passport of the founder (foreign citizen);
- Passport of the head (CEO / General Director) of the local company.

It should be noted that in some individual cases the above list may include additional documents. At the same time, despite the apparent simplicity, there are a number of features the future founder should know about before starting the registration procedure. The purpose of this article is to familiarize readers with such features.

### 1. Number of shareholders / participants of the parent company

First, a foreign founder (legal entity) should pay attention to the requirement of the legislation of the Kyrgyz Republic which states that a limited liability company (“LLC”) cannot have another legal entity as a sole shareholder if such legal entity has only one shareholder itself. Considering that LLC is the most popular legal form of doing business in the Kyrgyz Republic, in practice, foreign founders often face such a restriction. One way to overcome this limitation is to introduce an additional founder into the structure of the local company. For example, such an additional founder may be the sole shareholder of the parent company. Below are the schematic notations for the situations described above.



### 2. Type of economic activity of the local company: preliminary approval

In most cases, one should know the type of economic activity of the newly created company only to indicate it in the registration application for information and statistical purposes. However, in order to engage in certain types of economic activities and create a local company for these purposes, it is necessary to obtain



prior permission from the relevant state regulator. For example, in order to create an educational organization, before submitting documents to the registration authority, it is necessary to go through the approval procedure in an authorized state body in the field of education. Another example is the requirement to obtain a prior permission from the National Bank of the Kyrgyz Republic to register a bank or a microfinance organization.

### **3. Authorized (charter) capital of the local company**

One of the advantages of registering LLCs in the Kyrgyz Republic is the absence of requirements for a minimum amount of authorized capital for the most types of economic activity. In addition, the authorized capital of an LLC is paid in full during the first year of the company's activity from the moment of state registration, i.e. its advance payment by the time of registration is not required. For joint-stock companies, the requirements are more stringent: the authorized capital must be fully paid at the time of foundation of the company and cannot be less than 100,000 (one hundred thousand) Kyrgyz Soms.

At the same time, as in the case of obtaining prior approval for registration, there are peculiarities associated with the type of economic activity of the local company. For example, the minimum amount of the authorized capital for an insurance company is 150,000,000 (one hundred and fifty million) Kyrgyz Soms. Another example - the minimum amount of the authorized capital for a microfinance company is 50,000,000 (fifty million) Kyrgyz Soms.

### **4. Name of the local company**

The basic rule regarding the name of a local company is the prohibition to use a name similar to the name of a previously registered legal entity. For these purposes, it is recommended to check the selected company name in the electronic database of legal entities or (for greater certainty) apply for verification of the company name to the registration authority. In addition, there is a ban on the use of company names containing elements of discrimination, as well as obscene words.

Separately, it should be noted that there are restrictions on the use of certain words for the company names in the Kyrgyz Republic. For example, the use of the term "Manas" (the national hero of the Kyrgyz Republic) in the company name and the words and phrases formed on its basis is allowed in the company name of the commercial organization if the size of the authorized capital of such an organization is at least 100,000,000 (one hundred million) Kyrgyz Soms. Other examples may include existing restrictions on the use of the term "national" and the official full or abbreviated name of the Kyrgyz Republic.

### **5. Country of origin of the foreign founder**

Despite the fact that generally foreign citizens and organizations have the same rights regarding registration of legal entities in the Kyrgyz Republic as local citizens and organizations, there are a number of special legislative requirements that impose additional obligations on such foreign persons. For example, documents drawn up in a foreign language must be submitted to the registration authority with a notarized translation into Kyrgyz or Russian.

In addition, there is a special legislative requirement which application depends directly on the country of origin of the foreign founder, as well as on the country of origin of the documents provided by such foreign founder for registration. It is the requirement to legalize foreign documents (extract from the register, resolution on incorporation, power of attorney, and etc.) which are created on the territory of foreign states. Legalization is not required for documents from the member states of relevant international treaties and agreements to which the Kyrgyz Republic is a party. Below is a table with the requirements for documents coming from different states.

