DOING BUSINESS
in Kazakhstan

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SAYAT ZHOLSHY & PARTNERS LAW FIRM

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This brochure reflects all key legal aspects of doing business in Kazakhstan. The information contained in this brochure is of general nature and reflects the provisions of the current legislation of the Republic of Kazakhstan effective as at 30 March 2017.

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PREFACE

Over 19 years Sayat Zholshy & Partners has been committed to contributing to our CLIENTS' prosperity. During this period we obviously made a huge leap forward and strongly believe that our CLIENTS are the driving force in history-making who not only promote their own business but also contribute to the development and wellbeing of our country and its people.

Sayat Zholshy & Partners and our team have prepared this brochure meant to promote the development and prosperity of our CLIENTS' business in Kazakhstan because, ultimately, our CLIENTS' success is our success.

It has been always known that unique knowledge is important to anyone's success and in the era of high technology, with the ever-accelerating pace of life, access to information plays even a greater role. Information provides great advantages to business people who use it as a tool to prepare the ground for a vigorous development and, therefore, success and get several steps ahead of competition.

One brochure, of course, cannot cover all issues faced by the business community, but, on our part, we have attempted to reflect all key legal aspects of doing business in Kazakhstan. In our brochure you will find information on how properly (from the legal point of view) to set up, maintain and develop a business in Kazakhstan.

The information contained in this brochure is of general nature and reflects the provisions of the current legislation of the Republic of Kazakhstan effective as at 30 March 2017.

It should be noted, however, that this brochure should not be relied upon in acting, or refraining from acting, in relation to any particular business matter without specific legal advice.

Managing Partner
Sayat Zholshy & Partners, Lawyers and Attorneys at Law **V. Vodolazkin**

ABOUT SAYAT ZHOLSHY

The history of **Sayat Zholshy & Partners** Law Firm began on 25 December 1998 in Almaty. Since its inception, the Firm has been widely recognized as a professional team striving to be a leader in providing high-quality services of international standards.

The firm has been rated as one of the largest law firms in Kazakhstan by *The Legal 500 EMEA, Chambers & Partners, Asia Law Profiles, IFLR1000* and *Who's Who Legal*.

Based on the 2016 survey of the Kazakhstan legal services market and the expert review of *The Legal 500: EMEA*, Sayat Zholshy & Partners remains a leading Kazakhstan law firm. In 2017, Managing Partner Vitaliy Vodolazkin, who leads the dispute resolution practice, is once again included into the high-ranking list of Leading Lawyers, and Partner Arman Berdalin is highly praised as a head of the M&A practice.

The latest edition of *Chambers & Partners 2017* recommended Sayat Zholshy & Partners in such areas of practice as Corporate and Finance and Dispute Resolution. This year *Chambers & Partners 2017* singled out our Managing Partner Vitaliy Vodolazkin and Partner Arman Berdalin as notable practitioners. Senior Partner Aidyn Bikebayev was recognized by *Chambers & Partners* as a law practitioner. Managing Partner Vitaliy Vodolazkin, the leader of Dispute Resolution practice is noted for his pragmatic approach to disputes. The team of Vitaliy is distinguished for its handling of antitrust issues. The team of Arman is hailed by the guide for its handling of mid-market transactional mandates and a broad range of corporate governance and antitrust issues.

AsiaLaw Profiles 2017, a world-renown guide to Asia-Pacific's leading domestic and regional law firms, ranked Sayat Zholshy & Partners as an outstanding Kazakhstan law firm in such areas of practice as *Dispute Resolution & Litigation* and *Competition & Antitrust*, highly recommended in such areas as *Corporate/M&A* and *Energy & Natural Resources*, and recommended in such areas as *Banking & Finance*, *Intellectual Property*, *Labour & Employment*, *Project & Infrastructure* and *Restructuring & Insolvency*. Vitaliy Vodolazkin was highly ranked by the guide as a Market-Leading Lawyer (the title assigned only to outstanding national lawyers) in *Corporate Law*, *Dispute Resolution* and *Litigation*. Arman Berdalin was recommended by the guide as one of the Leading Lawyers in *Corporate Law and M&A*.

In 2017, international financial guide *IFRL1000* once again designated Sayat Zholshy & Partners as a Recommended Law Firm in Kazakhstan. The work of our team was characterised as "*very impressive*". Partners Vitaliy Vodolazkin and Arman Berdalin were noted as "*very competent*". Partner Arman Berdalin was distinguished as a Leading Lawyer of Kazakhstan.

Who is Who Legal recommended the Firm's partners Vitaliy Vodolazkin, Aidyn Bikebayev and Rustam Ospanov as the recognized arbitration, antitrust (competition) and tax specialists, respectively.

In 2010-2012, Sayat Zholshy & Partners was named the LAW FIRM OF THE YEAR IN KAZAKHSTAN by the majority of over 120 lawyers representing leading Kazakhstan and international firms at the Forum of Corporate Lawyers where SZP, as a team, claimed the first place and won five awards:

- Litigation Team of the Year;
- Arbitration Team of the Year;
- Corporate Team of the Year;
- Banking and Finance Team of the Year; and
- Antitrust Team of the Year.

Since 2012, Sayat Zholshy & Partners has been acting as a partner of International Finance Corporation (IFC) in *Doing Business*, an annual review performed by the World Bank. SZP partners and associates have been receiving letters of gratitude and privilege for their weighty contribution to the project.

For the most efficient representation and timely legal support of our clients in Kazakhstan we have offices in Almaty and Astana. For convenience of our clients, whenever they need our presence in other regions of Kazakhstan or abroad, we send our employees wherever is necessary.

The Firm comprises the Managing Partner, 7 Partners, 2 Counsels, 2 Senior Associates and 18 Associates educated in Kazakhstan, Russia, USA, Germany and Poland. Our Partners read lectures in Kazakhstan universities and publish their works in leading print and digital magazines.

Sayat Zholshy & Partners initiated and co-founded the Kazakhstan Association of Taxpayers which, nowadays, is a renowned public organisation actively protecting the taxpayers' interests in the Kazakhstan Parliament, Government and other public agencies.

Besides, Sayat Zholshy & Partners initiated and co-founded the Kazakhstan Bar Association, the first professional association of Kazakhstan lawyers.

The majority of our employees have a good command of the Kazakh, Russian and English languages, and some of them speak German and Polish. Moreover, our professional translators ensure high quality translation of legal documents.

Sayat Zholshy & Partners and the firm's attorneys are members and partners of the following organizations:

- Kazakhstan Petroleum Lawyers' Association;
- Almaty City Bar Association;
- Kazakhstan Lawyers' Union;
- Kazakhstan Taxpayers Association;
- Kazakhstan International Arbitration;
- International Bar Association;
- Kazakhstan Bar Association (Bar of Commercial Lawyers);
- Council for Protection of Competition of the National Chamber of Kazakhstan Entrepreneurs;
- Kazakhstan Association of Patent Attorneys; and
- Interdepartmental Lawdrafting Committee of the Kazakhstan Government.

WHY SAYAT ZHOLSHY & PARTNERS?

Guarantee of Confidentiality

Sayat Zholshy & Partners has the status of a firm of attorneys and counsels at law (advocates) while virtually all other well-known law firms in Kazakhstan are registered as limited liability partnerships.

Pursuant to the 5 December 1997 Law of the Republic of Kazakhstan *On Advocacy*:

1) examination of an attorney as a witness in the circumstances that have been made known to him in the course of his professional duties is prohibited;
2) attorney-client privilege consists of:
   - the fact that the attorney has been approached for legal advice; and
   - the information on the contents of oral or written negotiations with a person seeking assistance and any other persons regarding the nature and results of actions undertaken on behalf of the person seeking assistance, as well as any other information relating to the provision of legal assistance;
3) attorney's files, records and documents and other related materials and documents, as well as attorney's assets, including mobile communications, audio equipment and computer hardware, are exempt from examination, inspection, caption, seizure and/or check-up, except when permitted by Kazakhstan law; and
4) attorneys and attorney firms bear statutory liability for disclosing attorney-client privileged information.

Unlike attorney firms, limited liability partnerships (LLPs) acting as law firms cannot provide to their clients any statutory guarantees of confidentiality similar to those provided to clients of attorney firms.

International Standards of Practice

As a local law firm, we have first-hand knowledge and understanding of the local specifics (both legally and culturally) while aiming at international standards in our work and it is the combination that makes us stand out against competition and promote our clients' business.

The best proof that we have the correct strategic approach is the fact that our clients are international companies who require common standards for all their legal advisers worldwide and they keep coming back year after year with more assignments.

High Level of Professionalism

To ensure that our team is made up of only highly qualified and professional lawyers, we follow these principles:

1) requirements to job applicants, including:

- excellent academic education in the chosen field of expertise;
- leadership abilities; and
- competence in foreign languages;

2) competitive salaries to our associates;
3) ongoing professional training and development of our employees;
4) focus on specific fields of law;
5) partner supervision of associates; and
6) regular in-house workshops and seminars to discuss some of the most interesting legal cases and pressing problems of the current legislation.

Team Spirit

We value teamwork and believe that we can succeed only through working together as a team of professionals with focused expertise in various fields of law. With our "fine-tuned" and balanced system of interaction between our employees, we are able to reach the most efficient and unconventional solutions to each task which ensures that we take an individual approach to the needs of each client. We understand that creating a true team requires that all members can see perspectives of career advancement and we actively encourage our associates to work towards partnership and have new partners each year.

COUNTRY OVERVIEW

Geography and Landscape

Kazakhstan gained independence on 16 December 1991 and is now a young and rapidly developing country.

Kazakhstan is positioned at the junction of two continents – Europe and Asia – and, globally, due to its area of 2,724,900 square km, it is ranked ninth. In the north and west Kazakhstan borders Russia (the longest continuous onshore borderline on Earth), in the east – China, in the south – Kyrgyzstan, Uzbekistan and Turkmenistan. The total length of Kazakhstan onshore borders is 13,200 km.

Kazakhstan is the largest country in the world which does not have a direct access to the global ocean. Despite its remote distance from the oceans, Kazakhstan has two inland seas: the Caspian Sea, known for its rich deposits of oil, and the Aral Sea, which is an example of negative human impact on the environment.

Capital

The President of the Republic of Kazakhstan by his Decree dated 10 December 1997 moved the capital from Almaty to Akmola, later renamed Astana. However, Almaty remains the country's major city and has become its financial, business and cultural centre.

Currency

The national currency of Kazakhstan is the Kazakhstan tenge. Coins in circulation have denominations of 1, 2, 5, 10, 20, 50, and 100 tenge. Banknotes are issued in denominations of 200, 500, 1000, 2000, 5000, 10000 and 20000 tenge. Today, tenge has 18 levels of protection, and is included in the list of the most protected currencies of the world.

Population

According to the country's official statistics, as at 1 January 2017, the population of Kazakhstan is 17.9 million. Compared to 1 January 2016, the Kazakhstan population increased by 1.1%. The population density is 6.5 people per square km.

Kazakhstan is a multi-ethnic territory inhabited by over 100 national and ethnic groups. More than 50% of the population are ethnic Kazakhs. Russians are the second largest ethnic group.

Religion

Kazakhstan is a secular State where more than 40 confessions coexist in peace. The major religion is Sunni Islam.

Languages

Kazakh, being the largest in the Turkic group of languages, is the official language of Kazakhstan, while Russian is the language of interethnic communication.

Russian is officially used by central government and local government authorities on equal terms with Kazakh.

Public Holidays

The following days are public holidays in Kazakhstan:

New Year – 1 and 2 January;
Orthodox Christmas – 7 January;
International Women's Day – 8 March;
Nauryz Meiramy – 21-23 March;
Kazakhstan People's Unity Day – 1 May;
Defender of the Fatherland Day – 7 May;
Victory Day – 9 May;
Capital City Day – 6 July;
Constitution Day – 30 August;
Kurban Ait – 12 September;
Kazakhstan First President's Day – 1 December;
Independence Day – 16-17 December.

Climate

Kazakhstan is far away from any ocean; therefore, its climate is marked by variable weather patterns and a large seasonal temperature variance (the average temperatures in January range between -4°C and -19°C and the average temperatures in July range between +19°C and +26°C) typical of sharply continental climate.

Natural Resources

According to findings of scientific research, Kazakhstan holds the 6th largest world's reserves of mineral resources. Of the 110 elements in the Mendeleyev's periodic table, it has 99 elements, of which 70 have been explored and 60 elements are extracted and used. Kazakhstan has some of the richest deposits of oil, gas, titanium, magnesium, tin, uranium, gold, and other non-ferrous metals in the world.

Currently, Kazakhstan is the biggest producer of tungsten with largest deposits of this metal in the world. It holds the second largest reserves of chrome and phosphorus ores, fourth largest reserves of lead and molybdenum, and the eighth largest total reserves of iron.

Today, Kazakhstan has 14 prospective oil basins located virtually throughout its entire territory, of which only 160 oil and gas fields have been explored. Today, Kazakhstan's

forecasts are 300 major deposits of gold, of which 173 have been explored in detail. Over 100 coal deposits, including the biggest Ekibastuz deposit and the Karaganda coal basin, have been explored in Kazakhstan.

Economy

The overall economic development of Kazakhstan may be described as dynamic and rapid.

The President of the Republic of Kazakhstan, with the support of the Government of the Republic of Kazakhstan, prepared the *Kazakhstan 2050* development strategy named '*Kazakhstan 2050: New Political Course of the Established State*' the key objective of which is the entry of Kazakhstan to the club of top 30 most developed countries of the world before 2050 and further implementation of such major projects as Kashagan and Karachaganak with the extension of their related infrastructures.

The main mid-term goal of the social and economic policy is to embark on the new course of Kazakhstan development, i.e. the course of comprehensive economic pragmatism based on the principles of profitability, return on investments and competitive performance.

Generally speaking, the key mission is to develop a competitive high-technology economy model ensuring the growth of the Kazakhstan people wellbeing. Kazakhstan also shows striking growth rates of macroeconomic development. According to the World Bank's *Ease of Doing Business* ranking in 2017, Kazakhstan ranks the 35th among 190 countries improving its ranking by 16 places compared to the previous ranking.

According to the preliminary results, in 2017 the Kazakhstan GDP will not exceed 2%. The annual inflation rate will tend toward the upper bound of the corridor at 6-8%. The average monthly nominal wages in January 2017 were determined at the level of 136,777 tenge. At the year-end, the unemployment rate was 5% of the total economically active population.

According to the National Bank of the Republic of Kazakhstan, in 2016 gross inflow of foreign direct investments to Kazakhstan made up 14.5 billion US dollars, i.e. 27.3% more than in 2015.

Government and Political System

1. The President is the head of State and the executive branch and is elected in general election for a 5-year term. The presidential candidate must be a citizen of the Republic of Kazakhstan.
2. Apart from the Parliament and the Supreme Court, the President appoints all principal authorities, including the Government.

3. The President ensures coordination of all branches of power and accountability of authorities to the people of the country, signs laws and international treaties, and approves government programs and roadmaps.
4. The Parliament is the supreme legislative and representative body of the country. The Parliament adopts laws that have the supreme legal force, approves the State budget, controls the Government and appoints the Supreme Court. The Parliament has two chambers, the Senate and Majilis. Deputies of the Majilis are elected by general direct election for 5 years by party lists presented by political parties or from independent candidates who must be citizens of the Republic of Kazakhstan. 9 deputies of the Majilis are elected by the Assembly of the Peoples of Kazakhstan. Deputies of the Senate are elected by local representative bodies for 6 years.
5. The Government is formed by the President. It presents draft budgets and laws to the Parliament, ensures their enforcement and manages their administration. Members of the Government include the Prime Minister, deputies thereof, ministers and other officers.
6. The Constitutional Council supervises the compliance of regulatory legal acts and government acts with the Constitution.
7. The judicial branch comprises the Supreme Court (the judges are appointed by the Senate) and local courts (the judges are appointed by the President).
8. Local authorities are Maslikhats, representative bodies, and Akimats, executive bodies. Akims of oblasts (provinces), major cities of national status and the capital are appointed by the President upon approval from Maslikhats of oblasts, cities and the capital. Deputies of Maslikhats are elected locally by the population of respective regions.

KAZAKHSTAN LEGAL SYSTEM

The legal system of the Republic of Kazakhstan, along with Italy, France, Germany, Austria and some other European, mainly continental, countries, is built on the traditions of the Romano-Germanic (Continental) legal system. Unlike the Anglo-Saxon legal system (England and USA) where legal precedents are primary sources of law, the Continental system has a unified hierarchy of written legal sources.

The principal source of law in the Romano-Germanic legal system is the Constitution which is the main law and has the supreme legal force.

The Constitution of the Republic of Kazakhstan was adopted by the national referendum on 30 August 1995 which is celebrated as a national holiday.

Pursuant to Article 4 of the Constitution of the Republic of Kazakhstan, the effective laws of the Republic of Kazakhstan are the provisions of the Constitution, laws complying therewith, other regulatory legal acts, international contractual and other commitments of the Republic of Kazakhstan and regulatory resolutions of the Constitutional Council and the Supreme Court of the Republic of Kazakhstan.

The hierarchy of the sources of law in Kazakhstan is determined by the Law of the Republic of Kazakhstan *On Regulatory Legal Acts* of 24 March 1998. Pursuant to Article 4 of the Law, the Constitution of the Republic of Kazakhstan has the highest legal force. Following the Constitution, all regulatory legal acts have the following hierarchy:

1) laws amending the Constitution;
2) constitutional laws of the Republic of Kazakhstan and decrees of the President of the Republic of Kazakhstan having the force of law;
3) codes of the Republic of Kazakhstan;
4) laws of the Republic of Kazakhstan and decrees of the President of the Republic of Kazakhstan having the force of law;
5) regulatory resolutions of the Parliament of the Republic of Kazakhstan and its Chambers;
6) regulatory decrees of the President of the Republic of Kazakhstan;
7) regulatory resolutions of the Government of the Republic of Kazakhstan;
8) regulatory orders of ministers of the Republic of Kazakhstan and other heads of central government authorities, regulatory resolutions of central government authorities and regulatory resolutions of the Central Election Committee of the Republic of Kazakhstan;
9) regulatory orders of heads of departments and agencies of central government authorities; and
10) regulatory decisions of Maslikhats (local representative bodies), regulatory resolutions of Akimats (local executive bodies) and regulatory decisions of Akims.

None of regulatory legal acts of a lower level in the hierarchy may contradict regulatory legal acts of upper levels. In the event of contradicting provisions in regulatory acts of the same level, the provisions of the most recently enacted act apply.

Regulatory resolutions of the Constitutional Council of the Republic of Kazakhstan and the Supreme Court of the Republic of Kazakhstan do not fall within this hierarchy. Regulatory resolutions of the Constitutional Council of the Republic of Kazakhstan are based only on the Constitution of the Republic of Kazakhstan and no other regulatory act may contradict them.

International treaties ratified by Kazakhstan have priority over the laws of Kazakhstan and are applied directly, save for where it follows from an international treaty that adoption of a law is required in order for such treaty to become applicable in Kazakhstan. As such, the recognized principles and provisions of international law constitute an integral part of the legal system of the Republic of Kazakhstan which may be appealed to by all persons and entities.

The basic civil law principles are determined by Article 6 of the Constitution of the Republic of Kazakhstan, whereby public and private property are equally recognized and protected in Kazakhstan. The central regulatory legal act in the field of civil law relations is the Civil Code of the Republic of Kazakhstan which consists of two parts – the General Part and the Special Part. The General Part was adopted on 27 December 1994 and enacted on 1 March 1995. The Special Part was enacted on 1 July 1999. Even though both parts of the Civil Code have long been in force, they are being continuously improved and still undergo changes and amendments.

The General Part of the Civil Code governs such matters as legal status of individuals and legal entities, transactions, property rights, general provisions on obligations and contracts. The Special Part of the Civil Code contains provisions governing certain types of obligations (sale and purchase, gifts/donations, lease, contracting, etc.), as well as matters of intellectual property rights, inheritance and international private law.

Along with the Civil Code, Entrepreneurial Code and certain provisions of the Constitution of the Republic of Kazakhstan, there are other regulatory legal acts that govern business activities in Kazakhstan, including the following:

- Law of the Republic of Kazakhstan *On Joint Stock Companies* of 13 May 2003;
- Law of the Republic of Kazakhstan *On Limited and Additional Liability Partnerships* of 22 April 1998;
- Law of the Republic of Kazakhstan *On Rehabilitation and Bankruptcy* of 7 March 2014; and
- Law of the Republic of Kazakhstan *On Business Partnerships* of 2 May 1995.

Kazakhstan is the only CIS country that, by law, grants sole proprietors the right to participate in drafting regulatory legal acts applicable to sole proprietorship effective as of 1 July 2006. In particular, central government and local executive authorities send draft regulatory legal acts affecting the interests of sole proprietors to accredited private business associations for the purpose of their expert statement. Such expert statement is made in the form of recommendations and must be appended to the draft regulatory legal acts during their review and adoption.

BUSINESS ORGANIZATION AND LEGAL FORM IN KAZAKHSTAN

Foreign companies entering the Kazakhstan market usually register their structural subdivisions or subsidiaries.

Structural subdivisions

Structural subdivisions of a legal entity are branches, representative offices and other standalone structural subdivisions.

Pursuant to the legislation of the Republic of Kazakhstan, a structural subdivision is a separate subdivision of a legal entity which is located outside the place of its incorporation. Structural subdivisions are not legal entities.

The most common forms of structural subdivisions in Kazakhstan are branches and representative offices. The differences between a representative office and a branch are as follows:

1) a representative office may operate as a representation entitled to protect the interests of its parent company, to consummate transactions and to undertake other legal actions on behalf of the parent company, unless otherwise provided by Kazakhstan legislative acts; and
2) a branch may perform all or part of the functions of its parent legal entity, including the functions of a representative office.

Because structural subdivisions are not legal entities, a structural subdivision:

1) acts on behalf of the legal entity;
2) does not own any property;
3) has no separate liability for breach of its obligations and such liability is borne by its parent legal entity.

Parent legal entities allocate property to their structural subdivisions to enable them to perform the functions vested in such subdivisions. All property acquired and managed by structural subdivisions is the property of their parent legal entities. Structural subdivisions, acting on behalf of a legal entity, may hire personnel, open bank accounts, lease office and other premises, issue invitations and obtain visas.

Structural subdivisions operate under a “regulation” (similar to by-laws) adopted by the parent legal entity. Chief executive officers of structural subdivisions, also titled Director, Regional Manager, etc., are appointed by authorized bodies of the legal entity and act under a power of attorney issued by the parent legal entity. Kazakhstan tax authorities must be notified of any change of the CEO of the structural subdivision.

Subsidiary

A subsidiary is a legal entity whose decisions can be determined by another legal entity (the “parent company”) by virtue of a majority interest in its authorised capital or an agreement between such entities or otherwise.

In Kazakhstan subsidiaries are incorporated, as a general rule, in the form of a limited liability partnership (LLP) or a joint stock company (JSC).

Joint Stock Company

Joint stock companies are legal entities who issue shares in order to raise funds to carry out their business. Shareholders' risks are limited to the value of their shares. Shareholders are liable for the obligations of the JSC if it is established that shareholders' actions have resulted in the bankruptcy of the JSC.

Shareholders of a JSC have the right to freely dispose of their shares without consent of other shareholders.

Pursuant to the Law *On Joint Stock Companies*, the minimum charter capital requirement to a joint stock company is 50,000 monthly calculation indices, which, as at 1 January 2017, is equal to 113,450,000 tenge (or approximately 355,000 US dollars at the exchange rate of 320 tenge per 1 US dollar).

Voting in general shareholders' meetings is conducted in accordance with the "one share – one vote" rule, unless otherwise provided by the JSC Law.

All JSCs must have the following corporate bodies:

- general meeting of shareholders / sole shareholder;
- board of directors; and
- sole or collegial executive body.

The supreme body of a JSC is the general meeting of shareholders or a sole shareholder, if all voting shares are held by such sole shareholder. The supreme body is authorized to adopt decisions on key issues pertaining to the JSC's affairs.

The board of directors is responsible for general strategic management of a JSC. The board of directors must consist of at least 3 members, where at least thirty percent must be represented by independent directors (the most important of the independence criteria defined by the JSC Law is no affiliation with the JSC and its officers).

Management of its day-to-day operations is the responsibility of the executive body which may be a single-member body (Director, General Director, President, etc.) or a collegial body (Board, Committee, etc.).

JSCs are allowed to set up other corporate bodies in compliance with Kazakhstan regulatory legal acts and/or their constituent documents.

Members of the board of directors and the executive body are recognized as officials of a JSC who bear liability in accordance with the laws of the Republic of Kazakhstan to the JSC and its shareholders for harm caused by their actions and/or omissions, as well as for losses incurred by the JSC.

The incorporation and operation of a JSC in Kazakhstan is subject to a number of requirements and regulations established by Kazakhstan primary and secondary legislation. A JSC must file a wide variety of reports and notices on essential actions and/or events (financial statements, shares placement reports, corporate event notices, etc.).

Limited Liability Partnership

Limited liability partnership (LLP) is the most common legal form of legal entity in Kazakhstan. Registration formalities, corporate matters and procedures for approval of transactions for LLPs are less complicated than those for JSCs. If there is no need to protect the interests of foreign minority shareholders in their relations with local majority shareholders or to have strict control over the management's actions or, where necessary, to sell an interest (block of shares) in your company, we recommend that a legal entity be registered in the form of LLP. In addition, even though one of the key functions of a JSC is to raise investment through issue of shares or other securities and financial instruments in capital markets, this mechanism is relatively uncommon in Kazakhstan.

An LLP is a legal entity with limited liability founded by one or more private individuals or legal entities whose charter capital is divided into participation interests (shares). The founding persons are referred to as "Founders". LLP members include its founders and any persons holding interests in the LLP's assets. An LLP exists and operates under the foundation agreement (if there are more than one founder) and the charter.

Interests of all members in the charter capital and, accordingly, their interests in the value of the property of an LLP (interest in property) are proportionate to their contributions to the charter capital, unless otherwise provided by its constituent documents.

In the event of disposal of a participation interest in the LLP's charter capital to a third party, its members must comply with the other members' right of first refusal (pre-emption right) to acquire their interests.

Obligations of the members and those of the LLP are separate and several from those of each other. The LLP is not liable for the obligations of its members. Members of the LLP who have only made partial contributions to the charter capital are jointly liable for its obligations to the extent of the unpaid part of each member's contribution.

LLP's operating loss exposure is as follows:

1) losses of its members are limited to the extent of their contributions to the LLP's charter capital; and
2) the LLP is liable for its obligations by the entire property owned by the LLP.

All LLPs must have the following corporate bodies:

- general meeting of members/sole member; and
- executive body which may be a sole body (Director, General Director, President, Manager, etc.) or a collegial body (Directorate, Board, Committee, etc.).

The Charter (or Articles of Association) of an LLP may provide for a supervisory board and/or audit commission (auditor).

LLPs are not prohibited from setting up other corporate bodies; however, due to the specifics of Kazakhstan law, the activities of such bodies might be hindered and, as a result, deemed illegal.

By general rule, LLPs are not required to publish their financial statements. However, it may be required by the legislation that some LLPs that carry out certain types of business activities publish their financial statements for relevant financial periods for the general public.

Comparative analysis of the legal regime for a structural subdivision and subsidiary

The table below compares two legal forms of business enterprises, i.e. branches and LLPs:

Criteria	Branch	LLP
Charter capital	N/A	Minimum amount – 100 monthly calculation indices, or 226,900 tenge as at 1 January 2017 (slightly over USD700). No maximum limit. For small-size LLPs and for public Islamic special-purpose financial companies the minimum charter capital requirement is zero.
Registration of the branch's or LLP's expatriate chief executive	Required	
Documents required for incorporation	Certain documents issued by foreign government authorities, organisations and notaries are subject to consular legalization or apostilization.	
Presence of the Branch Manager or LLP's CEO in Kazakhstan to manage the operations and to sign reports, financial statements, tax returns and other declarations	Strongly recommended	
Registration in the oblast where principal operations are expected to be carried out	Strongly recommended because it is common practice that local authorities provide support only to those companies (or at least do not interfere with their operations) who pay taxes locally in their respective oblasts	
Tax residency	Permanent establishment of a non-resident	Kazakhstan resident
Local content	Minimal	Substantial

Establishment of other legal entities	May not establish any legal entities	LLP may be a founder or shareholder/ member of another legal entity. A single-member LLP may not be a sole member of another LLP
Licensing requirements	In certain cases, whether a general license (i.e. without restrictions on the territory and term of validity) may be obtained will depend on the legal form of the applicant	
Work permits	Required for all expatriate employees except for the Branch Manager	Required for all expatriate employees, including members of the governing bodies working in Kazakhstan
Repatriation of profits	Income after corporate income tax (20%) is subject to net receipts tax (15%)	Income is subject to corporate income tax (20%) and withholding tax (15%), if a company decides to pay dividends. Upon the expiration of a three-year period, LLP may be exempt from withholding tax, provided that it fulfills the applicable statutory requirements
Liability	Determined on the basis of the average annual number of employees and/or the average annual income of the parent company (not only its branch)	Determined on the basis of the average annual number of employees and/or the average annual income of the LLP

All private business entities are divided into three categories: small (including micro), medium and large businesses.

	Small business (microbusiness) entity	**Medium business entity**	**Large business entity**
	Average annual number of employees / average annual income		
Unincorporated sole proprietors and legal entities	Not more than 100 employees and not more than 300,000 MCIs* (maximum 15 employees and 30,000-fold MCI)	Over 100 but not more than 250 employees / or more than 300,000-fold MCI but not more than 3,000,000 MCIs	Over 250 employees or over 3,000,000 MCIs

* Monthly calculation index (MCI) in 2017 = 2,269 tenge (approximately 7 US dollars).

FOREIGN WORK PERMITS

The procedure for obtaining foreign work permits in Kazakhstan (the "Work Permit") is quite complicated. It is governed by Order of the Acting Minister of Healthcare and Social Protection of the Republic of Kazakhstan No. 559 dated 27 June 2016. There are legislatively determined quotas for foreigners permitted to work in Kazakhstan which are distributed between oblasts (Kazakhstan provinces).

Violations of the rules for obtaining work permits entail negative consequences both for employers and foreign workers. Moreover, such violations may have a general adverse effect on your business in Kazakhstan. There have been instances when companies faced difficulties in expanding their presence in the country precisely because they could not obtain a sufficient number of Work Permits.

Work Permits may be granted either to the employer or directly to foreign workers for the occupations included into the list of professionals permitted to independently seek employment in Kazakhstan.

Currently, Kazakhstan competent authorities issue two types of Work Permits:

1) fee-based Work Permits; and

2) Work Permits for Intragroup secondees from World Trade Organisation member states.

1. Fee-based Work Permits

Work Permits are granted for four grades of foreign workers:

1) **1st grade** – chief executives and their deputies;
2) **2nd grade** – senior managers of structural subdivisions meeting the qualification requirements set out in the occupational skills guide for senior managers, professionals and other employees and standard job descriptions for senior managers, professionals and other workers;
3) **3rd grade** – skilled professionals meeting the qualification requirements set out in the occupational skills guide for senior managers, professionals and other employees and standard job descriptions for senior managers, professionals and other workers; and
4) **4th grade** – skilled workers meeting the qualification requirements set forth in the Unified Salary and Wage Rates, Occupations and Skills Guide for skilled workers and standard job descriptions for skilled workers.

Doing business in Kazakhstan you have to ensure the following local content in your human resources:

1) the number of the first-category and second-category foreign employees must not exceed 30% of the total number of the first-category and second-category personnel; and
2) the number of the third-category and fourth-category foreign employees must not exceed 10% of the total number of the third-category and fourth-category personnel.

This requirement does not apply to the following entities and individuals:

1. small businesses;
2. government institutions and enterprises;
3. foreign nationals arriving to Kazakhstan for self-employment purposes;
4. foreign nationals obtaining permits within the quotas allocated to their respective home states with which the Republic of Kazakhstan has ratified international treaties on cooperation in labour migration and social protection of migrant workers; and
5. branches and representative offices of foreign companies the headcount of which does not exceed 30 people.

The below is a description of the Work Permit obtaining procedure:

Step One. The required documents are filed with competent government authority which, within 7 business days, must review the documents and evaluate qualifications of engaged expatriates.

Step Two. The competent government authority decides whether to issue the Work Permit or to refuse the issuance thereof and notifies the employer of the adopted decision.

Step 3. Within 10 business days after the receipt of the aforementioned notice, the employer has to pay the fee at the following rates depending on the category of engaged expatriate and the nature of the employer's business:

		Rate, monthly calculation index (MCI)			
##	**Economic activity**	**First category foreign employees**	**Second category foreign employees**	**Third category foreign employees**	**Fourth category foreign employees**
1	Agriculture, forestry and fishery	137	158	179	200
2	Mining and quarry operations	154	178	202	225
3	Processing	154	178	202	225
4	Power/gas/steam supply and air conditioning	137	158	179	200
5	Water supply; sewage and supervision over collection and disposal of waste	137	158	179	200
6	Construction	171	198	224	250

7	Wholesale and retail trade; cars and motorcycles repair and maintenance	154	178	202	225
8	Transportation and warehousing	137	158	179	200
9	Accommodation and meals	137	158	179	200
10	Information and telecommunications	137	158	179	200
11	Finance and insurance	137	158	179	200
12	Real estate operations	137	158	179	200
13	Professional, scientific and technical activities	137	158	179	200
14	Administrative and ancillary services	137	158	179	200
15	Mandatory social security	137	158	179	200
16	Education	137	158	179	200
17	Healthcare and social services	137	158	179	200
18	Arts, entertainment and recreation activities	137	158	179	200
19	Other services	154	178	202	225
20	Households engaging servants and producing goods and services for their own use	137	158	179	200
21	Exterritorial organisations and agencies	137	158	179	200

Step 4. The competent government authority issues the Work Permit which is valid for 12 months and may be extended maximum twice for 12 months each time. The first-category Work Permit may be extended annually for 12 months.

2. Work Permits for Intragroup Secondees from World Trade Organisation member states

Work Permits are granted for two categories:

1) managers; and
2) specialists (professionals).

3) For intragroup secondment purposes. an employer must ensure that the number of foreign employees (managers and specialists) does not exceed fifty percent of the number of Kazakhstan employees of the same category.

The Work Permit issuance procedure for intragroup secondment comprises the following steps:

Step 1. Vacancies are identified and checked against the Kazakhstan labour market supply through a candidate search on the domestic labour market.

Step 2. The required documents are filed with the competent government authority which reviews the documents and evaluates the qualifications of engaged expatriates.

Step 3. An employer applying for a Work Permit for an intragroup secondee shall assume one of the following special covenants (obligations):

- professional training of Kazakhstan nationals in the occupation of the employed foreign national;
- re-training of Kazakhstan nationals in the occupation of the employed foreign national;
- professional development of Kazakhstan nationals; and
- creation of new jobs for Kazakhstan nationals in the occupation of the employed foreign national.

Step 4. The competent government authority decides whether to issue the Work Permit or to refuse the issuance thereof and notifies the employer of the adopted decision.

Step 5. The competent government authority issues the Work Permit which is valid for a period specified in the relevant intragroup secondment agreement, but in any case not more than three years, and may be extended only once for twelve months.

Once a Work Permit is granted by the competent authority, it may not be transferred to other employers and will be valid only within the particular administrative and territorial unit for which it is granted; employers are allowed to send foreign workers on business trips to companies and organizations which are located in other administrative and territorial units for a period of maximum 90 calendar days (in total) within one calendar year.

A failure to comply with the foreign employment procedure may entail: for the employer's chief executive – administrative liability (fine) or criminal (in the event of several instances of violation) liability; for the employing company – administrative liability (fine); and for the foreign worker – administrative liability (fine and deportation).

If a foreign worker is deported, Kazakhstan migration authorities may deny new visas or entry to Kazakhstan for such worker in the future.

Violation of foreign employment legislation may also entail refusal to issue Work Permits in future.

VISAS

The visa regime for foreigners staying in the country is determined by Kazakhstan migration laws. Under this regime, foreigners are required to obtain a visa to enter the territory of the country and to get registered with local authorities.

There are several types of visas. Each type of visa is issued for specific purposes of stay of foreign nationals in Kazakhstan. The most popular visas for business purposes are investor visa, business visa and work visa. These visas may be issued as single-entry, double-entry, triple-entry and multiple-entry visas.

Investor Visa

Investor visas are issued to CEOs and/or CEO deputies and/or heads of structural subdivisions of legal entities engaged in investment activities in the Republic of Kazakhstan.

With an investor visa, visa holders may bring their family members to stay with them in Kazakhstan.

Multiple investor visas (A5) are valid for maximum 3 years and allow for sojourn in Kazakhstan during the entire visa validity period. Single-entry investor visas (A5) are valid for maximum 90 days and allow for sojourn in Kazakhstan during the entire visa validity period.

Investor visas are issued by foreign missions of the Republic of Kazakhstan, the Ministry of Foreign Affairs of the Republic of Kazakhstan subject to an invitation letter and the Ministry of Internal Affairs of the Republic of Kazakhstan subject to an application from the inviting party supported by a written request from the Kazakhstan competent authority in charge of investments.

Business Visa

Business visas are issued to foreign nationals arriving and staying in the Republic of Kazakhstan for the following business purposes:

- participation in conferences, symposiums, forums, exhibitions, concerts and other cultural, scientific and sports events; participation in meetings, roundtables, exhibitions and expert assemblies; humanitarian aid convoy; giving lectures and classes in education institutions; and participation in youth, student and school exchange programs, except for education in Kazakhstan institutions (B1);
- installation, repair and technical maintenance of equipment; and provision of consulting or audit services (B2);
- negotiating and contracting; and to founders or members of a board of directors of an entity (B3);
- international motor transportation (B4); and
- to crew members on board any scheduled and chartered airplanes who do not have the appropriate ICAO (International Civil Aviation Organisation) certificates; train crew members; and crew members on board any sea or river ships (B5).

Under the standard procedure, business visas require a letter of invitation from the inviting party and instructions from the Ministry of Foreign Affairs. In addition to the standard procedure, business visas may be obtained under the simplified procedure, when only a written application of a foreign national is sufficient. The simplified procedure is applicable to citizens of USA, Canada, France and certain other countries (a list of such countries is determined by the laws of the Republic of Kazakhstan).

Business visas are issued by departments of the Ministry of Foreign Affairs abroad or, if the foreign national is in Kazakhstan, by the Ministry of Foreign Affairs for a period of up to 1 year and, usually, allow sojourning in Kazakhstan for maximum 30 days (each entry).

Business visas (excluding B5 visa) do not give the right to family members of business visa holders to enter Kazakhstan.

Work Visa

Work visas are issued to foreign nationals arriving to Kazakhstan for employment purposes and to business immigrants.

In order for a foreign national to obtain a work visa, the inviting party (employer) is required to have a foreign Work Permit or the foreign national should have a permit for employment. Certain categories of foreign nationals and stateless persons, including, among others, chief executive officers of branches or representative offices of foreign legal entities (a list of such categories is determined by the laws of the Republic of Kazakhstan), are exempt from the requirement to have a Work Permit in Kazakhstan.

Work visas are issued by departments of the Ministry of Foreign Affairs abroad (or, if there is no such department abroad, by authorized representatives of the Republic of Kazakhstan) for a period of up to 1 year or for a validity period of the Work Permit and may be extended upon expiration of the initial term through a new visa issued by internal affairs authorities.

Family members of the work visa holder entering the country together with such work visa holder are not permitted to work in Kazakhstan. Any subsequent employment of such family members in Kazakhstan is subject to a foreign work permit obtainable by their employer (save for when such permit is not required) and a new work visa.

Registration of Foreign Nationals

Foreign nationals must get registered with relevant authorities by submitting their passports for registration.

Depending on visa types and categories and the issuing body, passports are registered by border control departments of the Border Police of the National Security Committee and migration police within 5 calendar days after crossing the Kazakhstan state border or on the basis of the information received from legal entities with regard to foreigners hosted by them. Passports are registered by putting a stamp or mark on visa stickers or migration cards or by issuing a registration certificate.

Registration is issued for a period specified in the application, but not exceeding the term of the visa. Registration of foreigners arriving from the states with which Kazakhstan has signed international treaties on visa free travel and sojourn is issued

for maximum 30 days, and foreigners arriving from the Customs Union Member States (Russian Federation and Republic of Belarus) for 90 days with potential extension for the same period.

Registration may be extended by internal affairs authorities at the place of temporary stay of the foreign visitor.

Visa-free Regime for Citizens of Investing Countries

Citizens of the following 45 countries that have either invested the most or have the potential to invest the most in Kazakhstan have been granted, on a temporary basis, visa-free travel to the Republic of Kazakhstan:

1. Australia
2. Austria
3. Belgium
4. Bulgaria
5. UK
6. Hungary
7. Greece
8. Denmark
9. Israel
10. Ireland
11. Italy
12. Spain
13. Iceland
14. Canada
15. Cyprus
16. Latvia
17. Lithuania
18. Luxembourg
19. Malaysia
20. Malta
21. Monaco
22. Netherlands
23. New Zealand
24. Norway
25. UAE
26. Poland
27. Portugal
28. Romania
29. Singapore
30. Slovenia
31. Slovakia
32. USA
33. Finland
34. France
35. Germany
36. Croatia
37. Czechia
38. Sweden
39. Switzerland
40. Estonia
41. South Korea
42. Japan
43. Mexica
44. Turkey
45. Chile

Citizens of the aforementioned states may stay in Kazakhstan without a visa for maximum 30 calendar days. If such citizens desire to extend their stay in Kazakhstan, they must obtain a visa as follows:

- for business purposes – a single-entry business visa valid for up to 30 calendar days; and
- if the applicant has a letter from investment authorities certifying the investor status – a single-entry investment visa valid for up to 90 calendar days or a multiple-entry visa valid for 3 years.

The visa-free regime for investing countries was introduced for the period from 16 July 2015 until 31 December 2017.

LICENSES AND NOTICES (LICENSING)

Kazakhstan law determines types of activities subject to licenses and permits.

Licensing matters are regulated mainly by Kazakhstan Law *On Licenses and Notices* No. 202-V of 16 May 2014 developed by Sayat Zholshy & Partners on the commission of the World Bank.

Permits are subdivided into two categories:

1) the 1st category permits – licenses for highly hazardous types/subtypes of activities or actions/operations; and
2) the 2nd category permits – all permits, other than licenses, applied to moderately hazardous types/subtypes of activities or actions/operations.

Hazard degree is determined through the regulatory impact assessment which is new to Kazakhstan.

Any licensed activity is permissible only after the issuance of the respective license.

Licenses are issued by licensors, i.e. local executive authorities or territorial departments of the central state authority.

License applications are filed with licensors at the place of the applicant's registration or, in certain cases, at the place of the applicant's activity. Licenses may be issued in favour of natural persons, legal entities, branches or representative offices thereof, as well as foreign entities without branches or representative offices in Kazakhstan.

Licenses are issued at the place of the licensee's registration or at the place of the licensee's activity.

Spheres of licensing

Certain activities in the following sectors of economy are subject to licensing;

1) TV and radio broadcasting;
2) culture;
3) education;
4) architecture, urban planning and construction;
5) oil and gas;
6) production sector;
7) informatization and telecommunications;
8) operations with narcotic drugs, psychotropic substances and their precursors;
9) healthcare;
10) use of nuclear power;
11) information security;
12) special technical facilities intended for special investigation activities;
13) operations with weapons, military equipment and certain types of arms, explosives and explosive materials;
14) operations with toxic substances;
15) manufacturing of national symbols of the Republic of Kazakhstan;

16) production and sale of ethyl alcohol and alcoholic products; tobacco production;
17) commodity exchanges;
18) exports and imports;
19) financial activities and activities associated with the concentration of financial resources;
20) space application;
21) gambling business;
22) veterinary;
23) agribusiness;
24) transportation;
25) forensic activities; and
26) services provided to individuals and corporations.

