

industries (including vehicle assembly plants in Andijan and Samarkand and an aircraft factory in Tashkent), much industry is connected with agricultural production and processing of commodities.

1.5 Regional Structure

Uzbekistan consists of 12 viloyats (regions) and the autonomous Republic of Karakalpakstan. As a result of Uzbekistan's highly centralized form of government, the 12 viloyats, the city of Tashkent, and the autonomous Republic of Karakalpakstan have little political power. A 'khokim' or prefect is appointed by the President for each viloyat. Karakalpakstan has its own head of Government, who is subordinate to the President of Uzbekistan.

2. ESTABLISHING A LEGAL PRESENCE

2.1 Representative Offices and Branches

A foreign legal entity may establish a representative office to represent its interests in Uzbekistan. A representative office is a subdivision of a foreign legal entity and is not entitled to conduct business activity which would result in income being generated in Uzbekistan. A representative office acts on the basis of a "Regulation" (similar to a charter or bylaws) and is managed by an individual authorized by the parent company under a power of attorney. A branch is a subdivision of a legal entity in a geographic area other than where the head office is located, which may fulfill all or part of the functions of its parent company, including income-generating business activity. At the present time, however, it is practically impossible to establish a branch of a foreign entity in Uzbekistan. This is mainly due to the absence of the necessary by-laws and other implementing regulations dealing with the process of registration of a branch of a foreign legal entity.

2.2 Uzbek Legal Entities

The following types of commercial legal entities may be formed under Uzbek law:

- Joint stock companies;

- Limited liability companies and additional liability companies;
- General business partnerships and limited business partnerships;
- Production cooperatives; and
- Private enterprises and unitary (state) enterprises.

The legal entities most commonly used by foreign businesses are described below.

2.3 Joint Stock Company

2.3.1 General

A joint stock company (“JSC”) is a legal entity which provides its shareholders with limited liability to the extent of the value of their shareholding. Shareholders who have not fully paid for their shares bear joint and several liability for the JSC’s obligations to the extent of the unpaid portion of the value of their shares. A JSC may be either open or closed. The minimum number of founders of an open JSC is unrestricted, while a closed JSC may be formed by not fewer than three and not more than 50 persons. Shareholders of an open JSC may freely dispose of their shares without the consent of other shareholders. An open JSC may have a public subscription for shares and sell them freely, in compliance with the *Joint Stock Company Law*.³ Alternatively, an open JSC may have a closed subscription for shares, except in cases where such closed subscription is limited by the company charter and by the *Joint Stock Company Law*.

Shares in a closed JSC may only be issued to its founders or to a predetermined group of people. The number of shareholders in a closed JSC may not exceed 50. If this does occur, the company must be transformed into an open JSC within six months. The transfer of shares in a closed JSC is restricted and shares may not be offered to the public. Shareholders in a closed JSC must first offer any shares they wish to sell to the other shareholders or to the JSC itself, as provided for in the company charter.

³ Law “On Joint Stock Companies and Protection of Shareholders’ Rights” dated 26 April 1996, as amended.

2.3.2 Charter Capital

The charter capital of a JSC comprises the nominal value of the company's shares acquired by the shareholders. All shares must have the same nominal value. The nominal value of preferred shares distributed may not exceed 20% of the company's charter capital. The minimum actual charter capital of a JSC may not be less than an amount equivalent to US\$ 50,000 (calculated at the official Central Bank exchange rate). Pursuant to the President's Decree No. YP-4053 of 18 November 2008, the actual charter capital of the JSCs to be established on or after 1 January 2009 has been increased to the equivalent of US\$ 400,000. JSCs established prior to 1 January 2009 are required to increase their actual charter capital to this value before 1 January 2010. However, as of 1 January 2009, the JSC Law has not been amended to reflect this new capitalization requirement. A JSC's charter capital may be decreased by reducing the nominal value of shares or by reducing the total number of shares issued (buy-out and cancellation), or increased by raising the nominal value of shares or by issuing new shares. The charter of a JSC may also provide for an authorized charter capital, up to the amount of which the actual charter capital amount may be increased over time. The authorized charter capital comprises the nominal value of the company's authorized shares, in addition to those shares which have already been issued and placed.

2.3.3 Shares

Shares in a JSC must be registered. They may be either preferred or common. The nominal price of a share may not be less than 100 Soums.

Preferred shares give their holders a priority right to receive dividends and other rights as stipulated in the *Joint Stock Company Law*.

