

Would Kazakhstan emerge as a new destination for start-ups?



KAZAKHSTAN

By Shaimerden Chikanayev

There is no doubt that Kazakhstan needs new economic drivers to facilitate the launch of innovative new businesses, to disrupt conventional industries and to transform intellectual capital into innovative start-ups.

Start-ups in such developed markets like the US or Europe that need financing usually turn to so-called venture capital firms, because they can provide not only the capital needed, but also strategic assistance and even introductions to potential customers and partners. Importantly, venture capital investments typically involve high risk in exchange for potentially high reward.

The Kazakh venture capital market is a very recent development and is still not fully matured. Kazakhstan, in particular, lacks an adequate legal framework to fund start-ups through venture capital, crowdfunding platforms or seed money. The absence of clear rules and incentives has substantially reduced the financing opportunities for local start-ups, which largely depended on making the right pitch to friends and family or the willing few.

In order to boost the local financing of new projects, amendments to the Kazakh legislation were promulgated in 2018, including amendments of the Law of the Republic of Kazakhstan 'On Investment and Venture Funds', which are set to change the whole start-up environment, technology-related or otherwise.

Several new concepts typical in common law-governed transactions, in particular, have been introduced into the legislation of Kazakhstan, such as:

- Representations and warranties, indemnity
- Put and call options, and
- Rights of parties to shareholder agreements, including voting rights.

The aforementioned amendments to the Kazakh laws provided shareholders

with more freedom to regulate their relations; however, it seems to be for Kazakh venture funds only.

These new tools, in particular, are available only for venture funds established under the Law of the Republic of Kazakhstan 'On Investment and Venture Funds' and therefore, while these changes constitute a step forward, they have not brought the aforementioned concepts into general Kazakh corporate law.

It is fair to say, therefore, that the concepts of 'representation', 'warranty', 'indemnity' or 'option agreement' still do not have a distinctive meaning in general Kazakhstan legislation and it is uncertain how the Kazakh courts would interpret and enforce such provisions.

Finally, the aforementioned legal novelties introduced legal terms of 'venture financing', 'venture fund', 'venture capital fund manager' and 'start-up company', as well as made it possible for the Kazakh government to co-finance venture funds.

A venture fund in Kazakhstan can be either an unincorporated joint venture (such as a consortium) or a legal entity in the form of a joint stock company or a limited liability company incorporated in Kazakhstan that attracts and accumulates money and other assets solely for the purpose of venture financing.

Islamic venture capital has become an important tool for economic development in developing regions of the world and with the Dubai International Financial Centre-modeled Astana International Financial Centre and the aforementioned positive changes for venture financing in the legal framework, Kazakhstan has a good chance of becoming a regional start-up powerhouse not only in Central Asia, but the whole Muslim world and a home to several of the pan-regional 'unicorns'. ☺

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