Should you need any information on certain subtypes of activities subject to licensing, please contact our office.

Licenses are differentiated as follows:

1. By subject:
   1) citizens and legal entities of the Republic of Kazakhstan;
   2) foreign entities without branches or representative offices in the Republic of Kazakhstan, foreign citizens, stateless persons and international organisations; and
   3) branches and representative offices of foreign entities.
2. By scope of activities:
   1) general license issued for a certain type of activities for an indefinite period of time;
   2) single-use license issued for a certain economic operation for a limited period of time, scope, weight or quantity (in physical or monetary terms); for gambling business activities for a term determined by the Kazakhstan Law *On Gambling Business*; and for activities related to housing construction at the expense of stakeholders within the scope determined by the Kazakhstan law *On Share Participating in Housing Construction*; and
   3) operational license issued for certain banking operations and certain class insurance operations.

Licenses are not issued when:

1) a certain type of activity is prohibited by Kazakhstan law in relation to the given category of subjects;
2) the license fee has not been paid;
3) the applicant does not meet qualification requirements;
4) the licensor has been informed by the competent government authorities that the applicant does not meet qualification requirements;
5) there is an effective court judgment/indictment, with respect to the applicant,

on the suspension or prohibition of the activities or certain types of activities subject to licensing; and

6) court, based on the marshal's recommendations, temporarily prohibited the issuance of a license for an insolvent applicant.

A license terminates when:

1) its validity term expires;
2) the licensed activities/operations have been performed to a full extent;
3) the license and/or appendices thereto are revoked;
4) the applicant terminates its activities (if an individual) or is liquidated (if a legal entity);
5) the licensee applies to the licensor for termination of the license and/or appendix thereto;
6) exception of the license or a certain type/subtype of activities or actions/ operations;
7) exception of the licensee from the list of persons subject to licensing; and
8) any other cases provided by Kazakhstan law.

A license must be reissued in the following cases:

1) change of the first name, middle name, if any, and surname (if the licensee is a natural person);
2) re-registration of an individual entrepreneur, change of his name or legal address (if the licensee is an individual entrepreneur);
3) reorganisation of a corporate licensee in the manner determined by the Kazakhstan Law *On Licenses and Notices*;
4) change of the name and/or address of a corporate licensee;
5) alienation of the license issued in accordance with the class "permits issued to facilities" together with the facilities in favour of third parties, provided that such alienation is permitted by the Kazakhstan Law *On Licenses and Notices* with respect to this type of license;
6) change of address of the licensee without his actual movement – for a license issued in accordance with the class "permits issued to facilities" or for appendices to the license, specifying the respective facilities; and
7) when reissuance is required by Kazakhstan law.

The applicant must file the application for reissuance of a license and/or appendix thereto within 30 calendar days after the changes which require the reissuance of such license and/or appendix thereto.

A license is issued in a digital format. If the applicant needs a hardcopy of a license, he shall apply therefore.

A license is suspended or revoked when the licensee violates Kazakhstan law. A license for certain type of activities may be revoked only through judicial proceedings.

INVESTMENT IN KAZAKHSTAN

The Republic of Kazakhstan has a favourable investment climate due to the country's stable political situation and economic growth. The Constitution of the Republic of Kazakhstan and other regulatory acts provide for various guarantees of investors' rights, in particular, guarantees in the event of nationalization and requisition, guarantees of transparency of the actions of government authorities with respect to investors, guarantees of use of income, guarantees of legal protection of investors' activities on the territory of the Republic of Kazakhstan. In addition, Kazakhstan ratified the 1985 Seoul Convention Establishing the Multilateral Investment Guarantee Agency and the 1997 Moscow Convention on Protection of Investor Rights. Kazakhstan also joined the 1965 International Convention on Settlement of Investment Disputes between States and Nationals of Other States (the ICSID Convention) that establishes the International Centre for Settlement of Investment Disputes. This Convention is applied as may be agreed between the parties to the dispute. Kazakhstan also signed bilateral agreements on mutual protection of investment with a number of countries, including: USA, United Kingdom, France, Turkey, Tajikistan, Bulgaria, Kuwait, Belgium-Luxembourg Economic Union, Russia, India, Switzerland, Mongolia, Poland, Saudi Arabia, Italy, Hungary, Egypt and some other countries. Kazakhstan law recognizes priority of international treaties ratified by the Republic of Kazakhstan over its national legislation. In the event that an international treaty ratified by the Republic of Kazakhstan provides for rules different from those contained in the national legislation, the rules of the international treaty will apply.

The principal legal act governing investment relations in the Republic of Kazakhstan is the Entrepreneurial Code of the Republic of Kazakhstan (the "Entrepreneurial Code"), in particular, Chapter 25 thereof. This Code determines the legal and economic basis for encouraging investment, provides guarantees of investors' rights investing in Kazakhstan and determines measures for government support of investment and the procedure for resolution of disputes involving investors.

Defined Terms

The Entrepreneurial Code defines investment as follows:

1) *investment* – all kinds of property (other than goods intended for personal use), including items of financial leasing as of the time of execution of the leasing agreement as well as rights thereto contributed by the investor to the charter capital of the legal entity or increase of fixed assets used for the purposes of entrepreneurial activities and implementation of public-private partnership and concession projects.

This definition is not different from those contained in most bilateral agreements on investment protection signed by the Republic of Kazakhstan with other countries.

The definition of investment activities reads as follows:

2) *investment activities* – activities of individuals and legal entities related to participation in the charter capital of commercial organizations or creation or increase of fixed assets used for the purposes of entrepreneurial activities and implementation of public-private partnership and concession projects.

The Entrepreneurial Code does not govern relations related to investment from funds of the state budget and capital investment in non-profit organizations, including for educational, charity, research or religious purposes.

The Entrepreneurial Code defines 'investor' as a natural person or legal entity who invests in the economy of the Republic of Kazakhstan and 'major investor' as a natural person or legal entity whose investment in the economy of the Republic of Kazakhstan exceeds the amount equivalent to 2,000,000 monthly calculation indices.

In other words, Kazakhstan law applies the domestic regime to foreign investors and does not differentiate between foreign and Kazakhstan investors.

Subject to certain conditions, as described in a greater detail below, investors may seek investment benefits:

3) *investment benefits* – targeted privileges provided pursuant to the legislation of Kazakhstan to legal entities of the Republic of Kazakhstan that are implementing an investment project and to leasing companies which import to Kazakhstan plant and equipment for implementation of investment projects by Kazakhstan entities under financial lease agreements.

One of such investment benefits provided by the government is government in-kind donation:

4) *government in-kind donation* – property owned by the Republic of Kazakhstan transferred to temporary free use or provided under the free land-use right to a legal entity of the Republic of Kazakhstan for implementation of an investment project with subsequent free transfer of ownership or land use.

Guarantees of Investors' Rights in the event of Nationalization or Requisition

Guarantees of Investors' Rights in case of nationalization or requisition are provided, first of all, by the Constitution of the Republic of Kazakhstan: "No one may be deprived of his property unless otherwise stipulated by a court decision. Forced alienation of property for the State needs in extraordinary cases stipulated by law may be exercised on the condition of its equivalent compensation."

No involuntary taking of property is permitted unless otherwise provided by Kazakhstan law, including, among other things, requisition of property due to emergency circumstances, seizure of property through judicial process as a sanction for committing a crime or other offence, alienation of immovable property on the grounds of acquisition by the Government of the rights to the land plot, and nationalization following adoption of a law on nationalization.

In the event of nationalization, the Republic of Kazakhstan shall reimburse the investor in full for his losses caused to such investor by adoption of legal acts of the Republic of Kazakhstan on nationalization.

An investor's property may be requisitioned subject to payment of the market value of the property to such investor. When the circumstances due to which the requisition was performed cease to exist, the investor may request that the remaining property be returned to such investor but is required to repay the amount of the received compensation adjusted to the impairment loss on such property.

Guarantees of Legal Protection of Investors' Activities in the Republic of Kazakhstan

This guarantee implies the right of investor for compensation of damages caused by acts of government authorities issued in violation of Kazakhstan legislation and by illegal actions (omissions) of officials of such government authorities. Investors are provided with full and unconditional protection of rights and interests under the Constitution of the Republic of Kazakhstan and other laws and regulations of the Republic of Kazakhstan and international treaties ratified by the Republic of Kazakhstan. The Republic of Kazakhstan guarantees stability of contracts made between investors and government authorities of the Republic of Kazakhstan, unless contracts are amended as may be agreed between the parties.

However the aforesaid guarantees do not apply in the event of:

– changes in the legislation of the Republic of Kazakhstan and/or enactment and/or changes in the international treaties of the Republic of Kazakhstan that modify the procedure and conditions for import, production and sale of excise goods; and
– amendments to Kazakhstan laws for the sake of national security, public order, healthcare and public morals.

Other regulatory legal acts also provide guarantees of stability and investors may rely on a particular law or regulation that provides for guarantees of stability as applicable.

Guarantees of Use of Income

Investors may, at their discretion, use the income earned from their activities after payment of taxes and other obligatory payments to the budget and to open bank accounts in the national and/or foreign currency in accordance with the banking and currency legislation of the Republic of Kazakhstan.

Dispute Resolution

The Entrepreneurial Code provides for investment ombudsman qualified to protect investors' rights and legitimate interests. The investment ombudsman appointed by the Kazakhstan Government is authorised to:

1) consider investors' applications regarding any issues arising in the course of their investment activities in the Republic of Kazakhstan and make recommendations on the resolution of such issues, including communication with government authorities;
2) render assistance to investors in connection with extrajudicial and prejudicial resolution of arising problems; and
3) develop recommendations on the improvement of Kazakhstan legislation concerning investment activity and submit them for consideration of the Kazakhstan Government.

When an investment dispute cannot be solved by way of negotiations or in accordance with the dispute settlement procedure pre-agreed by the parties, such dispute must be settled in Kazakhstan courts in compliance with international treaties and Kazakhstan laws, or in arbitration courts chosen by the parties. Those investors the states of which have signed bilateral agreements with Kazakhstan on mutual protection of investments and have acceded to the Energy Charter Treaty may refer to the provisions of such treaties which allow for settlement of investment disputes in an international commercial arbitration court, even in the absence of an arbitration clause.

Government Investment Support

In order to create a favourable investment climate for the development of economy and encouragement of investment in establishment of new, and expansion and modernization of the existing, production facilities using modern technologies, professional development of Kazakhstan personnel and environment protection, investors may be provided with government support in the form of investment benefits.

There are four categories of investment benefits:

granted to investment projects (including priority investment projects):

1) exemption from customs duties and import VAT;
2) government in-kind donations;

granted to priority investment projects:

3) tax preferences; and
4) investment subsidies;

granted to strategic investment projects:

5) tax preferences.

Currently, investment benefits only apply to Kazakhstan legal entities. Thus, if a foreign investor seeks investment benefits provided by the Entrepreneurial Code, such investor should set up a Kazakhstan legal entity.

In Kazakhstan, the Ministry of Investment and Development (the "MID") is responsible for investments. The MID is vested with broad powers to make independent decisions on investment preferences.

Investment preferences are assigned to priority activities the list of which is subject to the approval of the Kazakhstan Government.

The *List of Priority Types of Activities for Implementation of Investment Projects* was approved by Kazakhstan Government Resolution No. 13 of 14 January 2016.

Exemption from Customs Duties

Any legal entity engaged in the implementation of an investment project and importing process equipment, elements and spare parts thereto, raw and other materials shall be exempt from customs duties.

Any leasing company importing plant and equipment to Kazakhstan for a Kazakhstan entity implementing an investment project under a financial lease agreement shall be exempt from customs duties.

Any Kazakhstan legal entity engaged in the implementation of a special-purpose investment project under a special investment contract shall be exempt from customs duties, provided that such entity imports plant and equipment, components and spare parts thereto, raw and/or other materials as part of finished products manufactured in a special economic zone or free warehouse.

Imported technological equipment and elements thereto are exempt from customs duties for the validity period of an investment contract, but not more than 5 years from the date of its registration. Imported spare parts to technological equipment, raw and other materials are exempt from customs duties for a period of maximum 5 years, depending on the scope of investments in fixed assets, subject to the investment project compliance with the list of priority activities approved by the Kazakhstan Government. The exemption from customs duties is granted for the validity period of an investment contract, but not more than 5 years from the commissioning of fixed assets under the work program.

The following persons engaged in the implementation of a special-purpose investment project shall be exempt from import customs duties:

1) participants of special economic zones – for a fifteen-year period, but in any case within the operation period of the relevant special economic zone;
2) free warehouse owners – for maximum fifteen years from the date of the relevant special investment contract registration; and
3) Kazakhstan legal entities participating in agreements for industrial assembly of motor vehicles – for maximum fifteen years from the date of the relevant special investment contract registration.

Government In-kind Donations

Government in-kind donations are granted by a competent investment authority upon consultation with relevant government authorities responsible for management of state property and/or land resources as well as with local executive bodies either for temporary free use or on a temporary free land-use basis with subsequent transfer of ownership or land-use rights subject to fulfilment of the investment commitments under an investment contract.

Government in-kind donations may be granted in the form of land plots, buildings, structures, machinery and equipment, computers, measuring and control devices and apparatus, transport vehicles (other than automobiles), and production and household appliances. The maximum limit for a government in-kind donation is not more than 30% of the value of investment in fixed assets of a Kazakhstan legal entity.

A *strategic investment project* is an investment project included into the list determined by the Kazakhstan Government and which can have a strategic influence on the economic development of the Republic of Kazakhstan.

Tax Preferences

Tax preferences are granted to the Kazakhstan entities implementing priority investment projects in the manner and on the terms established by the Kazakhstan tax legislation.

Types of tax preferences:

for priority and strategic investment projects:

1) 100% abatement of corporate income tax assessments;
2) zero-rating of land tax; and
3) assessment of property tax at the rate of 0% of tax base;

for investment projects (except for priority and strategic investment projects):

4) exemption of materials and/or supplies from import VAT under investment contracts.

Investment contract determines the duration of each type of tax preferences, provided that such duration does not exceed the time limit of the tax preference application established by the Kazakhstan Code *On Taxes and Other Obligatory Payments to the Budget (Tax Code)*.

Investment Subsidies

Investment subsidies are granted to investors implementing priority investment projects subject to the Kazakhstan Government resolution.

An investment subsidy is granted through the recovery of maximum 30 percent of actual expenses for construction and installation works and procurement of equipment, excluding VAT and excises, subject to documentary evidence, but in any case not more than the amount of costs specified in pre-project documentation, including the state expert review, in the manner provided by Kazakhstan law.

An investment subsidy is payable upon the final and complete commissioning, as determined by an investment contract, provided that the investor has performed all investment obligations.

BANKING LEGISLATION

As at 30 March 2017, 33 banks are operating in the Kazakhstan financial market. As at 1 March 2017, the aggregate assets of Kazakhstan second-tier banks made up 24,867.5 billion tenge (approximately 78 billion US dollars).

Over the last few years Kazakhstan has been showing a trend of bank consolidation through mergers, thus, reducing a number of banks operating in the country.

The principal regulatory acts governing banking in Kazakhstan are:

- Law of the Republic of Kazakhstan *On Banks and Banking Activities in the Republic of Kazakhstan* of 21 August 1995;
- Law of the Republic of Kazakhstan *On the National Bank of the Republic of Kazakhstan* of 30 March 1995;
- Law of the Republic of Kazakhstan *On Government Regulation and Supervision of the Financial Market and Financial Organizations* of 4 July 2003; and
- Law of the Republic of Kazakhstan *On the Development Bank of Kazakhstan* of 25 April 2001.

Kazakhstan has a two-tier banking system. The National Bank is the country's central bank and represents the upper (first) tier of the banking system. All other banks represent the lower (second) tier of the banking system.

The unique feature of the country's banking system is that banking services are offered only by private banks. The Development Bank of Kazakhstan and the Housing Construction Savings Bank established with government participation have a special status and perform specific functions in the financial sector.

The National Bank of the Republic of Kazakhstan, which reports directly to the Kazakhstan President, plays the key role in government regulation of banking.

The primary goal of the National Bank of the Republic of Kazakhstan is to ensure stable prices in the country. In order to achieve this goal, the National Bank performs the following functions:

1) development and implementation of the country's monetary policy;
2) ensuring operation of payment systems;
3) currency regulation and currency control;
4) promoting stability of the financial system;
5) regulation, control and monitoring of the financial market and financial institutions, as well as any other persons falling under their authority;
6) ensuring proper protection of the rights and legitimate interests of financial services consumers; and
7) providing banking, monetary and exogenous sector statistics.

Figuratively speaking, the National Bank of the Republic of Kazakhstan provides banking services to its major client, the State, represented by its central authorities through traditional banking operations. On the other hand, based on its specific tasks, the National Bank acts as a regulatory authority in the financial sector (performs currency control functions, issues regulations, grants licenses, etc.) and is responsible

for proper functioning of the entire financial system.

The principal regulatory and supervisory functions in relation to banks, as well as other financial organizations, are performed also by the National Bank of the Republic of Kazakhstan.

The objectives of the National Bank of the Republic of Kazakhstan with regard to the public regulation, control and supervision of financial markets and financial institutions are:

1) implementation of measures preventing violation of rights and legal interests of consumers of financial services;
2) creation of equal opportunities for the functioning of relevant types of financial organizations based on the principle of fair competition; and
3) improvement of standards and methods of regulation and supervision of the activities of financial organizations and implementation of measures ensuring prompt and complete fulfilment of their assumed obligations.

For the purposes of regulation and supervision of banking activities, the National Bank of the Republic of Kazakhstan performs the following functions:

1) licensing of banking activities;
2) issuance of binding regulations concerning banks;
3) establishment of binding ratios and limits for financial performance indicators of banks;
4) control over the banks' compliance with the established capital requirements and ratios as well as legislative requirements to accounting and financial statements; and
5) application of sanctions and other enforcement measures to banks.

The development of banking legislation is aimed at improvement of the banking regulation mechanism which will ultimately promote stability of the entire financial sector of the Republic of Kazakhstan. In particular, a number of amendments increasing transparency of banks' structure and management have been introduced over the past few years, including the definitions of "bank holding company" and "bank conglomerate" and new rules for issuing permits and approvals by competent authorities to those acquiring the status of bank holding company or major bank participant or participation of banks in the activities of their subsidiaries and affiliates.

In particular, a bank holding company is a legal entity (other than where the owner is the state or a national managing holding company and other than where the Law *On Banks and Banking* requires otherwise) who, in accordance with a written consent of the authorized body, can own, directly or indirectly, twenty five or more percent of the bank's outstanding shares (less the preferred shares and the shares repurchased by the bank) or is able to:

- vote directly or indirectly with twenty five or more percent of the bank's voting shares; or
- determine the decisions being made by the bank by virtue of an agreement or otherwise or to have control.

A banking conglomerate is a group of legal entities comprised of a bank holding company, a bank or of the bank holding company's or bank's subsidiaries and/or organizations where the bank holding company and/or its subsidiaries have significant capital participation.

National managing holding companies, bank holding companies who are not residents of the Republic of Kazakhstan and subsidiaries or organizations in which the non-resident bank holding company has significant capital participation who are not residents of the Republic of Kazakhstan.

A major bank member is an individual or legal entity (other than where the owner is the state or a national management holding company, or an organisation specialising in the improvement of loan portfolios of second-tier banks, and other than where the Law *On Banks and Banking* requires otherwise) who, in accordance with a written consent of the authorized body, can own, directly or indirectly, ten or more percent of the bank's outstanding shares (less the preferred shares and the shares repurchased by the bank) or is able to:

- vote directly or indirectly with ten or more percent of the bank's voting shares; or
- determine the decisions being made by the bank by virtue of an agreement or otherwise in the manner prescribed by a resolution of the authorized body.

A bank may be opened in Kazakhstan subject to the relevant permit of the Kazakhstan National Bank which has full force and effect until the Kazakhstan National Bank decides to issue a banking license to such bank.

Kazakhstan banks are organised in the form of joint stock companies.

Bank founders and shareholders may be represented by legal entities or individuals, either residents or non-residents of the Republic of Kazakhstan, unless otherwise provided by the Kazakhstan Law *On Banks and Banking*.

In particular, legal entities incorporated in the tax havens blacklisted by Kazakhstan competent authorities may not, either directly or indirectly, own and/or use and/or dispose of voting shares in Kazakhstan resident banks.

The above restriction is one a few provided by Kazakhstan law.

The Law of the Republic of Kazakhstan *On Banks and Banking* determines the following transactions as exclusively limited to banks:

1) acceptance of deposits from, opening and maintenance of bank accounts for legal entities;
2) acceptance of deposits from, opening and maintenance of bank accounts for individuals;
3) opening and maintenance of correspondence accounts for banks and organizations performing certain bank transactions;
4) opening and maintenance of metals accounts for private individuals and legal entities reflecting the physical quantity of refined precious metals and coins minted in precious metals owned by another person;
5) cash transactions: acceptance and payment of cash by banks and the National Post Service, including changing, exchanging, recounting, sorting, packing and storing;

6) transfer transactions: performance of instructions from individuals and legal entities on money payments and transfers;
7) discounting transactions: discounting notes and other debentures for individuals and legal entities;
8) bank lending transactions: provision by a bank, mortgage organization, or subsidiaries of a national management holding company in the agricultural sector of loans in monetary form on the basis of serviceability, maturity and recoverability;
9) organization of currency exchange transactions;
10) collection of banknotes, coins and valuables;
11) acceptance for collection of payment documents (other than promissory notes);
12) opening (issuance) and acceptance of letters of credit and fulfilment of obligations thereunder;
13) issuance by banks of bank guarantees providing for performance in monetary form; and
14) issuance by banks of bank guarantees and other warranties for third parties ensuring performance in monetary form.

Prior to any of the above transactions, a bank must obtain the relevant license from the Kazakhstan National Bank.

In general, banks are prohibited from engaging in any business operations or transactions which do not fall under the category of banking activity, from acquiring interests or shares in legal entities, from founding or participating in non-profit organisations, except for the membership in the Kazakhstan National Chamber of Entrepreneurs, unless otherwise provided by the Law, and from transacting in securities in compliance with the Law.

Currently in Kazakhstan, in addition to 'conventional banks', there are also Islamic banks. The first Islamic bank to open in Kazakhstan is Al Hilal Islamic Bank JSC. In July 2010, Amanah Raya Berhad, Malaysia's premier trustee company, Development Bank of Kazakhstan JSC and FATTAH FINANCE JSC signed an agreement to set up another Islamic bank in Kazakhstan.

Conditions for opening Islamic banks in Kazakhstan became available in 2009 when the Law of the Republic of Kazakhstan *On Amendments to Certain Legislative Acts of the Republic of Kazakhstan Concerning Organization and Operation of Islamic Banks and Organization of Islamic Financing* amended the Law of the Republic of Kazakhstan *On Banks and Banking,* as well as certain other legislative acts with respect to organization and operation of Islamic banks and organization of Islamic financing.

In pursuance of the requirements of this law, the National Bank of the Republic of Kazakhstan prepared and adopted respective resolutions and regulations.

As can be seen from the above, these legislative amendments make it possible to introduce alternative forms of financing and may encourage reduction of interest rates on banking services in Kazakhstan.

INSURANCE

The legislation governing insurance in the Republic of Kazakhstan may be divided into two categories: (i) governing the requirements for establishment and operation of insurance entities, and (ii) governing relations between insurance entities and their clients. The legislation governing relations in the insurance market is primarily based on Civil Code of the Republic of Kazakhstan (Special Part) No. 409-I of 1 July 1999, Law of the Republic of Kazakhstan *On Insurance Activities* No. 126-II of 18 December 2000 and regulations issued by the National Bank of the Republic of Kazakhstan and the Agency of the Republic of Kazakhstan on Regulation and Supervision of the Financial Market and Financial Organizations (now dissolved). Mandatory types of insurance are governed by individual regulatory acts.

The first category comprises legislation governing establishment, operation and termination of insurance entities (insurance companies, insurance brokers, actuaries, etc.). The insurance legislation is characterized by strict regulatory requirements, strict requirements to financial stability and wide scope of authority of the National Bank of the Republic of Kazakhstan with respect to regulation of the activities of the insurance market participants. Principal requirements for organization of insurance activities include the following:

- insurance companies may operate only as joint stock companies;
- foreign insurance companies may not carry out insurance activities in Kazakhstan (effective from December 2020, this restriction is lifted in relation to certain companies determined by Kazakhstan law);
- an insurance company must obtain a license for each type of insurance;
- activities of insurance brokers and actuaries require a license;
- in addition to licenses, a permit from the National Bank of the Republic of Kazakhstan is required for establishment of an insurance company, appointment of CEOs and top managers, acquisition of the status of major participant of an insurance organization and reorganization (liquidation) of an insurance company;
- the charter capital of a newly established insurance company must range between 3.4 and 23.8 bln tenge depending on the branch and class of insurance (i.e. general insurance, life insurance, etc.);
- insurance companies must comply with prudential standards and other binding ratios and limits for insurance organizations, including minimum guarantee fund, and solvency margin;
- ban on preferential treatment by insurance organization of its affiliates; and
- ban on direct or indirect possession, use and disposal of voting shares of an insurance company by legal entities incorporated in offshore jurisdictions with the exemption of insurance (reinsurance) organizations which are subsidiaries of non-

resident insurance (reinsurance) organizations of the Republic of Kazakhstan with the minimum required credit rating awarded by one of the rating agencies the list of which is determined by the competent authority.

The second category is represented by the legislation directly governing the relations of an insurance company and its clients with respect to insurance of risks.

Insurance in the Republic of Kazakhstan comprises compulsory and voluntary insurance.

The terms and conditions of compulsory types of insurance are determined by law and may not be changed by an insurance company or a client. There are following types of compulsory insurance in Kazakhstan:

- compulsory environmental insurance;
- compulsory insurance of civil liability of owners of transport vehicles;
- compulsory insurance of civil liability of carriers to passengers;
- compulsory insurance of the employer's liability to employees for work-related bodily injury or disease;
- compulsory insurance of civil liability of owners of vehicles hazardous to third parties;
- compulsory insurance of civil liability of tour operators and travel agents;
- compulsory insurance of civil liability of auditors and audit firms;
- compulsory insurance of civil liability of private notaries;
- compulsory insurance in horticulture;
- compulsory social insurance; and
- compulsory social health insurance.

The terms and conditions of voluntary insurance are determined upon agreement between the parties, i.e. the insurant and the insurer. In general, voluntary insurance relations in Kazakhstan are developing in accordance with the international trends and contain legal mechanisms customary for developed countries.

Voluntary insurance is governed primarily by (dispositive) optional provisions, i.e. many requirements provided by the law may be altered upon agreement between the parties. However, the National Bank of the Republic of Kazakhstan also has authority to supervise and control execution and performance of insurance agreements which prevents insurance companies from abusing and violating interests of their clients.

The existing insurance market of Kazakhstan provides opportunities for effective insurance against most risks accompanying businesses on a daily basis. Such types of insurance offered by Kazakhstan insurance companies as insurance of real property, cargo, automobile transport, other property, various types of liability, petroleum operations, business risks, etc. are an essential attribute of stable business environment for Kazakhstan and foreign investors.

FINANCIAL LEASING

Any relations arising in connection with financial leasing are regulated by the Law of the Republic of Kazakhstan *On Financial Leasing* of 5 July 2000.

Normally, a financial leasing contract has three parties: the Lessor, the Lessee and the Seller. The Lessor acquires from the Seller the ownership of the leasing item provided by the contract and transfers the same to the Lessee for temporary possession and use for business purposes.

The term of leasing may not be less than three years and lease contracts must comply with one or more of the following requirements:

1) transfer of the leasing item to the Lessee's ownership and/or granting to the Lessee the right to buy the leasing item at a fixed price are determined in the leasing contract;
2) the term of leasing exceeds 75% of the service life of the leasing item; or
3) the present (discounted) value of lease payments for the entire leasing term exceeds 90% of the value of the leasing item to be transferred.

The Law of the Republic of Kazakhstan *On Financial Leasing* describes different forms and types of financial leasing.

Forms of financial leasing:

- domestic leasing – the Lessor and the Lessee are residents of the Republic of Kazakhstan; and
- international leasing – the Lessor or the Lessee are non-residents of the Republic of Kazakhstan.

Types of financial leasing:

- leaseback – when the Seller sells the leasing item to the Lessor, provided that the Seller obtains such leasing item under lease acting as the Lessee;
- secondary lease – when, in the event of expiration or termination of the lease contract, the leasing item remaining in ownership of the Lessor is leased out to another Lessee;
- bank lease – the Lessor is a bank;
- full lease – when technical maintenance of the leasing item and its current repairs are performed by the Lessor;
- sublease – when the Lessee (the Sublessor) transfers the property previously received from the Lessor to third parties (Sublessees) for temporary possession and use for business purposes for the fee and for the term determined by the sublease contract;
- net lease – when technical maintenance of the leasing item and its current repairs are performed by the Lessee; and

- Islamic lease – a type of lease provided by Islamic banks subject to a license issued by the Kazakhstan National Bank and by other non-banking legal entities incorporated in the form of a joint stock company.

Leasing items include buildings, structures, machinery, equipment, accessories, transport vehicles, land plots or any other non-expendable items, save for securities and mineral resources.

Only banks' leasing activities are subject to licensing.

For tax accounting purposes, such transfer is treated as purchase of property by the lessee and the lessee is treated as the owner of the leasing item with lease payments treated as payments under a loan granted to the lessee.

In the event of transfer of property under financial lease, exemption from value added tax with respect to the amount payable to the lessor applies subject to the following conditions:

1) such transfer complies with the requirements of Article 78 of the Tax Code (certain of such main requirements are described above); and
2) the lessee acquires the property as a fixed asset, property investment or biological asset.

The taxpayer has the right to reduce the taxable income with respect to certain types of income, including payment received under financial lease of fixed assets, property investments or biological assets.

Payment received under financial lease payable to the lessor who is a resident of Kazakhstan is not subject to withholding tax at the source of payment. Income from the transfer of fixed assets under international financial leasing contracts is exempt from withholding tax (with respect to income of non-resident legal entities carrying out business without setting up a permanent establishment).

STOCK MARKET AND SECURITIES

The central regulatory act governing the securities market in Kazakhstan is the Law of the Republic of Kazakhstan *On Securities Market* of 2 July 2003. This law governs such matters as:

- issue, offering, circulation and redemption of issue-grade securities and other financial instruments;
- specific features of establishment and operation of securities market participants; and
- determination of the procedure for regulation, control and supervision of the securities market to ensure secure, open and efficient operation of the securities market, protection of the rights of investors and holders of securities, and fair competition of securities market participants.

The securities market of Kazakhstan comprises two main segments:

Regulated securities market

The market for circulation of issue-grade securities and other financial instruments when transactions involving such securities and instruments are consummated in accordance with internal documents (rules, regulations, etc.) of the trade organizers, i.e. stock exchanges and quotation organizations of the OTC securities market.

Unregulated securities market

The market for circulation of securities when transactions do not require compliance with the internal documents of trade organizers, i.e. outside stock exchanges and quotation organizations.

Circulation of securities, as well as other objects of civil rights, means consummation of various civil transactions involving securities.

All transactions involving issue-grade securities are subject to mandatory registration in compliance with Kazakhstan law. The purpose of such registration is that it is a legal method of reflecting the transfer of the rights and title to the security. Pursuant to the Law of the Republic of Kazakhstan *On Securities*, rights to securities are certified by obtaining an extract from the personal account of the securities holder reflecting all transactions involving securities of the relevant holder.

Securities market participants are divided into two large categories:

Professional securities market participants

Participants whose principal activity is closely related to transactions involving securities. The Law of the Republic of Kazakhstan *On Securities Market* defines the

following criteria for defining a market participant as a professional securities market participant: it has the status of legal entity; operates under a license or in pursuance of provisions of legislative acts.

The below are the types of activities that are subject to licensing by competent authorities:

- brokerage activities;
- dealer activities;
- investment portfolio management (with or without the right to raise voluntary pension contributions);
- custodian activities;
- transfer agency activities;
- clearing activities related to financial instruments transactions; and
- organization of trade in securities and other financial instruments.

Other securities market participants

Other securities market participants include individual investors (private individuals and legal entities), institutional investors (investment and mutual funds, etc.), issuers (persons issuing securities), and professional organizations (associations/unions of professional securities market participants).

In order for a security to be admitted to a stock exchange, the person issuing such securities (the issuer) must meet certain specific criteria (listing requirements). General requirements for issuers and their securities admittable/admitted to trading on a stock exchange, as well as certain categories of the exchange list, are determined by Resolution of the Board of the Kazakhstan National Bank No. 189 of 22 October 2014. All issue-grade securities admitted to the stock exchange, depending on whether their issuers meet certain criteria, are divided into separate categories reflecting the level of financial risk exposure.

The Law of the Republic of Kazakhstan *On Securities Market* provides special consideration to the most common types of securities, i.e. shares and notes or bonds.

Shares issued by joint stock companies are subject to registration with competent authorities upon completion of the procedure of registration of the joint stock company as a legal entity (its incorporation). Upon completion of placement of shares among their founders, joint stock companies may offer the remaining shares to the general public.

The securities legislation provides for registration of issues of different kinds of bonds depending on the amount of borrowing and target area of the issuer. For instance, for the purpose of further development of the mortgage lending, the legislation expressly defines the requirements for issue of mortgage bonds.

In order to provide stock market participants with wider investment opportunities, the legislation defines the types and order of circulation of various types of derivative financial instruments (options, swaps, futures, etc.) relying on internationally applied principles and notions.

The emergence of the regulated financial instruments market (stock exchange) in Kazakhstan was prompted by the introduction of the national currency, tenge, on 15 November 1993. On 17 November 1993, the National Bank of the Republic of Kazakhstan and twenty three leading banks established the Kazakhstan Interbank Currency Exchange. As the law was updated and the securities market developing, the Kazakhstan Stock Exchange (KASE) became a full-fledged trading floor for all financial instruments. Currently, KASE comprises 58 members, including banks, broker, dealer and investment companies.

One of the strategic directions of further development of Kazakhstan's financial sector is creation of the regional financial centre in the city of Almaty. The special Law *On the Regional Financial Center of the city of Almaty* was adopted on 5 June 2006.

On 15 December 2006, the Chairman of the Agency of the Republic of Kazakhstan on Regulation of the Activities of the Regional Financial Centre of the city of Almaty issued an order whereby the Kazakhstan Stock Exchange was appointed as the operator of the regional financial centre of the city of Almaty (the RFCA). The National Bank of the Republic of Kazakhstan, who is the successor of the Agency, is a shareholder of KASE and is actively involved in the management of the stock exchange.

Today, KASE is a universal financial market which comprises four major sectors: the foreign currency market, the government securities market, including international securities of the Republic of Kazakhstan, the shares and corporate bonds market and derivatives market and is the operator of the largest universal regulated financial market in Central Asia where international investors from all over the world may trade in wide range of financial securities with minimal estimated risks and in accordance with the best international practice and to use a broad range of high quality additional exchange services.

On 19 May 2015, the President of the Republic of Kazakhstan signed a decree on the establishment of Astana International Financial Centre (the "Centre") with the corporate seat in Astana, Kazakhstan. On 7 December 2015, the Republic of Kazakhstan adopted the relevant constitutional statute.

The main objectives of the Centre, to become fully operational in 2018, include the following:

1) assistance in the attraction of investments in the Kazakhstan economy through the establishment of an environment that would be favourable for investment in financial services;
2) development of the securities market in the Republic of Kazakhstan and integration thereof with international stock markets;

3) development of the Kazakhstan markets of insurance, banking and Islamic financial services;

4) improvement of the quality of financial and other professional services in line with the best international practices;

5) seeking recognition as a financial centre worldwide.

The Centre regulations may be composed of acts issued thereby which, in their turn, may be underpinned by the principles, statutes and legal cases of the common law of England and Wales and/or the standards applied by leading international financial centres and adopted by the Centre's governing bodies.

Until 1 January 2066, all members of the Centre will be exempt from corporate income tax on income received from the following financial services rendered for the benefit of the Centre:

1) Islamic banking services;

2) re-insurance and insurance brokerage services;

3) services for the investment management, accounting and safekeeping of investment fund assets and the arrangement for investment fund securities issuance, offering, trading, repurchase and redemption;

4) broker/dealer/underwriter services;

5) any other financial services determined by the relevant resolution of the Centre Management Council.

Until 1 January 2066, all members of the Centre will be exempt from corporate income tax on income received from any legal, auditing, accounting and consulting services rendered to the Centre's bodies and members which provide the aforementioned financial services.

Until 1 January 2066, all foreigners employed by any of the Centre's bodies or members will be exempt from individual income tax on income from their services provided for the benefit of the Centre under their employment contracts signed with any of the Centre's members which render the aforementioned financial services or any legal, auditing, accounting or consulting services.

Until 1 January 2066, all legal entities and individuals will be exempt either from corporate income tax or individual income tax, as appropriate, on any of the following types of income:

1) capital gains from the sale of securities listed on a stock exchange as at the date of sale;

2) capital gains from the sale of (i) shares held by corporate members registered in accordance with the Centre regulations then in force or (ii) interests in the authorized capital of corporate members registered in accordance with the Centre regulations then in force;

3) dividends or interest on securities listed on a stock exchange as at the date of such dividends or interest accrual; or

4) dividends on (i) shares held by corporate members registered in accordance with the Centre regulations then in force or (ii) interests in the authorized capital of corporate members registered in accordance with the Centre regulations then in force.

The Centre's bodies and members engaged in the provision of the aforementioned services will be exempt from property and land taxes with respect to any facilities located within the jurisdiction of the Centre.

The Law of the Republic of Kazakhstan *On Securities Market* provides for an option to offer securities of Kazakhstan resident issuers in foreign states subject to certain conditions, the most important of which is the requirement to offer the securities contemporaneously in the domestic stock market which is one of the measures encouraging development of the securities market of Kazakhstan. This option makes it possible for residents of the Republic of Kazakhstan to gain direct access to foreign capital markets and attract investment at lower costs. Some successful examples of an IPO include offering of shares of such major companies as Kazakhtelecom JSC and KazMunaiGas Exploration Production JSC.

MERGERS AND ACQUISITIONS

Due to the complexity of Mergers and Acquisitions (M&A) there is neither a separate legislative act governing this field nor a specific branch of law, a field of academic study or a specific discipline of study.

It is also necessary to understand that the term “Mergers and Acquisitions” is not a legal term, *per se*, under Kazakhstan law. Such forms of reorganization as merger or acquisition can only be seen in a very limited number of M&As.

Legal Procedures Applicable to Business Acquisitions

The laws of the Republic of Kazakhstan distinguish the following legal procedures applicable to business acquisitions:

- acquisition of participation interests/shares in LLPs/JSCs;
- acquisition of fixed assets from an existing and operating legal entity (industrial equipment, immovable property, etc.);
- signing of franchise agreements and acquisition of intellectual property rights; and
- sale of an enterprise as a property complex.

Comparison of the Two Most Common Types of Business Acquisitions

Criteria	Companies	Assets
Speed of acquisition	Usually high	Usually low
Related expenses	Small	Can be significant
Historic risks	Remain	Minimized
Special permits, licenses	Remain in force	Cease to exist
Contracts with counterparties	Remain in force	Cease to exist
Obligations	Remain in force	Usually cease to exist

Mandatory Legal Form Requirements in Certain Events

The laws of the Republic of Kazakhstan set forth mandatory requirements for legal entities to be incorporated only in particular organizational legal forms as listed in the table below.

	Legal Entity/Organization	Legal Ground
1.	Air companies carrying out regular air transportation must be organized in the form of JSC.	Article 74.3 of the Law of the Republic of Kazakhstan *On the Use of Airspace of the Republic of Kazakhstan and on Aviation Activities*
2.	Joint stock investment funds must be organized in the form of JSC.	Article 1.1 of the Law of the Republic of Kazakhstan *On Investment Funds*
3.	Insurance (reinsurance) organizations must be organized in the form of JSC.	Article 22.1 of the Law of the Republic of Kazakhstan *On Insurance Activities*
4.	Voluntary pension savings funds must be organized in the form of JSC.	Article 41.1 of the Law of the Republic of Kazakhstan *On Pension Security in the Republic of Kazakhstan*
5.	Banks must be organized in the form of JSC.	Article 15.1 of the Law of the Republic of Kazakhstan *On Banks and Banking*
6.	Microfinance organisations must be organized in the form of business partnerships.	Article 11.1 of the Law of the Republic of Kazakhstan *On Microfinance Organisations*
7.	Professional associations of actuaries must be organized in the form of public associations.	Article3.1(2) of the Law of the Republic of Kazakhstan *On Insurance Activities*

Specifics of Kazakhstan Laws Pertaining to Consummation of M&A Transactions

Specifics of applicable laws must be considered in M&A transactions. In certain events, mergers and acquisitions / registration / re-registration / reorganization require “approval” from competent government authorities.

Please refer to the table below for the most common examples:

	Examples	Legal Ground
	Financial organizations	
1.	Acquisition of the status of a major participant of a bank / bank holding company.	Article 17-1.1 of Law of the Republic of Kazakhstan *On Banks and Banking in the Republic of Kazakhstan* No. 2444 of 31 August 1995 (the "Banking Law")
2.	Obtaining consent to set up an insurance (reinsurance) organization.	Article 27.1 of the Insurance Law
3.	Obtaining by an insurance (reinsurance) organization and insurance holding consent to set up or to acquire a subsidiary and significant participation interest in charter capital of other legal entities.	Article 32.1 of the Insurance Law
4.	Obtaining consent from the National Bank of the Republic of Kazakhstan to voluntary reorganization of an insurance (reinsurance) organization.	Article 62.2 of the Insurance Law
	Antitrust (antimonopoly) laws	
5.	Application to the antimonopoly body for consent to economic concentration in the following events: 1) reorganization of a market entity through merger or acquisition; 2) acquisition by a person (group of persons) of voting shares (participation interests, stakes) in the charter capital of a market entity where such person (group of persons) acquires the right to dispose of more than fifty percent of said shares (participation interests, stakes), provided that prior to the acquisition such person (group of persons) has not disposed of shares (participation interests, stakes) in such market entity or has disposed of fifty percent or less percent of the voting shares (participation interests, stakes) in the charter capital of said market entity; and 3) acquisition of the right to own, possess and use, including in consideration for payment (transfer) of the charter capital, by a market entity (group of persons) fixed production assets and/or intangible assets of another market entity, provided that the book value of the property constituting the subject matter of the transaction (inter-related transactions) is more than ten percent of the book value of the fixed production assets and the intangible assets of the market entity disposing of or transferring the property.	Articles 201.1(1).201.1(2) and 201.1(3) of Entrepreneurial Code of the Republic of Kazakhstan No. 375-V of 29 October 2015 (the "Entrepreneurial Code")

6.	Notifying antitrust authorities of transactions recognized as economic concentration in the following cases: 1) acquisition by a market entity of the rights (including under a trust deed, joint venture agreement or agency agreement) permitting to give instructions binding upon another market entity in carrying out its business activities or to perform the functions of its executive body; and 1) participation of same natural persons in executive bodies, boards of directors, supervisory boards or other governing bodies of two or more market entities, provided that said natural persons determine in such market entities the terms and conditions of carrying out their business activities.	Articles 201.1(4) and 201.1(5) of the Entrepreneurial Code
Subsoil and subsoil use laws		
7.	Compliance with the state's right of first refusal with respect to the acquisition of the alienated subsoil use right (or part thereof) and/or facilities related to the subsoil use right for strategic fields or blocks, with or without consideration.	Article 12.2 of Law of the Republic of Kazakhstan *On Subsoil and Subsoil Use* No. 291-IV of 24 June 2010 (the "Subsoil Use Law")
8.	Application for consent to the alienation of the subsoil use right and the rights related thereto.	Article 37.1 of the Subsoil Use Law
Strategic facilities		
9.	Obtaining the Government's consent to encumber or alienate strategic facilities.	Article 193-1.3 of the Civil Code of the Republic of Kazakhstan (the "Kazakhstan Civil Code")
10.	Compliance with the right of first refusal with respect to the purchase of a strategic facility at market value (this right belongs to the Government of the Republic of Kazakhstan or, at its discretion, to the national management holding company).	Article 193-1.4 of the Kazakhstan Civil Code

Restrictions on Foreign Participation in Kazakhstan Resident Legal Entities

Although Kazakhstan law grants "national treatment" to foreign investors, there are certain restrictions on foreign participation in Kazakhstan resident legal entities. Please refer to the table below for a list of the most common restrictions:

	Statutory Restrictions	Legal Ground
1.	Foreign nationals and legal entities are prohibited from owning, using, disposing of and/or managing, directly and/or indirectly, more than 20% of shares (participation interests, stakes) in a legal entity who is the owner of a mass media outlet in the Republic of Kazakhstan or from carrying out activities in this field.	Article 23.6(3) of the Law of the Republic of Kazakhstan *On National Security of the Republic of Kazakhstan* of 6 January 2012 Article 5.2 of the Law of the Republic of Kazakhstan *On Mass Media* of 23 July 1999
2.	Legal entities incorporated in offshore jurisdictions may not own, use and/or dispose of, directly or indirectly, voting shares in resident insurance (reinsurance) companies of the Republic of Kazakhstan.	Article 21.4 of the Law of the Republic of Kazakhstan *On Insurance* of 18 December 2000
3.	Legal entities organized/incorporated in offshore jurisdictions may not own, use and/or dispose of, directly or indirectly, voting shares in resident banks of the Republic of Kazakhstan.	Article 17.5 of the Law of the Republic of Kazakhstan *On Banks and Banking in the Republic of Kazakhstan* of 31 August 1995

Internal Corporate Actions Required for Mergers and Acquisitions

It should be noted that M&A transactions require certain corporate actions be taken. Please refer to the table below for some examples.