A shareholder must pay for its shares in full within one year after the registration of the JSC, or for further issues of shares, within the time specified by the decision on such further issuance. Payment for shares may be made in cash or other assets having monetary value, if permitted by the foundation agreement, decision on establishment of a JSC or decision on the issue of shares. If however the nominal value of shares acquired for such assets exceeds an amount equivalent to 200 minimum monthly wages (MMW), such assets must be appraised by an independent appraiser. As of

1 January 2009, the minimum monthly wage is 28,040 Soums (approximately US\$ 19.9 at the official exchange rate). Shares which are not paid for within the required time period are cancelled.

The company charter may specify the forms and terms of distribution of shares: open (offered to an unrestricted number of persons) and closed (offered to a predetermined list of persons). Shares must be paid for at their fair market value, other than on the founding of a JSC, when shares are paid for by the founders at their nominal value. All transactions involving shares in an open JSC must be carried out through a stock exchange or through organized off-exchange trades. A JSC may issue securities which may be further converted into shares pursuant to the terms stipulated in the company charter and in subsequent resolutions of the General Meeting of Shareholders. All shareholders must be registered in the shareholders' register, which must indicate the number of shares issued, their nominal value, the category of registered securities belonging to shareholders and contact details of the registered shareholders.

The Cabinet of Ministers on behalf of the state may introduce, at the time of privatization, a 'Golden Share' in a JSC which has strategic importance for the country, and in which the state has either no share or a shareholding not exceeding 25% of the charter capital. The 'Golden Share' has no monetary value, cannot be disposed of or encumbered, and is not counted in determination of charter capital and payment of dividends. The 'Golden Share' entitles the state to appoint one representative to the General Meeting of Shareholders and Supervisory Board of such a JSC and to veto certain important decisions which may be taken by these bodies.

2.3.4 General Meeting of Shareholders

The supreme management body of the JSC is the General Meeting of Shareholders ("GMS"). The GMS is held at least once a year. A meeting of shareholders other than the annual meeting is considered to be an extraordinary meeting.

Issues of high priority connected with the company's management, administration, business policy, corporate structure, financial aspects, elections and certain other issues are within the sole competence of the GMS, as stipulated in the *Joint Stock Company Law* and in the company charter.

With certain exceptions, the decisions which fall within the exclusive competence of the GMS may not be delegated to any other body of the JSC. For most decisions,

a simple majority of voting shares is sufficient (more than 50%). A supermajority vote (75%) at the GMS is required for certain matters as stipulated in the *Joint Stock Company Law*.

The GMS is valid if shareholders collectively holding more than 60% of the votes register and attend. The GMS may be attended either by a shareholder or its proxy. Any shareholder may at any time replace its proxy, and/or attend such meeting in person.

2.3.5 Supervisory Board

The Supervisory Board exercises overall management of the JSC, with the exception of those issues referred by the *Joint Stock Company Law* and the company charter to the exclusive competence of the GMS. If there are fewer than 30 holders of voting shares, the company charter may stipulate that the functions of the company's supervisory board be performed by the GMS. In this case, the company charter must designate a particular person or body within the JSC which has the exclusive authority to make decisions on holding the GMS.

The Supervisory Board handles issues of lower priority, mainly covering implementation, preparatory, financial and security market policies, as well as some supervisory and structural functions.

Election of the Supervisory Board and Chairman, the procedure for calling and holding Board meetings, and other issues related to the Board's operation must be specified in the company charter and/or in internal regulations.

2.3.6 Executive Body

The Executive Body manages the company's day-to-day activities through a Director (chief executive officer) or a Directorate (collective executive body). The Director or Directorate acts in the name and on behalf of the JSC within the scope of authority delegated by the GMS or Supervisory Board or as provided for in the company charter. The Director and members of the Directorate may incur joint and several liability for their actions.

2.3.7 Audit Commission, Internal and External Audit

As required by the Joint Stock Company Law the Audit (usually called Revision) Commission monitors the financial activity of the company. The Audit Commission's competence should be specified in the charter of a JSC and the regulation approved by the GMS.

The Audit Commission may conduct an audit at its own initiative, upon a decision of the GMS or the Supervisory Board, or at the request of shareholder(s) holding in aggregate more than 10% of the voting shares.

Members of the Audit Commission cannot simultaneously be members of the Supervisory Board, or hold any other positions in the management bodies of the JSC.

