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Conflicts between JV shareholders. Kazakhstani corporate law review

It is well known that business in Kazakhstan is operated via joint ventures (JV) that are created, mainly, in a form of limited liability partnership by two or more companies. The creation of joint ventures has become most popular over the past 10-12 years due to introduction on a political level of unspoken recommendations on local content increase to the business of the oil region of Kazakhstan. To increase local content in shareholding foreign companies have indiscriminately begun setting up the joint ventures with local enterprises in their sector.

The terms of creation of such joint ventures were predominantly prescribed not by the partners of the future JV, but by the deadlines of upcoming projects. This obviously led to accelerated registration of LLPs with rashly signed 'model' shareholders' agreements since potential partners were deprived of time to negotiate their conditions.

Herewith, the law does not require the provision of either a charter or a shareholders' agreement for the purposes of registering an LLP. On the one hand, it is commendable that the legislation gives entrepreneurs the freedom to independently negotiate their terms and conditions, and thus speeds up the process of business creation, but on the other hand, this creates the precondition for potential uncompromising conflicts between business owners.

An LLP created with equity participation in the authorized capital, for example, 51/49 or 50/50, with 'model' constituent documents assumes full mutual understanding and agreement between the partners. Practice shows that this happens extremely rarely. Often, due to insufficient trust between the partners, or as a 'leverage' mechanism one partner may block decision-making at the General Meeting of Participants (GMP) creating a 'deadlock situation' that may not find a resolution even if filed to the courts.

The point is that Kazakhstani civil law clearly regulates the decision-making mechanism of LLPs, but at the same time, entrepreneurs have the right to implement their own rules, enshrining them in the constituent documents. That is, if partners have not provided for a system of distributing votes that is suitable for their relationship, when making decisions falling within the competence of the GMP, the joint venture will be regulated by the relevant law by default, which is very general and often unsuitable for real business.

For example, art. 46 of the Law on LLP requires the executive body of the LLP, *no later than thirty days before the opening day of the GMP, to notify in writing each participant of the partnership about its holding at the address indicated in the register of participants, which is maintained by the executive body of the partnership*, which may not be very convenient for the current realities of the modern world when decisions need to be made in a tight timeframes. Regarding the procedure for making decisions by the GMP, the law stipulates that decisions are made either by a qualified majority or a simple majority, depending on the issue. Moreover, if the joint venture has a 50/50 distribution of shares, such a mechanism will not work, since in order to make any decision, even such a minor one as changing the legal address (since it requires amendments to the charter of the LLP), it will be necessary that the decision is taken unanimously.

The exclusive competence of the GMP includes a sufficient number of operational questions, such as the appointment of a executives, changes in the charter (address), approval of internal rules, procedures for their adoption and other documents regulating internal activities. It turns out that having standard constituent documents, conducting operating activities in a joint venture may become complicated if the shareholders cannot come to a common decision.

As a result, the market is filled with companies for which making operational decisions sometimes becomes more than difficult due to half-tailored constituent documents and insufficient coordination (mutual understanding) between the partners.

Conflicts are natural in all areas of life, and in medium and large businesses they are most inevitable. To minimize them, JV partners need to provide a clear decision-making mechanism in their companies, and preferably before the company begins to earn money.

Practice areas

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Key contacts



Zaira Sarsenova

Partner, Atyrau and Aktobe Branch
Director

 Aktobe, Kazakhstan

 Atyrau, Kazakhstan

 +7 701 768 0785

 +7 7122 501 712

 zsarsenova@gratanet.com