	Actions	Legal ground
1.	A person intending to acquire, either on its own or jointly with its affiliates, in the secondary securities market ≥30% of the JSC's voting shares, or any other number of voting shares where, as a result of buying the same, such person will, either on its own or jointly with its affiliates, own ≥30% of the JSC's voting shares, must notify accordingly the JSC and the competent authority (National Bank of the Republic of Kazakhstan).	Article 25.1 of the Law of the Republic of Kazakhstan *On Joint Stock Companies*

2.	A person who, either on its own or jointly with its affiliates, has acquired in the secondary securities market ≥30% of the JSC's voting shares, or any other number of voting shares where, as a result of buying the same, such person will, either on its own or jointly with its affiliates, own ≥30% of the JSC's voting shares, must, within 30 days of the date of acquisition, announce in mass media its offer to other shareholders to sell their shares in the JSC (an announcement of an offer to shareholders in a public company must be published on the corporate website). In the event of written consent of the shareholder to sell its shares, the person who has made an announcement of the offer of acquisition is required within a 30-day period to pay for the shares.	Article 25.3 of the Law of the Republic of Kazakhstan *On Joint Stock Companies*
3.	When person(s) fail(s) to observe the statutory procedure for acquisition of shares, the holder(s) of at least 30% of voting shares in the JSC shall partially dispose of their shareholding exceeding 29% of the JSC's voting shares to an unaffiliated party.	Article 25.3 of the Law of the Republic of Kazakhstan *On Joint Stock Companies*
4.	A legal entity which has acquired over twenty percent of voting shares in a JSC shall, within 30 calendar days from the date of such acquisition, publish in mass media (specified in the JSC's charter) the information about its shareholding in such JSC.	Article 25.5 of the Law of the Republic of Kazakhstan *On Joint Stock Companies*
5.	Actions in an LLP in the event of sale of a participation interest (or part thereof) by its member to a third party (for the purposes of compliance with the members' rights of first refusal).	Article 31 of the Law of the Republic of Kazakhstan *On Limited and Additional Liability Partnerships*
6.	A person who intends, either individually or together with its affiliates, to acquire in total at least 50 percent of interests in the authorised capital of a partnership shall notify all the members of such partnership of their intention. The members of the partnership may respond to such notification within minimum thirty days.	Article 29.2-1 of the Law of the Republic of Kazakhstan *On Limited and Additional Liability Partnerships*

Rights and Obligations of JSC Shareholders and LLP Members

In planning, consummating and performing M&A transactions it is very important to clearly understand the rights and obligations applicable to JSC shareholders and LLP members in accordance with the applicable law as described below.

Rights and Obligations of JSC Shareholders

Voting shares— issued and outstanding common and preferred shares with voting rights attached to such shares as provided by the JSC Law. Voting shares do not include shares redeemed by the JSC and shares held by nominal holders for the beneficial owner(s) whose details are not registered with the central depositary system.

Votes at general shareholders meetings are cast in accordance with the "one share – one vote" principle, unless otherwise provided by the JSC Law.

In addition to voting shares, the organizational meeting (resolution of the sole founder) or general meeting of shareholders may form one "*golden share*" which is not counted in the formation of the charter capital and payment of dividends. The holder of the "golden share" has the right to veto resolutions of the general shareholders meeting, the board of directors and the executive body with regard to matters set forth in the JSC's charter (Article 13.5 of the JSC Law).[1]

Depending on the number of acquired voting shares, shareholders are divided into *major shareholders* (one or more shareholders acting under an agreement signed by and between such shareholders and holding (together) ten or more percent of the JSC's voting shares (Article 1 of the JSC Law) and *minority shareholders* (holders of less than 10 percent of the JSC's voting shares) (Article 1 of the JSC Law).

	Rights of Shareholders	Governed by the JSC Law
	Shareholders (regardless of the number of shares)	
1.	• to participate in the management of the JSC in the manner provided by the JSC Law and the JSC's Charter; • to receive dividends; • to obtain information on the JSC's activities and review its financial statements in the manner determined by the general meeting of shareholders or the JSC's Charter; • to obtain extracts from the JSC's registrar or nominal holder certifying its title to the securities; • to nominate candidates to be appointed by the JSC's general shareholders meeting to the JSC's board of directors; • to appeal, through judicial review, against decisions of the JSC's bodies; • to make written requests to the JSC about its activities and obtain justified responses within 11 days after the receipt of the requests; • to receive a part of the JSC's assets in the event of its liquidation; and • to purchase shares or other securities in the JSC convertible into its shares, in exercise of its pre-emptive right, in the manner provided by the JSC Law, unless otherwise provided by statutory acts; and • to participate in the adoption of a decision by the general meeting of shareholders with regard to the change in the number or type of shares in the JSC in the manner prescribed by the JSC Law.	Article 14.1

[1] Pursuant to Article 8.11 of the Law of the Republic of Kazakhstan *On Banks and Banking in the Republic of Kazakhstan*, this provision does not apply to banks and bank holding companies.

2.	The right to demand payment of unpaid dividends regardless of the time when the JSC incurred the debt.	Article 22.6
3.	If a person acquires, either itself or together with its affiliates, thirty or more percent of the JSC's voting shares in the secondary securities market, makes a public announcement with an offer to other shareholders to sell their shares in the JSC but fails to pay for such shares, the shareholder who has responded to the offer to sell its shares has the right to appeal, through judicial review, against the refusal of the person who has publicly offered to buy such shares.	Article 25.4
4.	To demand redemption of shares of the JSC in the events provided by the JSC Law.	Article 27.1
5.	Voting right to receive dividends on its pledged share unless otherwise is provided by the terms of the pledge.	Article 31.1
6.	Minority shareholders have the right to contact the JSC's registrar with a request to join other shareholders in making decisions on matters included in the agenda of the general meeting of shareholders.	Article 41.4
7.	Shareholders have the right to be represented at general shareholders meetings and vote on agenda items through proxy.	Article 47.1
8.	To request at any time for review the minutes of the general shareholders meeting together with other documents related thereto (minutes of the voting results, powers of attorney authorizing to participate and vote at the general meeting and to sign the minutes and written reasoning of the refusal to sign the minutes) and to request a copy of the minutes of the general shareholders meeting.	Article 52.5
9.	Appeal, through judicial review, against decisions of the JSC's board of directors made in violation of the provisions of the JSC Law and the JSC's Charter if such decisions violate the rights and legitimate interests of the JSC and/or the rights and legitimate interests of such shareholder.	Article 58.8
10.	Obtain from the JSC information on the JSC's activities affecting the interests of the JSC shareholders in accordance with the JSC Law and the JSC's Charter.	Articles 79.1 and 79.3
11.	Request copies of the JSC's documents related to the JSC's activities in the manner provided by the JSC's Charter subject to certain possible restrictions on disclosure of confidential information, commercial secrets or other information protected by law. Documents governing particular matters related to issue, allocation, circulation and conversion of the JSC's securities containing confidential information, commercial secrets or other legally protected information must be provided to a shareholder at his request.	Article 80

	Shareholders (depending on the type of shares)	
12.	**Rights of common shareholder(s):** • the right to participate in general shareholders meetings and vote on all matters put to a vote; • the right to receive dividends; and • the right to receive part of the JSC's assets in the event of its liquidation. **Preferred shareholder(s) have priority over holders of common shares to:** • receive dividends in predefined guaranteed amounts set forth by the JSC's Charter; and • a part of the JSC's assets in the event of its liquidation **Preferred shareholder(s) have the right to participate in the JSC management if:** • the general meeting of the JSC shareholders makes resolutions on matters that may restrict the rights of holders of preferred shares; • the general meeting of the JSC considers matters related to approval of changes to the methodology (approval of the methodology if it has not been approved before) of determination of the value of preferred shares in the event of their repurchase by the JSC in a non-organized market; • the general meeting of the JSC shareholders makes a resolution on reorganization or liquidation of the JSC; and • dividends due on preferred share(s) are not paid in full for a period of three months after the expiration of the term provided for its payment. Holders of the JSC's preferred shares have the right to attend a general meeting of shareholders requiring that shareholder be present or represented at such meeting and to participate in discussions on items included into the agenda.	Article 13.1 Article 13.4 Article 48.2
	Shareholders of 5 and more percent of voting shares	
13.	Suggest that the board of directors include additional issues on the agenda of the general meeting of shareholders.	Article 14.1(1-1)
14.	Refer to judicial authorities on its own behalf in the events required by the JSC Law with a request for compensation of the JSC by the JSC's officials for the losses caused to the JSC and for refund by the JSC's officials and/or its affiliated person of the profit (income) gained by them as a result of adopting decisions on entering into (or making an offer to enter into) major transaction(s) and/or transactions which are interested party transactions.	Article 14.1(7)

Shareholders of 10 and more percent of voting shares		
15.	• The right to request convening of an extraordinary general meeting of shareholders or to refer to court with a request to oblige the JSC to hold an extraordinary meeting of shareholders if the JSC's bodies fail to comply with his request to convene an extraordinary meeting of shareholders; • the right to request convening of a meeting of the board of directors; and • the right to request performance, at its expense, of an audit by the JSC's auditor.	Article 14.2
16.	The right to include additional items into the agenda of the general meeting of shareholders subject to the condition that other shareholders of the JSC have been notified of such additional items at least fifteen days prior to the date of the general meeting or otherwise in accordance with Article 43.4 of the JSC Law.	Article 43.1
Preferred shareholder(s) of more than 1/3 of the total number of issued and outstanding (other than redeemed) preferred shares		
17.	The right to "block" resolutions restricting rights of a preferred shareholder; the right to "block" a possibility to include additional items in the agenda of the general meeting of shareholders if resolutions on such items may restrict the rights of preferred shareholders.	Article 13.4(1) Article 43.4
Shareholder(s) of 40 and more percent of voting shares		
18.	The right to demand quorum at an adjourned meeting.	Article 45.2
Shareholders of 50 and more percent of voting shares		
19.	The right to demand quorum at a general meeting of shareholders.	Article 45.1
Shareholders of at least 2/3 of preferred shares		
20.	The agenda may be changed to include an additional item by not less than two thirds of the total number of issued and outstanding preferred (other than redeemed) shares where a resolution on such item may restrict the rights of preferred shareholders.	Article 43.4

Shareholders of 95 and more percent of voting shares		
21.	The agenda may be amended by the majority of shareholders present or represented at the general meeting of shareholders holding in total at least 95% of the JSC's voting shares.	Article 43.4
Shareholder of 100 percent of voting shares (sole shareholder)		
22.	The right to independently adopt resolutions on all matters that are defined by the JSC Law and the JSC's Charter as falling within the competence of the general meeting of shareholders without convening a general meeting of shareholders, provided that such resolutions do not impair or restrict the rights attached to preferred shares.	Article 35.4

In addition to the rights and obligations, shareholders also have obligations described in the table below:

	Obligations of JSC shareholders	**Governed by the JSC Law**
1.	• Within ten days notify the JSC's registrar and nominal holder of the shares on behalf of beneficial shareholders of changes in the details and information required for the records in the JSC's shareholders registry; • pay up their shares; • not to disclose information related to the JSC or its activities which constitutes confidential information, commercial secrets or other information protected by law; and • perform any other duties provided by the JSC Law and other legislative acts of the Republic of Kazakhstan.	Article 15.1
2.	A person intending to acquire, either on its own or jointly with its affiliates, thirty or more percent of the JSC's voting shares, or any other number of voting shares where, as a result of buying the same such person will, either on its own or jointly with its affiliates, own ≥30% of the JSC's voting shares in the secondary securities market must notify of such intention the JSC and the authorized body in the manner defined by the authorized body.	Article 25.1
3.	Shareholders entitled to be present or represented at the general meeting of shareholders must have documents certifying the title to shares.	Article 39.2
4.	Bear expenses related to copying and delivery of documents per request of materials of the agenda of the general meeting of shareholders, unless otherwise provided by the Charter.	Article 44.4

Rights and Obligations of LLP Members

Interests of all members in the charter capital and, accordingly, their share in the value of assets of a limited liability partnership ("LLP") (share in assets) are proportionate to their contributions to the charter capital, unless otherwise provided by the constituent documents of the limited liability partnership.

The number of votes of each LLP member in voting at a general meeting is proportionate to its participation interest in the LLP's charter capital, unless otherwise provided by the LLP Law or the LLP's Charter.

	Rights of LLP Members	Governed by the LLP Law of the Republic of Kazakhstan
	Members (regardless of interest)	
1.	• The right to participate in the LLP management; • the right to obtain information on the LLP's activities and to review its accounting/financial and other documents in the manner provided by the LLP's Charter; • the right to gain income from the LLP's activities; • the right to receive, in the event of the LLP's liquidation, a part of its assets remaining after settlements with creditors or, as may be agreed by all members of the LLP, a part of such assets in kind; • the right to withdraw from the LLP by disposing of its interest; and • the right to appeal, through judicial review, against resolutions of the LLP's bodies violating its rights.	Article 11.1
2.	The right to sell or otherwise assign its interest in the LLP's assets or part thereof to one or more members of the LLP at its own discretion. Equally, a member of the LLP has the right to pledge its interest to secure its obligations to other member(s) of the LLP. Such transactions do not require consent from the LLP or its other members.	Article 29.2
3.	The right to obtain from the LLP a certificate proving its membership in the LLP, provided that the member has paid its contribution in full.	Article 6.24
4.	The right to "block" resolutions of one or more members increasing the charter capital by additional contributions.	Article 26. 4
5.	The right to dispose of a member's interest (or its part) to third parties or the right to pledge a member's interest (or its part) to secure such member's obligations to third parties, unless otherwise provided by the LLP's constituent documents.	Article 30.1

6.	• The pre-emptive right over third parties to purchase a member's participation interest or its part when such interest is sold by any member, unless otherwise provided by statutory acts; • the right to sell a member's interest (or its unpaid part) to a third party at a price which is not lower than the price specified in the notice of offer to sell, if members of the partnership do not buy this interest or its part in exercise of their pre-emptive purchase right within one month of the date of the notice to the LLP's executive body; • members have the right to repeat the procedure of their pre-emptive right to purchase an interest based on the actual selling price of the interest or its part, if the interest is sold to a third party by another member at a price which is lower than the price specified in the notice (and if the sale and purchase agreement is invalidated); • the right to demand, through judicial review, transfer of the buyer's rights and obligations within three months, if another member has sold the interest or its part in violation of the pre-emptive purchase right.	Article 31.1 Article 31.5 Article 31.6 Article 31.7
7.	The right to receive part of the distributable income in proportion to its interest in the charter capital, if the LLP's general meeting resolves to distribute income among its members.	Article 40.2
8.	The right to claim damages from another member who has caused damages to the LLP or its members.	Article 34.1
9.	The right to attend general meetings, to participate in discussion of agenda items and to vote on resolutions.	Article 42.2
10.	The right to be represented at the general meeting by proxy.	Article 42 3
11.	The right to put motions regarding agenda items of the general meeting at least ten days prior to its opening.	Article 46.2
12.	The right to claim, through court, from members of the executive body damages caused to the LLP by a failure of such members or their relative(s) (spouse, father, mother, children and siblings) to comply with the following restrictions: 1. to enter into transactions intended to gain valuable (property) benefits (including gift deeds, loan, gratuitous use, sale and purchase agreements, etc.); 2. to obtain commission fee either from the LLP or from third parties for transactions with third parties entered into by the LLP; 3. to act for or on behalf of third parties in their relations with the LLP; and 4. to undertake business activities competing with the activities of the LLP.	Article 55.3

13.	The right to demand financial audits of the LLP at its own expense.	Article 59.3
14.	The right of a member to demand purchase of its interest by other members who voted for reorganization of the LLP, if such member was not present at the meeting adopting the resolution to reorganize the LLP or voted against such resolution.	Article 66.1
Member(s) holding >5% interest		
15.	The right to include the items defined by such member(s) in the agenda of the general meeting.	Article 46.2
Member(s) holding >10% interest		
16.	The right to request holding/convening of extraordinary general meeting of LLP's members.	Article 45.2
Member(s) holding ≥20% interest		
17.	The right to request that resolutions of the general meeting be adopted by secret ballot.	Article 48.3
Member(s) holding >1/4 interest and member(s) holding >1/4 of votes of members present/represented at the general meeting of members		
18.	The right to "block" resolutions made by member(s) holding <3/4 interest / <3/4 of votes.	Article 39.1 Article 49.1 Article 48.2
Member(s) holding ≥1/3 interest		
19.	The right to "block" resolutions of member(s) holding ≤2/3 interest.	Article 47.4
Member(s) holding >50% interest		
20.	The right to demand presence of a quorum, unless a resolution requires a qualified majority of votes or a unanimous vote.	Article 47.4
Member(s) holding majority of votes of members present/represented at the general meeting of members (e.g. >50% interest + 1 vote)		

21.	The right to "ensure adoption of a resolution" other than in the following events: • amendments to the LLP's Charter, including changes in its charter capital, location and trade name or approval of the LLP's revised Charter; • resolution on reorganization or liquidation of the LLP; • resolution on mandatory repurchase of an interest from an LLP's member; • resolution on pledge of all assets of the LLP; and • other matters set forth in the LLP's Charter.	Article 48.2
	Member(s) holding >2/3 interest	
22.	The right to demand quorum if a resolution requires a qualified majority of votes or unanimous vote.	Article 47.4
	Member(s) holding ≥3/4 interest	
23.	The right to "ensure adoption of a resolution" on additional contributions from members to the LLP's assets by a general meeting of members.	Article 39.1
24.	The right to "approve resolutions" on holding a general meeting in absentia by ballots cast by members using all means of communication available to them ensuring authenticity of the transmitted and received messages.	Article 49.1
	Member(s) holding ≥3/4 of votes of members present/represented at the general meeting (qualified majority)	
25.	The right to "ensure adoption of resolutions" on the following matters (unless the LLP's Charter requires a greater majority of votes or unanimous vote for their adoption): • amendments to the LLP's Charter, including change in its charter capital, location and trade name, or approval of a revised charter of the LLP; • resolution on reorganization or liquidation of the LLP; • resolution on mandatory repurchase of an interest from an LLP's member; • resolution on pledge of all assets of the LLP; and • other matters, as may be defined by the LLP's Charter.	Article 48.2
	Member holding 100% interest	
26	The right to adopt resolutions on all matters without convening general meeting of members.	Article 10.2

Apart from the rights, LLP members also have obligations which are described in the table below:

	Obligations of LLP Members	Governed by the LLP Law
	Members (regardless of interest)	
1.	• Comply with the requirements of the Foundation Agreement; • make contributions to the LLP's Charter in the manner, amounts and within the terms set forth in its constituent documents (in the event of a newly set up LLP, its charter capital must be formed within one year after its registration); • not disclose information that has been classified by the LLP as commercial secret; • notify in writing the executive body and the registrar, if the LLP maintains a register of members, of any changes in the LLP's Charter.	Article 12.1 Article 24.2
2.	Be jointly and severally liable for the LLP's obligations to the extent of the outstanding part of a member's contribution (in the event if such member has not fully paid its contribution to the LLP's charter capital).	Article 2.4
3.	Assume the risk of accidental loss or damage to property subject to all of the following conditions: • the right to use such property is transferred as contribution to the LLP's charter capital; • the member is the owner of such property; and • the LLP's constituent documents do not provide otherwise.	Article 23.5
4.	Reimburse the LLP for the loss or damage and, unless otherwise provided by the LLP's Foundation Agreement or Charter, pay to the LLP a late payment interest in accordance with Article 353 of the Kazakhstan Civil Code (if a member has not paid his contribution in due time).	Article 24.3

5.	Within 5 (five) business days after the LLP registration, transfer funds from a founder's savings account (opened for the purpose of payment prior to the formation of the LLP's charter capital) to the LLP's current account. In the event of the founder's failure to comply with the requirement to transfer funds, such founder must pay to the LLP a late payment interest in the amounts set forth in Article 353 of the Kazakhstan Civil Code, unless the founders have not established any other consequences of such late payment.	Article 24.7
6.	Perform management of the assets transferred to trust management (if the LLP's founders make their contributions in kind in lieu of monetary contributions) for the benefit of all founders and, after registration of the LLP, for the benefit of the LLP.	Article 24.8
7.	Jointly and severally bear subsidiary liability to the LLP's creditors for its debts within the amount of the charter capital exceeding the amount of its own capital in the event if the LLP's stated charter capital exceeds its actual charter capital.	Article 25.3
8.	Notify in writing the LLP's executive body of its intention to sell its interest or its part to a third party specifying the intended offer price.	Article 31.2
9.	Within 7 days of relevant notice from the LLP's executive body, notify the LLP's executive body of its intention to exercise its pre-emptive purchase right specifying whether it intends to purchase the offered interest, either in full or in part.	Article 31.3
10.	Put forward motions (if any) regarding the items of the agenda of the general meeting at least 10 days prior to its opening.	Article 46.2
11.	Pay for audit of the LLP's financial statements (if such member requests the financial audit).	Article 59.3
Member(s) holding >5% interest		
12.	Request to include matters defined by a member or members (if any) into the general meeting's agenda at least 10 days prior to its opening.	Article 46.2

CORPORATE GOVERNANCE

Neither legislators nor legal practitioners have a single approach to the definition of "corporate governance". The main reason for that is that the concept of corporate governance is still being developed. Nevertheless, there is general agreement that corporate governance is a set of structures and procedures allowing for efficient management of a company and control over its operations at the highest institutional management level.

Lately, Kazakhstan has been showing a keen interest in corporate governance due to global trends and certain external factors.

However, we cannot deny the possibility of gaps in the Kazakhstan company legislation regulating the corporate governance matters.

Besides, the Kazakhstan's awareness about the importance of corporate governance not only for joint stock companies but also for smaller companies grows. We hope that this initiative will be implemented in the near future, thus raising the competitiveness and investment attractiveness of Kazakhstan companies.

Model Corporate Governance Code

In 2005, Kazakhstan developed the national Model Corporate Governance Code (the "**Model CGC**") which defined the key principles and rules of corporate governance in Kazakhstan. The Model CGC is based on the best international practices with due account for the Kazakhstan corporate culture specifics.

The Model CGC is not legally binding and is advisory in nature, and its main message is that Kazakhstan companies may develop their own corporate governance codes on the basis of the Model CGC, adopt them as internal corporate documents and voluntarily observe their requirements.

The current Kazakhstan Model CGC is outdated and needs thorough revision.

Corporate Structure

Corporate structure is a central element of the corporate governance system which represents the system of corporate bodies and their interrelationship expressed by the distribution of powers. Further, we would like to consider the corporate structure of a joint stock company (JSC) as a type of Kazakhstan business considered the closest to the classical concept of corporation.

The current legislation provides for the following hierarchy of JSC management bodies:

- supreme body – a general meeting of shareholders (or, in a JSC where all voting shares are held by one shareholder – such sole shareholder);
- management body – a board of directors; and
- executive body – a collegial body or a person who performs the executive functions at his sole discretion.

General Meeting of Shareholders

The supreme body of JSC is a general meeting of shareholders to be held annually within 5 months after the closure of a financial year. Apart from the annual general meeting, a JSC may convene extraordinary general meetings of shareholders.

JSC shareholders enjoy a number of rights enabling them to participate in the JSC management (including the proposal of candidates to the board of directors) and to get information about the JSC operations, as well as the entitlement to a portion of assets upon the JSC liquidation, and other rights provided by law and/or the JSC articles of association. The rights prescribed by law may not be limited.

A major shareholder of JSC (i.e. a shareholder who owns 10 or more percent of voting shares in the JSC) is granted ancillary rights. According to Article 1.23 of Kazakhstan Law *On Joint Stock Companies* No. 415-II of 13 May 2003 (the "**JSC Law**"), a major shareholder also implies a number of shareholders who act under an agreement signed between them and collectively hold 10 or more percent of voting shares in the JSC. The holders of preference shares have priority rights over the holders of ordinary shares with regard to predetermined dividends and assets distributed upon the JSC liquidation. Besides, a JSC may issue a golden share excluded from the authorized capital and dividend payments but providing the power to veto corporate decisions of the JSC.

The relationship between shareholders and the relationship between shareholders and the JSC are regulated by a memorandum of association (until the authorized stock is registered with government authorities) and articles of association. In Kazakhstan companies such legal instrument as a shareholders' agreement is hardly ever applied since it is not provided by Kazakhstan law. Such agreements are not prohibited, though, in practice, the provisions of a shareholders' agreement might conflict with law. For example, a shareholders' agreement may not contain any clause that would limit shareholders' rights because the law explicitly prohibits such limitation.

When any party fails to perform such agreement, it might be difficult to enforce the agreement because the law does not provide for such kind of agreement and any liability for its breach. Given the fact that in Kazakhstan shareholders' agreements are hardly ever executed, there is no court practice for settlement of related disputes.

Besides, Kazakhstan does not have legal precedent in the settlement of corporate disputes between minority and majority shareholders due to the fact that minority shareholders are "passive" shareholders implying former employees of a company who acquired shares upon its privatization. Such shareholders are hardly involved in the JSC management and, accordingly, they cannot lodge any claims or complaints against majority shareholders.

Board of Directors

The board of directors is a body responsible for the management of JSC operations. It is a corporate governance centre of a JSC.

Under the law, a board of directors must consist of three members, 30% of which must be independent directors.

Lately, the role of independent directors in JSC operations is being enhanced. Nowadays, the general professional level of independent members of the board is much higher than few years ago. Various surveys showed that shareholders are not willing anymore to invite nominal "independent" directors to the boards - they prefer to see a real professional contribution of directors to the board performance. For example, over 50% of companies are planning to introduce independent directors into their boards in the nearest future.

However, the main problem is that the law does not define the rights and obligations of independent directors. It is not clear what independent directors (except for the executives of the board committees) are responsible for and which powers they exercise.

The JSC board sets up various committees for consideration and issuance of recommendations to the board on the most vital issues, including the following:

- strategic planning;
- human resources and remuneration;
- internal audit;
- social issues; and
- any other issues covered by internal documents of the JSC.

Committees consisting of the board members and various professionals are headed by a member of the board of directors. The first four committees of the above are headed/chaired by independent directors.

For Kazakhstan the JSC board committees requirement is new and many companies set up such committees only for the sake of compliance, meaning that the committees do not perform the advisory function. This is not surprising, because in many JSCs the board meetings are practically not held.

The board matters include, without limitation, the appointment of a corporate secretary and the determination of his term of powers. This position was introduced in JSCs in 2007. However, until recently, only few shareholders and even corporate secretaries fully realized the purpose of this function. Most frequently, the corporate secretary functions were placed on in-house lawyers and implied the duties of the secretary of a general shareholders' meeting. The latest surveys showed that, currently, in each second company the corporate secretary does not combine his direct duties with any other functions, and almost 50% of companies evaluate the professional level of such specialists as high.

Please note that Kazakhstan law does not provide for the term “shadow director”.

Executive Body

The executive body, collegial or sole, administers the day-to-day operations of a JSC. The executive body may resolve on any matters related to the JSC operations which are not reserved to other bodies or officers of the JSC.

Liability of JSC Officers

The law provides for the list of actions for which JSC officers are liable. The list is not exhaustive and includes, *inter alia*, the following: (i) the delivery of misleading or knowingly fraudulent information; (ii) the violation of the procedure for information delivery established by the JSC Law; and (iii) the inducement to enter into and/or to make a decision regarding major transactions and/or interested party transactions which could cause loss to the JSC due to unfair practices and/or omissions, including any actions intended to derive profit/income from such transactions for themselves or their affiliates.

Subject to the law, officers (except for the officers interested in a certain transaction and offering its closure) may be released from liability if they have voted against the decision adopted by a JSC body which entailed losses for the JSC or its shareholders, or if they did not participate in the vote for a good cause. Besides, officers are released from liability when it can be proven that they have properly acted in compliance with the officers’ code of conduct provided by the law, have used the relevant information as at the date of such decision adoption and have reasonably believed that such decision serves the interests of the JSC.

JSC may insure the liability of its officers against any loss in order to ensure the compensation thereof at the expense of the insurance company. However, very few JSCs (one out of ten) implement programs for insurance of their officers’ liability.

Protection of Minority Shareholders

One of the key principles of corporate governance is the equitable treatment of shareholders. Nevertheless, the ability to influence JSC operations is directly proportional to the number of held shares.

The protection of minority shareholders is a very important aspect of corporate governance that helps to bring into balance the interests of minority and majority shareholders, to avoid conflict of interests and to minimize potential abuse on both sides.

The Kazakhstan company law provides for a number of legal instruments to protect the rights of minority shareholders:

- the right of minority shareholders to make common cause with other shareholders in order to adopt decisions on the agenda issues of a general meeting of shareholders (Article 41.4 of the JSC Law);
- the right of minority shareholders to demand buyout of their shares by the JSC if they did not attend the general meeting of shareholders or if they voted against the decision on (i) the JSC restructuring, (ii) shares delisting, (iii) the closure of a major transaction or an interested party transaction, and (iv) the amendment of the JSC articles of association in a way that restricts the rights attached to the shares held by such shareholders (Article 27.1 of the JSC Law);
- the legislative provision of the requirement that any decisions of a general meeting of shareholders related to the JSC operations must be adopted by the supermajority of votes (Article 36.2 of the JSC Law); and
- the right of minority shareholders to file a lawsuit in court seeking the prosecution of JSC officers (Article 14.1 of the JSC Law).

Besides, given the fact that the board members may be elected by cumulative vote (Article 50.1(2) of the JSC Law), technically, minority shareholders may seek their representation in the board of directors.

In spite of certain legal remedies, the Kazakhstan minority shareholders are still vulnerable and the applicable laws need some improvement.

BANKRUPTCY

Kazakhstan law defines bankruptcy as the debtor's insolvency as determined by court and serving as grounds for its dissolution. Insolvency is the inability of the debtor (either a sole proprietor or a legal entity), as determined by court, to fully satisfy its creditors' claims under the monetary obligations, to pay salaries and wages to persons employed under employment contracts, and to ensure payment of taxes and other obligatory payments to the budget, social security payments to the State Social Insurance Fund and compulsory pension fund and professional pension scheme contributions.

Declaration of Bankruptcy

Bankruptcy may be voluntary or forced. A court may declare the debtor bankrupt after it files a voluntary bankruptcy petition. The debtor must file a bankruptcy petition with a court in the event if the owner of its property, its authorized body, its founders or the legal entity's competent body makes a resolution to dissolve the debtor and that its property is insufficient to fully satisfy claims of its creditors. In the event of the debtor's failure to file a bankruptcy petition, the debtor's superior is subject to additional (secondary) liability for the debtor's obligations to creditors.

Declaration of forced bankruptcy is made in the event of a petition filed by creditor(s) or other persons in the events provided for by law. The ground for the creditor's petition to declare the debtor bankrupt or to apply rehabilitation proceedings is the debtor's insolvency. A debtor is insolvent when it matches at least one of the following criteria:

1) the borrower does not discharge his obligations to compensate creditor for damages inflicted on human health and life, to recover alimony, to pay salaries and other compensations under employment agreement, to make contributions to the State Social Security Fund, to make mandatory contributions to the pension fund and professional pension schemes, and to pay fees under copyright agreements for three months after the due date, provided that the total amount of such obligations exceeds one hundred monthly calculation indices determined for the current financial year by the republican budget law;
2) the borrower does not discharge his obligations to compensate creditor for taxes and other obligatory payments to the budget, including the liabilities of the debtor's branches and representative offices, for four months after the due date, provided that the total amount of such obligations exceeds one hundred and fifty monthly calculation indices determined for the current financial year by the republican budget law; and
3) the borrower does not discharge his obligations to other creditors for three months after the due date, provided that the total amount of such obligations of **an individual entrepreneur** exceeds three hundred monthly calculation indices determined for the current financial year by the republican budget

law, **OR** the total amount of such obligations of **a legal entity** exceeds one thousand monthly calculation indices determined for the current financial year by the republican budget law.

The above requirements do not apply to the petitions for bankruptcy of an absent debtor.

The court may declare the debtor bankrupt on the grounds of the debtor's insolvency.

Deliberate and False Bankruptcy

The law also defines deliberate and false bankruptcy. Deliberate bankruptcy is intentional creation or increase of insolvency as a result of an action/omission committed by a founder/participant, officer, corporate body or individual entrepreneur in its own personal interests or in the interests of third parties. False bankruptcy means intentionally misleading bankruptcy announcement as a result of an action and/or decision committed/made by a founder/participant, officer, corporate body or individual entrepreneur with the purpose to mislead the creditors in order to obtain a deferral of payments or an option to make in instalments the payments due to the creditors or debt discounts, as well as to be able to default on debt payments.

The owner of the property (or its authorized body), the founder/participant and/or officials of the debtor (legal entity) are subject to additional (secondary) liability to the creditors of the insolvent debtor with their property for intentionally causing the debtor's insolvency (intentional bankruptcy). The official of the bankrupt legal entity is ordered to reimburse the owner of the property for the damages and losses caused by the debtor's intentional insolvency.

If the debtor files a bankruptcy petition with a court and is able to fully satisfy its creditors' claims (false bankruptcy), the creditors may demand that the debtor indemnify them for the so caused damages and initiate judicial proceedings to impose subsidiary liability on the decision-makers.

When in the course of bankruptcy proceedings a bankruptcy commissioner reveals the facts of deliberate bankruptcy, he must (and creditors may) within one month file a lawsuit against such person for recovery of the creditors' claims which have not been satisfied due to the lack of assets remaining after the bankruptcy proceedings.

If the bankruptcy receiver identifies elements of deliberate or false bankruptcy, or when a bankrupt is recognized by a prosecutor on the grounds provided by Article 47.1(1) of the Bankruptcy Law, the receiver must, within one month, refer to law enforcement agencies in order to hold the respective officials liable.

Consequences of Initiating Bankruptcy Proceedings

Effective as at the date of initiating the bankruptcy proceedings:

1) the owner of the debtor's property (or its authorized body), the founders/participants and all bodies of a legal entity are prohibited to use or dispose of the property outside normal commercial transactions without the approval of the interim receiver;

2) enforcement of previous decisions of courts, intermediate courts/arbitrations, state revenue authorities and the debtor's owners (founders/participants) or bodies with respect to its property is suspended, safe for payments to the natural person to whom the debtor is liable for causing harm to life or health without regard to claims for non-pecuniary damages;
3) any creditors' claims against the debtor may be made only within the bankruptcy or rehabilitation proceedings prescribed by the Bankruptcy Law, except for the claims to third parties for performance of guarantee or surety commitments and forfeiture of the pledged item if the pledgor is a third party;
4) no recovery of money is permitted from the debtor's bank accounts as may be claimed by creditors, state revenue or any other competent government authorities assessing and/or collecting other obligatory payments to the budget, including those that are subject to satisfaction without recourse to the court (or further authorization) as well as foreclosure of the debtor's property; and
5) no disposition of shares or participation interests in the debtor's charter capital is permitted.

The court must hear a bankruptcy case within two months after the date of filing of the bankruptcy petition with the court.

Management of Debtor's Property and Affairs

Upon the issuance of a court decision on the recognition of a debtor as bankrupt, the right to manage his assets and affairs is assigned to an interim receiver.

The debtor's officers must, within three business days after the court's decision on the recognition of the debtor as bankrupt, transfer to the interim receiver the constituent, accounting and title documents, seals, stamps and any material and other values owned by the bankrupt.

The interim receiver may:

1) request from government authorities, corporations or individuals any information about debtors and their assets, including copies of documentary evidence which must be provided free of charge within ten business days after the request filing;
2) reveal the transactions executed by the debtor before his bankruptcy in violation of the Bankruptcy Law and claim in court (also on the basis of a petition from the creditor who detected such transactions) the invalidation of such transactions and return of assets;
3) take legal recourse when deliberate or false bankruptcy is detected;
4) request from creditors the documents proving the causes of action and claimed amounts; and
5) exercise any other rights provided by the Bankruptcy Law.
6) Settlements with creditors

Settlements with creditors are ranked, i.e. the lower-ranked claims are satisfied after the higher-ranked claims.

Those creditors' claims which remain undischarged due to the lack of the bankrupt's assets are deemed discharged.

Such amounts are written-off by the creditor against accounts receivable subject to a court ruling on the discharge of bankruptcy.

After all creditors' claims are discharged, the interim receiver must submit to the court the final report on his/her activity approved by the creditors' meeting accompanied by the liquidation balance sheet and the statement on distribution of assets remaining after settlement of liabilities to creditors. The court must approve the final report of the interim receiver and liquidation balance sheet and issue a ruling on the discharge of bankruptcy within fifteen calendar days after submission thereof.

Debt Relief

After the final settlement with creditors, the individual entrepreneur recognized bankrupt is exempt from the performance of the remaining liabilities connected with his business, save for the claims from individuals to whom the bankrupt is liable for damages to human life or health and any other claims of a personal nature set forth in Kazakhstan laws. A bankrupt is not granted debt relief if he/she transferred a part of his/her assets to another person in order to hide such assets within three years before the initiation of rehabilitation and bankruptcy proceedings, or concealed or fabricated the required accounting information, including accounting books, accounts and documents.

Winding-up of Bankrupt Legal Entities (Liquidation)

Bankrupt liquidation is deemed completed and bankrupt is deemed wound up after the relevant entry in the State Register of Legal Entities and Individual Entrepreneurs is made. Orders on deregistration of a bankrupt by state registration authorities are delivered to court, competent authorities and state revenue agency at the bankrupt's location. Members of the boards of directors of joint stock companies, chief executive officers and members of executive bodies, and chief accountants of bankrupt corporations are recorded by the registrar of bankrupts' founders set up by the competent authorities. Such registration may restrict the rights of the aforementioned officers to certain activities or the rights of such officers' employers.

Rehabilitation proceedings

A rehabilitation proceeding is the legal process by which an insolvent company is applied reorganisation, organisation, economic, governance, investment, technical, financial, legal and other measures permitted by Kazakhstan law for the reestablishment of the debtor's solvency in order to avoid its liquidation.

Insolvency of a debtor may be used by a creditor as the ground for initiation of rehabilitation proceedings.

Rehabilitation proceedings may be applied through courts only to profit organisations.

The term of rehabilitation proceedings is determined by court in accordance with the relevant rehabilitation plan. The court may, upon the application of the rehabilitation manager and with consent of the creditors' meeting, extend the term for maximum six months.

Subject to law, a rehabilitation plan is a set of interlinked measures aimed at the rehabilitation of a debtor through rehabilitation or accelerated rehabilitation proceedings which are performed by mutual consent of the debtor and creditors (or group of similar creditors) in order to re-establish the solvency of an operating entity and to retain its employees, specifying the deadlines, including the schedule for discharge of creditors' claims, as well as achieved results, used resources and potential risks. A rehabilitation plan must describe certain measures for re-establishment of the debtor's insolvency (rehabilitation measures) and set out the schedule for discharge of liabilities to creditors.

A rehabilitation plan must be developed by the debtor together with its creditors within three months after the effective date of the decision on application of rehabilitation proceedings.

The term of a rehabilitation plan must not exceed five years. The interim receiver must report to court on the efficiency/inefficiency of the rehabilitation plan.

The effect of rehabilitation proceedings is, to a large extent, similar to the effect of bankruptcy proceedings, with a few exceptions.

Upon the issuance of a court decision on the application of rehabilitation proceedings, the following consequences shall apply:

1) any transactions with assets outside regular business transactions are subject to approval of the interim receiver;
2) the accrual of any fines, charges and penalties on any liabilities of the debtor, including interest on loans, must be stopped;
3) the enforcement of any court/arbitration awards or decisions adopted by state revenue authorities, owners of the debtor's assets (or their authorized bodies) or founders/participants with regard to the debtor's assets, except for the payments to civilians to which the debtor is liable for damages to human life or health (excluding moral damages) which matured after the application of rehabilitation proceedings, must be suspended; and
4) all taxes and other obligatory payments to the budget assessed by the taxpayer in accordance with tax returns and assessed by tax revenue authorities in accordance with audit findings for tax periods following the tax period in which the rehabilitation proceedings were applied must be paid.

The rehabilitation manager must, based on the resolution of the creditors' meeting, apply to court for the termination of rehabilitation proceedings when:

1) the objective of such rehabilitation proceedings is achieved; or
2) the rehabilitation manager is convinced that the objective cannot be achieved.

Usually, when the objective of rehabilitation proceedings is not achieved, bankruptcy proceedings are applied.

CURRENCY REGULATION

The primary regulatory legal act governing currency relations in the Republic of Kazakhstan is Law of the Republic of Kazakhstan *On Currency Regulation and Currency Control* No. 57-III of 13 June 2005. This Law governs civil relations arising in connection with the exercising by residents and non-residents of rights to currency valuables and determines the goals, objectives and procedures of currency regulation and currency control. This Law applies to Kazakhstan residents outside the Republic of Kazakhstan.

The principal currency regulator in Kazakhstan is the National Bank of the Republic of Kazakhstan.

The following persons are recognised as **residents** of the Republic of Kazakhstan for the purpose of currency regulation and control:

- citizens of the Republic of Kazakhstan (except for those who hold the right for permanent residence in a foreign state) wherever located;
- foreign nationals and stateless persons who hold the right for permanent residence in the Republic of Kazakhstan (residence permit);
- all legal entities established in accordance with the legislation of the Republic of Kazakhstan having its registered office in the Republic of Kazakhstan and their branches and representative offices having their registered offices in and outside the Republic of Kazakhstan; and
- diplomatic, trade and other official representations of the Republic of Kazakhstan located outside the Republic of Kazakhstan.

Non-residents include:

- citizens of the Republic of Kazakhstan holding a document granting the right to permanently reside in a foreign state;
- foreign nationals and stateless persons (except for those who have a document granting the right to permanently reside in the Republic of Kazakhstan);
- all legal entities established in accordance with the legislation of foreign states, their branches and representative offices, wherever located;
- international organizations, unless otherwise provided by an international (intergovernmental) agreement on their establishment; and
- diplomatic and other official representations of foreign states.