A JSC having a balance value of more than 1 billion soums must also have an Internal Audit Service. An Internal Audit Service audits and monitors the operations of the executive bodies of a JSC and its branches and representative offices, through checking business and financial documents. The Internal Audit Service is accountable to the Supervisory Board of the JSC and carries out its activity in accordance with the charter and corporate regulations of the JSC, and the regulations adopted by the Cabinet of Ministers of the Republic of Uzbekistan.

For the confirmation and auditing of the annual financial reports and accounts of a JSC in which state shareholding is more than 50%, an external auditor not connected with the company or with its shareholders must be appointed, upon the recommendation of the State Property Committee (GKI).

2.4 Limited Liability Company

2.4.1 General

A Limited Liability Company ("LLC") is a company established by one or more individuals or legal entities, with a charter capital divided into participatory interests, the size of which is determined by its foundation documents. In contrast to a closed JSC, participatory interests in an LLC are not securities. The foundation documents of an LLC established by two or more participants are the foundation agreement and the company charter. If an LLC is established by only one participant, its foundation document is the company charter.

The participants in an LLC are not liable for its obligations, and they bear the risk of losses connected with the company's activities only up to the limit of the value of their personal contributions. Participants in the company who have not paid up their contributions in full are jointly and severally liable for its obligations to the extent of the unpaid part of the contribution of each of the participants. The liability of the company is limited to the extent of its assets.

2.4.2 Charter Capital

The charter capital cannot be less than 50 times the MMW. Each of the participants must pay at least 30% of their declared charter capital contributions at the time of registration of the company, confirmed by a bank document, with the remainder to be paid within one year.

2.4.3 General Meeting of Participants

The supreme management body of an LLC is the General Meeting of Participants ("GMP"). The GMP has exclusive powers with respect to those specific issues stipulated in the *Uzbek LLC Law*⁴ as being within the competence of the supreme management body. It mainly covers the business, financial, management and structural issues of the company. The meeting is convened not less than once a year. Participants jointly holding not less than 10% of votes have the right to demand an extraordinary GMP at any time and for any reason.

For most decisions, a simple majority of all participants of the LLC is sufficient. A qualified majority vote of two-thirds (66%) is required for issues of high priority such as decisions on the increase or decrease of the charter capital of the LLC. A unanimous vote (100%) is required for amendments to the charter and for reorganizing or liquidating the LLC.

An LLC has a Director (chief executive officer) or a Directorate (collective executive body) responsible for conducting the day-to-day management of the company. The Director or the members of the Directorate are elected at the GMP. The scope of the authority of the Directorate is specified in the foundation documents of the company.

⁴ Law "On Limited Liability and Additional Liability Companies" dated 6 December 2001, as amended.

In contrast to a JSC, there is no mandatory requirement for establishing a Supervisory Board in an LLC. However, an LLC may have a Supervisory Board if this is provided in the foundation documents. In addition, the company is prohibited from issuing securities.

2.4.4 Audit Commission, Internal and External Audit

The Audit (usually called Revision) Commission, or an Auditor, has the right to monitor the financial activity of the Director (or Directorate) and members of the Supervisory Board (if applicable) of an LLC. The charter of an LLC may provide for an external auditor not connected with the company or with its shareholders to act in place of the Audit Commission. An LLC with more than 15 participants must have an Audit Commission (or an Auditor). The members of the Supervisory Board (if applicable), the Director or the Directorate cannot be selected as members of the Audit Commission (or as an Auditor) of an LLC. The members of the commission are normally selected from the participants of the GMP. Nevertheless, a person not connected with the company or with the participants of an LLC may also be selected as the member of the Audit Commission or as an auditor of an LLC. The number of members of the Commission is specified in the company charter. The Audit Commission normally confirms the annual report and accounts of an LLC before their approval by the GMP.

An LLC having a balance value of more than 1 billion soums must also have an Internal Audit Service. An Internal Audit Service audits and monitors the operations of the executive bodies of the LLC and its branches and representative offices, through checking business and financial documents. The Internal Audit Service is accountable to the Supervisory Board of the LLC and carries out its activity in accordance with the charter and corporate regulations of the LLC, and the regulations adopted by the Cabinet of Ministers of the Republic of Uzbekistan.

For the confirmation and auditing of the annual financial reports and accounts of an LLC in which the state's interest is more than 50%, an external auditor not connected with the company or with its participants, and nominated by GKI, must be appointed.

