

## LEGAL ADVISORY COLUMN

**The most optimal legal structure for doing business in the Kyrgyz Republic**

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Every investor, local or foreign, who wishes to start a business in the Kyrgyz Republic, will inevitably ask himself which legal structure to choose so that his startup will be successful. Choosing the right legal structure is a very important decision from the perspective of the protection of his business interests and conducting an effective business.

Normally, after considering all of the pros and cons of each of the available legal organizational structures, and sometimes consulting with lawyers, investors choose the most optimal legal structure. However, they are not always free in their choice, since in a number of cases, certain types of businesses are required to be organized in a certain legal form.

Kyrgyz law allows to carry out entrepreneurial activity or, as investors say, do business, by setting up a legal entity or registering as an individual entrepreneur.

In the first case, to set up a legal entity, it is necessary to develop and approve its constituent documents (charter, foundation agreement), to appoint the governing bodies (the CEO, board of directors, etc.), to determine their competence, and to register a legal entity with the Ministry of Justice, tax authorities and Social Fund. In the second case, the procedure is much simpler: a citizen wishing to start business must file a respective application for registration as an individual entrepreneur with the State Statistics Committee, after which he shall be registered with the tax and social insurance authorities. In both cases, the right to start entrepreneurial activity, shall arise from the moment of state registration of a legal entity (with the Ministry of Justice) or individual entrepreneur (with the statistics authorities), which is confirmed by issuing a certificate and assigning an individual registration number and TIN.

The main difference between a business conducted via an especially created legal entity and the business conducted as an individual entrepreneur is liability of an investor: (1) in a legal entity, the investor's liability is limited only to the property transferred to this legal entity, and does not extend to his personal property; (2) when business is conducted as an individual entrepreneur, he is liable

for his obligations arising in the course of entrepreneurial activity to the full extent of his personal property. For this reason, investors, as a rule, prefer the first option and conduct business by setting up a legal entity for these purposes.

If the investor opts to do business by setting up a legal entity, he will have to select the legal structure which will best suit his business from among the alternatives provided by Kyrgyz laws: (i) Limited Liability Company («LLC»); (ii) Joint Stock Company («JSC»), which can be of two types: open («OJSC») and closed (CJSC); (iv) Additional Liability Company («ALC»); (v) commercial cooperative («CC»).

An investor is not always free to choose a certain form of doing business. Specifically, Kyrgyz law requires that banking and insurance business can be organized only as a JSC, either OJSC or CJSC. Pawnshops may be organized only as ALCs, in which the founder will be additionally liable with his personal property for the obligations of ALC (this is a difference between ALC and LLC or JSC, in which the founder or shareholder is not liable for the obligations of LLC and JSC with his personal property). As for CC, this form of business organization is normally used in agriculture (growing, processing, or selling of agricultural products). A member of a CC, like a founder of a LLC and a shareholder of a JSC, is not liable for the obligations of a CC with his personal property and his liability and risks are limited to the property transferred to the CC.

The most popular form of organizing business is LLC. A relatively low popularity of such business structure as JSC is attributable, in our opinion, to more complicated organizational formalities such as the requirements to offer shares, distribute them, register the offering with the State Service for Regulation and Supervision of Financial Market, execute an agreement with an independent registrar for keeping the registry of shareholders of a JSC and some other requirements. In this regard, LLC is the most optimal legal structure for doing business and the most common form of business organization. But it is the investor who makes the final decision.