Currency transactions include:

- transactions implying the transfer of ownership and other rights to currency valuables and the use of currency valuables as a means of payment; and
- import, sending and remittance to the Republic of Kazakhstan, as well as export, sending and remittance from the Republic of Kazakhstan of any currency valuables, national currency, securities and payment documents the face value of which is expressed in the national currency, and unvalued securities issued by residents.

Currency valuables include:

- foreign currency;
- securities and payment documents denominated in foreign currency;
- unvalued securities issued by non-residents;
- refined gold in bars;
- national currency of the Republic of Kazakhstan;
- securities and payment documents denominated in the national currency of the Republic of Kazakhstan, if used in transactions between residents and non-residents and between non-residents; and
- unvalued securities issued by residents, if used in transactions between residents and non-residents and between non-residents;

Any and all foreign currency exchange transactions are subject to licensing in the Republic of Kazakhstan. Licenses are issued by the National Bank of the Republic of Kazakhstan.

The following currency transactions are subject to **registration** in the Republic of Kazakhstan:

1) payments between residents and non-residents under commercial loans related to export (import) of goods for a period over 180 days, and for a shorter period when the actual repayment or discharge period (either on the part of residents or on the part of non-residents) exceeds 180 days;
2) financial borrowings between residents and non-residents for a period of over 180 days, and for a shorter period when the actual repayment or discharge period (either on the part of residents or on the part of non-residents) exceeds 180 days;
3) direct investment by non-residents in the Republic of Kazakhstan and residents abroad; and
4) payments between residents and non-residents related to acquisition of fully exclusive rights to intellectual property as well as transfer and receipt by residents of money and other property in fulfilment of the obligations of the participant of joint activities.

Registration of the aforesaid currency transactions by the National Bank of the Republic of Kazakhstan is required only if they fall under any of the following criteria:

- the amount of the currency transaction involving property (funds) incoming to the Republic of Kazakhstan and/or creation of obligations of the resident to return the property (repay the funds) to the non-resident exceeds an amount equal to 500,000 US dollars; or
- the amount of the currency transaction involving transfer of funds (transfer of property) outside the Republic of Kazakhstan and/or creation of claims of a resident to a non-resident to return the property (repay the funds) exceeds an amount equal to 100,000 US dollars.

Registration of currency transactions is confirmed by a registration certificate issued by the National Bank of the Republic of Kazakhstan in the established form.

Currency transactions that are performed in accordance with the **notification regime**:

1) settlements between residents and non-residents in connection with export/import of works/services;
2) acquisition of securities, investment of cash and other properties to ensure participation in an entity (including the authorized capital) or contribution to the entity's assets that do not constitute direct investment,
3) transactions with derivative financial instruments between residents and non-residents;
4) payments made by residents in favour of non-residents and payments made by non-residents in favour of residents in connection with the acquisition of title to real estate;
5) transfer of cash and other assets by residents in favour of non-residents (or by non-residents in favour of residents) in trust management;
6) opening of accounts by residents (except for banks and the national post operator) in foreign banks;
7) direct investment made under a brokerage services agreement with a resident broker or under an investment portfolio management agreement with a resident management company;
8) banks' own transactions related to direct investment abroad and direct investment of non-residents in banks; and
9) other transactions provided for by the regulatory legal acts of the National Bank of the Republic of Kazakhstan.

Resident parties of such transactions and/or authorized banks are required to notify the National Bank of the Republic of Kazakhstan of the performance of the aforesaid transactions only if they fall under any of the following criteria:

- the amount of a currency transaction involving property (funds) incoming to the Republic of Kazakhstan and/or creation of obligations of a resident to return property (repay the funds) to a non-resident exceeds an amount equivalent to 500,000 US dollars;
- the amount of a currency transaction involving transfer of funds (transfer of property) outside the Republic of Kazakhstan and/or creation of claims of a resident to a non-resident to return property (repay funds) exceeds an amount equivalent to 100,000 US dollars; and
- the amount of payment and/or transfer by a resident to a non-resident and/or by a non-resident to a resident in connection with transactions involving derivative financial instruments and in settlements related to export/import of works/services exceeds an amount equivalent to 100,000 US dollars.

The notification of the National Bank of the Republic of Kazakhstan of currency transactions is confirmed by a certificate of notification issued by the National Bank in the statutory form.

The aforementioned currency regulation regimes do not apply to export/import-related commercial loans which require a contract registration number and currency transactions with non-residents when one of the parties to such transactions is the National Bank of the Republic of Kazakhstan and/or the Ministry of Finance of the Republic of Kazakhstan.

Currency transactions between residents, subject to certain exemptions, are prohibited, unless otherwise provided by Kazakhstan Law *On Currency Regulation and Currency Control* No. 57-III of 13 June 2005.

Currency transactions between non-residents within the Republic of Kazakhstan may be performed without any restriction other than in the event of a special currency regime introduced in the Republic of Kazakhstan by a relevant act issued by the President of the Republic of Kazakhstan. A special currency regime is applied as a measure of last resort in the event of threats to the economic security of the Republic of Kazakhstan and stability of its financial system, if the situation cannot be cured by other economic policy measures. The duration of a special currency regime may not exceed 1 year.

Currency transactions between residents and non-residents are not restricted and shall be performed in the manner prescribed by the National Bank of the Republic of Kazakhstan and in compliance with the aforementioned currency regimes.

Residents may enter into transactions with non-residents in the national currency of the Republic of Kazakhstan and/or foreign currency as may be agreed between the parties in accordance with the currency legislation of the Republic of Kazakhstan.

Non-residents may, in accordance with the procedure prescribed by law, receive and transfer (without restrictions) dividends, interest and other income gained on deposits, securities, borrowings and other currency transactions with residents.

Payments and transfers of money under currency transactions of residents and non-residents are only permitted (subject to certain statutory exemptions) through accounts in authorized banks.

Cash in foreign currency received by resident legal entities and non-residents under currency transactions within the Republic of Kazakhstan must be deposited in accounts with authorized banks.

Payments within the Republic of Kazakhstan under currency transactions which are subject to registration, notification and/or contract number assignment must be made by wire transfer.

Resident and non-resident individuals may, without any limitation of the amount, make gratuitous transfer of money without opening accounts in authorized banks within, from and to the Republic of Kazakhstan, and other money transfers that are not related to any business activity and that are not subject to the contract number assignment, registration or notification.

Residents and non-residents may sell and buy foreign currency in the Republic of Kazakhstan only from and to authorized banks allowed to perform foreign currency

exchange transactions through currency exchange offices of such authorized banks and currency exchange offices of authorized organizations.

Resident and non-resident individuals may export foreign and national currency in cash (except for precious metal coins) and traveller's checks from the Republic of Kazakhstan in the amounts not exceeding the equivalent of 10,000 US dollars without documents confirming the origin of the exported cash in foreign currency.

Cash in foreign and national currency (other than precious metal coins) and traveller's checks imported or exported to and from the Republic of Kazakhstan by resident and non-resident individuals in the total amount exceeding 10,000 US dollars must be declared to the public revenue authority of the Republic of Kazakhstan in a customs declaration, other than in the event of import to or export from a certain territory belonging to the Customs Union.

Customs declarations are made in writing showing the entire amount of the imported or exported cash in foreign and/or national currency of the Republic of Kazakhstan and traveller's checks specifying the source and purpose of the cash and traveller's checks.

Import/export currency control

The objective of the import/export currency control is to make sure that residents and non-residents comply with Kazakhstan currency regulations, including the regulations on repatriation of foreign currency and national currency of the Republic of Kazakhstan implying the crediting of authorised bank accounts with:

1) national and foreign currency proceeds from export of goods (works/services); and
2) national and foreign currency transferred by a resident in favour of a non-resident for the purpose of settlements under import of goods (work, services) in the event of a failure to perform or partial performance of obligations by a non-resident.

Authorized banks, as well as branches of the National Bank of the Republic of Kazakhstan, monitor implementation of the repatriation requirement under contracts for amounts exceeding 50,000 US dollars.

Residents must comply with the requirement of repatriation of national and foreign currency within the repatriation time period.

For repatriation of national and foreign currency, the currency contract must determine the term for discharge of liabilities by non-residents.

Since January 2012 Kazakhstan requires the assignment of registration numbers to foreign currency contracts for export/import of goods.

The export/import currency regulation procedure and the terms and conditions for assignment of registration numbers to residents' export/import contracts are regulated by the *Guidelines for Export/Import Currency Regulation in the Republic of Kazakhstan and Assignment of Registration Numbers to Residents' Export/Import Contracts*

approved by Resolution of the Management Board of the National Bank of the Republic of Kazakhstan No. 42 of 24 February 2012.

A contract registration number shall be obtained by an exporter/importer prior to the payment and/or remittance of cash under the relevant contract and/or movement of goods across the Kazakhstan border under the export/import contract. A registration number is assigned by an authorised bank or branch of the National Bank of the Republic of Kazakhstan to each contract for supply of goods the value of which, as at the effective date of the contract, exceeds the equivalent of 50,000 US dollars, provided that:

1) the exported/imported goods are moved across the Kazakhstan border, including for the purposes of work/service/lease contracts, for a period exceeding 1 year;
2) the customs procedure is replaced with the customs procedure for export or for release for domestic consumption in relation to the goods earlier subjected to another customs procedure in connection with the transfer of title to such goods from a resident to a non-resident or from a non-resident to a resident;
3) transfer of the contract maintenance to an authorised bank, other than the bank of the contract record registration, including the cases when the license of the bank of the contract registration is suspended or revoked and de-registration of the contract is unreasonable; or
4) exporter/importer assigns its receivables from a non-resident under the contract to a resident.

Contracts with non-residents which do not imply the movement of exported/imported goods across the Kazakhstan border and contracts which imply the movement of goods but do not create financial liabilities do not require a registration number.

Financial Monitoring

The Republic of Kazakhstan performs financial monitoring aimed at countering the legalisation (laundering) of illegal earnings and the financing of terrorism. According to Kazakhstan Law *On Combating Legalization (Laundry) of Criminal Proceeds and Financing of Terrorism* No. 191-IV of 28 August 2009, the subjects of financial monitoring include the following:

1) banks and organizations performing certain types of banking operations;
2) exchanges;
3) insurance (reinsurance) organizations, insurance brokers and mutual insurance associations (since 1 July 2017);
4) the unified pension saving fund and voluntary pension saving funds;
5) professional securities market participants and the central depository;
6) notaries performing notarial acts with respect to money and/or other property;

7) attorneys and other independent experts on legal matters in the events when they participate, for and on behalf of their clients, in transactions involving money and/or other property in connection with the following activities:
   - sale and purchase of immovable property;
   - management of monetary funds, securities, and other property of the client;
   - management of bank accounts or securities accounts;
   - accumulation of funds for creation, maintenance of operations or management of the company;
   - creation, sale and purchase, operation or management of legal entities;
8) accounting firms and professional accountants engaged in accounting business activities, and audit firms;
9) gambling business and lottery organizers;
10) postal service operators providing money transfer services;
11) microfinancial institutions;
12) payment organisations;
13) individual entrepreneurs and legal entities engaged in leasing activities as unlicensed lessors;
14) pawnshops;
15) individual entrepreneurs and legal entities transacting in precious metals and precious gems, as well as jewellery made thereof;
16) individual entrepreneurs and legal entities providing agency services in connection with real estate sale and purchase transactions; and
17) social health insurance fund.

The subjects of financial monitoring are responsible for due diligence of their customers/representatives and beneficiary owners when:

1) they establish business relations with a customer;
2) they perform any transactions with cash and/or other assets subject to financial monitoring; and
3) there are reasons to doubt the trustworthiness of the earlier received information about a certain customer, representative or beneficiary owner.

Financial monitoring requirement is applied to the following transactions with money and/or other property:

1) receipt of a prize, including in electronic form, from betting, gambling in a gambling establishment or lottery, in the amount equivalent to or exceeding KZT3,000,000, or its equivalent in foreign currency;
2) purchase, sale and exchange of foreign currency (in cash) through currency exchange offices in the amount equivalent to or exceeding KZT10,000,000, or its equivalent in foreign currency;

3) withdrawal of money through a check or promissory note in the amount equivalent to or exceeding KZT10,000,000, or its equivalent in foreign currency;
4) withdrawal of cash from or placement of money to a customer's bank account, as well as receipt/disbursement of cash from/to a customer, unless otherwise provided by paragraphs 11) and 12) below, in the amount equivalent to or exceeding KZT10,000,000, or its equivalent in foreign currency;
5) credit or transfer of money to a customer's bank account by an individual or legal entity registered, residing or domiciled, respectively, in an offshore jurisdiction and holding an account with a bank registered in an offshore jurisdiction, or consummating cash and/or other property transactions with such persons, in the amount equivalent to or exceeding KZT5,000,000, or its equivalent in foreign currency;
6) transfer of cash abroad to accounts (deposits) opened in the name of an anonymous holder and receipt of money from abroad from accounts (deposits) opened in the name of an anonymous holder in the amount equivalent to or exceeding KZT5,000,000, or its equivalent in foreign currency;
7) gratuitous payments and transfers of money by a customer in favour of a third party in the amount equivalent to or exceeding KZT7,000,000, or its equivalent in foreign currency;
8) cash purchase (sale), import to or export from the Republic of Kazakhstan of items of cultural value in the amount equivalent to or exceeding KZT45,000,000, or its equivalent in foreign currency;
9) transactions by a legal entity within less than 3 months from the date of its state registration in the amount equivalent to or exceeding KZT10,000,000, or its equivalent in foreign currency;
10) import to or export from the Republic of Kazakhstan of cash, documentary securities payable to bearer, promissory notes or cheques, save for import or export by the National Bank of the Republic of Kazakhstan, banks and the National Post Service Operator, in the amount equivalent to or exceeding KZT10,000,000, or its equivalent in foreign currency;
11) cash payment of insurance benefit or receipt of insurance premium in the amount equivalent to or exceeding KZT10,000,000, or its equivalent in foreign currency;
12) placement, transfer of voluntary pension contributions to the unified pension saving fund and/or voluntary pension saving fund and cash pension payments from the unified pension saving fund and/or voluntary pension fund in the amount equivalent to or exceeding KZT10,000,000, or its equivalent in foreign currency;

13) receipt or transfer of property under financial lease contracts in the amount equivalent to or exceeding KZT45,000,000, or its equivalent in foreign currency;
14) cash transactions involving provision of services, including contractor services, transportation, freight forwarding, storage, commissioning and trust management of property, except for services implying the lease of safety deposit boxes, in the amount equivalent to or exceeding KZT10,000,000, or its equivalent in foreign currency;
15) over-the-counter sale and purchase of precious metals and stones and jewellery made thereof in the amount equivalent to or exceeding KZT10,000,000, or its equivalent in foreign currency;
16) transactions with immovable and other property subject to mandatory state registration in the amount equivalent to or exceeding KZT200,000,000, or its equivalent in foreign currency;
17) transactions with bonds and government securities, except for repo transactions in a regulated market through open bidding, in the amount equivalent to or exceeding KZT45,000,000 or its equivalent in foreign currency;
18) transactions with shares and units in mutual investment funds, except for repo transactions in a regulated market through open bidding, in the amount equivalent to or exceeding KZT7,000,000 or its equivalent in foreign currency;
19) lombard transactions with cash, securities, precious metals and stones and jewellery made thereof, and other valuables (except for national currency coins made of precious metals) in the amount equivalent to or exceeding KZT3,000,000 or its equivalent in foreign currency; and
20) contribution and transfer of deductions and/or contributions to social health insurance fund equivalent to or exceeding 7,000,000 tenge, or an equivalent amount in foreign currency.

In this regard, suspicious transactions are subject to financial monitoring regardless of the mode of their performance and the amounts that are paid or may/might be paid in such transactions. The term “suspicious transaction” means any customer’s transaction (including an attempted transaction in progress or completed transaction) raising suspicions that the cash and/or other assets used for its execution are criminal proceeds or a transaction intended to legalize/launder criminal proceeds or to finance terrorism or any other criminal activities. The signs/criteria of a suspicious transaction are determined and approved by the Kazakhstan Government.

The subjects of financial monitoring may review customer’s transactions and may record the results of such review only when:

1) the customer consummates a complicated, unusually large transaction with cash and/or other assets without apparent economic substance or obvious legitimate objective;
2) the customer performs actions aimed at avoiding the procedures of due diligence and/or financial monitoring;
3) there are grounds to believe that a certain cash and/or other asset transaction consummated by the customer is intended to cash criminal proceeds; and
4) a cash and/or other asset transaction involves a party incorporated/residing in a state/territory that does not comply with the recommendations of the Financial Action Task Force on Money Laundering (FATF), as well as uses accounts in banks incorporated in such state/territory.

The list of states/territories not complying and/or insufficiently complying with the FATF recommendations is prepared by competent authorities on the basis of the documents issued by FATF.

The information and data related to a transaction which is subject to financial monitoring will not be disclosed by attorneys in the event that such information and data are obtained in connection with legal advice provided in relation to representation and protection of private individuals and legal entities before interrogation bodies, pretrial investigation bodies and courts, as well as in connection with legal support in the form of advice, clarifications, consulting and written opinions regarding the issues requiring professional legal expertise, and drafting of claims, appeals and other legal documents.

CUSTOMS REGULATIONS

International Cooperation

Kazakhstan's international cooperation in the field of customs affairs is largely reflected by its activities in the Commonwealth of Independent States (the CIS) and the Eurasian Economic Union (EEU) which replaced the Eurasian Economic Community (EurAsEC).

Until recently (1 January 2015), the Republic of Belarus, Republic of Kazakhstan, Kyrgyz Republic, Russian Federation and Republic of Tajikistan had the Agreement on Establishment of the EurAsEC, the main goal of which was to effectively promote the establishment of the Customs Union and Single Economic Area.

The Customs Union united 3 states which ratified the *Agreement for Creation of a Single Customs Territory and Establishment of the Customs Union* of 6 October 2007 – the Russian Federation, Republic of Belarus and Republic of Kazakhstan.

On 29 May 2014, the Member States of the Customs Union signed the Treaty on the EEU which came into force in the Member States on 1 January 2015. On 2 January 2015, the Republic of Armenia joined the EEU and, on 12 August 2015, the Kyrgyz Republic officially joined the EEU. Besides, on 10 October 2014, the Republic of Belarus, Republic of Kazakhstan, Kyrgyz Republic, Russian Federation and Republic of Tajikistan signed the Agreement on the Termination of the EurAsEc effective as of 1 January 2015.

The EEU is an international organisation having international personality and striving for maximum possible regional economic integration. The EEU ensures the free movement of goods, services, capital and workforce within its territory, as well as the pursuance of well-coordinated, harmonized and unified policy in relation to the economic sectors determined by the Treaty on the EEU and international treaties applicable to the EEU.

The EEU has the following bodies:

- the Supreme Eurasian Economic Council – the supreme body of the EEU consisting of the heads of the EEU Member States;
- the Eurasian Intergovernmental Economic Council – the body consisting of the heads of the Member States' governments;
- the Eurasian Economic Commission – the permanent supranational regulatory body of the EEU comprising the Council and the Board of the Commission. The main objective of the Commission is to provide the necessary conditions for the EEU operation and development and to develop proposals for economic integration within the EEU; and
- the Court of the Eurasian Economic Union – the judicial body of the EEU called to enforce the Treaty on the EEU and other international treaties applicable to the EEU.

– The EEU operates a customs union in the form of a trade and economic integration of its Member States within a single customs territory where mutual trade is not applied customs duties (or other similar duties, taxes and fees), non-tariff regulatory measures, special protection, antidumping or countervailing measures, but instead the EEU applies the Single Customs Tariff and unified measures for the regulation of external trade with third parties.

The customs union of the EEU Member States:

- has an internal commodity market;
- applies the EEU Single Customs Tariff and other unified measures for the regulation of external trade with third parties;
- applies the uniform treatment to commodity trade with third parties;
- applies unified customs regulations; and
- ensures the free movement of commodities between the EEU Member States without customs declaration and public control (transportation, sanitary, veterinary-sanitary, quarantine and phytosanitary), unless otherwise provided by the Treaty on the EEU.

The unified customs regulations of the EEU comply with the Customs Code of the EEU, international treaties, the Treaty on the EEU and other acts regulating customs issues. As at 31 March 2017, the Customs Code of the EEU has not been adopted yet. Therefore, subject to the Treaty on the EEU, before the adoption and enactment of the Customs Code of the EEU, the customs regulations will be performed in compliance with the Customs Code of the Customs Union.

Since 1 January 2015, the customs territory of the EEU applies the Unified Commodity Nomenclature of Foreign Economic Activity of the EEU (CN FEA EEU) and the Single Customs Tariff of the EEU (SCT EEU) which, before the enactment of the Treaty on the EEU, were, respectively, the Unified Commodity Nomenclature of Foreign Economic Activity of the Customs Union (CN FEA CU) and the Single Customs Tariff of the Republic of Belarus, Republic of Kazakhstan and Russian Federation (SCT CU) in due time approved by Resolution of the Council of the Eurasian Economic Commission No. 54 of 16 July 2012.

Customs Procedures

Effective in the EEU as at 31 March 2017 the Customs Code of the Customs Union determines 17 types of customs procedures:

1) release for domestic consumption;
2) export;
3) customs transit;
4) bonded warehouse;

5) inward processing within the customs territory;
6) outward processing outside the customs territory;
7) processing for domestic consumption;
8) temporary import (admission);
9) temporary export;
10) re-import;
11) re-export;
12) duty free trade;
13) destruction;
14) abandonment of goods in favour of the State;
15) free customs zone;
16) free warehouse; and
17) special customs procedure.

Goods moved across the customs border of the EEU are subject to mandatory customs clearance under one of the aforementioned procedures. As mentioned above, goods moved within the customs territories of Belorussia, Kazakhstan, Russia, Kyrgyzstan and Armenia are not subject to customs clearance.

Subject to the Treaty on the EEU, the terms and conditions for setup and operation of free/special economic zones and free warehouses are determined by international treaties applicable to the EEU. Since, under the Treaty on the EEU, the international treaties of the EEU Member States intended for the formation of the regulatory legal framework of the Customs Union and the Single Economic Space effective on the date of its enactment are included in the EEU law and are applied to the extent compliant with the Treaty on the EEU, such customs procedures as "free economic zone" and "free warehouse" are also regulated by the *Agreement Concerning the Free/Special Economic Zones within the Customs Territory of the Customs Union and Customs Procedures of the Free Customs Zone* and the *Agreement on Free Warehouses and Customs Procedures of the Free Warehouse* (Saint-Petersburg, 18 June 2010).

Hence, subject to the *Agreement Concerning the Free/Special Economic Zones within the Customs Territory of the Customs Union and Customs Procedures of the Free Customs Zone*, the procedure for setup, as well as the terms and conditions for operation of a free economic zone in a Member State of the Customs Union (EEU) is determined by the national legislation of such Member State.

On 21 July 2011, Kazakhstan adopted new Law *On Special Economic Zones in the Republic of Kazakhstan* No. 469-IV which governs the matters related to setting up, operation and termination of special economic zones within the Republic of Kazakhstan. A decision on establishment of a special economic zone and activities meeting the objectives of such zone are made by the President of Kazakhstan upon a proposal from the Kazakhstan Government.

The following **ten special economic zones** have been set up in Kazakhstan by Decrees of the President of the Republic of Kazakhstan:

1) the **Aktau Seaport** Special Economic Zone (within the territory of the commercial harbour and partially within the administrative boundaries of the city of Aktau in the Mangistau Oblast) – effective until 1 January 2028;
2) the **Innovation Technologies Park** Special Economic Zone (within the territory of the Alatau village of the Medeu District of the city of Almaty and adjacent territories of the Almaty Oblast) – effective until 1 January 2028;
3) the **Ontustik** Special Economic Zone (within the territory of the Sairam District of the South Kazakhstan Oblast) – effective until 1 July 2030;
4) the **New City of Astana** Special Economic Zone (within the administrative border of the city of Astana, including Industrial Parks 1 and 2, and the urban light rail system) – effective until 2027;
5) the **National Industrial Petrochemical Technology Park** Special Economic Zone (within the territory of the Atyrau Oblast) – effective until 31 December 2032;
6) the **Burabai** Special Economic Zone (within the territory of the Burabai District of the Akmola Oblast) – effective until December 2017;
7) the **Pavlodar** Special Economic Zone (within the territory of the North Industrial District of the city of Pavlodar) – effective until 1 December 2036;
8) the **Khorgos – Eastern Gate** Special Economic Zone (within the territory of the Almaty Oblast) – effective until 2035;
9) the **Saryarka** Special Economic Zone (within the territory of the Karaganda city and adjacent land of the Bukhar-Zhyrau District of the Karaganda Oblast) – effective until 1 December 2036; and
10) **Taraz Chemical Park** Special Economic Zone (Shuski District, Zhambyl Oblast) – effective until 1 January 2037.

Goods are placed and used within the boundaries of a free economic zone, free from customs duties and taxes and from non-tariff regulation measures applicable to foreign goods and free from prohibitions and restrictions applicable to the goods of the EEU.

Export Control

To ensure national security, to strengthen the regime of non-proliferation of weapons of mass destruction, to promote the formation of stable and safe system of international relations, to strengthen international security and stability, prevention of proliferation of weapons of mass destruction and their means of delivery, the Republic of Kazakhstan

monitors and controls exports of certain products.

Pursuant to Law of the Republic of Kazakhstan *On Export Control* No. 300-III of 21 July 2007, export control requirements are applied to the following types of products:

1) conventional weapons and military equipment, raw materials, supplies, special equipment and technologies, and works and services related to their production;
2) nuclear and special non-nuclear materials, equipment, installations, technologies, sources of ionizing radiation, dual purpose (use) equipment and related goods and technologies, and work and services related to their production;
3) dual purpose (use) chemicals, goods and technologies that may be used in production of chemical weapons included in the lists determined under international export control regimes;
4) pathogenic agents, their genetically modified forms and fragments of genetic material that may be used in production of bacteriological (biological) and toxin weapons included in the lists determined under international export control regimes;
5) missilery, engines, their components, equipment, materials and technologies used in production of missilery included into the lists determined under international export control regimes;
6) mass destruction weapons; and
7) scientific and technical information, services and results of intellectual creative activity related to military products, and dual purpose (use) goods and technologies.

Nomenclature (list) of products subject to export control is approved by the Government of the Republic of Kazakhstan. The products subject to export control must be exported or imported on the grounds of a license issued by the competent authority (the Ministry of Investment and Development of the Republic of Kazakhstan).

State revenue authorities monitor the movement of products subject to export control across the State Border of the Republic of Kazakhstan.

Kazakhstan's WTO Accession

On 30 November 2015, after almost twenty years of negotiations, the Republic of Kazakhstan was officially accepted as member of the World Trade Organization (WTO). The deed of accession to the Marrakesh Agreement Establishing the World Trade Organization of 15 April 1994 was signed in Geneva on 27 July 2015 and ratified by the Kazakhstan Parliament on 12 October 2015.

The WTO is the only global international organization dealing with the rules of trade between its member-states. Its functions include the following:

- monitoring the members' compliance with trade agreements incorporated into the Marrakesh Agreement Establishing the World Trade Organization as annexes which are binding upon the respective WTO members;
- reviewing trade policies adopted by the WTO members;
- administering the rules and processes related to dispute settlement;
- serving as a forum for trade negotiations between the WTO members; and
- cooperating with the International Monetary Fund and International Bank for Reconstruction and Development.

The WTO was founded on the basis of the General Agreement on Tariffs and Trade (GATT) signed on 30 October 1947 and is a legal successor of the latter. The fundamental GATT/WTO principles and rules include the following:

- most-favoured-nation (MFN): treating other people equally;
- national treatment: treating foreigners and locals equally;
- regulation of trade by tariff means;
- general elimination of qualitative and other restrictions;
- predictability: through binding and transparency;
- transparency of trade policies; and
- settlement of trade disputes through direct negotiations and consultations.

The Kazakhstan's accession to WTO implies better access of Kazakhstan goods and services to global markets.

TAXATION

Kazakhstan taxation is regulated by Kazakhstan Code *On Taxes and Other Obligatory Payments to the Budget (Tax Code)* No. 99-IV of 10 December 2008 which was enacted on 1 January 2009 (the "Tax Code") and other regulatory legal acts of the Republic of Kazakhstan, as well as international treaties ratified by the Republic of Kazakhstan. The Tax Code determines rates of taxes and other obligatory payments, the procedure for their assessment and payment, the scope of powers of tax authorities with respect to ensuring fulfilment and enforcement of outstanding tax liabilities, rules for maintaining tax accounting records and filing tax returns, the forms and procedures for tax control by tax authorities, the methods of appealing against their decisions as well as actions (failures to act) of their officers.

The following taxes are applied in the Republic of Kazakhstan:

1) corporate income tax;
2) individual income tax;
3) value added tax;
4) excise taxes;
5) rent export tax;
6) special charges and taxes from subsoil users;
7) social tax;
8) tax on transport vehicles;
9) land tax;
10) property tax;
11) gambling business tax (to be abolished with effect from 1 January 2020);
12) flat tax; and
13) single land tax.

There are also obligatory payments to the budget:

1. state duty;
2. fees, including:
    - fee for the issuance and/or renewal of a foreign employment permit in the Republic of Kazakhstan;
    - registration fee;
    - fee for passage of road vehicles through the Republic of Kazakhstan;
    - auction fee;
    - license fee for certain activities;
    - fee for the issuance of a permit to use frequencies by television and radio broadcasting companies; and
    - civil aviation certification fee.

3. dues for:
    - the use of land plots;
    - the use of surface water resources;
    - environmental emissions;
    - the use of wildlife;
    - the use of forests;
    - the use of specially protected natural areas;
    - the use of frequencies;
    - the provision of long-distance and/or international telephone services and mobile services;
    - the use of navigable waterways; and
    - outdoor/visual advertisement installation.

Corporate Income Tax (CIT)

Corporate income tax is applied to:

1) taxable income;
2) income taxable at the source of payment; and
3) net income of a non-resident legal entity operating in the Republic of Kazakhstan via a permanent establishment.

CIT is payable by Kazakhstan resident legal entities (except for public institutions) and non-resident legal entities operating in Kazakhstan via a permanent establishment or receiving income from Kazakhstan sources.

Taxable income (which is determined as difference between comprehensive annual income adjusted for amount required by the Tax Code and deductions) less revenues and expenses provided by the Tax Code, minus loss carryforwards, is applied a **20%** CIT.

Besides, net income (income after CIT) of a non-resident legal entity operating in Kazakhstan via a permanent establishment is also applied an additional **15%** CIT.

Please also note that comprehensive annual income of a resident taxpayer accounted for assessment of taxable income shall be reduced by (or adjusted for) the amount of dividend income.

Besides, resident taxpayers are also entitled to decrease of their taxable income by the capital gain on disposal of shares or interests in a legal entity which is not a subsoil user, provided that 50 or more percent of the legal entity's asset value comprises the assets of persons not being subsoil users and the taxpayer has been holding the shares or interests for over three years. Those taxpayers which in the similar tax period incur losses in connection with the sale of shares or interests in the legal entity within other transactions must, first of all, reduce their capital gain on the sale of shares or interests by the amount of such losses.

Throughout a year taxpayers (except for newly established taxpayers and other taxpayers specified by the Tax Code) must pay their CIT by advance payments (in equal instalments) before the 25th day of each month which are credited towards CIT assessed for the entire tax period. The year-end CIT shall be paid before the 10th of April, and the relevant CIT declaration shall be filed before the 31st of March the year following the tax period.

Income taxable at the source of payment, except for non-resident's income from Kazakhstan sources, is applied a **15%** withholding tax. Such withholding tax shall be paid by a tax agent before the 25th day of a month following the month in which the income was paid. The relevant withholding tax declaration shall be filed by the tax agent before the 15 day of a month following the quarter in which the income was paid.

Taxation of income of a non-resident legal entity depends on whether or not it operates through a permanent establishment in the Republic of Kazakhstan. The most common form of a non-resident's permanent establishment is a branch or representative office. However, the performance of non-resident's activities in the Republic of Kazakhstan via a branch or representative office does not necessarily entail the formation of a permanent establishment of such non-resident in Kazakhstan under an international double-tax treaty. Besides, any preparatory or auxiliary activities (complying with the Tax Code) different from the non-resident's core activities also do not necessarily entail the formation of the non-resident's permanent establishment in Kazakhstan.

When non-resident's business activities run in Kazakhstan without incorporation of a branch or representative office entail the formation of a permanent establishment, such non-resident must get registered with Kazakhstan tax authorities as a taxpayer.

CIT on income of a non-resident legal entity operating in Kazakhstan through a permanent establishment is assessed and paid in accordance with the standard procedure, i.e. similar to the procedure applicable to Kazakhstan legal entities. Taxable income includes all types of income related to the operations of the permanent establishment as of the time of commencement of its operations in the Republic of Kazakhstan. Deductions include expenses directly related to earning of income from the operations in the Republic of Kazakhstan through its permanent establishment regardless of whether or not such expenses are incurred within or outside the Republic of Kazakhstan, other than non-deductible expenses in accordance with the Tax Code.

CIT on taxable income of non-resident legal entities operating without a permanent establishment in the Republic of Kazakhstan is deducted at the source of payment by the tax agent, i.e. the person paying the income. Income of such non-resident legal entities from Kazakhstan sources not related to a permanent establishment is taxable at the following rates:

1)	income of a person incorporated in a tax haven earned from performance of work, provision of services regardless of the actual place of their performance and/or provision, as well as other income recognized by the Tax Code as income of the non-resident from Kazakhstan sources received by such person from a resident of the Republic of Kazakhstan or from a non-resident operating through a permanent establishment or from a branch (representative office) of a non-resident, if their operations do not constitute a permanent establishment in the Republic of Kazakhstan	**20%**
2)	income from value growth, interest, compensations, royalty and insurance premiums payable under risk insurance policies	**15%**
3)	income from international transportation services and insurance premiums payable under risk reinsurance policies	**5%**
4)	other income recognized by the Tax Code as non-residents' income from Kazakhstan sources	**20%**

A tax agent shall file withholding tax declarations for Q1-Q3 with tax authorities before the 15th day of a month following the quarter in which non-resident's income was paid, and withholding tax declaration for Q4 shall be filed before the 31st March in a year following the tax period in which non-resident's income was paid and/or for which the accrued but unpaid non-resident's income was credit by the tax agent as deduction.

The order of payment and rates of the corporate income tax subject to withholding at the source of payment largely depend on whether the Republic of Kazakhstan and the country which is the country of residence of the foreign legal entity operating without a permanent establishment have signed an international treaty on avoidance of double taxation and prevention of evasion of taxes on income or property (capital). In this regard, subject to certain conditions, the tax agent (a Kazakhstan company) is entitled to pay income to the foreign company operating without a permanent establishment in the Republic of Kazakhstan free from CIT. In addition, international treaties may provide for lower income tax rates compared to the national laws of the contracting states. Pursuant to the Tax Code, if an international treaty ratified by the Republic of Kazakhstan provides for rules different from those contained in its tax legislation, the rules of such international treaty apply. It should be noted that Kazakhstan tax legislation determines the procedure for administration and application of international treaties. A failure to comply with such procedure entails invalidity of the application of the international treaty.

As at 31 March 2017, the Republic of Kazakhstan has double tax treaties with Austria, Azerbaijan, Armenia, Belarus, Belgium, Bulgaria, Canada, China, Czech Republic, Estonia, Finland, France, Germany, Great Britain, Georgia, Hungary, India, Iran, Italy, Japan, Korea, Kyrgyzstan, Latvia, Lithuania, Luxemburg, Macedonia, Malaysia, Moldova, Mongolia, Netherlands, Norway, Pakistan, Poland, Qatar, Russia,

Romania, Saudi Arabia, Serbia, Singapore, Slovakia, Slovenia, Spain, Sweden, Switzerland, Tajikistan, Turkmenistan, Turkey, UAE, United States, Uzbekistan, Ukraine and Vietnam. The double tax treaties with Croatia and Kuwait are still pending execution and subsequent ratification.

Individual Income Tax (IIT)

The IIT is applied to the following income of individual residents:

1) income taxable at the source of payment:
   a) employees' income;
   b) income of a private individual from the tax agent;
   c) pension payments from the unified pension savings fund and voluntary pension savings funds;
   d) income in the form of dividends, interest and prizes;
   e) scholarships/bursaries;
   f) income under insurance savings plans;
2) income non-taxable at the source of payment:
   a) property income;
   b) income of sole proprietors;
   c) income of attorneys, private notaries, private law enforcement officers and professional mediators; and
   d) other income (including any income received from non-Kazakhstan sources).

The aforesaid income is subject to the IIT at the rate of **10%**, other than income in the form of dividends (received from sources both inside and outside Kazakhstan) taxable at the rate of **5%**.

IIT is paid by natural persons who have taxable objects. The assessment and withholding and payment of tax from income taxable at the source of payment are performed by tax agents. The assessment, withholding and payment of IIT from income not taxable at the source of payment are performed by taxpayers.

The Tax Code contains a wide list of income of individuals that are exempt from taxation in the Republic of Kazakhstan and are not recognized as income. For instance, the following types of income are not recognized as income of resident individuals or are deductible from income taxable in the Republic of Kazakhstan: (i) value of property acquired by the individuals through donation or inheritance from other individuals, (ii) capital gain from the sale of shares or participation interests in a legal entity that is not a subsoil user, provided that 50 or more percent of the asset value of such legal entity is made up of property of persons or entities who are not subsoil users and the taxpayer has been holding shares or participation interests for over 3 years, as well as the dividends received from such persons (provided that the legal entity paying dividends is a resident of the Republic of Kazakhstan); (iii) capital gain from the sale of motor vehicles subject to state registration in Kazakhstan, provided that such vehicles have been beneficially owned by such individual for a period exceeding 1 year;

(iv) capital gain from the sale of residential houses, country houses, garages or private farming facilities located in Kazakhstan, provided that they have been beneficially owned by such individuals for a period exceeding 1 year from the date of the title state registration.

The following resident taxpayers must directly file IIT returns with tax authorities before 31 Mach of the year following the accounting tax period:

1) sole proprietors (other than those applying a special tax regime to small-scale businesses operating under a license or simplified tax return procedure for incomes included into the taxable base of such individual entrepreneurs);
2) private notaries, private law enforcement officers, attorneys and professional mediators;
3) individuals who have received property income;
4) individuals who have received other income, including outside the Republic of Kazakhstan;
5) individuals who have money held in bank accounts with foreign banks located outside the Republic of Kazakhstan;
6) individuals who beneficially own the following properties (the first return for 2017 shall be filed before 31 March 2018):
   - real estate (rights and/or deals in relation thereto) subject to the state or any other form of registration (accounting) with competent authorities of a foreign state in compliance with the legislation of such foreign state;
   - securities the issuers of which are incorporated outside Kazakhstan;
   - interest in the authorised capital of a legal entity incorporated outside Kazakhstan; and
7) members of the Parliament of the Republic of Kazakhstan, judges and other persons required by the laws of the Republic of Kazakhstan to file tax returns.

Income of non-resident individuals received from Kazakhstan sources is also subject to IIT at the same rates which are applied to income of non-resident entities running business without formation of a permanent establishment in Kazakhstan (please see the section *Corporate Income Tax* above). The IIT assessable and payable on such income of non-resident individuals must be withheld at the source of payment by a tax agent, i.e. the payer of income.

The Tax Code exempts certain types of income of non-resident individuals received from Kazakhstan sources from taxation in Kazakhstan. For example, income of non-resident individuals (except for the persons registered in state havens) in the form of capital gain from the sale of shares/interests in a resident entity that is not a subsoil user, provided that 50 or more percent of the asset value of such entity belongs to the persons not being subsoil users, and the person has been owning such shares/interests for a period over 3 years, as well as income received from such persons in the form of dividends, is exempt from taxation in Kazakhstan (provided that the legal entity paying dividends is a resident of the Republic of Kazakhstan).

Social Tax

In Kazakhstan, employers, including foreign legal entities operating in the Republic of Kazakhstan through permanent establishments and non-resident legal entities operating in Kazakhstan through branches or representative offices not leading to the formation of permanent establishments under double-tax treaties, are payers of the social tax. A resident legal entity may, at its own discretion, recognize its own subdivision as a social tax payer in relation to the employer's expenses payable to employees of such subdivision.

The following employer's expenses are subject to the social tax (except for individual entrepreneurs, private notaries, private enforcement agents, professional mediators and attorneys):

1) money in cash and/or non-cash forms payable by the employer in favour of the employee by operation of employment agreement, and employee's benefits in kind and/or in the form of material gain;
2) income of non-resident individuals:
   - from activities in the Republic of Kazakhstan under an employment agreement (contract) signed with the resident or non-resident employer;
   - management compensations and/or other payments to members of the management body (board of directors or any other body) received by such persons in connection with performance of their management obligations with respect to the resident regardless of the place of actual performance of such obligations;
   - allowances paid by resident or non-resident employers in connection with the stay in the Republic of Kazakhstan (expatriate allowances);
   - from their activities in the Republic of Kazakhstan as material gain received from the employer (payment and/or reimbursement of the cost of goods, performed works or provided services received by a non-resident individual from third parties; the negative difference between the cost of goods, works and services sold to a non-resident individual and the purchase price or cost of such goods, works and services; writing off of debts or obligations of non-resident individuals); and
3) income of expatriate personnel provided for work in the Republic of Kazakhstan by non-residents to residents of the Republic of Kazakhstan or to non-residents operating in the Republic of Kazakhstan through a permanent establishment.

The social tax is paid at the rate of **11%**. Sole proprietors (other than those operating under special tax regimes), private notaries, private law enforcement officers, professional mediators and attorneys assess the social tax in the amount equal to 2 monthly calculation indices as determined by the Budget Law of the Republic of Kazakhstan and effective as at the date of payment, for themselves, and equal to 1 monthly calculation index for each employee.

The social tax is assessed by applying tax rates to the tax base for the tax period. The amount of the social payments assessed in accordance with Law of the Republic of Kazakhstan *On Compulsory Social Insurance* No. 405-II of 25 April 2003 must be deducted from the social tax. The tax period for assessment of the social tax is a calendar month.

Value Added Tax (VAT)

VAT payers in the Republic of Kazakhstan include:

1) persons registered as VAT payers in the Republic of Kazakhstan:
   - sole proprietors;
   - resident legal entities other than public institutions;
   - non-residents operating in the Republic of Kazakhstan through branches or representative offices;
   - trust managers that have turnovers related to sale of goods, works and services under trust management agreements with the founders of the trust or with the beneficiaries in other cases of creation of trust management; and
2) persons importing goods to the Republic of Kazakhstan in accordance with the customs legislation of the Customs Union and/or the customs legislation of the Republic of Kazakhstan.

Subdivisions of resident legal entities may not be VAT payers.

Registration as a VAT payer is either mandatory or voluntary.

Kazakhstan legal entities, non-residents operating in the Republic of Kazakhstan through a branch or representative office and sole proprietors the turnover of which for a calendar year exceeds 30,000 monthly calculation indices (in 2017, 30,000 MCIs = 68,070,000 tenge) are subject to mandatory VAT registration. Starting from 1 January 2018, the minimum turnover will be reduced to 25,000-fold MCI, from 1 January 2019 – to 20,000-fold MCI, and from 1 January 2020 – to 15,000-fold MIC.

For registration as a VAT payer the aforementioned persons must file the appropriate application with the tax authority at the place of their incorporation within 10 business days after the month in which the minimum turnover threshold was exceeded.

Persons become VAT-payers on the first date of the month following the month in which they filed applications for registration as VAT-payers.