No.	State category	Requirements	Basis
1	States parties to the Hague Convention on abolishing the requirement of legalization for foreign public documents of 5 October 1961 ( <i>with the exception of the Republic of Austria, the Kingdom of Belgium, the Federal Republic of Germany and the Hellenic Republic</i> )	Apostille	Hague Convention on abolishing the requirement of legalization for foreign public documents of 5 October 1961
2	States parties to the Conventions on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters, signed in Minsk on 22 January 1993 and in Chisinau on 7 October 2002 ( <i>Azerbaijan Republic, Republic of Armenia, Republic of Belarus, Georgia, Republic of Kazakhstan, Republic of Moldova, Russian Federation, Republic of Tajikistan, Turkmenistan, Republic of Uzbekistan and Ukraine</i> )	No additional requirements to the documents	Conventions on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters, signed in Minsk on 22 January 1993 and in Chisinau on 7 October 2002
3	The Republic of Austria, the Kingdom of Belgium, the Federal Republic of Germany and the Hellenic Republic	Legalization	The Hague Convention does not apply between the Kyrgyz Republic and the indicated states due to the expression by the indicated states of objections regarding the accession of the Kyrgyz Republic to the convention
4	States that are not parties to any of the above conventions ( <i>for example, China, the United Arab Emirates, Canada and other states</i> )	Legalization	Art. 10 of the Law of the Kyrgyz Republic "On state registration of legal entities" dated 20 February 2009 No. 57

## 6. Legal address of the local company

One of the mandatory elements of an application for registration and a resolution on incorporation is an indication of the legal address of the to be created local company. A fair question is: how can the to be created company specify its future legal address? The legal capacity of a legal entity arises from the moment of its state registration, therefore, until that moment it cannot, for example, conclude a lease contract for an office space or acquire such a property. The answer is the absence of any requirements regarding the confirmation of the declared legal address of the to be created company in the legislation of the Kyrgyz Republic. During the process of state registration of a legal entity in the Kyrgyz Republic the founder does not need to confirm the legal address indicated in the registration application and the resolution on incorporation by any additional documents. However, it is worth noting that confirmation of the legal address may be required at a later stage of the company's activity (for example, when registering the company as a VAT payer).



## **7. Post-registration actions: one-stop shop principle**

The legislation of the Kyrgyz Republic on state registration of legal entities contains a provision according to which state registration is carried out by the registration authority on the basis of the one-stop shop principle. The one-stop shop principle includes the implementation of state registration by the registration authority with simultaneous registration with the tax authority, statistics agency and the social fund. The one-stop shop principle suggests that after passing through state registration with the registration authority, additional registration with the tax authorities, statistical agencies and the social fund is not required.

Unfortunately, in practice, the one-stop shop principle still does not work in the Kyrgyz Republic. The founder always needs to remember that after completing the registration procedure with the Ministry of Justice and receiving a certificate of state registration, the newly created company needs to collect two additional packages of documents and separately register with the tax authority and the social fund.

## **8. Work permit for foreign employees of the local company**

Founders shall always remember that foreign citizens need to obtain a work permit to carry out labor activities on the territory of the Kyrgyz Republic. The procedures for obtaining permission to attract foreign labor for a local company and obtaining work permits for foreign employees (including the head) of a local company almost always accompany the procedure for state registration of a company with foreign participation in the Kyrgyz Republic. Since obtaining a work permit is a rather time-consuming and lengthy procedure, it is recommended that all the necessary preparatory procedures, including the preparation of supporting documents for future work permits (applications, diplomas, etc.), be completed before the legal entity registration procedure is completed.

An exception to the above rule is made to foreign employees from the member states of the Eurasian Economic Union: the Republic of Armenia, the Republic of Kazakhstan, the Republic of Belarus and the Russian Federation. Citizens of the above states do not need a work permit to carry out labor activities in the Kyrgyz Republic.

It is important to note that this article does not cover all the possible features associated with the registration of a company with foreign participation in the Kyrgyz Republic. This article does not constitute a legal advice and is written for informational purposes. To get answers to specific questions, readers are advised to separately contact the appropriate specialists.

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