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Re-domiciliation of Kazakhstani companies to a foreign jurisdiction through the AIFC

In many countries there is a possibility of re-domiciliation of a legal entity, meaning its transfer from one jurisdiction to another. Such procedure allows to ensure continuity of operations of the company that wishes to continue its development in a different state due to legal, economic or other reasons. During re-domiciliation there is no necessity to liquidate the company in the country of its primary registration, which allows it not to lose its assets, corporate structure and not to terminate existing obligations. It is important that for purposes of re-domiciliation implementation such procedure must be allowed by the legislation of “donor country”, as well as “recipient country”.

In general, there is no possibility of re-domiciliation in the legislation of Kazakhstan. In this regard it is impossible to directly transfer the company, for instance, from a foreign jurisdiction to general jurisdiction of the legislation of Kazakhstan and vice versa.

However, the Astana International Financial Centre (the “**AIFC**”) allows to carry out re-domiciliation to a jurisdiction of a foreign state. This opens a possibility re-domiciliation of ordinary Kazakhstani company to a foreign jurisdiction in two stages:

1. amalgamation of the company registered under the laws of the Republic of Kazakhstan to the company registered in the AIFC;
2. re-domiciliation of the company registered in the AIFC to a foreign state.

Shortly, these stages are the following.

Stage 1. Amalgamation of the company registered under the laws of the Republic of Kazakhstan to the company in the AIFC

The legislation of Kazakhstan and the AIFC acts do not directly regulate the procedure of transfer of company established under the general jurisdiction of Kazakhstan (the “**Kazakhstani Company**”) to the AIFC jurisdiction.

At the same time Part 9 of the AIFC Companies Regulations (*Compromises and Arrangements*) establishes a possibility of obtaining a specialized sanction of the AIFC Court on carrying out of separate instances of reorganization of the AIFC company for purposes of compromise in case of dispute with shareholders or creditors. That being said, under the reorganization an amalgamation to the AIFC company of any other company, including companies registered outside the AIFC, could be considered among other things.

Therefore, the company registered in the AIFC (the “**AIFC Company**”) could apply to the AIFC Court for sanctioning of its consolidation (amalgamation) with Kazakhstani company. If the AIFC Court is of the opinion that such sanctioning would be appropriate for purposes of such compromise, it could issue corresponding order. At the same time such order shall be enforced on the territory of Kazakhstan as any other judgment of Kazakhstani court. We have already encountered such issues in practice and could confirm the viability of such approach.

That being said, before implementation of the amalgamation procedure it is necessary to preliminarily check on limitations of amalgamation, obtain necessary consents, as well as check for possible consequences of amalgamation for Kazakhstani Company and the AIFC Company.

After amalgamation of Kazakhstani company to the AIFC company, the latter becomes a full legal successor of such Kazakhstani company, since amalgamation takes place according to the provisions of Kazakhstani legislation on amalgamation of the legal entities.

Stage 2. Re-domiciliation of the AIFC Company to a foreign state.

Re-domiciliation procedure or, as listed in the AIFC acts, “transfer of incorporation” from the AIFC to a foreign jurisdiction is provided by Part 13 of the AIFC Companies Regulations and Part 5 of the AIFC Companies Rules.

Similar to the amalgamation procedure, before re-domiciliation it is required to carry out a preliminary inspection. In particular, it is required to:

- ▶ ensure that legislation of a “recipient country” provides for a possibility of acceptance of the company from a different jurisdiction under the re-domiciliation;
- ▶ check the compliance of the company with requirements of the legislation of a recipient country;
- ▶ obtain necessary consents of corresponding authorities on re-domiciliation (for instance, if necessary, the consent of the Astana Financial Services Authority);
- ▶ check for possible consequences of re-domiciliation.

For purposes of re-domiciliation of the AIFC Company submits to the AIFC Registrar an application with attached documents containing confirmation on these issues and that there are no limitations.

Furthermore, according to the requirements of the AIFC Companies Rules it is necessary to place in advance an announcement on planned re-domiciliation of the AIFC Company. Obviously the full and detailed list of steps must be developed taking into account the requirements of the legislations of both jurisdictions: the AIFC and recipient state.

The AIFC Companies Regulations establishes that the AIFC Company ceases to be a company registered under the laws of the AIFC and deregisters from the moment of providing the registrar a certificate/instrument of continuation in foreign jurisdiction issued in accordance with the procedure established by the legislation of the corresponding foreign state.

As mentioned above, the AIFC acts provide for a reverse procedure of re-domiciliation of foreign company to the AIFC territory. As far as we know, practical case of such re-domiciliation to the AIFC jurisdiction already exists.

Therefore, the AIFC provides its participants with not only advantages on taxation, exemptions in terms of recruitment of foreign workers and other advantages established by the legislation, but with such a unique opportunity, as a way to foreign jurisdictions without a necessity of liquidation and termination of its obligations, which Kazakhstani companies did not have before.

Authors: Maxim Burak, Partner; Aruzhan Aimak, Counsel of GRATA International, Kazakhstan.

Practice areas

[THE ACTING LAW OF THE AIFC](#)

Locations


KAZAKHSTAN


Key contacts



Aruzhan Aimak

Counsel

 Astana, Kazakhstan


 +7 701 532 9480


 aaimak@gratanet.com



Maxim Burak

Partner, Head of Subsoil Use
Department (Astana)

 Astana, Kazakhstan

 +7 701 786 2606

 +7 7172 919 555

 mburak@gratanet.com