Those who fail to file the VAT registration application with the tax authorities in due time are subject to administrative liability in the form of a penalty being 10% of the taxable turnover for the non-registered period for small businesses, 15% for mid-size businesses and 30% for large businesses.

The tax bases for VAT purposes are:

1) taxable turnover; and
2) taxable import.

Taxable turnover is the turnover of the VAT-payer:

1) related to sale of goods (works and/or services) in the Republic of Kazakhstan, other than the turnover exempt from VAT in accordance with the Tax Code (e.g., transactions with securities, transfer of property as a charter capital contribution, etc.) and/or turnover occurring outside the Republic of Kazakhstan; and
2) related to acquisition of works and/or services from non-residents who are not VAT-payers in the Republic of Kazakhstan and who are not operating through branches or representative offices.

The Tax Code also determines turnovers that are taxable at the zero rate (export of goods, international transportation, etc.) for which the VAT-payer may apply for tax refund in compliance with the Tax Code.

If works and/or services were performed or provided by non-residents who are not VAT-payers in the Republic of Kazakhstan and if they are sold in the Republic of Kazakhstan, such works and/or services constitute turnover of their receiving taxpayer of the Republic of Kazakhstan who is required to pay VAT for the non-resident in accordance with the Tax Code. The amount of paid VAT may be offset.

Taxable import is comprised of goods imported or to be imported to the territory of the Customs Union that are subject to declaration in accordance with the customs legislation of the Customs Union and/or the customs legislation of the Republic of Kazakhstan.

Subject to certain exemptions and conditions determined by the Tax Code, in determining the amount of VAT payable to the budget, the recipient of goods (works and/or services) may offset the amounts of VAT payable for received goods, including fixed assets, works and services, if they are used or will be used for the purpose of taxable turnover. The amount of the input tax exceeding the amount of the tax assessed for the tax period is offset against future VAT payments. In this regard, in order to offset the tax amount, certain conditions determined by the Tax Code apply.

The VAT rate is **12%**. A VAT-payer is required to pay the tax payable to the budget at its place of incorporation for each tax period before the 25th day of the second month following the accounting tax period (the VAT accounting period is a calendar quarter). VAT on imported goods is payable on the date determined by the customs legislation of the Republic of Kazakhstan for payment of customs duties.

VAT return shall be filed before the 15th day of a month following the reporting period.

Commercial invoice is a compulsory document to be issued by a VAT payer on sales of goods/works/services (unless otherwise provided by the Tax Code).

Specifics of VAT on Exports and Imports of Goods, Performance of Works and Provision of Services in the Customs Union

On 1 July 2010, the Customs Code was amended to include a new chapter (Chapter 37-1) *Specifics of VAT on Exports and Imports of Goods, Performance of*

Works and Provision of Services in the Customs Union, which governs VAT applied to exports and imports of goods, performance of works and provision of services, as well as its tax administration in the mutual trade relations of the Customs Union which was established under the Eurasian Economic Community (EEC) between the Russian Federation, Republic of Belarus and Republic of Kazakhstan in pursuance of the Treaty on the Establishment of the Common Customs Territory and Formation of the Customs Union of 6 October 2007. In spite of the abolishment of the Eurasian Economic Community upon the enforcement of the Treaty establishing the Eurasian Economic Union (EEU) on 1 January 2015 and the termination of the Treaty on the Establishment of the Common Customs Territory and Formation of the Customs Union of 6 October 2007, no amendment with regard to the application of the term "Customs Union" has been incorporated into the Tax Code. Considering the fact that the EEU operates the customs union consisting of the EEU Member States (Russian Federation, Republic of Belarus, Republic of Kazakhstan, Republic of Armenia and Kyrgyz Republic), it is obvious that the Customs Union-related provisions of the Tax Code should apply to the customs union of the EEU.

Hence, apart from the persons registered as VAT-payers in the Republic of Kazakhstan, VAT in the Customs Union must also be paid by the following persons importing goods to the territory of the Republic of Kazakhstan from the territories of the Customs Union Member States:

- resident legal entities;
- structural subdivisions of resident legal entities, if they are a party to an agreement (contract);
- structural subdivisions of resident legal entities upon a respective decision of such legal entities if, pursuant to the terms and conditions of the agreement (contract) between the resident legal entity and the taxpayer of a Member State of the Customs Union, the recipient of goods is the structural subdivision of the resident legal entity;
- non-resident legal entities carrying out business through a permanent establishment without opening a branch or representative office and registered as a taxpayer with the tax authorities of the Republic of Kazakhstan;
- non-resident legal entities carrying out business in the Republic of Kazakhstan through a branch or representative office;
- non-resident legal entities carrying out business without setting up a permanent establishment;
- trust managers importing goods as part of the business carried out under trust management agreements with the trustors or the beneficiaries in other events of creation of trust management;

- diplomatic missions of foreign states and their missions with equal status accredited in the Republic of Kazakhstan, persons who are members of diplomatic and administrative and support staff of such missions, including their cohabiting family members; consular services of foreign states accredited in the Republic of Kazakhstan and consular services officers and personnel, including their cohabiting family members;
- private notaries, private law enforcement officers, professional mediators and/or attorneys importing goods in order to practice as notaries, to enforce judicial acts and to practise as professional mediators and attorneys, respectively; and
- individuals importing goods for the purpose of carrying out business activities.

In the event of export of goods from the Republic of Kazakhstan to another Member State of the Customs Union, a zero-rate VAT applies. The VAT-payer must submit to the tax authorities together with the VAT return an application for import of goods and payment of indirect taxes received from the taxpayer of a Customs Union Member State importing the goods to its home state that should bear lettering from tax authorities that the indirect taxes have been paid and/or the applicant is exempt from such taxes.

In the event of import of goods, including goods derived from processing of customer-supplied and owned raw materials (on a give-and-take basis) to the territory of the Republic of Kazakhstan from the territory of the Customs Union Member States, the taxpayer must submit to the local customs authority at the location (place of residence) the indirect tax return on the imported goods before the 20th day of the month following the tax period. It is worth noting that the Treaty on the EEU effective from 1 January 2015 exempts the following goods imported to any Member State of the EEU from indirect taxes (VAT and excises):

1) any goods the import of which is exempt from taxation in a Member State under the national laws of such Member State;
2) any goods which are imported to a Member State by individuals for non-business purposes; and
3) any goods which are imported to a Member State from another Member State for transfer thereof within one legal entity (national laws of a Member State may provide for an obligation to notify tax authorities of the import/export of such goods).

Excise Duties

Excise duties are applied to the following goods produced in the Republic of Kazakhstan and imported to the Republic of Kazakhstan (excise goods):

1) all kinds of spirits;
2) alcohol products;
3) tobacco products;

4) tobacco heating products and e-cigarette nicotine-containing liquids;
5) gasoline (other than aviation gasoline) and diesel fuel;
6) motor transport vehicles designed for transportation of 10 or more passengers with engine capacity of over 3,000 cubic centimetres, other than minivans, buses and trolleys;

   light-duty motor vehicles and other motor transport vehicles designed for transportation of passengers with engine capacity of over 3,000 cubic centimetres (other than manually-operated motor vehicles or those with manual operation adaptors specifically designed for disabled persons); and

   chassis-box trucks with engine volumes of over 3,000 cubic centimetres (except for the cars with manual steering or manual steering adapter for handicapped people);
7) crude oil and gas condensate; and
8) alcohol-containing medical products registered in accordance with the laws of the Republic of Kazakhstan as drugs.

Besides, the trade regulator may extend the list of imported goods subject to excise taxes depending on the country of their origin.

Excise taxes are paid by the individuals who import excisable goods from the Customs Union member-states for business purposes and the individuals and legal entities, including non-resident legal entities and their structural subdivisions, which:

1) produce excise goods in the Republic of Kazakhstan;
2) import excise goods to the territory of the Republic of Kazakhstan;
3) wholesale and retail trade of gasoline (other than aviation gasoline) and diesel fuel in the Republic of Kazakhstan;
4) sell seized, ownerless excise goods and excise goods passed to the State by succession and transferred to the State on a gratuitous basis in the Republic of Kazakhstan that are set forth in paragraphs 5)-7) above, if no excise tax has been previously paid on such goods in the Republic of Kazakhstan in accordance with the legislation of the Republic of Kazakhstan;
5) sell the aforesaid excise goods included in bankruptcy assets if no excise tax has been previously paid on such goods in the Republic of Kazakhstan in accordance with the legislation of the Republic of Kazakhstan;
6) carry out picking (packing) of excise goods set forth in paragraph 6);.

In this regard, excise tax is applied to:

1) the following operations carried out by the excise tax-payer with the goods manufactured, produced and/or extracted and/or bottled by such tax-payer:
   - realization (sale) of excise goods;
   - transfer of excise goods for processing on a give-and-take basis;
   - transfer of excise goods derived from customer-supplied and owned raw materials (on a give-and-take basis), including excise raw materials;

- contributions to charter capital;
- use of excise goods in payments made in kind, unless they are used for the payment of mineral replacement tax and rent export tax;
- shipping of excise goods by the manufacturer to its structural subdivisions;
- use by the manufacturer/producer of the manufactured, produced and/or extracted and/or bottled excise goods for own production needs and for own production of excise goods;
- movement of excise goods by the manufacturer from the manufacturer's address specified in the license;

2) wholesale trade of gasoline (other than aviation) and diesel fuel;
3) retail trade of gasoline (other than aviation) and diesel fuel;
4) realization of bankruptcy assets and/or excise goods either seized and/or abandoned or inherited by the state or gratuitously assigned to the state;
5) damage and/or loss of excise goods; and
6) import of excise goods to the territory of the Republic of Kazakhstan.

Excise rates are determined as a percentage (ad valorem) of the value of the goods and/or as an absolute value (specific) per unit of measurement in kind.

Alcohol products, other than wine stock, beer and malt beverages, and consumer packaged tobacco products are subject to marking with control marks.

The tax period for the purpose of excise duties payment is a calendar month. By general rule, the taxpayer must pay excise duties before the 20th day of the month following the accounting tax period, subject to certain exceptions.

An excise tax return supported by excise assessment details shall be filed before the 15th day of the second month after the tax period.

Any person who is engaged in production and wholesale and/or retail trade of gasoline (except for aviation gasoline) or diesel fuel, production of ethanol and/or alcohol products, wholesale and/or retail trade of alcohol, production and/or wholesale of tobacco products, and production and assembly/furnishing of excisable motor vehicles must get registered with tax authorities as a taxpayer running certain business at the location of taxable and/or connected with taxation facilities used for business purposes.

Export Rent Tax

Export rent tax is paid by individuals and legal entities exporting crude oil, crude petroleum products falling under position 2709 00 in the Unified Foreign Trade Goods Classification (except for subsoil users exporting crude oil and gas condensate produced under production sharing agreements with the Kazakhstan Government or the relevant competent authority before 1 January 2009 and subsoil use contracts approved by the Kazakhstan President) and coal.

The tax base for the purpose of export rent tax is the volume of exported crude oil, crude petroleum products and coal.

The rates of rent tax on export of crude oil and crude petroleum products are determined by the Tax Code and depend on the world prices of crude oil and gas condensate per barrel: the higher the price the higher is the rate. The minimum rate is 0% and the maximum rate is 32%. The rate of rent tax on exports of coal is 2.1%.

The tax period for payment of export rent tax is a calendar quarter. Rent tax shall be paid before the 25th day of a month following the tax period. A rent tax return shall be filed before the 15th day of the second month following the tax period.

Subsoil Users' Taxes and Special Charges

Taxes payable by subsoil users are the tax on extraction of mineral resources and the excess profit tax.

Special charges payable by subsoil users include:

1) subscription bonus;
2) commercial discovery bonus; and
3) historic cost recovery charge.

Previously, subsoil users were able to sign production sharing agreements with the Government of the Republic of Kazakhstan that determined, among other things, tax regimes (i.e. the procedure for assessment and payment of taxes and other obligatory payments to the budget, including types and rates thereof) for subsoil users. The current Tax Code does not provide for this option.

However, the Tax Code provides that the tax regime that had been determined in a production sharing agreement (contract) signed between the Government of the Republic of Kazakhstan or a competent authority and the subsoil user prior to 1 January 2009 and that had been subjected to mandatory fiscal assessment, as well as in a subsoil use contract approved by the President of the Republic of Kazakhstan, will remain in force for the purpose of taxes and other obligatory payments to the budget when such agreement (contract) contains express tax stability provisions with respect to such taxes and obligatory payments, will apply exclusively to the parties to such agreement (contract) as well as to operators for its entire term and will not apply to persons who are not parties to such agreement (contract) or approved persons (operators), and may be amended upon mutual agreement between the parties.

Bonuses

Subscription bonus is a one-time charge payable by a subsoil user for the acquisition of a subsoil use right in a contract territory or for the extension of a contract territory.

Subscription bonuses are payable by individuals and legal entities who win tenders for the acquisition of subsoil use right through direct negotiations on granting the subsoil use right in accordance with the subsoil and subsoil use legislation of the Republic of

Kazakhstan and who are parties to one of the following subsoil use contracts signed in accordance with the procedure established by the legislation of the Republic of Kazakhstan:

1) an exploration contract; or
2) a contract for production of mineral resources (save for subsoil users who have entered into the contract under the exclusive right to acquire the mineral production right following commercial discovery under an exploration contract within the relevant contract territory); and
3) a combined exploration and production contract.

The initial amount of the subscription bonus is set separately for each subsoil use contract to be signed in the amounts determined by the Tax Code and may be increased upon the decision of the tender committee of the competent authority.

Commercial discovery bonuses are paid by subsoil users under the contracts for production and/or combined exploration and production of mineral resources for each commercial discovery in the contract area, including the discovery in the course of additional exploration of the area and/or re-estimation of reserves.

The exploration contracts not providing for further production are not subject to commercial discovery bonus.

Commercial discovery bonuses are payable by subsoil users who have reported the commercial discovery of mineral resources within the contract territory in the course of subsoil use operations under existing subsoil use contracts.

Commercial discovery bonuses are applied to physical volumes of mineral resources approved by the government body authorized for these purposes within the contract territory.

The tax base for the purpose of assessment of a commercial discovery bonus is the value of mineral reserves approved by the government body authorized for these purposes.

Commercial discovery bonuses are paid at the rate of 0.1% of the tax base.

Historic cost recovery charge is a fixed charge paid by a subsoil user in connection with recovery of the total costs incurred by the government on geological survey and exploration of mineral deposits prior to signing a subsoil use contract. Historic cost recovery charge is paid by subsoil users who have signed subsoil use contracts in accordance with the statutory procedure with respect to the mineral deposits in relation to which the Government incurred costs on geological survey of the contract territory and exploration of deposits prior to signing such contracts.

The amount of historic costs incurred by the Government in relation to geological survey and exploration is determined by the government body authorized for these purposes in the manner established by the legislation of the Republic of Kazakhstan and is paid to the budget:

1) as a historic cost recovery charge at a rate determined by the relevant confidentiality agreement less the fee for geological information acquired from the Kazakhstan Government; and
2) as a fee for geological information acquired from the Kazakhstan Government at a rate determined by the relevant confidentiality agreement.

Mineral Extraction Tax

The mineral extraction tax is paid by subsoil users in monetary form separately for each type of mineral resources, oil, ground water and therapeutic muds produced in the Republic of Kazakhstan. In the course of operations performed under the subsoil use contract, the Government of the Republic of Kazakhstan may determine to replace the monetary form of payment of the mineral extraction tax with payments in-kind in accordance with an addendum to be signed between the competent government authority and the subsoil user.

The mineral extraction tax for all types of produced minerals, oil, ground water and therapeutic muds, regardless of the method of extraction, is paid at the rates and in the manner determined by the Tax Code.

Mineral extraction tax is paid by subsoil users producing oil, minerals, ground water and therapeutic muds, including extraction of minerals from man-made deposits of minerals under each separate subsoil use contract.

The tax period for the purpose of mineral extraction tax is a calendar quarter. Mineral extraction tax shall be paid before the 25th day of the second month following the tax period. Mineral extraction tax return shall be filed before the 15th day of the second month following the tax period.

Excess Profit Tax

The excess profit tax is payable by subsoil users in relation to the operations performed under each separate subsoil use contract, except for subsoil users operating under:

- production sharing agreements (contracts) signed between the Government of the Republic of Kazakhstan or the competent authority and subsoil users prior to 1 January 2009, and subsoil use contracts approved by the President of the Republic of Kazakhstan;
- contracts for exploration, for exploration and production or for production of widespread mineral resources, ground water and/or therapeutic muds (if these contracts do not provide for production of other mineral resources); and
- contracts for construction and operation of underground facilities not related to exploration or production.

The tax base for excess profit tax is the portion of the subsoil user's net income for each separate subsoil use contract for the tax period exceeding the amount of 25% of

the subsoil user's deductions determined (net income and deductions) for the purpose of assessment of the excess profit tax in the manner established by the Tax Code.

The excess profit tax is paid by subsoil users at the rates set out in a sliding scale (the excess tax rate increases as the ratio of the total annual tax to the deductions increases varying from 10% to 60%).

Tax on Transport Vehicles

The tax on transport vehicles is payable by individuals owning taxable items under the right of ownership and by legal entities owning taxable items under the right of ownership, the right of operating control or operational management. The transport vehicles tax on taxable items transferred (received) under financial lease contracts is payable by the lessee.

The taxable base is a transport vehicle (including aircraft, motor boat, ship, tug boat, barge, yaught and railway rolling stock), other than trailer, subject to state registration and/or registered in Kazakhstan. Open-pit dump trucks with loading capacity of minimum 40 tons, special-purpose transport vehicles subject to property tax, and sea ships registered with the Kazakhstan international ship register are not subject to the transport vehicles tax.

The rates of transport vehicles tax are set out by the Tax Code in monthly calculation indices and depend on the type of a transport vehicle, its designation, engine volume and the year of manufacture.

Taxpayers make their own assessments of transport vehicles tax for the relevant tax period (i.e. calendar year).

Legal entities pay transport vehicles tax to the budget at the place of their registration by making current payments before 5 July each year. Private individuals are required to pay this tax before 31 December each year, and in case of any registration actions with respect to a motor vehicle – before the completion of such actions.

Land Tax

Individuals and legal entities holding land plots (or shares in land in the event of shared ownership) under the land ownership right, permanent land use right and primary temporary free land use right are required to pay land tax. For tax purposes, all lands are classified into different categories depending on their designation. Land categories are determined by the Land Code of the Republic of Kazakhstan.

The tax base for assessing the land tax is the size of a land plot. Base rates of the land tax are determined by the Tax Code and vary depending on the quality of soil, location, water supply and other characteristics of a land plot.

Legal entities and sole proprietors, private notaries, attorneys and professional mediators make their own assessments of the amounts of land tax that are payable in equal instalments within a tax period, but before 25 February, 25 May, 25 August and 25 November of the current year.

Sole proprietors and legal entities who have land plots under the land ownership right, permanent land use right, primary temporary free land use right or temporary land use for a fee are required, within 10 business days after the creation of such rights, to file an application with the tax authority either at the location of their incorporation or at the location of the land plot for registration of the taxable item at its location.

Assessments of the land tax payable by private individuals are made by tax authorities. Individuals must pay land tax before 1 November of a year following the tax period (tax period is equivalent to one calendar year).

Property tax

Property tax is paid by:

1) legal entities holding a taxable item under the right of ownership, operating control or operational management in the Republic of Kazakhstan;
2) sole proprietors holding a taxable item under the right of ownership in the Republic of Kazakhstan;
3) concessionaires holding a taxable item under the right of possession or use when such taxable item is a concession facility under a concession agreement;
4) individuals holding taxable items under the right of ownership; and
5) any other persons determined by the Tax Code as property tax payers.

In Kazakhstan the following assets of legal entities and individuals are subject to property tax:

- buildings and structures classified as such by the appropriate technical regulator, as well as parts thereof, accounted for as fixed assets or investment in real property in accordance with the International Financial Reporting Standards and Kazakhstan legislation concerning accounting and financial reporting;
- buildings and structures classified as such by the appropriate technical regulator, as well as parts thereof, assigned to individuals under long-term housing lease agreements with a purchase option and accounted for as long-term accounts receivable in accordance with the International Financial Reporting Standards and Kazakhstan legislation concerning accounting and financial reporting;
- buildings and structures under concession the title and use rights to which have been assigned under concession agreements;
- depreciable assets set forth in Article 111-1 of the Tax Code (for acquisition and/or creation of which a subsoil user has incurred expenses associated with the preparation of operation blocks/sites to the production of uranium by the method of drillhole in situ leaching since the commencement of production upon a commercial discovery);

- buildings and structures classified as such by the appropriate technical regulator, as well as parts thereof, accounted for, subject to the International Financial Reporting Standards and Kazakhstan accounting and financial reporting legislation, within the assets of second-tier banks which acquired the ownership thereto after the foreclosure on pledged assets or other collateral; and
- buildings and structures actually owned and used/operated without the state registration of titles thereto.

Legal entities (subject to certain exceptions, e.g. non-profit organizations, etc.) assess the property tax at the rate of 1.5% applied to the tax base (i.e. the average annual balance-sheet value of the taxable items as shown by the accounting records).

Sole proprietors and legal entities applying the special legal regime on the basis of a simplified tax return assess the property tax at the rate of 0.5% applied to the tax base.

Taxpayers (legal entities and individual entrepreneurs) must assess the property tax for the relevant tax period (a calendar year). Current payment must be made by taxpayers in equal instalments before 25 February, 25 May, 25 August and 25 November of the current year.

Taxable items of individuals (except for individual entrepreneurs) include housing and residential buildings, country houses (*dachas*), garages and other structures, constructions and premises held by them under the right of ownership.

The tax on property of private individuals is assessed based on the value of taxable items at the rates set out in a progressive tax scale: ranging between 0.05% for taxable items whose value is up to 2,000,000 tenge and 2,946,600 tenge + 2% of the amount exceeding 450,000,000 tenge for items whose value is over 450,000,000 tenge. Assessment of the property tax for private individuals is made by tax authorities before 1 July of a year following the tax period at the location of a taxable item regardless of the taxpayer's place of residence. Natural persons must pay this tax before 1 October each year following the tax period.

Special Tax Regimes

Taxpayers are entitled to choose between a general tax regime and a special tax regime. The special tax regime applies a special order of payments to the budget for certain categories of taxpayers in accordance with a simplified procedure for assessment and payment of certain taxes and land use fees and for filing relevant tax returns.

The following special tax regimes are effective in Kazakhstan:

1) special tax regime for small business entrepreneurs which comprises:
   - special tax regime based on business licenses; and
   - special tax regime based on simplified tax returns;
2) special tax regime for farms and farm households; and
3) special tax regime for legal entities that are producers of agricultural products, aquaculture (fishery) products and agricultural consumer cooperatives.

Special tax regime for small business entrepreneurs

In spite of the fact that the Entrepreneurial Code provides for the qualification criteria of private enterprises as small and micro businesses, the Tax Code provides its own criteria for qualification of taxpayers as small and micro businesses. In order to apply a special tax regime, the Tax Code provides certain criteria for qualification of a taxpayer as a small business.

Pursuant to the Tax Code, the special tax regime for small businesses may not be applied to:

1) legal entities that have branches and/or representative offices;
2) branches and representative offices of legal entities;
3) taxpayers having other separate structural subdivisions and/or tax entities in various populated locations (other than those carrying out activities related to property lease);
4) legal entities in which other legal entities hold participation interest exceeding 25%;
5) legal entities whose founder or participant is also a founder or participant of another legal entity applying a special tax regime;
6) taxpayers providing services under agency agreements (contracts);
7) nonprofit organisations; and
8) entities engaged in the arrangement and performance of special international exhibitions in the Republic of Kazakhstan.

Pursuant to the Tax Code, the special tax regime for small business entrepreneurs does not apply to the following activities:

1) production of excisable goods;
2) storage and wholesale of excisable goods;
3) sale of certain petroleum products (gasoline, diesel fuel and black oil fuel);
4) conduction of lotteries;
5) collection of glassware;
6) subsoil use;
7) collection, storage and sale of scrap and waste ferrous and non-ferrous metals;
8) consulting services;
9) accounting or auditing;
10) financial and insurance activities and insurance brokerage and agency activities; and
11) legal, law-making and justice activities.

State registration of individuals carrying out unincorporated entrepreneurial activities is made through their registration as sole proprietors with local tax authorities at the place of business specified at the time of application for state registration as a sole proprietor.

The special tax regime for small businesses provides a simplified procedure for assessment and payment of social tax, and corporate or individual income tax, other than taxes deductible at the source of payment. The assessment, payment and filing of tax accounts and returns on other taxes and compulsory payments to the budget are made in accordance with the general procedure.

The ***special tax regime based on licenses*** is applied only by sole proprietors meeting the following requirements:

1) do not use hired labour;
2) carry out activities as individual entrepreneurs; and
3) their income for the tax period (calendar year) does not exceed 300-fold minimum wages (as at 1 January 2017, 300-fold minimum wages are equal to 7,337,700 tenge).

The tax base for taxpayers applying the special tax regime on the basis of a license is the income for a tax period (calendar year) comprising the adjusted revenues received (receivable) in the Republic of Kazakhstan as determined by the Tax Code.

The value of a license includes the payable individual income tax (excluding the tax withheld at the source of payment), social tax, and obligatory pension and social contributions.

The individual income tax and social tax included into the value of a license are determined by applying the rate of 2% to the tax base. The value of a license is payable to the budget in the form of:

1) individual income tax – in the amount of 1/2 of the assessed amount; and
2) social tax – in the amount of 1/2 of the assessed amount less the amount of social payments.

The obligatory pension and social contributions included in the value of a license are assessed in accordance with the procedure established by the Kazakhstan pension provision legislation.

The ***special tax regime based on simplified tax returns*** applies to small business entrepreneurs meeting the following requirements:

1) for sole proprietors:
   - the maximum permitted number of employees for a tax period is 25 people, including the sole proprietor;
   - the maximum permitted income for a tax period (six months) is 1,400-fold minimum wages (as at 1 January 2017, 1,400-fold minimum wages are equal to 34,242,600 tenge); and
2) for legal entities:
   - the maximum permitted number of employees for a tax period is 50 people;
   - the maximum permitted income for a tax period (six months) is 2,800-fold minimum wages (as at 1 January 2017, 2,800-fold minimum wages are equal to 68,485,200 tenge).

Taxpayers make their own tax assessments under simplified tax returns by applying the rate of 3% to the tax base for an accounting tax period (six months). The assessed amount of taxes is adjusted to the lower figure by 1.5% of the amount of tax per employee based on the average number of employees if the average monthly wages of employees as at the end of an accounting period amounted to at least 2 minimum monthly wages for sole proprietors, and at least 2.5 minimum monthly wages for legal entities (48,918 tenge and 61,147.50 tenge, respectively).

Taxes assessed under simplified tax returns must be paid before the 25th day of the second month following the reporting tax period (6 months) by remitting to the budget half of the individual/corporate income tax and social tax assessed under simplified tax returns, less social contributions to the State Social Insurance Fund.

Tax Inspections

Tax inspections are divided into the following categories:

1) documentary audits that comprise comprehensive, targeted and cross-check audits;
2) chronometric observations;

and following types:

1) sampling audits (assigned by tax authorities to taxpayers based on the review of tax returns, information provided by competent authorities and other documents and information related to the taxpayer's/tax agent's activities); and
2) unscheduled tax audits.

It should be specifically noted that the legislation of the Republic of Kazakhstan does not prohibit repetitive audits, i.e. audits with respect to the same taxes and other mandatory payments to the budget payable or paid by the taxpayer for the already audited tax period. However, unscheduled audits (with limited exceptions) for the earlier audited period may be performed only on the grounds of a resolution issued by the competent authority (State Revenue Committee of the Kazakhstan Ministry of Finance).

30 calendar days prior to a sampling comprehensive and/or sampling targeted audit, tax authorities are required to send or deliver to the taxpayer (tax agent) a relevant tax audit notice made in a proper form. Such notice is not required for unscheduled audits.

Tax audits are carried out on the basis of an order and the date of service of such notice is considered the date of commencement of such tax audit. A tax audit order must be registered with the competent authority on legal statistics and special accounts of the Kazakhstan General Prosecutor's Office prior to the commencement of the tax audit. Tax audits should not interrupt the taxpayer's ordinary course of business. The duration of tax audits set out in notices may not exceed 30 business days from the date of service of such notice. However, in certain events as determined by the Tax Code, tax authorities may extend such period.

A tax audit report is prepared upon completion of the tax audit and the date of service of such report to the taxpayer (tax agent) is considered the date of its completion. With effect from 1 July 2017, the described procedure will be different for certain categories of taxpayers as determined by the Kazakhstan Ministry of Finance. Upon the completion of a tax audit of such category taxpayer, the taxpayer will be delivered, first of all, an interim tax audit report to which the taxpayer may object in writing.

Upon completion of the tax audit, if the inspectors find any violations resulting in the assessment of any taxes and other obligatory payments to the budget, the tax authority issues a notice of the findings of the tax audit which must be sent to the taxpayer (tax agent) within 5 business days after the date of service of the tax audit report to the taxpayer.

The taxpayer may dispute such notice with a superior tax authority (rather than court) within 30 business days after the date when the notice is delivered to the taxpayer or with a court within 3 months after the date when such notice is received. After 1 July 2017, if a taxpayer willing to dispute a notice of the findings of a tax audit out of court, irrespective of which tax authority has performed the audit, such tax payer will have to file an appeal with the competent authority (i.e. the Kazakhstan Ministry of Finance). Appeals will be processed by a newly formed appeal commission.

In response to the taxpayer's appeal, a reasoned decision shall be issued within 30 business days after the date of filing of the appeal of the taxpayer or within 45 business days after the date of filing of the appeal of a major taxpayer who is subject to monitoring.

Before 1 July 2017, taxpayer may file an appeal against a decision of the superior tax authority issued in response to its appeal against the relevant notice with a competent government authority (i.e. the State Revenue Committee to which the Kazakhstan Ministry of Finance delegated the power to revise decisions on appeals against notices) within 30 business days after the date following the date of receipt of such decision, or upon expiration of the period determined by the Tax Code if no such decision is issued, or with a court within 3 months after the date when the taxpayer became aware that his appeal was denied by the superior tax authority in full or in part. After 1 July 2017, the procedure provided by the Tax Code for revision of decisions on appeals against such notices will be abolished, meaning that the notices will have to be challenged only in court.

Claims disputing tax audit notices are subject to a state duty at the rate of 0.1% of the disputed amount of taxes and other obligatory payments to the budget (including tax default interests) specified in the notices, but in any case not more than 500 MCIs (in 2017, 500 MCIs are equivalent to 1,134,500 tenge) for sole proprietors, and at the rate of 1% of the disputed amount of taxes and other obligatory payments to the budget (including tax default interests) specified in the notices, but in any case not more than 20,000 MCIs (in 2017, 20,000 MCIs are equivalent to 45,380,000 tenge) for legal entities.

TRANSFER PRICING

Law of the Republic of Kazakhstan *On Transfer Pricing* No. 67-IV of 5 July 2008 came into force on 1 January 2009. This law is aimed at improving statutory regulation of public relations arising in connection with transfer pricing in order to prevent public revenue losses in international business operations and transactions related thereto.

Transfer prices are prices that are established between related parties and/or are different from fair market prices taking into account the price range in arm-length transactions and that are subject to control in accordance with the aforesaid law.

Control over Transfer Pricing

The following transactions are subject to transfer pricing control:

1) international business transactions;
2) transactions consummated in the Republic of Kazakhstan that are directly related to the international business transactions:
   - involving minerals for sale produced by a subsoil user who is a party thereto;
   - when one of the parties is eligible to tax benefits; and
   - when one of the parties incurs losses as shown in tax returns for the last two tax periods preceding the year of consummation of the transaction.

International business transactions are:

- export and/or import transactions for sale and purchase of goods;
- performance of works and provision of services when one of the parties thereto is a non-resident operating in the Republic of Kazakhstan without a permanent establishment; and
- transactions for sale and purchase of goods, performance of works and provision of services entered into by residents of the Republic of Kazakhstan and consummated outside the Republic of Kazakhstan.

Competent authorities exercise control by way of:

1) transactions monitoring;
2) inspections; and
3) other procedures established by Kazakhstan law.

Monitoring is required with respect to international business transactions involving goods (works/services) the list of which is approved by the competent authorities (e.g., crude oil, gold, sugar, construction operations, marketing services, etc.). Parties to such transactions must keep records of transactions monitoring and report to the competent authorities by 15 May of the year following the accounting year in the manner and in the form determined by the competent authority. The accounting period is one calendar year.

Kazakhstan law provides for administrative liability for the failure to file transaction monitoring reports and other documents required for control over transfer pricing and for over 2,000-fold MCI variance between the data provided by a transaction monitoring

report and the data acquired in the course of an audit. The applicable administrative penalty ranges between 100 MCIs and 750 MCIs (i.e. between KZT226,900 and KZT1,701,750, as at 1 January 2017).

Inspections by competent authorities in connection with transfer pricing are required in the following events:

1) establishment of a deviation of the transaction price from the market price;
2) receipt from government authorities of information on application of transfer prices; and
3) inspections carried out by competent authorities as to compliance with the tax legislation of the Republic of Kazakhstan and the customs legislation of the customs union and/or the Republic of Kazakhstan, if there are no sources of information on market prices.

In exercising control over transfer pricing, competent authorities are entitled to request from the parties to a transaction, government authorities and third parties information required to determine the market price and differential, as well as other data required to monitor transactions.

If it is established in the course of an inspection that the transaction price deviates from the market price taking into account the price range, the competent authorities will make adjustments of the taxable items and tax-related items in the manner determined by Kazakhstan law. Adjustments are made only if they increase or may subsequently increase the amounts of taxes and other obligatory payments to the budget.

Adjustment of taxable items and tax-related items is required in the event of deviation of the transaction price from the market price which is determined as a mean average as stated in the source of information with respect to the following transactions with parties who:

- are incorporated in a tax haven;
- are engaged in barter (exchange) transactions;
- have incurred losses shown in tax returns for the last two tax periods preceding the year of consummation of the transaction;
- are eligible to tax benefits; and
- fulfil their obligations under transactions made by way of set-off of similar counterclaims (including set-off through assignment).

Based on adjustment of taxable items and tax-related items, taxes and other obligatory payments to the budget are paid in the manner as if income or expenses from such transactions and other taxable items for the accounting period were determined based on the market price taking into account the price range subject to default interests and penalties in accordance with the legislation of the Republic of Kazakhstan.

Taxable and/or tax-related items are not adjusted when the transaction price deviates from the market price, considering the price range, in the following cases:

fixation or determination of transaction price and/or pricing methodology in an international treaty ratified by Kazakhstan;

1) fixation of transaction price in intergovernmental agreements;
2) exercise by the government of its pre-emptive right to buy affined gold for the replenishment of precious metal assets; and
3) fixation of transaction price and/or pricing methodology by the Kazakhstan Government.

The innovation of Law of the Republic of Kazakhstan *On Transfer Pricing* No. 67-IV of 5 July 2008 is the introduction of the option to enter into written transactions on use of transfer pricing between the competent authorities (tax and customs authorities) and parties to a transaction which sets out the method and source of information used to determine the market price for a fixed period (maximum 3 years).

Market Price Determination Methods

One of the following methods is applied for the purpose of the market price determination:

1) the comparable uncontrolled price method;
2) the cost plus method;
3) the resale minus method;
4) the profit split method; and
5) the transactional net margin method.

The primary method is the **comparable uncontrolled price method** which implies the comparison of a transaction price for goods (works/services) with the market price, taking into account the price range, for identical (or, in their absence, similar) goods (works/services) in comparable economic conditions. In determining the market price for the goods (works/services), information on prices for goods (works/services) existing at the time of sale of such goods (works/services) is taken into account.

The comparable uncontrolled price method is used to determine the market price by way of external and/or internal comparison. In an external comparison, the comparison is performed between comparable transactions between a party to the transaction and its related party and between two unrelated parties. In an internal comparison, the comparison is performed between comparable transactions between a party to the transaction and its related party and between the same party to the transaction and an unrelated party.

In the **cost plus method**, the market price for goods (works/services) is determined as a sum of costs (expenses) incurred and a mark-up ("plus element of profit").

The determined costs (expenses) relate to production (acquisition) and/or sale of goods (works/services), transportation, storage, insurance, etc. The mark-up is determined in the manner to ensure the average rate of return established for the relevant field of activity which is calculated based on the rate of return range under comparable economic conditions. The rate of return (profitability) for the relevant

field of activity is determined on the basis of the data from the government statistics authorities of the Republic of Kazakhstan, state revenue authorities and other sources of information.

The resale minus method is the method whereby the market price for goods (works/services) is determined as a difference between the price for which such goods (works/services) are sold by the buyer in the subsequent sale (resale) and confirmed costs (expenses) incurred by the buyer in the resale (net of the price for which the goods (works/services) are bought by the buyer from the seller) and a margin. The margin must be within the margin range.

The profit split method determines the profit from a transaction that must be split between parties to the transaction on the basis of economic evaluation, functional analysis, arm-length agreements and the profit that would be earned by such parties if there were no related parties.

The transactional net margin method is based on determining a net margin that would be received from the transaction unrelated parties in comparable economic conditions. The net margin is determined on the basis of one of the following factors based on the accounting records:

- net book value of assets;
- sales; and
- costs.

Sources of Information Used for the Market Price Determination

For the purpose of determining the market price for goods (works/services) and other data required to apply the methods of determination of the market price, the following sources of information the list of which is approved by the Government of the Republic of Kazakhstan are used in the specified order of priority:

1) officially recognized sources of information on market prices;
2) sources of information on exchange quotations;
3) data of government authorities, competent authorities of foreign states and organizations on prices, the differential, costs and conditions affecting the deviation of a transaction price from the market price; and
4) information programs used for the purpose of transfer pricing, information provided by transacting parties and other sources of information.

LABOUR LAW

Employment Legislation

The primary legislative act governing labour relations is Labour Code of the Republic of Kazakhstan No. 414-V of 23 November 2015. Besides, labour matters are covered by a number of laws and regulatory acts of the Republic of Kazakhstan.

Labour Contracts

Labour relations normally arise out of labour contracts which must be executed only in writing.

Labour contracts may not be entered into with foreign nationals or stateless persons sojourning in the Republic of Kazakhstan until the employer or the foreign worker obtains a foreign employment permit from the local executive authority or a professional attestation certificate from the Kazakhstan Ministry of Labour and Social Protection or a labour immigration permit from the internal affairs authority.

According to law, labour contracts may be signed for the following terms:

1) for an indefinite term;
2) for a fixed term of at least one year [Note: upon the expiry of a labour contract, the parties may extend the contract for an indefinite term or a fixed term of at least one year. Small businesses may sign labour contracts for any fixed term];
3) for a term required for the performance of a particular work;
4) for a term required for the replacement of a temporarily absent employee;
5) for a term required for the performance of seasonal work; and
6) for the validity period of a Work Permit or professional attestation certificate or labour immigration permit.

Labour contracts with chief executives of legal entities (general director, director, chairman of a board of directors, etc.) are signed by the owner of the employer's corporate assets or its authorized representative/body or its competent body or an authorized representative of the latter. Such labour contracts, as opposed to labour contracts with other employees, may be terminated at any time at the option of the owner of the employer's corporate assets or its authorized representative or its authorized body.

Employers may terminate labour contracts at their discretion subject to one of the following grounds: liquidation (winding-up), staff reduction, production cutback, the employee's being unfit for the position, employee's misconduct, etc. Employees, however, are permitted by law to terminate employment at their discretion subject to at least 1-month written notice to the employer (a labour contract may provide for a longer notice period). Nevertheless, a labour contract may provide for the employer's right to terminate such contract by mutual consent of the parties (without the need to follow the statutory termination procedures) subject to the employee's compensation at the rate determined by the labour contract.

Social partnership at the level of organisations may be established in the form of collective agreements providing for certain mutual labour obligations between the employees' representatives and the employer. The term of a collective agreement is determined by the parties thereto.

Working Time and Time Off

Working hours may be normal, reduced and part-time. Normal working hours may not exceed 40 hours per week.

Part-time working hours are working hours that are less than the normal working hours, including part-time working day, part-time working week or contemporaneous reduction of the duration of daily work (work shifts) and reduction of the number of working days per working week.

As a general rule, a standard working week for employees is a 5-day working week with 2 days off. Organizations where a 5-day working week is impractical due to the nature of their operations and working conditions apply a 6-day working week with 1 day off. Besides, labour law provides for an option to apply work shifts, flexible working hours, record of cumulative working hours and rotations. Unfortunately, the law does not provide a detailed regulation of special work schedules which raises a lot of practical issues.

Employees are granted annual paid work and social leaves. The main paid annual work leave may not be less than 24 calendar days. A different term of the leave may be provided for certain categories of employees. Besides, additional annual paid leaves may be granted to: (i) workers engaged in heavy-duty physical labour and work in harmful (highly harmful) and hazardous (highly hazardous) working conditions; and (ii) persons with 1st and 2nd grade disabilities (at least 6 calendar days). The social leave (unpaid leave, study leave, pregnancy and maternity/paternity leave, adoption leave and unpaid leave to attend to a child up to the age of three years) releases the employees from work for a certain period for the purpose of creating favourable conditions for maternity and child care, part-time education and other social purposes.

Shift or Rotation Work

The shift or rotation method applies if the place of work is located at a remote distance from the employee's place of residence. The employer provides to the employee transportation to and from the place of work, accommodation and meals at the place of work and other conditions.

Working time under shift or rotation method is recorded by applying the method of cumulative record of working time for an accounting period (1 quarter to 1 calendar year). The duration of working time within an accounting period may not exceed the established limit.

In general, the duration of one shift may not exceed 15 calendar days. However shifts may be extended:

- subject to the employee's written consent – up to 30 calendar days; and
- for sea ship crew members – up to 120 calendar days.

Labour Compensation and Other Payments

The amount of labour compensation is determined on an individual basis depending on the qualification of an employee, the degree of work complexity, the quantity and quality of work, as well as on working conditions but not less than the minimum wage determined by the Budget Law of the Republic of Kazakhstan for the relevant year. As at 1 January 2017, the minimum wage is 24,459 tenge. Wages and salaries are paid only in monetary form in the national currency of the Republic of Kazakhstan not later than the first day of the month following the accounting month.

In case of a temporary disability, an employee is paid a social allowance from the employer's funds. The amount of the allowance is determined based on the average monthly pay of the employee. The employer pays maternity and adoption leave subject to employment and/or collective agreement or the employer's act, less social contributions under the Kazakhstan laws concerning obligatory social security.

Financial Liability

The employer is financially liable to the employee for: damages caused by illegal deprivation of the employee of the opportunity to work; and harm caused to life and/or health of the employee.

The employee is financially liable for direct real damage inflicted on the employer. Kazakhstan law provides for a list of circumstances under which an employee may be held financially liable, including, but not limited to, a contract between the employer and the employee on assumption of full financial liability by the employee, damage caused by the employee under the influence of alcohol or drugs, etc.

The employer and employee may, by mutual consent, sign a non-compete agreement providing for the employee's obligation not to undertake any actions which could cause damage to the employer. Such non-compete agreement should provide for restrictions and conditions for acceptance thereof, as well as compensation payable during the effective period of the provision.

Labour Dispute Settlement

Individual labour disputes are settled by grievance commissions and, if a grievance commission fails to settle a dispute or to enforce its ruling, by courts (this provision does not apply to small businesses and heads of corporate executive bodies). Collective labour disputes are settled as follows:

1) by the employer (association of employers);
2) if the employer (association of employers) fails to settle a dispute, by a grievance committee;

3) if the grievance committee fails to settle a dispute, by a labour arbitration; and
4) if the labour arbitration fails to settle a dispute, by a court.
5) Besides, the parties to a dispute may also settle the dispute through a mediator. The institution of mediation is distinct from the reconciliation procedure and may be held contemporaneously.