Any other LLC may also at its discretion engage the services of an external auditor.

2.5 Additional Liability Company

2.5.1 General

An Additional Liability Company (“ALC”) is a company established by one or more individuals or legal entities with a charter capital divided into participatory interests, whose size is determined by the foundation documents and which are not securities. The foundation documents of an ALC are the same as for an LLC, *i.e.*, the foundation agreement and the charter (or only the charter if an ALC is established by one person).

An ALC has the same organizational structure as an LLC, the main difference being in the liability of the participants. Participants in an ALC have broader liabilities in comparison to an LLC, the liability of which is limited to the value of the participants’ contributions. In contrast to an LLC, the foundation documents of an ALC may provide for the joint and several liability of its participants to be a multiple of their capital contributions. The multiple must be the same for all participants. If one of the participants becomes insolvent (bankrupt), liability for the company’s obligations is shared among the other participants in proportion to their contributions unless the company’s foundation documents provide otherwise.

2.6 Partnerships

2.6.1 General Business Partnership

A General Business Partnership (“GBP”) is a partnership whose partners, in accordance with the agreement concluded between them, engage in business activity on behalf of the partnership and are jointly and severally liable for its obligations with all their assets.

2.6.2 Limited Business Partnership

A Limited Business Partnership (“LBP”) is a partnership in which there are one or more limited partners (contributors) who do not participate in the partnership’s business and who bear the risk of losses connected with the partnership’s activities only to the extent of their contributions. In addition, an LBP may have partners who are engaged in business on behalf of the partnership and are liable for the obligations of the partnership with all their assets.

A person may be a partner in only one GBP and a partner in only one LBP. A partner in a GBP cannot be a partner in an LBP. A partner in an LBP cannot be a contributor in the same partnership or be a partner in another GBP.

2.6.3 Charter Capital and Foundation Documents

The foundation document of both types of partnerships is the foundation agreement. The charter capital of a GBP or an LBP may not be less than 50 MMW.

2.6.4 Partners' Rights

A partner may leave either a GBP or an LBP established for a fixed term only on reasonable grounds (as defined in the foundation agreement) and may leave a partnership established for a non-fixed term only with at least three months' advance notice.

Only the partners manage the operations of either a GBP or an LBP, as defined by the foundation agreement of the partnership.

2.7 Private Enterprise

2.7.1 General

A new organizational structure for conducting business, the private enterprise was first introduced in 2003 under the Law “*On Private Enterprises*”.⁵ A private enterprise is a commercial entity which is founded and managed by a sole individual. The foundation document is a charter approved by the owner. Current legislation provides additional liability of the owner for obligations of a private enterprise where the legal entity does not have sufficient assets. There is no prohibition on a foreigner establishing this type of entity. However, a private enterprise founded by a foreign individual would not have the privileges granted to enterprises with foreign investments.

⁵ Law “On Private Enterprise” dated 11 December 2003, as amended.

2.7.2 Charter Capital and Management of Private Enterprises

There is no legislative minimum applicable to the charter capital amount of private enterprises, which is determined by the owner himself and can be formed by contributions in the form of money, securities or any other assets which have monetary value. As the owner, an individual is presumed to run the company.

3. FOREIGN INVESTMENT IN UZBEKISTAN

3.1 Forms of Investment

A foreign investor is entitled to engage in investment activity in Uzbekistan by means of:

- Equity participation in companies, banks, trusts, cartels, associations, and other enterprises established together with Uzbek resident legal entities and individuals;
- Establishment of an enterprise wholly owned by a foreign investor;
- Portfolio participation through the acquisition of bonds, shares and share certificates, and other securities issued by Uzbek companies or the Government;
- Total or partial acquisition of tenure rights, rights to immovable property (including land use rights), concession rights effecting the use of subsoil resources, etc.; and
- Other forms of investment which do not conflict with Uzbek legislation.

3.2 Enterprises with Foreign Investment

The principal laws governing foreign investment in Uzbekistan are the *Foreign Investment Law* and the *Foreign Investor Guarantees Law*. It should be noted that the *Foreign Investment Law* requires all foreign currency expenses of enterprises with foreign investment to be paid out of their own foreign currency receipts and other permitted sources of foreign currency. Both the *Foreign Investment Law* and the *Foreign Investor Guarantees Law* state that a foreign investor shall be entitled to freely repatriate its earnings, but this may be difficult to implement in practice. The latter law also