

Construction License in Kazakhstan: Possible Pitfalls for Foreigners

Today, numerous foreign companies conduct construction works in Kazakhstan. According to the Law on architectural, urban planning, and construction activities in the Republic of Kazakhstan¹, construction activities in Kazakhstan require companies to hold a construction license.

In accordance with the Law on permits and notifications², foreigners, stateless persons, and foreign legal entities receive permits and send notifications on an equal basis with citizens and legal entities of Kazakhstan, unless otherwise provided by the laws of the Republic of Kazakhstan and the ratified international treaties.

There are number of agreements of mutual recognition between the government of Kazakhstan and foreign countries, for instance:

- Agreement on the Mutual Recognition of Construction Licenses issued by the Licensing Bodies of the CIS Member States (Moscow, 27 March 1997);
- Agreement between the Government of the Russian Federation and the Government of the Republic of Kazakhstan on the Mutual Recognition of State Licenses for Construction Activities issued by the Licensing Bodies of the Russian Federation and the Republic of Kazakhstan (Moscow, 1 August 1995);
- Agreement between the Government of the Republic of Kazakhstan and the Government of the Kyrgyz Republic on the Mutual Recognition of State Licenses for Construction Activities issued by the licensing bodies of the Republic of Kazakhstan and the Kyrgyz Republic (Almaty, 19 May 1995);
- Agreement on cooperation in construction activities (Moscow, September 9, 1994).

Foreign companies may obtain a construction license in Kazakhstan based on their own licenses. When recognising the construction licenses, the qualifications of foreign companies must be verified.

Generally, under Kazakh legislation, construction licenses are divided into three categories:

- Category I construction license entitles a licensee to perform the construction of the facilities of “all levels of responsibility”, which may include any type of building of any level of complexity and safety;
- Category II construction license entitles a licensee to perform the construction of the facilities of the “second and third levels of responsibility”, as well as to conduct works for the construction of facilities of the “first level of responsibility” under the subcontract agreement;
- Category III construction license entitles a licensee to perform the construction of the facilities of the “second technically uncomplicated and third level of responsibility”, as well as to conduct works for the construction of facilities of the “first and second levels of responsibility” under the subcontract agreement.

¹ Law of the Republic of Kazakhstan dated July 16, 2001 No. 242. “On architectural, urban planning and construction activities in Kazakhstan”

² Law of the Republic of Kazakhstan dated May 16, 2014 No. 202-V “On Permits and Notifications” (with amendments and additions as of 01.04.2021)

In order to be able to perform any construction in Kazakhstan, the foreign company must hold a respective license. The entity with the licenses of Category II or III cannot perform construction which requires the entity to hold the license of Category I.

Thus, foreign companies conducting construction usually obtain the license of Category I. The following requirements are qualifications provided by the law³ for applicants to obtain the license of Category I:

1. the presence of certified engineering and technical worker;
2. production base;
3. material and technical capacities;
4. construction experience;
5. the presence of at least ten completed construction projects of the first and (or) second level.

We also note that there are cases when the foreign company performs construction works as a general contractor, and wishes to sub-contract some part of its scope of work. In this case, a sub-contractor must hold a respective license to conduct all relevant sub-contracted works.

Please note, that the general contractor cannot transfer any part of the scope of work for which it has no license. For example, there is a tender for a project which requires applicants to hold the license of Category I but the applicant only holds the license of Category II. The applicant has a sub-contractor who holds the license of Category I (*not a concession agreement*). In this case, the applicant would be denied to access to the tender since it cannot perform the respective scope of work and cannot transfer any part of the scope of work to the sub-contractor.

In addition, there is a limitation in the volume of construction works that can be transferred to a sub-contractor. The types and amount of construction works, which the general contractor intends to transfer to subcontractors, shall be specified in the contract concluded between the customer and the general contractor. Kazakh legislation prohibits provision for subcontract more than two-thirds of the value of the construction contract.⁴ In other words, it is not allowed for the general contractor to transfer all volume of work to a sub-contractor.

We also would like to stress that there are many other issues which the foreign construction company may face in Kazakhstan. In the beginning, the foreign company must make a choice whether it should incorporate any branch or subsidiary?

The company may conduct its operations without establishing its legal presence in Kazakhstan. However, despite the flexibility of the legislation on licensing, in practice, foreign companies face difficulties. It is hard to carry out licensed activities without creating a branch or opening a Kazakh subsidiary because there are many issues with taxation, customs, certification of machinery, and employment.

³ Order of the acting Of the Minister of National Economy of the Republic of Kazakhstan dated December 9, 2014 No. 136 "On approval of uniform qualification requirements for the implementation of licensed architectural, urban planning and construction activities" (with amendments and additions as of July 30, 2019)

⁴ Law of the Republic of Kazakhstan dated July 16, 2001 No. 242. "On architectural, urban planning and construction activities in Kazakhstan", Article 66.11

As the matter of practice, foreign companies buy existing company which holds a Kazakh construction license. Thus, the foreign company is not just purchasing a company, but a license itself.

The other option is to create a branch. A branch is a separate unit of a legal entity and is not considered a legal entity. Accordingly, the experience of a parent company can be used for a license application. It should be noted, the license should be obtained by a parent company, and not by a branch.

Unicase has extensive knowledge about the construction market in Kazakhstan and will be glad to assist and advise on construction matters.

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