Other Provisions

The employer is required to ensure safety and protection of the employee's labour. For this purpose, there is a requirement of compulsory insurance of employees against accidents at work, assessment of production facilities, setting up of an HSE service or appointment of a separate HSE specialist, or assignment of HSE duties to other specialists, etc.

Employers provide professional training, retraining and development for the employees or other persons with whom they do not have labour relations under a training contract. Upon completion of professional training, retraining and development, the trainee is required to work for the employer for a term agreed upon by the parties in the training contract. In the event of termination of the labour contract prior to the expiration of the term set out in the training contract, initiated either by the employee or the employer due to the employee's fault, the employee is required to reimburse the employer for the expenses incurred in relation to his or her training in proportion to the remaining work term.

ANTI-MONOPOLY (ANTITRUST), UNFAIR COMPETITION AND NATURAL MONOPOLIES LEGISLATION

The Treaty on the Eurasian Economic Union (EEU) was signed by the Presidents on 1 January 2015 in Astana, Kazakhstan. The EEU unites the Republic of Belarus, Republic of Kazakhstan, Russian Federation, Republic of Armenia and Kyrgyz Republic.

Section XVIII of the Treaty on the EEU provides for the common principles and rules of competition ensuring the detection and interdiction of anticompetitive practices in the EEU Member States, as well as any other acts which might negatively affect competition in transborder markets of two or more Member States.

The Treaty on the EEU establishes the following common principles of competition:

1. The Member States shall apply their competition (antitrust) laws to market entities on equal terms (i.e. similarly and equally irrespective of their legal structure and place of incorporation).
2. The Member States shall legislatively ban the following:
   - executing any agreements between central government authorities, local government authorities, other agencies or organisations performing government functions, or between the specified authorities and market entities, provided that such agreements entail or might entail non-admission, limitation or elimination of competition, unless otherwise provided by the Treaty on the EEU and/or any other international treaties between Member States; and
   - granting state or municipal preferences, unless otherwise provided by the national legislation of Member States, considering the specifics provided by the Treaty on the EEU and/or any other international treaties between Member States.
3. The Member States shall apply stringent measures for the prevention, detection and suppression of the actions/omissions set forth in Clause 2(i) above.
4. Subject to their national laws, the Member States shall ensure strict control over economic concentration to the extent sufficient for the protection and development of competition in each Member State.
5. Each Member State shall put into place a government agency authorized to implement and/or to pursue the competition (antitrust) policy implying, inter alia, that such agency is vested with the powers to enforce the prohibition of anti-competitive practices and unfair competition, to control economic concentration, to prevent and detect competition (antitrust) law offences, to stop such offences and to prosecute offenders.
6. The Member States shall legislatively provide for punitive measures applied for anti-competitive acts against market entities or public officers based on the principles of efficiency, equality, enforceability, inevitability and certainty, and shall ensure the monitoring of such measures application. Besides, the Member States acknowledge that, if such punitive measures are applied, the most stringent of

them shall be applied to those offences which constitute a threat to the cause of competition (e.g., anti-competitive agreements or abuse by market entities of the Member States of their dominant position in the market), while the preference shall be given to those punitive measures which are based on the offender's proceeds from the sale of commodities or from the offender's expenses for the purchase of commodities in the market of which the given offence has taken place.

7. Subject to their national laws, the Member States shall ensure the transparency of their competition (antitrust) policies which includes, inter alia, the publication of information on activities of the Member States' competent authorities in mass media and the Internet.
8. Subject to national laws and the Treaty on the EEU, the competent authorities of the Member States shall intercommunicate through (i) the exchange of notices, information requests, consultations, information on investigations (case hearings) affecting the interests of the other Member States; (ii) the performance of investigations (case hearings) at the request of competent authorities of another Member State and the reporting on the outcome thereof.

Besides, the Treaty on the EEU establishes the common rules of competition which ban the following:

- actions/omission of a dominating market entity which entail or might entail the non-admission, limitation or elimination of competition and/or the infringement of third party's interests;
- unfair competition;
- agreements between the Member States' market entities operating and competing in one commodity market which entail or might entail:
  1) fixation or maintenance of prices/tariffs, discounts, markups/surcharges or extra charges;
  2) downward/upward adjustment or support of tender prices;
  3) market sharing by the territoriality principle, the volume of sales/purchases, the assortment of sold goods or the vendor/customer structure;
  4) reduction in production or phaseout of certain goods; and
  5) refusal to sign contracts with certain vendors or customers;
- vertical agreements between market entities, save for those vertical agreements which are admissible subject to the admissibility criteria set forth in Exhibit 19 to the Treaty on the EEU, provided that:
  1) such agreements entail or might entail the fixation of resale prices, unless a vendor sets a price ceiling for resold goods; and
  2) such agreements provide for the vendor's commitment not to sell goods of the competing market entity. This ban does not apply to the agreements on the organisation of sale of goods under trademarks or other means of vendor/manufacturer individualisation;

- any other agreements between market entities, save for those vertical agreements which are admissible subject to the admissibility criteria set forth in Exhibit 19 to the Treaty on the EEU, if it is found that such agreements entail or might entail the limitation of competition;
- coordination of economic activities of the Member States' market entities by individuals or profit/non-profit organisations, if such coordination entails or might entail any of the aforementioned consequences (applicable to prohibited agreements) which may not be recognized as admissible subject to the admissibility criteria set forth in Exhibit 19 to the Treaty on the EEU. The Member States may legislatively prohibit the coordination of economic activities when such coordination entails or might entail the consequences which may not be recognized as admissible subject to the admissibility criteria set forth in Exhibit 19 to the Treaty on the EEU.

The Supreme Council of the Eurasian Economic Commission developed the criteria to qualify a market as a cross-border market in order to determine the scope of authority of the Eurasian Economic Commission.

According to the criteria:

- for application of the unified rules of competition, a market is deemed cross-border when the geographic boundaries of a commodity market cover two or more Member States;
- the Eurasian Economic Commission precludes the unfair competition bans violation by businesses (market participants) when:
  - *the business whose activities violate the introduced bans and the competing business(es) or its/their business reputation is/are inflicted damages as a result of such violation are incorporated in different Member States;*
- the Eurasian Economic Commission precludes the violation by businesses (market participants) of the bans on anti-competitive agreements, when:
  - *at least two businesses (market participants) whose activities violate the bans are incorporated in different Member States;*
- the Eurasian Economic Commission precludes the violation by businesses (market participants) of the bans on abusive behaviour subject to the aggregate of the following conditions:
  - *the share of sales and purchases of the business dominating in the commodity market, meeting the criteria set forth in paragraph 2 of the criteria description, whose activities lead to violation of the statutory ban, in the total volume of commodities circulating in each Member State affected by the violation is at least 35 percent;*
  - *the ban violation leads or may lead to exclusion, limitation or elimination of competition in the commodity market, meeting the criteria set forth in paragraph 2 of the criteria description, or to discrimination against other persons in two or more Member States;*

- *the aggregate share of sales and purchases of a number of businesses each of which dominates in the commodity market, meeting the criteria set forth in paragraph 2 of the criteria description, and whose activities lead to the ban violation, in the volume of commodities circulating in each Member State affected by the violation is, for maximum three businesses (market participants), at least 50 percent or, for maximum four businesses (market participants), at least 70 percent (this provision does not apply when the share of at least one of the specified businesses is under 15 percent in each Member State);*
- *during a long period of time (during at least one year or, if such period is less than one year, during a period of the respective market existence) the reference shares of businesses are constant or subject to minor changes, and the access to the respective commodity market is impeded for new competitors;*
- *the commodity sold or purchased by businesses may not be replaced with another commodity when consumed (including the consumption for production needs), and the commodity price growth does not give rise to the respective decrease in demand for the commodity; the information about such commodity price, and sale and purchase conditions in the respective commodity market is available for an unlimited number of persons; and*
- *the ban violation leads or may lead to exclusion, limitation or elimination of competition in the commodity market, meeting the criteria set forth in paragraph 2 of the criteria description, or to discrimination against other persons in two or more Member States.*

Some of the provisions of the Treaty on the EEU outlined below may be of special interest to the reader:

1) The dominant position of a business in a transborder market is determined by the Commission in accordance with the methodology for assessment of competition in a transborder market approved by the Commission. The market share of a market participant is not the only determination value, because all the following circumstances are to be considered: the share of a business entity as compared to the market shares of its competitors and consumers;
2) the ability of a business entity to unilaterally determine the price level of the goods and to have a decisive effect on the general conditions of sale of the goods in the respective goods market;
3) the existing economic, technological, administrative or other restrictions for entering a goods market; and
4) the time period during which a business entity has had the ability to have a decisive effect on the general conditions of circulation of goods in the goods market.

Subject to the methodology for assessment and imposition of penalties approved by the Commission, the Commission imposes penalties for violation of common rules of competition in transborder markets and for non-disclosure or untimely disclosure

of information, at the Commission's request, or for deliberate misrepresentations in documents provided to the Commission, at the following rates:

1) unfair competition inadmissible under Article 76.2 of the Treaty on the EEU entails the imposition of penalty on officers and individual entrepreneurs in the range between RR20,000 and RR110,000, and on legal entities in the range between RR100,000 and RR1,000,000;
2) execution by a market entity of an agreement inadmissible under Articles 76.3, 76.4 and 76.5 of the Treaty on the EEU, as well as the participation in such agreement, entails the imposition of penalty on officers and individual entrepreneurs in the range between RR20,000 and RR150,000, and on legal entities in the range between 0.01 and 0.15 of the offender's proceeds from the sale of goods/works/services in the market of which the given offence was committed or of the offender's expenses for the purchase of goods/works/services in the market of which the given offence was committed, but in any event not more than one-fiftieth of the offender's total proceeds from the sale of all goods/works/services and not less than RR100,000. When the offender's proceeds from the sale of goods/works/services in the market of which the given offence was committed exceed 75% of the offender's total proceeds from the sale of all goods/works/services, the penalty ranges between 0.003 and 0.03 of the offender's proceeds from the sale of goods/works/services in the market of which the given offence was committed or from the offender's expenses for the purchase of goods/works/services in the market of which the given offence was committed, but in any event not more than one-fiftieth of the offender's total proceeds from the sale of all goods/works/services and not less than RR100,000;
3) coordination of market entities' economic activities inadmissible under Article 76.6 of the Treaty on the EEU entail the imposition of penalty on individuals in the range between RR20,000 and RR75,000, on officers and individual entrepreneurs in the range between RR20,000 and RR150,000, and on legal entities in the range between RR200,000 and RR5,000,000;
4) commitment by a dominating market entity of actions recognized as the abuse of dominant position and inadmissible under Article 76.1 of the Treaty on the EEU entails the imposition of penalty on officers and individual entrepreneurs in the range between RR20,000 and RR150,000, and on legal entities in the range between 0.01 and 0.15 of the offender's proceeds from the sale of goods/works/services in the market of which the given offence was committed or of the offender's expenses for the purchase of goods/works/services in the market of which the given offence was committed, but in any event not more than one-fiftieth of the offender's total proceeds from the sale of all goods/works/services and not less than RR100,000. When the offender's proceeds from the sale of goods/works/services in the market of which the given offence was committed exceed 75% of the offender's total proceeds from the sale of all goods/works/

services, the penalty ranges between 0.003 and 0.03 of the offender's proceeds from the sale of goods/works/services in the market of which the given offence was committed or from the offender's expenses for the purchase of goods/works/services in the market of which the given offence was committed, but in any event not more than one-fiftieth of the offender's total proceeds from the sale of all goods/works/services and not less than RR100,000; and

5) non-disclosure or untimely disclosure of the information set forth in Section XVIII of the Treaty on the EEU and the Protocol to the Commission, including non-disclosure of information or deliberate misrepresentations in documents provided to the Commission, entails the imposition of penalty on individuals in the range between RR10,000 and RR15,000, on officers and individual entrepreneurs in the range between RR10,000 and RR60,000, and on legal entities in the range between RR150,000 and RR1,000,000.

A fine is payable to the budget of the Member State in which the non-compliant market entity is incorporated or in which the non-compliant individual permanently or temporarily resides.

The person who voluntarily reports to the Eurasian Economic Commission and/or the national competent authorities on the execution of an inadmissible agreement will be exempt from the liability for offence, subject to the aggregate of the following conditions:

- on the date of the person's report to the Eurasian Economic Commission, the Commission did not have any information or documents regarding the offence;
- the person refused to participate or to continue his participation in an agreement inadmissible under Article 76 of the Treaty on the EEA; and
- the provided information and documents are sufficient to establish the fact of the offence.

The person who was the first to comply with all the conditions above shall be released from the liability. No notice is accepted if made by several persons who have entered into a prohibited agreement.

The Eurasian Economic Commission, a successor of the Customs Union Commission, is the competent authority responsible for monitoring of the compliance with the unified competition rules in the single economic space.

The Eurasian Economic Commission:

- considers applications/materials on the presence of signs of violation of the common rules of competition, as well as performs any necessary investigations;
- opens and considers competition rules violation cases;
- issues orders and makes decisions binding upon business entities (market entities);
- requests and receives information;
- delivers an annual report on the competitive situation in transborder markets;

- posts judgments on tried cases regarding violation of the common rules of competition; and
- exercises other authorities necessary for implementation of the provisions of the Competition Agreement.

Actions or omissions of the Eurasian Economic Commission in the field of competition may be appealed in the Court of the Eurasian Economic Union.

The provisions of the Treaty on the EEU regarding the government price control restrictions are not applicable to (i) the government price control of all services, including the services provided by natural monopolies, (ii) government procurement and commodity interventions, and (iii) the following goods:

1. natural gas;
2. liquid gas for household needs;
3. electric and heat energy;
4. vodka, liqueurs and other alcohol products with at least 28% alc/vol (minimum price);
5. ethyl alcohol from food raw materials (minimum price);
6. solid fuel and furnace oil;
7. nuclear power cycle products;
8. kerosene for domestic needs;
9. petroleum products;
10. pharmaceuticals; and
11. tobacco products.

Relations in the field of protection of competition, restriction of monopolistic activities and unfair competition and in the field of natural monopolies are governed by the following legislative acts:

- Entrepreneurial Code of the Republic of Kazakhstan No. 375-V of 29 October 2015 (Section 4 'Economic Competition');
- Law of the Republic of Kazakhstan On Natural Monopolies No. 272-I of 9 July 1998; and
- other legal regulatory acts and regulations.

The anti-monopoly activities are performed by the Committee for Regulation of Natural Monopolies and Protection of Competition and Consumer Rights of the Kazakhstan Ministry of National Economy.

Natural Monopolies

Pursuant to the Law of the Republic of Kazakhstan *On Natural Monopolies*, a natural monopoly is where the conditions of the services (goods/works) market are such that it is either impossible or economically inadvisable to create conditions for competition to satisfy the demand for a certain type of services (goods/works) due to the technological specifics of production and provision of such type of services (goods/works). The Law *On Natural Monopolies* recognizes the following services (goods/works) as those of natural monopolies:

1) transportation of oil and/or petroleum products via trunk pipelines, save for their transportation through the Republic of Kazakhstan and their export from the Republic of Kazakhstan;
2) storage and transportation of commercial gas via interconnection or trunk gas pipelines and/or distribution networks, operation of group tank facilities, and transportation of crude gas via interconnection pipelines, save for the transportation of commercial gas through the Republic of Kazakhstan and its export from the Republic of Kazakhstan;
3) transmission and/or distribution of electricity;
4) production, transmission, distribution and/or supply of heat, except for the heat generated by ground, ground water, river, reservoir, sewage from industrial enterprises and power stations, and sewage treatment plants;
5) technical dispatch of grid output and consumption of electricity;
6) ensuring balance between the production and supply of electricity;
7) services of mainline rail network, unless the mainline rail network is used for transportation of containerized cargoes and empty containers, and transit transportation of cargoes through the Republic of Kazakhstan;
8) services of railway lines with railway transport facilities under concession agreements in the absence of an alternative railway line;
9) services of access roads in the absence of an alternative access road;
10) flight navigation services, except for air navigation service provided to international and transit flights;
11) services of airports, except for services provided to transit flights through the Kazakhstan air space requiring technical landing in Kazakhstan airports for non-business purposes;
12) services of ports;
13) providing for property lease (rent) or use of cable conduit system; and
14) water supply and/or sewage system;

The activities of natural monopoly entities are controlled by the competent government authority who is authorised to regulate prices for goods, works or services of natural monopolies, to impose administrative liability in the event of establishing violations in the actions of natural monopoly entities and to file claims with judicial authorities against antimonopoly law offenders, to exercise control over reorganization and liquidation of natural monopoly entities and their procurements.

Monopolistic Activities

Monopolistic activities restricted by the Entrepreneurial Code are:

1) anticompetitive agreements between market participants;
2) anticompetitive collaboration of market participants; and
3) abuse of a dominant or monopolistic position.

Monopolistic activities are subject to criminal, civil and administrative liability. Administrative liability is imposed in the form of fines determined as a percentage of the proceeds from prohibited monopolistic activities and in the form of forfeiture of the monopolistic proceeds. In addition to the above, in the event that a dominant or monopolistic market participant has been held administratively liable for abuse of a dominant position twice within one calendar year and continues to carry out actions restricting competition, the anti-monopoly authority, for the purpose of competition development, is entitled to file a court claim on forced separation of such market participant or separation of one or several legal entities from such market participant on the basis of its structural subdivisions.

The main qualifying element of anticompetitive agreements and anticompetitive collaboration is the limitation of competition. Offenders committing violations in the form of anticompetitive agreements and anticompetitive collaboration include private individuals and legal entities, as well as foreign legal entities (and their branches and representative offices) engaged in business activities and non-profit organisations conducting business in accordance with their charter objectives.

The sufficient ground to qualify the abuse of a dominant or monopolistic position as an offence, in addition to the possibility of limitation of access to the respective commodity market and prevention/limitation/elimination of competition as a result of such abuse, is the threat of impairment of the legal rights of a market undertaking or consumers at large. The Entrepreneurial Code sets out an extensive list of types of abuse of a dominant or monopolistic position. Dominant or monopolistic market entities may be qualified as offenders committing this violation.

Monopolistic position is defined as the position of entities of natural monopoly and government monopoly and market participants holding 100% share of the relevant commodity market.

In this regard, the Entrepreneurial Code provides two definitions of the term “market participant holding a dominant or monopolistic position”. Articles 172.3 and 172.4 of the Entrepreneurial Code recognize a position of a market participant as dominant, if:

1) its share in the relevant commodity market is 35 or more percent (under certain conditions);
2) the total share of maximum three market participants holding the largest shares in such market is 50 or more percent (under certain conditions); and
3) the total share of maximum four market participants holding the largest shares in such market is 70 or more percent (under certain conditions);

and a position of financial organizations as dominant, if:

1) the total share of maximum two financial organizations holding the largest shares in the relevant market of financial services is 50 or more percent; and
2) the total share of maximum three financial organizations holding the largest shares in the relevant market of financial services is 70 or more percent.

Article 172.1 provides that a dominant or monopolistic position is deemed the position of a market entity or a number of market entities on the relevant commodity market which allows such market entity or a number of such market entities to exercise control over the relevant commodity market, including significant influence on the overall conditions of the commodity circulation.

To determine the share of a market participant in the relevant commodity market, the antimonopoly authority analyses the commodity market based on the data provided by government authorities, market participants and their associations.

Unfair Competition

The Entrepreneurial Code also governs the matters related to prevention/detection of unfair competition and restraining of competition. Unfair competition includes any competitive actions aimed at receiving or providing illegal property. In this regard, the Entrepreneurial Code provides an exhaustive list of unfair competition forms (in total, 14 forms).

Economic Concentration Control

In addition to the above, the antimonopoly authority is authorized to exercise control over economic concentration. Economic concentration is defined as direct or indirect control of business activities of a market participant exercised by a person (or groups of persons).

The current legislation recognizes the following as economic concentration:

1) reorganization of market participants through mergers or acquisitions;
2) acquisition by a person (group of persons) of voting shares (participation interests in the charter capital) in the charter capital of a market participant whereby such person (group of persons) acquires the right to dispose of more than 50 percent of such shares (participation interests in the charter capital) if, prior to the acquisition, such person (group of persons) did not have the right to dispose of shares (participation interests in the charter capital) in such market participant or had the right to dispose of 50 or less percent of voting shares (participation interests in the charter capital) in such market participant. This provision does not apply to the founders of a legal entity in the process of its incorporation;
3) acquisition of ownership, possession and use, including by payment (transfer) of charter capital, by a market participant (group of persons) of fixed assets and/or intangible assets of the other market participant, if the book value of the property constituting the subject matter of the transaction (a series of related transactions) exceeds 10 percent of the book value of fixed assets and intangible assets of the market participant disposing of or transferring such assets;
4) acquisition by a market participant of the rights (including under a trust management agreement, joint venture agreement, trust deed) permitting binding instructions to be given to the other market participant in connection with its business activities or performance of functions of its executive body; and

5) membership of the same individuals in the executive bodies, boards of directors, supervisory boards or other management bodies of two or more market participants, if such individuals determine the conditions of the business operations of such market participants.

Consent of the antimonopoly agency to consummation of the transactions specified in paragraphs 1), 2) and 3) above or its notification of the transactions specified in paragraphs 4) and 5) above is required in the events if the total book value of assets of the reorganized market participant (group of persons) or the acquirer (group of persons) and market participants whose voting shares (participation interests, stakes) in the charter capital are being acquired, or the total volume of sales for the last financial year exceeds 10,000,000 MCIs as in effect at the date of application.

Consent to economic concentration involving financial organizations is required if the value of assets or the size of the own equity of the financial organization exceeds the amounts set out by the antimonopoly agency together with the National Bank of the Republic of Kazakhstan.

It is particularly important for person considering acquisition of a business in the Republic of Kazakhstan or control in legal entities that are selling goods (works/services) in commodity markets of the Republic of Kazakhstan to comply with the requirements of the antimonopoly legislation with respect to obtaining prior consent to economic concentration because, if the antimonopoly authority determines that illegal economic concentration has occurred, it may, in addition to imposing respective administrative liability, invalidate the economic concentration carried out without consent of the antimonopoly authority in accordance with the established procedure if such concentration has resulted in creation or strengthening of a dominant or monopolistic position of the market participant or group of persons and/or competition limitation.

It should be noted that, although the requirement to obtain consent from antimonopoly authorities to economic concentration is not new to the legislation of the Republic of Kazakhstan, representatives of the Kazakhstan business community (not to mention foreign companies) often remain unaware of this matter which may give rise to the risk of loss of the acquired business and/or investment.

Other Powers of the Antimonopoly Authority

In addition to prevention, establishment and restraining of monopolistic activities and unfair competition and control of economic concentration, the antimonopoly authority also prevents anticompetitive actions of the government authorities of the RK and exercises control over the government's participation in business activities. These types of control are exercised by way of prior approval by the antimonopoly authority of the establishment of state-owned enterprises and legal entities in which over 50 percent of shares (interests) are owned by the State and its affiliates.

INTELLECTUAL PROPERTY RIGHTS

Protection of Intellectual Property Rights - General Provisions

Intellectual property law in Kazakhstan undergoes serious development.

The Civil Code of the Republic of Kazakhstan provides for the following categories of intellectual property rights: (1) copyrights, (2) related rights, utility models and industrial designs, (4) selection achievement rights, (5) semiconductor topography rights, (6) rights to protection of undisclosed information, and (7) rights to means of identification of parties to civil law relations, goods and services.

Intellectual property rights are provisionally divided into two groups: (1) copyrights, which also often include related rights, and (2) industrial property rights (patent rights), which cover all other categories.

The government authority responsible for control and protection of intellectual property rights, including the function of registration of intellectual property items and property rights related thereto in the Republic of Kazakhstan is the Ministry of Justice of the Republic of Kazakhstan (the "Ministry"). The main mission of the Ministry is to implement the government policy on protection of intellectual property rights and to ensure development of the single patent system of the Republic of Kazakhstan.

In addition, a new body, the National Institute of Intellectual Property (a national public enterprise with the right of economic management) of the Ministry of Justice of the Republic of Kazakhstan (the "NIIP") was set up to perform expertise functions in the fields identified as government monopoly (provision of industrial property protection services).

Kazakhstan is a party to a number of international property agreements:

- Paris Convention for the Protection of Industrial Property (20 March 1883);
- Madrid Agreement Concerning the International Registration of Marks (14 April 1891);
- Singapore Treaty on the Law of Trademarks of 27 March 2006;
- Trademark Law Treaty of 27 October 1994;
- 6 September 1952 Universal Copyright Convention as revised in Paris on 24 July 1971;
- Nice Agreement concerning the International Classification of Goods and Services for Registration of Marks (15 June 1957);
- Stockholm Convention Establishing the World Intellectual Property Organization (14 July 1967);
- Locarno Agreement Establishing an International Classification for Industrial Designs (8 October 1968);
- Washington Patent Cooperation Treaty (19 June 1970);
- Strasbourg Agreement Concerning the International Patent Classification (24 March 1971);
- Berne Convention for the Protection of Literary and Artistic Work (24 July 1971);

- Geneva Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of their Phonograms (18-29 October 1971);
- Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure (28 April 1977); and
- Eurasian Patent Convention (Moscow, 9 September 1994).

The primary legislative acts of the Republic of Kazakhstan governing intellectual property, in addition to the Civil Code, are:

- Law of the Republic of Kazakhstan *On Copyright and Related Rights dated* 10 June 1996;
- *Patent Law of the Republic of Kazakhstan* dated 16 July 1999;
- Law of the Republic of Kazakhstan *On Trademarks*, Service Marks and Appellations of Origin of Goods dated 26 July 1999;
- Law of the Republic of Kazakhstan *On Legal Protection of Semiconductor Topographies* dated 29 June 2001; and
- Law of the Republic of Kazakhstan *On Protection of Selection Achievements* dated 13 July 1999.

Rights to intellectual property arise from the fact of its creation or as a result of the provision of legal protection by the competent government authority.

Copyrights and Related Rights

The Law *On Copyrights and Related Rights* protects works of science, literature and art (copyright), as well as productions, performances, phonograms, and TV and radio broadcasting or cablecast organizations (related rights). Copyright protection is granted to an author without registration requirements. An author may assign the rights to use a copyrighted work. A copyright is protected for the lifetime of the author plus seventy years.

Computer programs and databases are protected under the Law *On Copyright and Related Rights*. The production of computer programs unlawfully altering existing programs and providing unauthorised access to protected computer information entails criminal and civil liability.

Inventions, Utility Models, Industrial Designs and Selection Achievements

Patent protection is granted to an invention if it is new, involves an inventive step and is industrially applicable. A patent certifies the priority, authorship and exclusive right to an industrial property. A patent for an invention is granted for twenty years from the date of application.

Patent protection is granted to a utility model if it is new and industrially applicable. A patent for a utility model is valued for a term of five years from the date of application which may be extended for an additional term at the request of the patent holder but for maximum three years.

An industrial design is granted legal protection if it is new, original and industrially applicable. A patent for an industrial design is granted for a term of 15 years from the date of application which may be extended for an additional term at the request of the patent holder but for maximum 5 years.

A selection achievement is granted legal protection if it is new, distinct, uniform and stable.

Patents may be assigned or licensed by the authors to individuals and/or legal entities. To be valid, the assignment or license agreement must be registered. Infringement of the rights of patent holders entails civil and criminal liability. It must be noted that, in the past, the infringement of any copyrights and related rights entailed also administrative liability. However, due to criminalization of this offence, starting from 2015, the liability for such offence is regulated only by the Criminal Code.

Trademarks, Service Marks and Appellations of Origin of Goods

The right to a trademark or service mark is based on its registration, and may also be protected without registration in accordance with applicable international treaties to which the Republic of Kazakhstan is a party.

Trademark and service mark registration is granted for a term of ten years, renewable every ten years. Assignments or license agreements granting the right to use trademarks must be registered.

Designation of origin is registered for an indefinite period of time subject to the condition that the specific qualities of a product manufactured in a respective geographic area are maintained. The right to use the names of protected designation of origin is valid for 10 years from the date of submitting an application to expert organization and each time is extended for 10 years at the owner's request made during the last year of its validity subject to the condition that the specific qualities of the product with respect to which the designation of origin has been registered are maintained.

Legal protection is provided to appellations of origin of goods upon their registration with the NIIP. The registered owner of an appellation of origin of goods may not grant licenses to use the appellation of origin of goods.

Infringement of the rights of registered owners of trademarks and appellations of origin rights entails civil, criminal and administrative liability.

Protection of Integrated Circuit Topographies

Legal protection applies only to original topographies (layout designs). Topography is original if it is the result of the author's creative work and is deemed original until proved otherwise.

The author of a topology is a natural person whose creative work resulted it its creation.

The author of a topology or another rightholder may register a topology by filing an application for registration within two years after the date of the first use of the topology, if such use took place.

The exclusive right to a topography/topology may be assigned, in full or in part, to another person under a license agreement.

The exclusive right to a topology is valid for a period of ten years after the date of the topology registration.

Intellectual Property in the EEU

On 19 July 2016, in Grodno, Belarus Heads of the Eurasian Economic Union (EEU) Member-States signed the *Agreement on the Coordination of Actions for the Protection of Intellectual Property Rights in the Member-States of the Eurasian Economic Union*.

Besides, subject to the Treaty on the Eurasian Economic Union, Kazakhstan intends to sign two more international treaties in the field of intellectual property:

- the treaty on trademarks, service marks and designation of origin in the Member States of the Eurasian Economic Union; and
- the agreement on collective management of copyrights and related rights.

SUBSOIL USE AND PETROLEUM OPERATIONS

According to advanced countries research data, Kazakhstan is the 6th world's largest holder of natural resources and its proved reserves are estimated at approximately 10 trillion dollars.

As at the current date, according to information from various sources, with its proved oil reserves estimated at approximately 4.8 bln tons, Kazakhstan is one of the 15 leading countries with largest oil reserves. The prospective oil reserves of the oil fields located in the Kazakhstan's sector of the Caspian Sea alone are estimated at over 124.3 bln barrels, or 17 bln tons, of which over 70% are in the Kazakhstan's sector of the Caspian Sea.

In Kazakhstan there are operating about 204 hydrocarbons subsoil use contracts, including: 63 hydrocarbons exploration contracts; 55 hydrocarbons production contracts, 71 hydrocarbons exploration and production contracts, 15 hydrocarbons production sharing agreements and Tengizchevroil contracts.

Legal regulation of relations arising in connection with the development of mineral deposits in Kazakhstan originates from the declaration of its independence in 1991.

Today, petroleum operations in Kazakhstan are governed by Law of the Republic of Kazakhstan *On Subsoil and Subsoil Use* No. 291-IV of 24 June 2010. This Law replaced former Law of the Republic of Kazakhstan *On Subsoil and Subsoil Use* No. 2828 of 27 January 1996 and Law of the Republic of Kazakhstan *On Oil* No. 2350 of 28 June 1995.

The Law of the Republic of Kazakhstan *On Gas and Gas Supply* defines the legal, economic and organizational framework for regulation of civil law relations in the gas and gas supply field in the Republic of Kazakhstan and which is aimed at creating conditions for satisfaction of Kazakhstan domestic demand for gas and at effective, reliable and safe operation of gas supply system facilities.

Subsoil Use Right

The following operations require the acquisition of a subsoil use right:

1) geological study of subsoil by the State;
2) exploration;
3) production;
4) combined exploration and production; and
5) construction and/or operation of underground facilities not associated with exploration or production.

Pursuant to the current legislation of Kazakhstan, a subsoil use right arises from:

- provision of a subsoil use right directly by the State;
- transfer of a subsoil use right by a subsoil user or disposal of a participation interest (block of shares) in a corporate subsoil user to another entity; and

- transfer of a subsoil use right, by universal succession, in the event of reorganization of a legal entity or death of an individual holder of the subsoil use right.

A subsoil use right can be permanent or temporary, alienable or unalienable, onerous or gratuitous.

A subsoil use right may be held either by Kazakhstan or foreign citizens or entities. A subsoil user must be a subject of entrepreneurial activity, except for the producers of commonly occurring minerals and underground waters for their own needs.

Procedure for Granting a Subsoil Use Right

In general (with some exceptions), a subsoil use right is provided through execution of contracts based on tender results.

Exceptions from this rule apply to the execution of subsoil use contracts through direct negotiations in the following events:

- production involving a person holding an exclusive subsoil use right to production in connection with a commercial discovery under an exploration contract;
- construction and/or maintenance of underground facilities not related to exploration and/or production;
- exploration and/or production involving a national company performed in accordance with the activity allocation approved by the Kazakhstan Government;
- exploration, production and combined exploration and production in compliance with the Entrepreneurial Code of the Republic of Kazakhstan with industrial and innovative entities whose activities (processes) are connected with subsoil use;
- in the event of declaring a new tender for subsoil use right cancelled on the grounds of only one accepted bid and a decision made by a competent authority or a respective local executive body to enter into a contract with the bidder through direct negotiation of the terms and conditions which, however, should not be worse than those set forth in the bid;
- operations for production of groundwater in the volumes of over two thousand cubic meters per day for supply of potable and domestic water for household needs of the population with the owner or user of the land plot under which the groundwater is found, provided that it holds the right for special water use in this plot;
- exploration of blocks granted under the simplified procedure; and
- exploration or other use of state-owned technogenic mineral formations.

Besides, an exploration contract may be executed without any tender or direct negotiations on the grounds of a resolution issued by competent authorities with regard to certain block(s) allocated from the contract area after its restructuring.

A tender for a subsoil use right is conducted by the competent authority or respective local executive bodies in the event of widespread natural resources.

Tenders are arranged and conducted by the Commission for Holding Subsoil Use Right Tenders.

Subsoil Contracts

In August 1999, Kazakhstan introduced a new system whereby the rights of an investor were determined by subsoil use agreements/contracts between the investor and competent authority. The new system replaced the previous system whereby the primary legal instrument giving rise to the rights of the investor was a license issued by the Government with the requirement to sign a subsoil use contract, but such contract was considered secondary to the license.

Matters related to execution and fulfilment of contracts are within the scope of the competent authority responsible for ensuring compliance with the interests of the Republic of Kazakhstan.

Subsoil use contracts come into force upon their registration with competent authorities.

Subsoil use contracts may be granted for exploration, production, as well as for combined exploration and production.

Current Law of the Republic of Kazakhstan *On Subsoil and Subsoil Use* No. 291-IV of 24 June 2010 defines the following types of subsoil use contracts by the following types of subsoil use operations:

- **for exploration** – contracts for exploration;
- **for exploration by a person granted an exploration right under the simplified procedure –** model contracts for exploration;
- **for production** – contracts for production;
- **for combined exploration and production** – contracts for combined exploration and production;
- **for construction and/or operation of underground facilities not related to exploration or production** – contracts for construction and/or operation of underground facilities not related to exploration or production; and
- **for government geological survey of mineral resources** – contracts (agreements) for government geological survey of mineral resources.

Any contract, save for the contract/agreement for government geological survey of mineral resources and model contract for exploration, shall be executed in the form and matter provided by model contracts differentiated by types of subsoil use approved by competent authorities. Any contract/agreement for government geological survey of mineral resources shall be executed in the manner prescribed by the authorities responsible for subsoil survey and use.

Contracts for combined production and development are signed upon decision of the Government of the Republic of Kazakhstan only with respect to those subsoil blocks and deposits which are strategically important and/or which have a complex geology. During the exploration phase, such contracts are governed by the provisions of the laws pertaining to exploration and by the provisions governing production after the discovery and evaluation of the deposit, approval of respective design projects and amendments to the contract related to the production phase.

Exploration contracts are signed for a term of up to 6 years.

Production contracts are signed for a term of maximum 25 years, and in relation to fields with significant and unique mineral reserves – for a term of maximum 45 years. In case of force majeure, the term of an exploration, production or combined exploration/ production contract is extended by the competent authority for a period of such force majeure duration subject to written evidence of the force majeure delivered by the subsoil user in compliance with Kazakhstan law.

When a subsoil use contract in relation to a field with significant and unique mineral reserves is extended for a term exceeding 10 years, such contract provisions must be amended by adding one of the following subsoil user's obligations:

1) to build up independent processing capacities through the establishment of a new legal entity or joint venture;
2) to upgrade or reconstruct the existing production facilities;
3) to upgrade or reconstruct the existing processing facilities;
4) to deliver capability for Kazakhstan mineral processing facilities on contract terms; or
5) to independently implement other investment project(s) focused on the social and economic development of the region through the establishment of a new legal entity or joint venture.

When a subsoil use right in relation to such field is granted to a third party, the respective subsoil use contract must provide for one of the aforementioned obligations.

Early Termination and Annulment of Subsoil Use Contracts

The competent authority may unilaterally terminate a subsoil use contract before its expiration in the following events:

1) a failure of the subsoil user to rectify more than 2 breaches of the obligations provided by the subsoil use contact within the period specified in the respective notice from the competent authority;
2) transfer by the subsoil user of the subsoil use right and/or objects related to the subsoil use right without consent of the competent authority other than where no such consent is required;
3) the subsoil user refuses to provide or misrepresents the information set forth in Article 76.1(13-1) of Kazakhstan Law On Subsoil and Subsoil Use No. 291-IV of 24 June 2010;
4) during two consecutive years the subsoil user performed less than thirty percent of its financial obligations provided by the respective subsoil use contract, provided that such violation was not caused by any circumstances beyond the subsoil user's control, and the subsoil user used its best endeavours to deliver the produced mineral resources to processing facilities; and

5) if the actions of the subsoil user in carrying out subsoil use operations with respect to strategic parts of the subsoil and deposits affect economic interests of the Republic of Kazakhstan creating a threat to the national security.

In the latter event the competent authority may unilaterally terminate the subsoil use contact before its expiration, if:

1) the subsoil user, for a period of 2 months of the date of receipt of a notice from the competent authority of changing and/or amending the terms and conditions of the contract, fails to confirm its consent to negotiations on changing and/or amending the terms and conditions of the contract or refuses to participate in negotiations;
2) the parties, for a period of 4 months of the date of receipt of the subsoil user's consent to carry out negotiations on changing and/or amending the terms and conditions of the contract, fail to reach an agreement on changing and/or amending the terms and conditions of the contract; and
3) the parties, for a period of 6 months of the date of reaching an amicable decision to restore the economic interests of the Republic of Kazakhstan, fail to sign the changes and/or amendments to the terms and conditions of the contract.

Decisions made by the Government of the Republic of Kazakhstan to terminate a contract are exempt from the above requirements for termination of subsoil use contracts with respect to strategic subsoil blocks and deposits. When the competent authority terminates a contract, at its own discretion, on the aforementioned grounds, the competent authority must notify the subsoil user at least two months before the termination.

The competent authority, at its own discretion, may terminate a model contract for exploration before its term expires when:

1) the subsoil user untimely remits the amounts for social and economic development of the region and the development of its infrastructure payable and increasing annually;
2) the subsoil user fails to fulfil the minimum cost and work requirements year-wise which need to be fulfilled within one block during the entire period of the model contract; and
3) the subsoil user uses the license area for any purpose not covered by the model contract.

The subsoil user may seek early termination of the contract through court or unilaterally refuse to perform the contract on the grounds provided by the contract.

The grounds for annulment of contracts are as follows:

1) the tender for subsoil use right is qualified as invalid;
2) the contract does not include the mandatory requirements provided by Law of the Republic of Kazakhstan On Subsoil and Subsoil Use No. 291-IV of 24 June 2010;

3) it is discovered that the competent authority and the local executive authority of the oblast or city with the status of national importance or the capital city has been provided with intentionally misleading information which affected its decision to enter into the contract with this person; and
4) other grounds provided by the laws of the Republic of Kazakhstan.

Pre-emptive Subsoil Use Right of the State

The Republic of Kazakhstan has the pre-emptive right of purchase of mineral resources from subsoil users before other persons at the prices not higher than the prices used by the subsoil users in consummating transactions with respective mineral resources prevailing at the date of the transaction minus transportation and sales costs (where there is no information on the prices used by the subsoil user, the prices not higher than the prices prevailing in world markets at the date of the consummation of the transaction for acquisition by the State of the mineral resources, less transportation and implementation costs).

Pursuant to Law of the Republic of Kazakhstan *On Gas and Gas Supply* No. 532-IV of 9 January 2012, in order to ensure energy security and satisfy the domestic demand for commercial gas, the Republic of Kazakhstan has the pre-emptive right before others to purchase crude gas disposed by subsoil users in accordance with the laws of the Republic of Kazakhstan on subsoil and subsoil use and subsoil use contracts as well as commercial gas extracted and processed by subsoil users from the crude gas produced by them and owned by them in accordance with the laws of the Republic of Kazakhstan on subsoil and subsoil use.

Priority Subsoil Use Right of the State

In order to preserve and strengthen the resource and energy basis of the national economy in new and previously signed subsoil use contracts in relation to strategic fields and blocks, the State has the priority right before the other party of the contract or members of the legal entity having the subsoil use right and other persons to acquire, both on paid and free basis, the subsoil use right (or part thereof) and/or the objects related to the subsoil use right.

A person intending to alienate its subsoil use right (or a part thereof) and/or objects related to the subsoil use right must submit to the competent authority an application for permit to transfer the subsoil use right and/or objects related to the subsoil use right.

When the owner of a subsoil use right and/or an asset related to the subsoil use right intends to dispose of such subsoil use right (or a part thereof) and/or the asset related to such subsoil use right, the State may, via a national management holding or a national company (subject to the division of responsibilities approved by the Kazakhstan Government) or the competent authority, exercise its priority right for the purchase of such subsoil use right (or a part thereof) and/or the asset related to such subsoil use right.

The procedure for exercise of the Kazakhstan Government's priority right for the purchase of a disposed subsoil use right (or a part thereof) and/or an asset related to the subsoil use right by a national management holding or a national company is determined by the Kazakhstan Government.

The competent authority makes a decision on behalf of the Kazakhstan Government whether a national management holding or a national company should purchase a disposed subsoil use right (or a part thereof) and/or an asset related to the subsoil use right in the prescribed manner and in accordance with the division of responsibilities approved by the Kazakhstan Government.

Transfer of Subsoil Use Rights

Transfer of a subsoil use right (or part thereof) and/or objects related to a subsoil use right is made by way of:

1) alienation of the subsoil use right, in full or in part, to another person under civil transactions on a free or paid basis;
2) alienation of objects related to the subsoil use under civil transactions on a free or paid basis;
3) transfer of the subsoil use right and/or objects related to the subsoil use right to the charter capital of another legal entity;
4) alienation of the subsoil use right made in the course of privatization of property complexes of state-owned enterprises having the subsoil use right;
5) alienation of the subsoil use right and/or objects related to the subsoil use right in the course of bankruptcy proceedings;
6) forfeiture of the subsoil use right and/or objects related to the subsoil use right, including under pledge; and
7) creation of the right to a participation interest in a legal entity having the subsoil use right or in a legal entity capable of, directly and/or indirectly, determining decisions and/or affecting decisions made by such subsoil user, if the primary business of this legal entity is related to subsoil use in the Republic of Kazakhstan, resulting from increase of the charter capital by way of additional contributions made by one or more members and by way of accession of a new member of the legal entity.

The initial issue for circulation in the organized securities market of shares or other securities certifying the ownership right to the shares or securities convertible to shares of a legal entity having the subsoil use right and/or a legal entity capable of, directly and/or indirectly, determining decisions and/or affecting decisions made by such subsoil user, if the primary business of this legal entity is related to subsoil use in the Republic of Kazakhstan, including IPOs in the organized securities market of such securities issued under additional issue, requires consent of the competent authority.

Transfer through succession (assignment) of the subsoil use right (or part thereof) and/or objects related to the subsoil use right made under a deed of assignment or

a separation balance sheet in the event of reorganization of a legal entity having the subsoil use right, or a legal entity which is a member (shareholder) of a legal entity having the subsoil use right, is permitted only with consent of the competent authority or the local executive authority (with respect to widespread mineral resources).

Domestic Preference and Local Content

All subsoil users and their contractors are subject to the mandatory local content requirement, i.e. they must procure works and services from Kazakhstan businesses, provided, however, that they meet the relevant project requirements and Kazakhstan technical regulations.

Those subsoil users who signed their subsoil use contracts with the competent authority before 1 January 2015 and contractors thereof engaged in subsoil use operations in the Republic of Kazakhstan must procure goods from Kazakhstan manufacturers, provided that they meet the relevant project requirements and Kazakhstan technical regulations.

Supervising authorities, in carrying out audits of subsoil use operations, focus on the compliance of subsoil users with the Kazakhstan (local) content requirements.

Gas Flaring Ban

Law of the Republic of Kazakhstan *On Subsoil and Subsoil Use* No. 291-IV of 24 June 2010 prohibits flaring associated gas and/or natural gas in carrying out petroleum operations, subject to the following exceptions:

1) in the event of a risk or occurrence of emergency situations, threat to life of personnel or health of the public and the environment;
2) in the event of well testing and/or production testing; and
3) in the event that flaring of gas is technologically inevitable (commissioning and startup of processing facilities, operation of processing facilities and maintenance and repairs of processing facilities).

The second and third exceptions require consent of the oil and gas competent authority approved by the exploration and mining competent authorities, environmental and industrial safety authorities, provided that the subsoil user is in compliance with the project documentation limits and rates calculated by using the methodology approved by the Government of the Republic of Kazakhstan.

Oil and Gas Exports

Kazakhstan relies on the domestic and Russian transport infrastructure in its oil and gas exports. Currently, there are four operating export oil pipelines: the Atyrau-Samara pipeline connecting Kazakhstan with the Russian export network; the Tengiz-Novorossiisk pipeline connecting the Tengiz field with a Russian port on the Black Sea; 2 pipelines for exports of oil to the north of China and Atasu – Alashankou and Kenkiyak – Kumkol.

There are plans to considerably increase exports of oil through the Kazakhstan Caspian Transport System (KCTS) which is to include the Eskene – Kuryk pipeline and the Trans Caspian System. The KCTS is intended for export of oil across the Caspian Sea to international markets through the Baku - Tbilisi – Ceyhan and other oil transport routes. It is also planned to increase oil exports by extension of the available oil pipelines: Kenkiyak – Atyrau, Kenkiyak – Kumkol, Kumkol – Atasu and Atasu – Alashankou.

A considerable volume of exports flows through the Aktau Sea Port and the primary sea routes are:

- Aktau – Baku (and from there by railway to Batumi),
- Aktau – Makhachkala (and from there through pipeline to Novorossiysk), and
- Aktau – Neka (SWAP transactions in the Persian Gulf).

PRINCIPLES OF ECOLOGICAL REGULATION

Any relations in the field of environment protection, conservation and recovery, as well as mineral resources management in the course of economic and other activities connected with the use of natural resources and protection of environment in the Republic of Kazakhstan, are regulated by the environmental (nature conservation) laws of the Republic of Kazakhstan.

Land, mineral resources, surface and underground waters, atmospheric air, forests and other vegetation, fauna, genetic resources, natural ecological systems, climate and global ozone layer must be adequately protected from destruction, degradation, damage, pollution and any other adverse effects. Specially protected nature conservation areas and nature reserve funds are the areas of special concern.

We have to understand the difference between the state regulation of environment protection and the state regulation of mineral resources management.

The state regulation of environment protection covers the following:

1) licensing of environment-related activities;
2) ecological regulation;
3) technical regulation in the field of environment protection;
4) government environmental impact assessment;
5) issuance of environmental permits;
6) government environmental monitoring;
7) economic regulation of environment protection; encouragement of the development and diffusion of environmentally friendly technologies; and financing of nature protection measures;
8) rationing of greenhouse gas emissions;
9) inventory of greenhouse gas;
10) introduction of market mechanisms for emission reduction and greenhouse gas absorption;
11) monitoring of actual emissions and greenhouse gas absorption;
12) state ecological monitoring;
13) state statistical accounting of subsoil users, emission/pollution sources and contaminated areas; and
14) ecological education and awareness.

The state regulation of mineral resources management covers the following:

1) state planning in relation to the mineral resources management;
2) government control over natural resources management;
3) issuance of licenses/permits and execution of agreements/contracts for subsoil use;

4) arrangement for the restoration and reclamation of natural resources, and introduction of resource saving technologies;
5) monitoring and inventory of natural resources;
6) rationing and allocation of natural resources;
7) administration of government agencies engaged in natural resources management; and
8) arrangement for conservation of natural resources.

The concept "**natural resources management**" implies the use of natural resources and/or the environmental impact of human life and activities, including the economic and other activities conducted by corporations and individuals. The natural resources management is subdivided into general and ad-hoc industry natural resources management.

The general natural resources management is an ongoing charge-free process meant to satisfy the vital needs of community without allocation of any natural resources.

The ad-hoc industry natural resources management is the chargeable use of natural resources by corporations and/or individuals and/or their environmental emissions regulated by Kazakhstan law. All corporations and individuals engaged in the ad-hoc industry natural resources management must maintain industrial environmental monitoring.

The concept "**natural resources management**" covers the following:
1) land use;
2) water use;
3) forest use;
4) subsoil use;
5) wildlife use;
6) vegetation use;
7) environmental emissions; and
8) other uses of natural resources determined by Kazakhstan law.

Environmental Code of the Republic of Kazakhstan No. 212 of 9 January 2007 clearly distributes environment protection and natural resources management functions across multiple governmental agencies. Currently, the Kazakhstan Ministry of Energy is responsible for the protection of environment. One of the Ministry's committees is responsible for the environmental regulation, monitoring and supervision of the oil and gas industry. The Kazakhstan Government also has other special agencies responsible for environment protection and natural resources management.

The economic and other activities subject to the environmental impact assessment are subdivided into the following four categories depending on the assessment significance and coverage:

the first category covers all hazard Class 1 and Class 2 activities (sanitary classification of industrial facilities), as well as the exploration and production of mineral resources, excluding commonly occurring mineral resources;

the second category covers all hazard Class 3 activities (sanitary classification of industrial facilities), as well as the production of commonly occurring mineral resources, any uses of forest and special uses of water;

the third category covers all hazard Class 4 activities (sanitary classification of industrial facilities); and

the fourth category covers all hazard Class 5 activities (sanitary classification of industrial facilities), as well as any uses of wildlife, excluding amateur/sport fishing and hunting.

All activities not covered by the sanitary classification of industrial facilities fall under the fourth category.

Any activity conducted by a corporation or individual in the field of environmental design, rationing and audit falling under the first category requires a license for the performance/provision of environmental works/services.

All environmental works and services are licensed by the competent environmental authorities in compliance with the Kazakhstan law on licenses and notices.

In order to establish the maximum acceptable concentrations, the competent authorities responsible for sanitary and epidemiological well-being of the population maintain record-keeping of potentially hazardous chemical substances and classify such hazardous substances by their hazard level. Kazakhstan permits to apply only those chemical substances which have been registered with such competent authorities.

The maximum permissible emissions (except for greenhouse gas emissions), pollutants discharge, industrial and consumption waste disposal are emission amounts calculated for each stationary source of emissions and a whole enterprise in order to ensure their compliance with environmental quality standards. The maximum permissible emissions, pollutants discharge, industrial and consumption waste disposal are necessary for the issuance of emission permits for certain projects relying on target values and technology-based emission limit values set for stationary and mobile sources of emissions, technological processes and equipment. The maximum permissible emissions, pollutants discharge, industrial and consumption waste disposal applicable to the first, second and third category facilities are valid for ten calendar years, and those applicable to the fourth category facilities – for an unlimited term.

The maximum permissible emissions from mobile pollutants are not determined. The maximum air concentrations of major pollutants from exhaust gas are determined by the Kazakhstan technical regulations.

Import of radioactive products or semi-products, raw materials and components the radioactive content of which exceeds the elimination threshold determined by the applicable radiological safety regulations is subject to Kazakhstan export control legislation and government accounting of nuclear materials and ionizing radiation sources in compliance with the Kazakhstan nuclear energy legislation.

Environmental impact assessment is the procedure for assessment of the potential effects of economic and other activities on the environment and human health, the

development of measures for prevention of adverse effects (such as destruction, degradation, damage or depletion of natural ecological systems and mineral resources) and promotion of environmental health in accordance with the requirements of the Kazakhstan environmental law.

Environmental impact assessment is mandatory for all types of economic and other activities having direct or indirect impact on the environment and human health. It is prohibited to develop or implement any economic or other projects having impact on the environment without the assessment of such impact. The results of impact assessment form an integral part of any pre-planning, planning, pre-project and project documentation. Project customers, sponsors and developers must consider the results of such environmental impact assessment and ensure the selection of such solutions which have the lowest adverse effect on the environment and human health.

There are two types of environmental expert review in Kazakhstan – state and public. The following documents and projects are subject to the mandatory state environmental expert review:

1) pre-project and project documentation, if projected activities have impact on the environment, and all materials supporting the environmental impact assessment;
2) draft permissible emissions;
3) draft regulatory legal acts of the Republic of Kazakhstan, and regulatory technical and instructional guidance documents the implementation of which might have adverse environmental effects;
4) draft scientific and feasibility studies on the setup and extension of specially protected natural areas, the abolition and reduction of state natural sanctuaries and conservation areas of national status;
5) biological studies on the production and use of flora and fauna resources;
6) draft master plans for the development of urban areas, free economic areas and specially treated economic areas;
7) terrain studies justifying the qualification of certain areas as ecological disaster zones or environmental emergencies; and
8) economic projects which might have an adverse effect on the environment of neighbouring states, or the implementation of which requires the use of natural facilities shared with neighbouring states or affects the interests of neighbouring states, including the Baikonur Cosmodrome, determined by international treaties of the Republic of Kazakhstan.

Public environmental expert review is performed, on a voluntary basis, by expert committees set up by public associations and implies the review of any economic and other activities for compliance with the public interests safeguarding public health and sound environment. Public environmental expert review can be initiated by any public association or individual whose interests are affected by the subject of such public environmental expert review.

The subjects of environmental expert review and the procedure for assessment of their compliance with the Kazakhstan environmental law are determined by the Kazakhstan technical regulations.

Kazakhstan subsoil users must obtain the following environmental permits:

1) emission permits; and
2) integrated environmental permits.

Any emissions from any stationary sources are subject to environmental permits. Greenhouse gas emissions are not subject to environmental permits, save for those emissions which are determined by the Kazakhstan Tax Code as pollutants.

There is also ecological audit which can be mandatory or voluntary. Corporations and individuals are subject to **a mandatory ecological audit** on the following grounds:

1) duly documented substantial harm to the environment inflicted by economic and other activities of corporations or individuals;
2) reorganisation of a corporate subsoil user conducting environmentally degrading economic and other activities through a merger, split-up or spin-off; or
3) bankruptcy of a corporate subsoil user conducting environmentally degrading economic and other activities.

A voluntary ecological audit can be initiated by the audit subject or participant considering certain objectives, timing and scope of such audit determined by an ecological audit agreement between the initiator and ecological auditor or ecological audit firm.

Based on the findings of an audit of ecological management system, an individual or legal entity may receive a certificate of their ecological management system compliance with international standards subject to the Kazakhstan technical regulations.

The state regulation of greenhouse gas emissions and absorption implies the following:

1) greenhouse gas allowance allocation among subsoil users;
2) introduction of market mechanisms for emissions reduction and greenhouse gas absorption; and
3) administration of subsoil users.

The economic regulation of environment protection and subsoil use includes the following mechanisms:

1) planning and financing of environment protection measures;
2) emission charges;
3) charges for the use of certain mineral resources;
4) economic encouragement of environment protection;
5) market mechanisms for emissions management;
6) market mechanisms for emissions reduction and greenhouse gas absorption;
7) environmental insurance; and
8) assessment of the economic dimensions of environmental impacts.

It is worth noting that emission charges payable by subsoil users at the rates determined by their environmental permits are levied in compliance with the Kazakhstan tax law. The methodology for calculating emission charges is approved by the competent authorities responsible for environment protection. The discharge of emission tax liabilities does not relieve a subsoil user from the liability to compensate damages inflicted to the environment.

The economic assessment of air, water and soil pollution damages above the specified standards, illegal use of natural resources, industrial and consumption waste (including radioactive waste) disposal above the specified standards is performed by direct and indirect methods in compliance with the rules approved by the Kazakhstan Government.

The ***direct method*** of economic assessment of damages consists in determining the actual expenditures for environmental reclamation and degraded natural resources and living organisms recovery through the best engineering, technical, organisational and technological practices.

The ***indirect method*** of economic assessment of damages is applied when the direct method is inapplicable and, depending on the types of environmental impact, it consists in the accumulation of damages by element.

Government Control

The government control over environmental protection and mineral resources management comprises the following:

1) ecological control;
2) control over the use and protection of land;
3) control over the use and protection of water resources;
4) control over the study and use of subsoil;
5) control over Kazakhstan forest regulations;
6) control over wildlife management; and
7) control over specially protected natural areas.

The government ecological control implies the following:

1) statistical analysis of emissions and natural resources accounting data and subsoil users' environmental activity data;
2) arrangement and performance of environmental audits and compliance assessments; and
3) application of legal instruments for enforcement of the Kazakhstan environmental law.

The government ecological control is exercised by the following officers:

- Chief State Ecological Inspector of the Republic of Kazakhstan;
- Deputy Chief State Ecological Inspector of the Republic of Kazakhstan;
- Senior State Ecological Inspectors of the Republic of Kazakhstan;
- State Ecological Inspectors of the Republic of Kazakhstan;

- Chief State Ecological Inspectors of oblasts, republican status cities and the capital city;
- Senior State Ecological Inspectors of oblasts, republican status cities and the capital city; and
- State Ecological Inspectors of oblasts, republican status cities and the capital city.

Environmental inspection represents a set of measures through which the officers exercising the government ecological control collect and analyse environmental compliance data. Environmental inspections may be performed only by the officers authorized to exercise the government ecological control. Environmental inspection must not suspend the activities of the inspected subsoil user, unless otherwise provided by Kazakhstan law.

The government control over environment protection is exercised in the form of inspection and other forms. Inspection must be performed in compliance with the Entrepreneurial Code of the Republic of Kazakhstan. Other forms of the government control must be exercised in compliance with the Environmental Code.

Any subsoil user-related confidential information may not be disclosed to any third party without a prior written consent of such subsoil user. Confidentiality is determined by Kazakhstan legislative acts and international treaties. A state ecological inspector may not disclose any information classified as a state, trade or any other legally protected secret or any confidential information obtained in the course of an environmental inspection, unless otherwise provided by Kazakhstan legislative acts.

State Cadastre

A state cadastre of mineral resources represents a corpus of systematized data on quantitative and qualitative parameters of mineral resources organised in the manner prescribed by the Environmental Code and other legislative acts of the Republic of Kazakhstan. The subjects of the Unified System of Cadastres include land, water, forest, soil, subsoil, vegetation and wildlife in their interaction.

Besides, there is a state cadastre of industrial and consumption waste. Any waste and waste disposal facilities are subject to registration with the State Cadastre of Waste.

There is also a subsoil user and pollutant source accounting database arranged in the form of a state register of emitting subsoil users and pollutant sources in the Republic of Kazakhstan.

Liability for Environmental Offences

Offenders of the Kazakhstan environmental law are subject to serious property, administrative and criminal liability.

Any damage inflicted upon the environment, public health, private or corporate property, and the government as a result of:

1) natural resources destruction or injury;

2) unlawful or irrational use of mineral resources;
3) unauthorized pollution of the environment, including accidental unauthorized peak emissions and unit discharges, and industrial and consumption waste disposal; or
4) environmental pollution in excess of industry norms;

must be compensated to a full extent by the offender, either of his own free will or through judicial proceedings, in compliance with Kazakhstan law and depending on the degree of the victim's disablement, the cost of his/her treatment and rehabilitation, the cost of medical attendance, and any other costs and losses.

Environmental damages caused by violation of the Kazakhstan environmental law must be compensated by the offender, either of his own free will or through judicial proceedings, subject to the economic assessment of damages performed in the manner prescribed by the Environmental Code.

Any corporation or individual whose activity presents higher environmental risks must compensate any damages caused by the source of increased danger, unless they prove that the damages were caused by force majeure or malicious intent of the affected person.

Moral damages caused by violation of the Kazakhstan environmental law must be compensated in the manner prescribed by the Kazakhstan civil law.

Waste disposal and pollution discharge in excess of industry norms in the facilities equipped and intended for disposal of waste and discharge of sewage waters and preventing the contamination of surface, subsurface and underground waters are not deemed as environmental damages. Ingress of chemicals or sewer overflows in production sites restricted with protective structures preventing their entry into the soil, subsurface or underground waters are also not deemed as environmental damages.

Requirements to the performance of extended manufacturer/importer responsibility

Those individuals and entities which manufacture in and/or import to Kazakhstan the goods/products falling under the extended manufacturer/importer responsibility must ensure the collection, transportation, processing, decontamination, use and/or utilisation of waste generated as a result of the loss of such goods'/products' consumption characteristics falling under the extended manufacturer/importer responsibility, as well as the packaging thereof, by any of the following methods:

1) a manufacturer/importer has its own system for collection, processing and utilisation of waste subject to the regulations determined by the appropriate environmental authority. The requirement to have an in-house system for collection, processing and utilisation of waste does not apply to manufacturers and importers of motor vehicles;
2) a manufacturer/importer signs a contract with an operator of extended manufacturer/importer responsibility for collection, transportation, processing,

decontamination, use and/or utilisation of waste generated as a result of the loss of such goods'/products' consumption characteristics falling under the extended manufacturer/importer responsibility, as well as the packaging thereof, and remits to the bank account of such operator of extended manufacturer/importer responsibility a certain fee for the collection, transportation, processing, decontamination, use and/or utilisation of waste calculated in accordance with the methodology applicable to such collection, transportation, processing, decontamination, use and/or utilisation of waste services.

The extended manufacturer/importer responsibility does not apply to the following manufacturers/importers:

1) manufacturers of oils and polymer/glass/paper/cardboard packaging who use in the process at least thirty percent of waste oils and polymer/glass/paper/cardboard wastes, respectively, processed and utilized in Kazakhstan;
2) manufacturers/importers of goods/products sold outside Kazakhstan;
3) manufacturers/importers of polymer, glass, paper and/or cardboard or mixed material packaging intended and/or used for packaging of goods/products sold outside Kazakhstan; and
4) individuals who import to Kazakhstan the goods/products which do not fall under the extended manufacturer/importer responsibility, provided that the volume of such imported goods/products does not exceed quota on duty-free import of goods/products for personal use, save for importers of motor vehicles.

LAND AND OTHER IMMOVABLE PROPERTY

Land plots

The primary legislative act governing relations arising in connection with land plots is Land Code of the Republic of Kazakhstan No. 442-II dated 20 June 2003 (the "Land Code").

Land in the Republic of Kazakhstan may be held in State and private ownership. All land not in private property is the property of the State whose rights are represented by government authorities within the scope of their respective powers.

The land use right may be permanent or temporary, alienable and inalienable, and acquired on a free or paid basis.

Land users are divided into the following categories (persons):

1) State (public) and non-State (private);
2) national and foreign;
3) private individuals and legal entities;
4) permanent and temporary; and
5) primary and secondary.

The private property right to land and the land use right arise from:

1) granting of the right to own/use land by the State;
2) transfer of the right to own/use land (under civil transactions); and
3) transfer of the right to own/use land by universal succession (inheritance/ succession, reorganization of legal entity).

Citizens of the Republic of Kazakhstan may have in private ownership land plots designated for running farms/farm households, private subsidiary holdings, forestry, gardening, private housing construction and summer cottage (*dacha*) construction, as well as land plots allocated/offered for development, or built-in lands, of industrial and civil, including residential, buildings (constructions/structures) and related complexes, including lands designated for maintenance of buildings (constructions/structures) in accordance with their designation.

Transfer of title from state ownership to private ownership is made on a paid basis by way of lump sum sale or instalment sale, or on a gratuitous basis as determined by the local executive authority.

Privately owned legal entities of the Republic of Kazakhstan may have in private ownership land plots designated/offered for agricultural commercial production, forestry, development, or built-up lands of industrial and civil, including residential, buildings (constructions/structures) and related complexes, including lands designated for maintenance of buildings (constructions/structures) in accordance with their designation.

Foreign nationals, stateless persons and foreign (privately owned) legal entities may have in private ownership land plots designated/offered for development of (or built-up land plots) industrial and civil, including residential buildings (constructions/

structures) and related complexes, including land plots designated for maintenance of buildings (constructions/structures) in accordance with their designation.

The right of permanent land use is granted to the following State-owned land users:

1) legal entities owning buildings (structures and constructions), premises in condominiums on the basis of the right of operating control or operational management;
2) legal entities engaged in agricultural and forestry production and for research, testing and educational purposes;
3) legal entities using lands of specially protected natural sites; and
4) in other events provided for by the legislation of the Republic of Kazakhstan.

Permanent land use rights may not be granted to foreign land users.

Land plots may be granted to citizens or legal entities of the Republic of Kazakhstan under the right of temporary land use (lease) on a paid basis for a period of up to 49 years (and for a period of up to 25 years to foreign nationals, stateless persons and foreign corporations, as well as legal entities in the authorized capital of which the share of foreign nationals, stateless persons or foreign corporations exceeds fifty percent, for the purpose of agricultural production) and on a free basis for a period of up to 5 years.

By Decree No. 248 of 6 May 2016 the Kazakhstan President imposed moratorium on agricultural land leasing by foreign nationals, stateless persons, foreign entities or legal entities in the authorised capital of which at least fifty percent interest belongs to foreign nationals, stateless persons or foreign entities until 31 December 2021.

Transfer and assignment of the land use right may be made only by persons who have bought the right of temporary land use/lease on a paid basis, unless otherwise provided by Kazakhstan law.

A land plot which is owned or used under the right of ownership or land use may be used as collateral.

The right of long-term use of a land plot in the form of lease is permitted for the term of the lease agreement. No pledge of the right of short-term use of a land plot on a paid or free basis is permitted.

The right of private ownership/land use with respect to a land plot is terminated in the event of:

1) disposal of the land plot;
2) waiver by the owner/land user of its ownership right or land use right; and
3) loss of the right to own/use land in other events provided for by Kazakhstan law.

No seizure of a land plot or land use right from the owner/land user without their consent is permitted other than in the event of:

1) foreclosure of a land plot or land use right for liabilities of the owner or land user;
2) compulsory acquisition of a land plot for state needs;
3) compulsory seizure from the owner or land user of a land plot which is not used in accordance with its designated purpose or used with violations of the legislation of the Republic of Kazakhstan in the events provided for by Kazakhstan law;

4) compulsory acquisition from the owner or land user of the land plot affected by radioactive pollution subject to granting a land plot of equal value; and
5) confiscation.

In addition, the right to use land may be terminated on the following grounds:

1) expiration of the term for which the land plot was granted;
2) early termination of the agreement for lease of the land plot or the agreement for temporary land use on a free basis, save for when the land plot is held in pledge; and
3) termination of the labour relations in relation to which the land user was granted a service allotment.

Dwellings

Citizens or legal entities may have in private ownership legally acquired dwelling regardless of its location in the Republic of Kazakhstan, unless otherwise provided by legislation. There are no restrictions as to the number and size of dwellings owned by one citizen or legal entity.

The right to own a dwelling or its part arises from the following grounds:

1) construction of a house (or part thereof);
2) consummation of transactions of sale and purchase, exchange, gift or disposal subject to life-time support and other civil transactions not contradicting the legislation;
3) acquisition of a dwelling through inheritance or universal succession;
4) acquisition of ownership by the lessee of the dwelling or dwelling property/ apartment occupied by such lessee in the state-owned residential properties through its privatization (purchase or gratuitous transfer). The privatized dwelling will pass to the joint and common ownership of the lessee and all family members permanently residing with him/her, including those who are temporarily away, unless otherwise provided by an agreement between them;
5) payment of a member of a housing (housing construction) cooperative of the entire amount of a share contribution for the dwelling property. The right to own such dwelling will also pass to his/her family members entitled to a portion of the accumulation of shares;
6) transfer of the dwelling property to ownership under a contractual obligation, including an agreement for the citizen's contribution to the construction of the building in the form of his/her labour or funds;
7) transfer of the dwelling by privately-owned legal entities to the ownership of their employees or other persons by sale or gratuitous transfer;
8) transfer of the dwelling by the State or a state-owned legal entity to the ownership of their employees or other persons on the conditions set out by law;
9) provision of a dwelling as compensation in the event of loss of a privately

owned dwelling due to demolition or requisition or when such dwelling becomes uninhabitable as a result of a natural calamity or emergency of natural or anthropogenic nature occurring in Kazakhstan. In the event of demolition of a residential building in connection with taking (purchase) of land plots for state needs, the owner, prior to the demolition, is provided ownership of a suitable dwelling or is paid compensation in the amount of the market price of the dwelling. If the value of the provided dwelling is greater than the value of the demolished dwelling, the difference is not taken from the owner. If the value of the demolished dwelling is greater than the value of the provided dwelling, the difference is paid to the owner; and

10) on other grounds not prohibited by legislative acts of the Republic of Kazakhstan.

The owner of a dwelling or unfinished residential building may freely, at his discretion but considering the specifics of Kazakhstan law, sell on his own terms, transfer by gift, exchange or will to other persons, pledge, or otherwise dispose of the same in the manner not prohibited by legislative acts.

Use of the dwelling by the owner for non-residential purposes does not require a permit from government authorities, but obligates the owner to comply with construction, sanitary, fire protection and other mandatory rules and regulations.

A landlord or a person authorised by the landlord to lease an accommodation must arrange for the registration of their tenants in the manner prescribed by Kazakhstan law.

The right to own a dwelling terminates in the event of disposal of the dwelling by the owner to another person, the owner's death or in the event of demolition (loss) of the dwelling, and in other events set out by the Civil Code of the Republic of Kazakhstan.

Compulsory termination of the right to own a dwelling is permitted in the following events:

1) enforcement of the dwelling together with the land plot for the owner's debt;
2) requisition;
3) confiscation;
4) compulsory disposal of the land plot on which the building is located for State needs; and
5) demolition of an unsafe building if there is a threat of its collapse (failure).

State Registration of Rights to Immovable Property

In Kazakhstan, rights to immovable property are subject to mandatory state registration in accordance with the Civil Code of the Republic of Kazakhstan and provisions of Law of the Republic of Kazakhstan *On State Registration of Rights to Immovable Property* No. 310-III of 26 July 2007 (the "**State Registration Law**").

State registration with the legal cadastre is required in the event of creation, change and termination of rights (encumbrance of rights) to movable property and in the event of legal claims.

State registration with the legal cadastre is mandatory with respect to the following rights to immovable property:

1) the right of ownership;
2) the right of operating control;
3) the right of operational management;
4) the land use right for a period of not less than one year; and
5) easement in favour of the dominant land plot or another property for a period of at least one year.

Other rights may be registered at the option of the right holder.

The following encumbrances on the rights to immovable property require registration with the legal cadastre:

1) the right of use for a period of at least 1 year, including lease, free use, easement, annuity and life-term support;
2) the right of trust management, including custody, guardianship, inheritance/ succession, bankruptcy, etc;
3) pledge;
4) attachment;
5) restrictions (prohibitions) to use and dispose of the immovable property or to perform certain work imposed by government authorities within the limits of their powers; and
6) other encumbrances on rights to immovable property set out by the laws of the Republic of Kazakhstan other than overriding interests.

State registration with the legal cadastre is mandatory with respect to:

1) changes in identification data of the property required to maintain the legal cadastre with certain exceptions;
2) changes in the information on the holder of the right in the registration sheet of the legal cadastre;
3) change of the type of the right other than in the event of change of the right in pursuance of a legislative act;
4) change of the terms and conditions of the agreement if they pertain to the data in the registration sheet, affect the scope of rights determined for the property or if they must be registered upon agreement of the parties; and
5) other changes, if so required by legislative acts or an agreement between the parties.

Pre-emptive interests mean rights (encumbrances on rights) to immovable property that, pursuant to legislative acts, are exempt from mandatory state registration in the legal cadastre and are deemed valid without state registration.

Overriding interests that do not require mandatory state registration with the legal cadastre are as follows:

1) encumbrances operating as general rules and restrictions set out by legislative acts of the Republic of Kazakhstan;

2) rights (encumbrances on rights) arising by virtue of regulatory legal acts, including the right to enter land plots and passages through such land plots which are not restricted to public access (public rights of way) and public easements;
3) land use rights for a period of up to 1 year;
4) the right to use property of others for a period of up to 1 year, including the right to lease, free use and easement for up to 1 year;
5) the right of way for the public and transport to electric transmission lines, telephone and telegraph lines and poles, pipelines, geodesic points and other communication lines for public needs;
6) effective possession of the immovable property by persons who are not the right holders until acknowledgment of the effective possessor's right of ownership to the property in due order by acquisitive prescription; and
7) the right to use residential buildings of the state residential property or the right to use residential buildings leased by local executive authorities from privately owned property.

State registration of the rights to immovable property and related transactions is the responsibility of the Ministry of Justice of the Republic of Kazakhstan. State registration is subject to a duty as determined by the Tax Code of the Republic of Kazakhstan.

The rights (encumbrances on the rights) to immovable property which is subject to mandatory state registration with the legal cadastre in accordance with the State Registration Law are created as of the time of their state registration, unless otherwise provided by this Law and other legislative acts.

If registration is not denied, the time of filing the application is acknowledged as the time of state registration.

If the legal cadastre information system receives an electronic copy of a title document, then the state registration date of the title to real estate shall be deemed the date when such title is confirmed by the registration authority by delivering a notice of the performed registration.

The rights (encumbrances on the rights) to immovable property which is not subject to mandatory state registration with the legal cadastre are created in accordance with the legislative acts of the Republic of Kazakhstan governing relevant relations, unless otherwise agreed upon between the parties.

The State Registration Law also provides for electronic registration of titles to real estate upon notarial certification of transactions with such real estate.

A person must file an application for state registration within 6 months after the occurrence of the legal fact serving as a ground for creation of the right (encumbrance on the right), including notarization of an agreement, entry into force of a court judgment and issue of other title documents, unless otherwise provided by the State Registration Law. A failure of individuals and/or legal entities to comply with such 6-month period entails liability under the laws of the Republic of Kazakhstan.

State registration of rights to immovable property (or encumbrance of such rights) must be finalized within 3 business days after filing the application with the registration authority, unless otherwise provided by law. The electronic registration of titles to real estate shall be performed within one business day following the date when the legal cadastre information system receives the payment confirmation of the fee for state registration of titles to real estate or the exemption thereof. Registration of encumbrances imposed by government authorities or other authorized persons, as well as registration of legal claims, must be made immediately upon filing the application with the registration authority.

Expedited state registration of the rights (encumbrances) to immovable property must be finalized before the date following the date of filing the application with the registration authority subject to payment of the state fee in the amount set out by the tax legislation of the Republic of Kazakhstan.

CONSTRUCTION

Today, the construction sector in Kazakhstan is receiving considerable attention from the government.

The principal regulatory legal acts governing construction are:

- Law of the Republic of Kazakhstan *On Architectural and Construction Activities in the Republic of Kazakhstan* No. 242-II of 16 July 2001;
- Order of the Kazakhstan Minister of National Economy *On the Approval of the Guidelines for the Organisation and Performance of Customer/Developer Functions* No. 229 of 19 March 2015;
- Order of the Kazakhstan Minister of National Economy *On the Approval of the Guidelines for Comprehensive Town-planning Expertise of Urban Design Projects on All Levels* No. 706 of 20 November 2015*;*
- Order of the Kazakhstan Minister of National Economy *On the Approval of the Guidelines for the Execution of Expert Opinions on Urban Planning and Construction Projects (Feasibility Studies and Design Estimate Documentation)* No. 305 of 02 April 2015;
- Order of the Kazakhstan Minister of National Economy *On the Approval of the Guidelines for the Formation of Expert Committees/Groups and the Engagement of Specialists/Specialized Organisations for Comprehensive Independent Urban-planning Expertise* No. 306 of 02 April 2015*;*
- Order of the Kazakhstan Minister of National Economy *On the Approval of the Guidelines for the Reliability and Sustainability Analysis of Buildings and Structures* No. 702 of 19 November 2015*;*
- Order of the Kazakhstan Acting Minister of National Economy *On the Approval of the Unified Architecture, Urban Planning and Construction Qualification Requirements and List of Documents Certifying the Conformance Thereto* No. 136 of 9 December 2014*;*
- Order of the Kazakhstan Acting Minister of National Economy *On the Approval of the National Standards in the Field of Architecture, Urban Planning and Construction* No. 276 of 27 March 2015*;*
- Resolution of the Government of the Republic of Kazakhstan *On Certain Issues of Implementation of the Law of the Republic of Kazakhstan on Architectural and Construction Activities in the Republic of Kazakhstan* (approves the Rules for Commissioning of Facilities by Acceptance and Working Commissions) No. 1328 of 15 October 2001; and
- Construction Rule 1.04-03-2013 *Commissioning of Completed after Major Overhauling Residential and Public Buildings and Communal Facilities*.

The government supervises architecture, urban planning and construction in the Republic of Kazakhstan in accordance with the laws pertaining to architectural, urban planning and construction activities as well as in accordance with the system of government rules and standards pertaining to architecture, urban planning and construction.

Technical regulation in the field of architecture, urban planning and construction applies to buildings, structures, the processes related to their design, construction, reconstruction, technical upgrading, extension, capital overhauls and operation, as well as to building materials and structures.

Designing, construction, reconstruction, technical upgrading, extension, overhaul and operation of industrial facilities in special economic zones and of international specialized exhibition facilities in the Republic of Kazakhstan may be applied construction standards, regulations and standards of foreign states and international/regional organisations. Construction of industrial facilities in special economic zones and of international specialized exhibition facilities in the Republic of Kazakhstan may be based on any construction materials and structures which meet construction standards, regulations and standards of foreign states and international/regional organisations.

State standards (regulatory documents) in the field of architecture, urban planning and construction constitute a part of the legislation of the Republic of Kazakhstan.

Certain activities in the field of architecture, urban planning and construction are licensable in accordance with the Kazakhstan law on licenses and notices.

For the purpose of project and design activities and construction and assembling operations in the field of architecture, urban planning and construction individuals and legal entities are divided into the following three categories:

1st category – carry out the activities set out in this paragraph at sites of all levels of responsibility under their existing licenses;

2nd category – carry out activities set out in this paragraph at sites of the second and third levels of responsibility as well as work at sites of the first level of responsibility under their existing licenses as subcontractors; and

3rd category – carry out activities set out in this paragraph at sites of the second low-tech and third levels of responsibility under their existing licenses as subcontractors.

Individuals and legal entities are classified under a particular category by the licensor who issues licenses in accordance with the qualification requirements for project and design activities and construction and assembling operations in the field of architecture, urban planning and construction, and their relevant categories are specified in the special terms and conditions to the license.

Licenses for architectural, urban planning and construction operations are issued by local executive authorities exercising state control over architecture and construction activities on the level of an oblast, republican status city or capital city.

Licensees are individuals and legal entities holding a license to carry out licensable activities in the field of architecture, urban planning and construction. Licensees holding a license to carry out construction and assembling operations may, by virtue of these licenses, carry out respective repair and construction operations, reconstruction of buildings (other than restoration of historic and cultural monuments), and construction and reinforcement of structures.

Construction (reconstruction, restoration, technical upgrading, modernisation and overhaul) of facilities and complexes, as well as utility engineering and laying, landscaping and site finishing are performed in accordance with project (project estimate) documentation prepared in compliance with duly approved detailed plans and development projects based on the master plan of a settlement (or an equivalent development and housing chart of settlement with population under five thousand).

A customer/owner may, upon consultation with local authorities of a republican status city/capital city/region/oblast status city, implement any of the following projects without project (project estimate) documentation using sketch plans or reference designs:

1) individual housing construction projects, save for construction in earthquake-prone regions or in special geological/hydrogeological/geotechnical environments that require tailor-made solutions and implementation techniques;
2) construction of temporary buildings in residential yards or plots of gardeners' partnerships, and construction of residential and/or utility buildings intended for seasonal works or free-range animal husbandry;
3) reconstruction (reconfiguration, refurbishment) of residential and non-residential premises in residential buildings which do not require additional land allotments or modification of load-bearing structures, engineering and utility systems, which do not deteriorate any architectural, esthetical, fire-proof, blast resistant and sanitary properties and which do not have any negative impact on environment through their lifecycle; and
4) modification of other technically simple buildings intended for personal use.

The project (project estimate) documentation based on which the relevant construction has not been commenced over three years after its issuance shall be deemed outdated and may be re-used only after re-expertise and re-approval in the manner prescribed by applicable laws.

The pre-project documentation based on which the relevant project estimate documentation has not been prepared and approved within three years after its adoption shall be deemed outdated and may be re-used only after re-expertise and re-approval in the manner prescribed by applicable laws.

Any pre-project and/or project (project estimate) documentation prepared by a foreign entity or individual specialist and intended for development and/or construction in Kazakhstan, save for the pre-project and/or project (project estimate) documentation intended for international specialised exhibition facilities in Kazakhstan, must be prepared on the terms and conditions and by phases of pre-project and project works and treated as a part of the project (project estimate) documentation required by the Law, statutory regulations and technical assignment, and in compliance with the requirements of national standards, including fire and industrial security requirements, unless otherwise provided by the applicable international treaty ratified by the Republic of Kazakhstan.

This rule may be departed from when:

1) a customer/investor decides to perform all of the following covenants:
   - observance of fire and explosion safety, structure reliability, constancy of performance, and occupational safety and health standards determined by Kazakhstan law and regulatory acts, which must be acknowledged by comprehensive non-departmental expertise;
   - provide suppliers of goods/works/services with any information they might require in compliance with Kazakhstan law and other regulatory acts;
2) facilities included in the Map of Industrial Development of the Republic of Kazakhstan are designed, constructed, reconstructed, upgraded or extended.

A project (project estimate documentation) for construction of a new building or structure, complex thereof and engineering/transportation infrastructure must provide for urban-planning justification of its location and economic, architectural, space-planning, functional, technological, structural, engineering, ecological, energy-efficient and other solutions within the scope sufficient for completion and commissioning of the facility.

Construction projects also include the project estimate documentation based on a technical expertise and intended for:

1) overhaul of existing facilities and restoration of the buildings/structures which cannot be classified as historical or cultural monuments;
2) reconstruction, extension, refurbishment and technical upgrading of operated facilities;

3) post-utilization of dismantled worn-out facilities, save for demolition of dangerous buildings and structures; or

4) mothballing/demothballing of unfinished buildings the construction of which has been suspended.

Construction projects are subject to comprehensive independent expertise performed by expert organisations and individual experts certified in the relevant areas of practice identified by the applicable feasibility study and project estimate documentation.

Urban planning projects are subject to comprehensive urban-planning expertise performed by expert committees or groups consisting of experts certified in the relevant areas of practice with the involvement, if necessary, of advisors from designing, scientific and research institutions.

Favourable expert opinions are prerequisite for approval of draft projects.

The following projects are subject to mandatory expertise:

1) urban planning and development projects requiring comprehensive urban-planning expertise and subject to the approval of the Kazakhstan Government or local authorities;

2) feasibility studies and project estimate documentation intended for construction of buildings and structures, or complexes thereof, and engineering and transportation infrastructure fully or partially funded by the government budget, or not funded by the government budget but ensuring, in compliance with Kazakhstan law, the government interest in the production of goods or provision of services, or funded by non-government loans secured or guaranteed by the government; and

3) project estimate documentation intended for construction of the facilities financed from other than budget sources or other forms of government investment, save for the projects implying the construction of technically simple facilities set forth in Article 64-1.4 of the Law.

The main contracting parties in the course of construction (including design, research, expertise, development, and manufacturing of construction materials and structures by order) are the customer/investor or their authorized representative and the contractor/general contractor.

Any national of the Republic of Kazakhstan or a foreigner or a stateless person or a Kazakhstan or foreign entity may act as a customer under a construction contract.

Any individual or legal entity (including a joint venture) holding the appropriate license for architectural, urban planning and/or construction activity in the Republic of Kazakhstan may act as a contractor under a construction contract.

The contracting parties must observe all the procedures and requirements established by Kazakhstan law at all stages of a construction project.

The customer shall notify the authorities exercising state control over architecture and construction activities of such works in the manner prescribed by the Law of the Republic of Kazakhstan *On Licenses and Notices*.

Any construction process is subject to architectural and construction control envisaged by Chapter 6 of the Law.

All subjects of architecture, urban planning and construction activities shall be liable for violation of any applicable regulations/requirements/standards/rules/restrictions under Kazakhstan law.

Completed construction operations must be accepted by the state acceptance commission or an acceptance commission.

A deed of commissioning of a completed facility which is approved in accordance with the established procedure constitutes grounds for registration of the facility with the government authority responsible for registration of rights to immovable property.

AUDIT OF BUSINESS ENTITIES (GENERAL PROCEDURE)

In Kazakhstan, audit is one of the tools of government control and supervision over business entities. The audit procedure is regulated by the Kazakhstan Entrepreneurial Code (the "Entrepreneurial Code").

An audit implies any of the following actions on the part of an auditor:

1) visiting an audited person/facility by a government officer;
2) requesting any information related to the subject of an audit, save for any information requests made in the course of other monitoring and oversight procedures; or
3) calling an audited person to provide information on their compliance with Kazakhstan legislation.

There are three types of audit:

1) an audit performed in accordance with a special procedure based on the level of risk and assigned by the control and supervision authorities subject to risk assessment;
2) a random audit meaning a risk-based audit assigned subject to reports analysis and other forms of control; and
3) an unscheduled audit assigned on the basis of certain facts and events.

Government monitoring and oversight applies to the following four groups of audited persons/facilities:

- the first group includes the audited persons/facilities applied a special auditing procedure implying risk assessment, unscheduled inspection and other forms of monitoring and oversight;
- the second group includes the audited persons/facilities applied spot and unscheduled inspections and other forms of monitoring and oversight;
- the third group includes the audited persons/facilities applied unscheduled inspections and other forms of monitoring and oversight; and
- the fourth group includes the audited persons/facilities applied only other forms of monitoring and oversight without any inspections.

Business entities subject to government monitoring and oversight are assigned to one of the above groups by the relevant regulators which also distinguish between them by risk level.

Audited persons/facilities falling into the second group may be re-assigned to the third group if they have signed third party liability insurance contracts.

Kazakhstan law prohibits applying the aforementioned special auditing procedure based on risk assessment and unscheduled inspection to small businesses, including microbusinesses, within three years after their incorporation/state registration (except

for reorganised entities and their legal successors), save for certain activities.

For avoidance of abuse and overreaction on the part of government authorities, Kazakhstan law provides for the list of reasons for an unscheduled audit:

- control over the performance of improvement notices (resolutions, representations or recommendations) prescribing to rectify the violations discovered in the course of an audit or other forms of control and supervision;
- reports from corporations and individuals on certain facts giving rise to a risk of harm to human health and life, environment and legitimate interests of corporations, individuals and the state, save for the reports from corporate and individual consumers whose rights have been infringed and the reports from government authorities;
- reports from corporations and individuals on certain facts of harm inflicted on human health and life, environment and legitimate interests of corporations, individuals and the state, save for the reports from corporate and individual consumers whose rights have been infringed and the reports from government authorities;
- reports from corporate and individual consumers whose rights have been infringed;
- requests from prosecuting authorities with regard to certain facts of harm or risk of harm to human health and life, environment and legitimate interests of corporations, individuals and the state;
- reports from government authorities on certain facts of harm or risk of harm to human health and life, environment and legitimate interests of corporations, individuals and the state;
- cross-audit of a third party with whom the audited person has entered into civil law relations for acquisition of information required for the audit;
- follow-up audit based on the application from the audited person regarding their disagreement with the initial audit findings;
- requests from criminal prosecution authorities subject to the Kazakhstan Code of Criminal Procedure;
- applications from taxpayers with regard to the information and matters set forth in Article 627 of the Kazakhstan Code *On Taxes and Other Obligatory Payments to the Budget (Tax Code)*;
- a notice from the audited person on the inception of its activities or other actions in the manner prescribed by the Kazakhstan law *On Permits and Notices*; and
- detection by selection and sanitary/epidemiological expertise of any offence of Kazakhstan legislation concerning sanitary and epidemiological wellbeing of population, as well as hygienic and technical standards, that could endanger the lives and well-being of human beings and environment.

The control and supervision authorities must notify an audited person in writing of a risk-based or random audit at least 30 calendar days before the commencement of such audit, specifying the terms and subject matter of the audit.

The general rule is that the control and supervision authorities must notify an audited person of an unscheduled audit at least 24 hours before the commencement of such audit, specifying the subject matter of the audit. However, sometimes, unscheduled audits are performed without a prior notice.

An audit must be performed on the basis of the notice of audit containing the following information:

1) reference number and date of the notice;
2) name of the government agency;
3) surname, first name and middle name (if specified in ID) and position of the person(s) authorised to perform the audit;
4) information about the specialists, counsels and experts engaged in the audit; and
5) name of the audited entity or the surname, first name and middle name (if specified in ID) of the audited individual, their address, identification number and territorial allegiance.

When authorities audit a branch and/or representative office of a legal entity, the notice of audit must specify its name and address;

6) subject matter of the audit;
7) timing of the audit;
8) legal reasons for the audit, including the regulatory legal acts the compliance with which has to be audited;
9) audited period;
10) rights and obligations of the audited entity/individual provided by Article 155 of the Entrepreneurial Code; and
11) signature of the person authorized to sign such notice and seal of the government authority.

All notices of audit, except for unscheduled audits for security and safety compliance performed by the state labour inspectorate in case of threat to human life and health and cross-audits performed by state revenue authorities in pursuance of the Kazakhstan Code *On Taxes and Other Obligatory Payments to the Budget (Tax Code)*, must be registered with the competent authorities responsible for legal statistics and special records.

Government officers arriving to an entity for the performance of audit must present the following documents:

- notice of audit bearing a note of registration with the competent authorities responsible for legal statistics and special records;
- service certificate;
- permit of competent authorities to visit sensitive facilities, if necessary;
- medical admission required for certain facilities and issued in the manner prescribed by healthcare authorities; and
- checklist containing the itemized list of requirements subject to audit.

An audit is deemed to be commenced on the date of delivery of the respective notice of audit to the audited person.

The duration of audit depends on the scope of planned work and the assigned tasks and, usually, does not exceed 5 business days for microbusinesses and 30 business days for small, medium-size and large businesses and non-private entities. In certain cases, the duration of audit may be determined individually.

The officers of the control and supervision authorities performing an audit may not:

1) check the compliance with those requirements which are not specified in the checklists of the control and supervision authorities and which do not fall within the competence of the government authorities on behalf of which such officers are acting;
2) request documents, information, sample products or samples of environment and production facilities inspections which are not subject to inspection or covered by the scope of inspection;
3) take samples of products or samples of environment and production facilities inspections for examination, testing or measurement purposes without sampling protocols duly executed in a statutory form and/or in quantities exceeding the thresholds determined by national standards, regulations on sampling and methodology of research, testing and measurement, technical regulations or other previously effective regulatory technical instruments, regulations and methodology of research, testing and measurement;
4) disclose and/or disseminate any information received in the course of an audit which might constitute a trade, tax or another legally protected secret, unless otherwise provided by Kazakhstan law;
5) exceed the time limits prescribed for a certain audit;
6) audit a subject/object which has already been audited by a superior/inferior authority or by another government authority with regard to the same matter within the same period, unless otherwise provided by subparagraphs 2), 8), 9) and 10) of Article 144.3 of the Code; or
7) make cost-intensive arrangements for public control purposes at the expense of an audited subject.

It is prohibited to withdraw or seize original accounting or other documents.

Based on the audit findings, an officer of the control and supervision authorities must issue a report on audit findings. When the chief executive officer of the audited entity or the audited individual, or their authorized representatives, have remarks and/or objections to the audit findings, they must express and deliver them in a written form which is attached to the report on audit findings with the respective note on it.

An audit is deemed to be completed on the date when the respective report on audit findings is delivered to the audited entity/individual which cannot be later than the audit completion date specified in the notice of audit.

When the auditing authorities infringe the rights and legitimate interests of an audited person the latter may appeal against the actions/omissions of such control and supervision authorities and/or officers thereof in the superior government authorities or a court as provided by Kazakhstan law.

LITIGATION AND ARBITRATION

Courts of the Republic of Kazakhstan

In 2015, once again, Kazakhstan reformed its judicial system involving, *inter alia*, civil proceedings.

On 31 October 2015, the Republic of Kazakhstan adopted a new Code of Civil Procedure with effect from 1 January 2016.

At present, the judicial system of Kazakhstan comprises, as before, district courts and courts assigned equal status; oblast courts and courts assigned equal status; and the Supreme Court of the Republic of Kazakhstan.

However, the new Code of Civil Procedure provides for a three-tiered judicial system comprising courts of first jurisdiction, courts of appeal and courts of cassation replacing the old four-tiered system including the courts of first jurisdiction, courts of appeal, courts of cassation and courts of supervision. From now on, the power of supervisory jurisdiction to review judgments which have become final will be exercised by cassation jurisdiction represented by a judicial panel of the Supreme Court of the Republic of Kazakhstan. Hence, cassation jurisdiction of oblast courts and courts assigned equal status was abolished.

District courts are divided into specialized courts, interdistrict economic courts, interdistrict courts and administrative courts assigned equal status, military courts and interdistrict juvenile courts.

The city courts of Astana and Almaty, and the Military Court of the Armed Forces of the Republic of Kazakhstan are assigned an equal status with oblast courts.

Judicial power is exercised through civil, criminal and other forms of proceedings established by law. In the events required by law, criminal proceedings are held before a jury.

As a general rule, matters falling under the jurisdiction of first instance courts are considered by district (city) courts and courts assigned equal status.

However, this rule has a number of exceptions, e.g. the Astana City Court, being a first instance court, considers and settles investment dispute cases, except for the cases subject to the jurisdiction of the Supreme Court of the Republic of Kazakhstan, as well as disputes between investors and government authorities over investors' activities. The Supreme Court of the Republic of Kazakhstan considers and settles, in accordance with the rules of procedure of the court of first instance, the following civil cases:

1) recourse against decisions and actions/omissions of the Central Election Commission of the Republic of Kazakhstan and recourse against decisions and actions/omissions of the Central Referendum Commission; and
2) investment disputes between parties one of which is a major investor.

The term 'investment dispute' means a dispute arising from contractual relations between investors, including major investors, on one side, and government authorities, on the other side, in connection with the investors' investment activities.

Any individual or legal entity investing in the Republic of Kazakhstan amounts exceeding two million-fold monthly calculation index is deemed as a major investor.

Therefore, on 1 January 2016, Kazakhstan, for the first time, introduced a special jurisdiction for investment disputes which, from now own, will be referred to district courts of Astana, the Astana City Court and the Supreme Court of the Republic of Kazakhstan.

Specialized interdistrict economic courts consider civil matters in property and non-property disputes between unincorporated individual entrepreneurs and legal entities, as well as corporate disputes.

Corporate disputes are disputes between a business organization, association (union) of business organizations, association (union) of business organizations and/or sole proprietors, a non-profit organization having the status of a self-regulating organization in accordance with the laws of the Republic of Kazakhstan, and/or its shareholders/participants/members, including the former shareholders/participants/members ("corporate disputes"), related to:

1) setting up, reorganization and liquidation of a legal entity;
2) the ownership of shares in joint stock companies, participation interests in the charter capital of business partnerships, coop members stakes, to their encumbrances and exercise of the rights arising therefrom, other than disputes arising in connection with division inherited property or division of community property of spouses which includes shares in a joint stock company, participation interest in the charter capital of business partnerships and/or coop members stakes;
3) claims for damages caused to a legal entity by certain actions/omissions of officers, founders, shareholders, members and other persons;
4) invalidation of transactions and/or enforcement of implications of such invalidated transactions;
5) the appointment or election, termination or suspension of powers and authorities of persons who have been or are members of the legal entity's governing body and to their responsibilities and liabilities, as well as disputes arising from civil law relations between such persons and the legal entity in connection with the exercise, cessation and/or suspension of their powers and authorities;
6) the issue of securities;
7) the maintenance of registers of securities holders taking into account the rights to shares and other securities, as well as disputes related to placement and/or circulation of securities;

8) the annulment of state registration of issue of shares;

9) the convening and conduction of a general meeting of shareholders of a legal entity and resolutions adopted thereby; and

10) the recourse against decisions and/or actions (omissions) of governing bodies of a legal entity.

Specialized interdistrict economic courts also consider the cases connected with the restructuring of financial organisations and non-financial organisations belonging within a bank conglomerate as a parent company, when provided by Kazakhstan laws, and the cases connected with the bankruptcy of individual entrepreneurs/legal entities and the rehabilitation of legal entities.

Specialized district and administrative courts assigned equal status resolve matters relating to disputing resolutions of bodies (officials) authorized to resolve administrative violation matters.

Military courts resolve civil matters relating to disputing by military personnel of the Armed Forces, other forces and military formations and citizens called for military training of actions (omissions) of officials and bodies of military administration. Military courts are entitled to resolve other civil matters if one of the parties to the dispute is a military officer, military administration body or military unit.

Specialized interdistrict juvenile courts resolve civil matters relating to disputes on: determination of the place of residence of minors; determination of the manner of communication between minors and their parents and removal of a child from the custody of other persons; determination of the place of residence of a child leaving Kazakhstan for permanent residence with one of the parents; termination (restriction) or restoration of parental rights; on child adoption and cancellation thereof; assignment of minors to special education organizations or special treatment organizations; to disputes arising out of custody and care (guardianship) over minors; paternity examination of a minor and recovery of alimony from him; applications on restriction or deprivation of minors from fourteen to eighteen years old of the right to dispose of their income; recognition of underage children *sui juris* (emancipation); paternity test and recovery of child support in proportionate or fixed amount; protection of labour and housing rights of underage children; and compensation of damages jointly caused by underage children and full-aged people, including those which involved fully or partially disabled adults.

Civil litigations in a court of first instance are resolved by a single judge who is acting on behalf of the court.

Matters in courts of appeal and cassation are, usually, resolved by a panel of the judges of the court (at least three) and, in certain cases, by a single judge.

Judgments of a court of first instance may be appealed against with appellate and cassation courts.

Judgments of a court of first instance become effective upon expiration of the term set out for filing an appeal or protest against such judgments, unless they have been appealed or protested against.

Generally, appeals and protests may be filed/submitted within one month after the final court judgment.

When a complaint or protest is brought on appeal, the decision (if not cancelled) shall come into force on the date of the ruling issued by the court of appeal.

Valid acts issued by local and other courts, subject to appellation proceedings, may be appealed in courts of cassation.

A cassation complaint or protest may be filed within six months from their effective date.

The ruling of the court of cassation shall come into force upon its reading.

In exceptional cases, a judgment of a judicial panel of the Supreme Court of the Republic of Kazakhstan may be reviewed on the grounds that such judgment may result in severe irreversible consequences to life or health or to the economy and security of the Republic of Kazakhstan, if the issued judgment infringes the rights and legitimate interests of general public or other public interests, or if the issued judgment violates the consistency of interpretation and application of legal provisions by courts.

Effective judgments, rulings and resolutions may be reviewed upon discovery of new facts on the grounds provided for by the Kazakhstan Code of Civil Procedure.

Claims filed with courts of first instance are subject to state duty in the amount of:

1) for property disputes: 1% of the amount of the claim from private individuals and 3% of the amount of the claim from legal entities;
2) for non-property disputes – 50% of the amount of the monthly calculation index established by the law on the budget of the republic for the current year.

Since 1 January 2016, any filings with courts of cassation are subject to state duty at the rate of 50% of the state duty applicable to non-property claims and, in relation to property claims, at the rate of 50% of the state duty assessed on the basis of the disputed amount. Appeals of judicial acts are exempt from state duty.

At any stage of civil proceedings, as well as at the stage of judicial act enforcement, parties are afforded the opportunity to sign an amicable agreement or any other agreement provided by the Code for the purpose of settlement.

The Supreme Court of the Republic of Kazakhstan has implemented an electronic court room project ensuring mobile, transparent and accessible judicial service.

The electronic court room is a 'single window' access to all electronic services provided by Kazakhstan courts through which mooters can file with Kazakhstan courts any claims, responses thereto, complaints of appeal of cassation, petitions for review and any other procedural documents in digital form.

To make such filing procedure legal the Kazakhstan civil procedure legislation was introduced certain amendments allowing for electronic filing of claims and other procedural documents.

In the event of a failure to voluntarily enforce a court judgment, the procedure of compulsory enforcement by authorized government bodies (local divisions of the

Committee for Enforcement of Judicial Acts of the Ministry of Justice of the Republic of Kazakhstan, Departments for Enforcement of Judicial Acts for Oblasts and the cities of Astana and Almaty, and private receivers acting within certain areas) will apply.

In such event, if a court decision is enforced through the application to public receivers, the debtor is required to pay an enforcement penalty of 10% of the enforced amount or the value of the property or 10 monthly calculation indices from private individuals and 20 monthly calculation indices from legal entities under enforcement documents of non-property nature on the grounds of a ruling issued by a public receiver which may be challenged by the debtor in court. When enforcement of a judgement is performed by a private receiver, his services are paid from the funds recovered from the debtor and his fee rate ranges between 3% and 25% of the recovered amount or property value depending on the category of a case and the recovered amount. The legislation provides for administrative and criminal liability for a gross failure to enforce court judgments.

The primary legal acts governing procedural activities of courts and enforcement procedures in the Republic of Kazakhstan are as follows:

- Code of Civil Procedure of the Republic of Kazakhstan No. 377-V of 31 October 2015;
- Code of Criminal Procedure of the Republic of Kazakhstan No. 231-V of 4 July 2014;
- Law of the Republic of Kazakhstan *On Enforcement Procedure and Status of the Court Enforcement Officials* No. 261-IV 3 of 2 April 2010;
- Penal Code of the Republic of Kazakhstan No. 234-V of 5 July 2014; and
- Code of Administrative Offences of the Republic of Kazakhstan No. 235-V of 5 July 2014.

Arbitration

The legislation of the Republic of Kazakhstan also provides parties involved in civil relations with an alternative option to resolve disputes in arbitration.

Kazakhstan arbitration courts can be permanent or ad hoc, i.e. arbitrations set up for resolution of certain disputes.

Arbitrators and arbitration panels called to resolve disputes referred thereto must be independent in their decision-making and rule out any interference in their work by government authorities and other organisations, unless otherwise provided by law.

Any dispute may be referred to arbitration, provided that parties thereto have an arbitration agreement.

An arbitration agreement may regulate any disputes which have already arisen or might arise between the parties in connection with particular civil relations.

When a dispute has already been referred to court, the parties thereto may sign an arbitration agreement prior to the relevant court judgment, in which case the court issues ruling to dismiss the application without prejudice.

Matters relating to internal procedures of arbitrations are governed by their established rules.

Pursuant to Law of the Republic of Kazakhstan *On Arbitration* No. 488-V of 08 April 2016, disputes affecting the interests of underaged persons or persons duly recognised as fully or partially incapacitated, disputes connected with rehabilitation or bankruptcy, disputes between natural monopolies or their customers, and disputes between government and quasi-government agencies/entities are not subject to arbitration.

Arbitration court may not consider disputes arising from personal non-property relations which are not connected with any property.

Besides, arbitration court may not consider disputes between natural persons and/or legal entities of the Republic of Kazakhstan on one side and legal entities in which at least fifty percent of voting shares/interests are directly or indirectly held by the government on the other side without a prior written consent of the relevant sector authority (when a dispute relates to state property) or local executive authority (when a dispute relates to municipal property).

When government authorities, government enterprises or legal entities in which at least fifty percent of voting shares/interests are directly or indirectly held by the government decide to enter into an arbitration agreement, they have to apply to the relevant sector authority (when a dispute relates to state property) or local executive authority (when a dispute relates to municipal property) for their consent to such agreement execution and to support their application by the arbitration cost forecast. The relevant sector authority or local executive authority must, within fifteen calendar days, consider the application and notify the applicant in writing of their consent or substantiated refusal to issue such consent. When considering such application, the relevant sector authority or local executive authority must have due regard to economic security and public interests.

In general, awards of arbitrations are subject to voluntary enforcement by the parties to the dispute. In the event of a failure to enforce the award on a voluntary basis, the award is subject to enforcement on a compulsory basis in accordance with the procedure established for enforcement of judgments of courts of general jurisdiction of the Republic of Kazakhstan.

Kazakhstan is a member of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958, the European Convention on International Commercial Arbitration 1961 and Washington Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the ICSID Convention). Pursuant to these international treaties whose provisions have been incorporated into the national legislation of Kazakhstan, recognition and enforcement of foreign arbitral awards are governed by reciprocal national treatment.

We recommend that our clients in choosing an arbitration court refer their disputes to the Kazakhstan International Arbitration which is headed by a leading civil law expert of Kazakhstan, Professor M.K. Suleimenov.

In order for a dispute to be eligible for resolution by arbitration court, the parties are required to enter into an arbitration agreement or to have an arbitration clause in their contracts. Arbitration provisions may have the following wording:

"Any dispute and/or disagreement arising out of or in connection with this contract is subject to final resolution by the Kazakhstan International Arbitration in accordance with its Rules currently in force.

The Arbitration Court will comprise _____ arbitrators (single arbitrator). The place of the arbitration proceedings will be _____. The language of the arbitration proceedings is _____.

This contract is governed by the substantive law of _____ (identify the State)."

CRIMINAL LAW AND CRIMINAL PROCEDURE

General Provisions

The system of criminal law of Kazakhstan is based on the principles of continental law. In general, criminal law and the penal system are up-to-date and humane: the majority of constituent elements of crime comply with those accepted by international practice; the mechanism of protection of human rights is well-developed; legal entities are not subject to criminal liability; Kazakhstan Presidential Decree No. 1251 of 17 December 2003 imposed moratorium on capital punishment until its total abolition.

However, although there are certain positive developments in the regulation of criminal matters, the practice of investigation and resolution of criminal matters by courts still may not be considered as fully complying with democratic principles.

Criminal law of the Republic of Kazakhstan, as well as the other members of the CIS, comprises only the Criminal Code of the Republic of Kazakhstan.

On 3 July 2014, Kazakhstan adopted new Criminal Code No. 226-V which supersedes the previous Criminal Code of the Republic of Kazakhstan No. 167-I of 16 July 1997.

The new Criminal Code introduced a number of novels. Pursuant to the declared principles of civil society, the new Criminal Code (similar to the previous one), unlike the old Criminal Code of the Kazakh Soviet Socialist Republic effective until 1998, gives priority to legal protection of the rights of individuals, and not the State.

The new Criminal Code clarifies certain definitions. For example, it provides definitions and specifies the amounts of material, large-scale and extremely large-scale damages in relation to certain *corpora delicti* set forth in the Special Part of the Criminal Code.

The new Criminal Code introduced the concept of minor criminal offence meaning an offence (culpable action or omission) that does not seriously jeopardize public security and does not cause any serious harm or threat of such harm to a person, entity, community or state which is punished in the form of a penalty, correctional or public works, or arrest.

When a person is found guilty of a minor criminal offence, he/she may be applied the following primary punishments:

1) penalty;
2) correctional works;
3) public works; and
4) arrest.

When a person is found guilty of a criminal offence, he/she may be applied the following additional punishments:

1) penalty;
2) correctional works;

3) custodial restraint;
4) imprisonment; and
5) capital punishment.

When a person is found guilty of a criminal violation, he/she may be also applied the following additional punishments:

1) confiscation of property;
2) deprivation of special, military or honorary title, class rank, diplomatic rank, qualification class and state awards;
3) deprivation of the right to occupy a certain position or to engage in a certain activity; and
4) expel from the Republic of Kazakhstan, if the culprit is a foreigner or stateless person.

Penalty is a financial sanction applied at the rates determined by the Criminal Code on the basis of the current monthly calculation index established by the Kazakhstan law effective at the date of criminal violation or in the amount multiple of a bribe value.

When a culprit evades paying a penalty imposed on him/her for a minor criminal offence, such culprit shall either (i) be involved in public works the scope of which is determined by the formula: 1 hour of public works for 1 monthly calculation index; or (ii) be arrested for a period determined by the formula: 1 day of arrest for 4 monthly calculation indices, unless otherwise provided by the Criminal Code.

When a culprit evades paying a penalty imposed on him/her for a crime, such culprit shall be imprisoned for a period determined by the formula: 1 day of imprisonment for 4 monthly calculation indices, unless otherwise provided by the Criminal Code. When a culprit is charged with the crimes set forth in Articles 366, 367 and 368 of the Criminal Code (acceptance of bribe, bribery or mediation in bribery) and evades paying a penalty imposed on him/her for such crime, the culprit shall be imprisoned for a period determined by the respective Article of the Special Part of the Criminal Code.

The definition of 'arrest' excluded by Kazakhstan Law No. 393-IV of 18 January 2011 was re-introduced by the new Criminal Code. The arrest provision came into force on 1 January 2017. Arrest implies a close custody of a culprit ensuring his/her isolation from the community for the entire period of his/her imposed penalty. The term of arrest may range from thirty to ninety days. Retention period is included into the term of arrest. Arrest may not be applied to juvenile criminals, pregnant women or mothers of infants, single fathers of infants, 58 years old and older women, 63 years old and older men, and the 1st and 2nd grade invalids. Military servants serve their sentences in military detention facilities.

Life imprisonment may be imposed for commitment of especially serious crimes and as an alternative to capital punishment. Life imprisonment may not be applied to women and persons who committed crimes prior to reaching the age of eighteen, as well as against women and men who have reached the age of at least sixty three years. Life imprisonment may be replaced with a limited period imprisonment, as an act of grace.

The new Criminal Code changed the definition of 'confiscation'. Under the old Criminal Code, all or part of the assets owned by a culprit, as well as any instruments or means of crime, were subject to confiscation, i.e. forced non-repayable attachment of the properties in favour of the state. The new Criminal Code defined concretely that not only the assets owned by a culprit but also the assets acquired at the expense of criminal proceeds, as well as any instruments or means of crime, are subject to confiscation.

The following cash and other assets are subject to confiscation:

1) any cash and other assets acquired as a result of a criminal violation, and any income from such assets, except for the assets and income therefrom to be returned to their legal owner;
2) any cash and other assets into which the assets acquired as a result of a criminal violation and any income from such assets were, in part or in whole, transformed or converted;
3) any cash and other assets used or intended for financial or other support of extremist or terrorist activities or a criminal group;
4) any cash and other assets used as instruments or means of crime; and
5) any cash and other assets transferred by a culprit to the ownership of other persons.

If a certain item of the assets specified in paragraphs 1) and 2) above cannot be confiscated on the date of the court ruling on confiscation of such item due to its utilisation, sale or for another reason, law enforcement officers must confiscate cash in the amount equivalent to the value of such item subject to the respective court ruling.

In the cases set forth in Section 15 of the Kazakhstan Code of Criminal Procedure confiscation of assets may be applied by court decision as a penal measure.

The following cash and other assets are not subject to confiscation:

1) the assets needed by a culprit or his/her dependants and listed by the criminal procedure law; and
2) the cash and other assets which have been legalized in accordance with the Kazakhstan Law *On Amnesty of Kazakhstan Nationals, Oralmans and Holders of Kazakhstan Residence Certificates Due to Legalization of their Assets*, provided that such cash or assets have been received as a result of a criminal offence exempt from criminal liability under the Law.

The provisions of Article 48-5(2) of the Criminal Code do not apply to the judicial acts effective as at 1 September 2014 and to the legalized assets and cash which are not subject to legalization.

The new Criminal Code increased the term of deprivation of the right to occupy a certain position or to engage in a certain activity which now ranges from one to ten years, and in explicitly provided cases – for life. Such measure applies to the crimes committed by persons engaged in pedagogic and juvenile-related activities and to any corruption crimes.

The new Criminal Code introduced the concept of the exemption from criminal liability subject to the fulfilment of the terms and conditions of a procedural agreement and bail surety. When a person fulfils all the terms and conditions of such procedural agreement he/she may be exempt from criminal liability.

When a person commits a minor criminal offence or a crime of insignificant or moderate gravity not causing serious harm to health of a person or death, for which the respective Article or part thereof of the Special Part of the Criminal Code provides a penalty among other types of primary punishments, such person may be exempt by court decision from criminal liability and prescribed bail surety.

Bail surety implies bailment by a bailsman in the amount equivalent to twofold (for individuals) and tenfold (for entities) maximum penalty rate established for the committed criminal violation.

Bail surety is applied to:

1) minor criminal offences – for a period ranging from 6 months to 1 year;
2) crimes of insignificant gravity – for a period ranging from 1 year to 2 years; and
3) crimes of moderate gravity – for a period ranging from 2 years to 5 years.

Upon expiration of the surety term, the bail is returned to the bailsman, provided that the person exempt from criminal liability does not commit another criminal violation during the surety term, otherwise the court will reverse its ruling on the exemption of such offender from criminal liability and will apply another punishment based on cumulative offences. The bail is appropriated in favour of the state.

The provisions on exemption from criminal liability subject to bail surety do not apply to those culprits who commit corruption crimes, terrorist or extremist crimes, criminal group crimes, or child molestation.

Criminal procedure in Kazakhstan is governed by Code of Criminal Procedure of the Republic of Kazakhstan No. 231-V of 4 July 2014 which is currently in force. The new Code of Criminal Procedure introduced a number of novels.

The Code of Criminal Procedure defines as primary principles of criminal procedure judicial protection of human rights and freedoms, protection of dignity and honour, personal inviolability, inviolability of personal privacy, dwelling and property, presumption of innocence, equality of all before the law and courts, independence of the judiciary, adversarial nature of the judicial process and equality of the parties.

In order to ensure compliance with the principle of adversarial nature of the judicial process and independence of judicial and prosecution functions, the Code of Criminal Procedure of the Republic of Kazakhstan provides for obligatory participation of the State prosecutor in the main proceedings, except for private prosecution proceedings.

It should be specifically noted that the Code of Criminal Procedure of the Republic of Kazakhstan provides for an option of presence of an attorney (defender) as of the time of detention and arrest of a person or bringing charges against such person or declaring a person suspect.

Pursuant to the amendments of 7 October 1998, Article 75 of the Constitution of the Republic of Kazakhstan provides for an opportunity of criminal proceedings with participation of juries. Law of the Republic of Kazakhstan No. 121-III *On Jury* was adopted on 16 January 2006 and came into force on 1 January 2007.

An officer of the criminal prosecution authority may detain a person suspected of committing a crime that may be sentenced with imprisonment on one of the following grounds:

1) when such person is caught in the commitment of a crime or immediately following its commitment;
2) when witnesses, including the victims of the crime, expressly name such person as one who has committed the crime or detain such person in the manner provided for by the Code of Criminal Procedure of the Republic of Kazakhstan;
3) when trace evidences of crime are discovered on the body or clothing of such person, in the vicinity of such person or in the place of his residence; and
4) when the materials of investigation or undercover investigative and counterintelligence activities with respect to a certain person that have been obtained in the manner established by law contain valid and reliable information on the committed or imminent crime.

When there is any other evidence sufficient to suspect a person of a criminal violation, such person may be arrested only if he/she tried to escape, or if he/she could not be identified, or if court was filed an application for approbation of restraint in the form of custody.

Retention period starts from the date when an offender is actually arrested and may not exceed seventy two hours.

The new Criminal Code introduced new term 'surrender' meaning a procedural compulsory measure for a term of maximum three hours needed to find out whether the surrendered person is involved in a certain criminal violation. Under the old Code of Criminal Procedure the aforementioned three hours were included in the aggregate term of arrest.

If prosecution authorities establish that a person is involved in a certain criminal violation, they may arrest such person in the manner prescribed by the Code of Criminal Procedure, while the surrender term is included in the aggregate term of arrest.

Upon expiration of the surrender term, the surrendered person is immediately delivered a certificate of surrender, unless such person is subject to procedural detention.

The victim or any other citizen has the right to detain the person who has committed a criminal violation and to restrict freedom of his/her movement for subsequent surrender of such person to prosecution or other government authorities in order to prevent him or her from committing other offences.

When a person is arrested on suspicion of a criminal violation, an officer of prosecution authorities shall orally notify the person of his/her arrest on suspicion of the

criminal violation and shall explain his/her right to invite a counsel for his/her defence, the right to remain silent, and that any disclosed information may be used against him/her in court.

When an arrested person does not speak Kazakh and/or Russian or cannot adequately apprehend the explanation of his/her rights due to his/her alcoholic, narcotic or other intoxication, or due to his/her psychosomatic disease, then his/her rights are explained in the presence of an interpreter, if necessary, and/or counsel prior to the commencement of interrogation of the suspect, the fact of which is recorded by the respective officer in the transcript of interrogation.

Within 3 hours after the actual detention, an officer of investigation authorities, investigator or interrogator must prepare a transcript of interrogation. When the suspect files the respective petition, he/she must be examined by a doctor in order to ascertain his/her health condition and bodily injuries, if any.

The transcript shall specify the surname, first name and middle name, if any, of the suspect, who detained the suspect, the grounds and reasons for detention and its place, the time of actual detention and surrender (hour and minute), the note about explanation of the suspect's rights, the results of personal search, information about the suspect's health condition, as well as the time and place of the transcript execution.

The transcript shall be signed by the executing officer, suspect and counsel, if any. The transcript shall be accompanied by the respective medical examination report, if any.

The officer performing prejudicial inquiry shall, within twelve hours from the time of the transcript execution, notify the prosecutor of the detention in writing.

The suspect may be detained without the court approbation for a period of maximum seventy two hours.

The person making the detention may, subject to the rules set out by the Code of Criminal Procedure of the Republic of Kazakhstan, immediately conduct personal search of the detained person in the event when there are grounds to believe that he/she is carrying a gun or items which can be used as guns, or any items the circulation of which is prohibited or which can be used as evidence, or he/she is trying to dispose of the evidence revealing the criminal violation committed by him, or in other events where necessary.

The person detained on suspicion of a criminal violation must be released subject to the ruling of the person performing prejudicial inquiry or the prosecutor when:

1) suspicion of the criminal violation has not been proven;
2) there are no grounds to apply to the detainee such restraint measures as custody, arrest or expel from the Republic of Kazakhstan;
3) the person was detained in violation of the Code of Criminal Procedure; and
4) there is no legal cause to detain such person.

If within seventy two hours from the actual detention of a person the chief executive officer of the detention facility does not receive the court approbation of the suspect

custody, such chief executive officer of the detention facility shall immediately release the detainee on the grounds of his own resolution and shall notify the person responsible for the case procedure and the prosecutor.

When the chief executive officer of the detention facility fails to fulfil the requirements set forth in the second part of this article, such officer shall be liable under Kazakhstan law.

When the detainee is released, he/she is delivered a certificate specifying the name of detaining authority, the grounds, place and time of his/her surrender and detention, and the grounds and time of his/her release.

The officer performing prejudicial inquiry shall immediately notify any adult member of the suspect's family or, if there is no such family member, any other relative or friend, of his/her detention and the place of his/her custody, or shall allow the suspect to notify his family or friends of his/her detention.

Pursuant to the amendments made to the Constitution of the Republic of Kazakhstan in May 2007, arrest must be sanctioned by a court and not by a prosecutor as was required before the introduction of these amendments. A person may be held in detention without a court warrant for maximum 72 hours.

Measures of restraint are as follows:

1) commitment not to leave and commitment of proper conduct;
2) personal guarantee;
3) placement of a military servant under the supervision of the military unit command;
4) placement of a minor in the care of authorized persons or organizations;
5) bail;
6) house arrest; and
7) custody.

Where necessary, a person subject to measures of restraint, save for when a military servant is kept under surveillance in command of a military unit and arrest, may be also subject to electronic monitoring. Means of electronic monitoring may be used subject to the condition that relevant arrangements have been made to hide such means from the reach and observation of others and taking into account the locations frequented by the suspect and his or her path routes as well as age, health condition, marital status and lifestyle.

For enforcement of the procedures for investigation, court trial of criminal cases and proper serving of sentences established by the Code of Criminal Procedure, the agency responsible for criminal procedure may apply to suspects, charged offenders and culprits other measures of procedural compulsion, instead of or in addition to the aforementioned restraints, such as required appearance, surrender, temporary removal from a job position, forfeiture of property, or prohibition of approaching.

Prohibition of approaching is a novel introduced by the new Code of Criminal Procedure which implies the restriction of the suspect's/culprit's activities seeking to find, harass, visit, make telephone calls or otherwise communicate with the victim or

other participants of the case for their protection. Prohibition of approaching is subject to approbation by investigating judge or may be applied by court.

In case of justifiable threat or criminal violation connected with violence or threat of violence against family or under-age individuals, the person performing prejudicial inquiry shall, at the written request of the victim or another person seeking protection, issue a ruling on soliciting the judges to approbate prohibition of approaching and shall deliver such ruling to the prosecutor.

The ruling on prohibition of approaching shall specify the grounds for application of such procedural restraint and which exactly types of approaching are prohibited, and the respective enforcement authorities. A copy of the ruling on prohibition of approaching shall be delivered to the prosecutor, suspect, culprit, counsel, victim and enforcement authorities.

When a suspect/culprit breaks the prohibition of approaching, he/she may be applied a financial penalty in the manner prescribed by the Code of Criminal Procedure or a restraint measure.

Another novel introduced by the Code of Criminal Procedure is the provision of a fund for compensation of damages to victims. This provision will come into force after enactment of the legislative act on such fund.

The persons recognized by prosecution authorities as victims are entitled to immediate full or partial cash compensation from such government fund in the cases, manners, amounts and terms determined by the legislative act on the fund for compensation of damages to victims.

The following persons are charged, by sentence, with the obligation to recover the amounts paid from the fund for compensation of damages to victims as determined by the legislative act on the fund for compensation of damages to victims:

1) culprit;
2) legal representatives of a juvenile culprit; and
3) legal entity financially liable under Kazakhstan law for damages caused by penal actions of an individual.

Prejudicial inquiry may be initiated on the grounds of sufficient evidence of a criminal violation, if there are no circumstances excluding criminal proceedings, in particular:

1) application from an individual or notice from a public officer or executive officer of an entity about a criminal violation or missing person;
2) surrender/acknowledgment of guilt;
3) announcement in mass media; and
4) report of an officer of prosecution authorities on an imminent or committed criminal violation.

If there are grounds to initiate prejudicial inquiry, the investigator, investigating authority, chief executive officer of investigating authority, coroner and prosecutor shall, within their authority and in the manner determined by the Code of Criminal Procedure,

confirm by their ordinance that they initiate the proceedings with regard to the given criminal case.

Prosecution authorities shall accept and register any applications and notices regarding imminent or committed criminal violations. The applicant is delivered a document certifying the registration of his/her application/notice regarding the criminal violation.

A refusal to accept and register an application regarding a criminal violation and any other grounds for initiation of prejudicial inquiry set forth in the Code of Criminal Procedure is inadmissible and is subject to statutory liability, and may be appealed in court or prosecutor's office in the manner prescribed by the Code of Criminal Procedure.

Prejudicial inquiry in relation to minor criminal offences is performed in the form of inquest, preliminary investigation or protocol.

Prejudicial inquiry may be speeded up, save for the protocol form of inquiry.

Prejudicial inquiry may be speeded up in case of a crime of insignificant or moderate gravity or in case of a grave crime, provided that the collected evidence establishes the fact of such crime and the offender fully admits his/her guilt and agrees with the amount of inflicted damage/harm, subject to notification of the suspect and explanation of legal implications of such decision. The speeded up prejudicial inquiry shall be finalized within fifteen days.

Speeded up prejudicial inquiry shall not be applied to:

1) cumulative criminal violations when at least one of them is an extremely grave crime;
2) any person who does not know the language in which proceedings are conducted;
3) any person who enjoys privileges or immunity from criminal prosecution;
4) any criminal violation in relation to which at least one of participants does not admit his/her guilt; and
5) any criminal violation committed by a juvenile offender or a person who cannot exercise his/her right of defence because of his/her physical or mental handicaps.

When a prosecutor receives a criminal case with an indictment based on the results of speeded-up prejudicial inquiry, he/she shall, within three days, undertake one of the following actions:

1) confirm the indictment and deliver the criminal case to court;
2) assign an inquest or preliminary investigation of the case; or
3) rule to stop the preliminary investigation or criminal prosecution of certain suspects.

When there is information that a person has committed a crime, provided that there is no need to detain such person, or when a detainee is applied a restraint measure before the respective ruling on classification of the suspect's crime, prejudicial investigation authorities issue a resolution on recognizing such person as a suspect.

The resolution on recognizing a person as a suspect is pronounced to such person. The officer performing preliminary investigation shall explain to the subject of such resolution his/her rights, the fact of which shall be recorded in the resolution the copy of which shall be delivered to the suspect. Within twenty four hours after the issuance of the resolution on recognizing a person as a suspect, its copy shall be delivered to the respective prosecutor.

When there is enough evidence to prove suspicions of someone's crime, the prosecutor and preliminary investigator shall issue, within reasonable time, a well-founded opinion on classification of such crime, a copy of which shall be delivered to the respective prosecutor within twenty four hours after its issuance.

A suspect who is not taken into custody shall be served a writ of interrogation either by hand, or by telephone/cable or by any other means of communication. The writ shall specify who is summoned and by whom, the date and time of appearance and the implications of non-appearance. The writ shall be served to a suspect with the written acknowledgement of receipt or, when the suspect is not available at the time of delivery, the writ may be served to an adult member of his/her family or to the respective housing/communal organisation/administration at the place of his/her residence or work which must deliver the writ to the suspect. A suspect may be summoned by other means of communication. When a suspect is outside Kazakhstan and evades the interrogation by preliminary investigation authorities, the writ is published in the Kazakhstan mass media and other publicly available telecommunication networks or, when the location of such suspect is known, in the mass media at the place of his/her location.

The crime classification opinion shall be pronounced in the presence of a defence attorney, if his/her presence is required by law or suspect's petition, within twenty four hours after the issuance of such opinion. If the suspect or his/her defence attorney does not appear, the opinion may be pronounced after the expiration of the twenty four hour period.

The officer performing preliminary investigation shall explain the matter of suspicions to the suspect. The suspect shall be delivered a copy of the crime classification opinion.

When a suspect is outside Kazakhstan and evades the interrogation by prosecution authorities, the officer performing preliminary investigation and, if a defence attorney appears, the defence attorney shall write on the crime classification opinion that it cannot be pronounced because the suspect is outside Kazakhstan and evades the interrogation by preliminary investigation authorities.

When the place of the suspect's location is known, a copy of the aforementioned opinion is delivered to him/her by means of communication, including, but not limited to, the regular mail. When necessary, the officer performing preliminary investigation may, by approbation of the prosecutor, arrange for the publication of the suspect's crime qualification opinion in the Kazakhstan mass media or mass media at the place of the suspect's location, as well as any publicly available telecommunication networks.

Witnesses, victims and suspects shall be summoned for interrogation by the person performing preliminary investigation by a writ served in compliance with the statutory procedure or by any other means of communication.

The novel of the current Code of Criminal Procedure is that it allows remote interrogation.

The interrogation of a suspect or witness may be assisted by highly technological video communication facilities (remote interrogation) when the suspect is summoned to the preliminary investigation authorities located in the district/oblast/republican status city/capital city where such suspect or witness resides. In the course of such remote interrogation its participants interactively communicate with interrogated persons.

Remote interrogation may be applied when:

1) a person cannot, due to health or other reasonable excuses, appear in the authorities performing criminal proceedings at the place where a certain criminal case is investigated/trialled;
2) a person needs protection;
3) the interrogated person is under eighteen years old;
4) it is required by the time restrictions of preliminary investigation or court trial; or
5) there are reasons to assume that direct interrogation is difficult or costly to arrange.

The decision on remote interrogation is made by the officer investigating the case either at his own discretion or on the application from any party of the criminal proceedings, or at the request of the prosecutor delivered in the manner prescribed by the Code of Criminal Procedure.

The application of highly technological devices in the course of remote interrogation ensures high quality image and sound, as well as information security. When a person seeks protection, his/her image and voice can be modified in the course of a video conference, at the request of such person, ensuring that no one recognizes him/her.

When the officer performing preliminary investigation realizes that all facts of a certain case which need to be proven are established in compliance with the Code of Criminal Procedure, such officer shall notify, in writing, the suspect and his/her defence attorney or legal representative, if any, as well as the victim and his/her representative, civil plaintiff, civil defendant and their respective representatives of the investigation completion.

Concurrently with such notification the aforementioned persons are explained their rights for insight into the case materials and petition for additional investigation or other proceedings. The notice shall specify the place where the case materials can be reviewed and the deadlines for such review. The fact of the case materials review by a participant of the proceedings shall be recorded in the form of a protocol.

The time required by a suspect or his/her defence attorney for insight into the case materials shall not be limited. However, when the suspect and his/her defence attorney

obviously procrastinate the time, the officer performing preliminary investigation may draft a schedule for review of the case materials within a certain period of time subject to approval by the prosecutor.

After all parties of the proceedings review the case materials and all their petitions are considered, the officer performing preliminary investigation shall issue an indictment and deliver it together with the case materials to the respective prosecutor. The prosecutor shall, in his/her turn, review the indictment and case materials. Having reviewed the criminal case materials, the prosecutor shall undertake one of the following actions:

1) approve the indictment;
2) issue another indictment;
3) forward the criminal case to the officer performing preliminary investigation for additional investigation;
4) close the criminal case, either in part or in whole, on the grounds provided by the Code of Criminal Procedure;
5) make a decision on the execution of a procedural agreement, either at his own discretion or on the application from a defence party; or
6) extend or shorten the list of persons summoned to court, except for the list of witnesses on the part of defence.

The prosecutor shall ensure that the indictment is handed to the defendant and the acknowledgement of its receipt shall be entered upon the record.

When the defendant is outside Kazakhstan and evades prosecution proceedings, the prosecutor shall deliver the indictment to the defendant via the available means of communication. When necessary, the prosecutor shall arrange for the publication of an announcement in mass media and other publicly available telecommunication networks on the referral of the criminal case to court.

A copy of the indictment shall be delivered to the defence attorney of the defendant, victim and his/her legal representative by hand or through other available means of communication.

Upon the completion of all actions required by the Code of Criminal Procedure, the prosecutor shall resolve to commit the defendant to court and shall refer the criminal case to the relevant jurisdiction court.

When a subject of criminal proceedings is outside Kazakhstan, he/she shall be summoned by a writ based on the application for legal redress. Such person shall be notified of summons in advance. The summoned person, except for the suspect, defendant, accused and convict, is informed about the amount and procedure for reimbursement of the expenses incurred in connection with the summons.

Those witnesses, victims, civil plaintiffs, civil defendants, their representatives and experts who obeyed the summons while being outside Kazakhstan, shall not be liable to criminal or administrative proceedings, taken into custody or applied any other measure of procedural restraint in Kazakhstan, irrespective of their citizenship, for any actions or

indictments which were committed/issued before they crossed the Kazakhstan border.

The aforementioned persons also shall not be held liable, taken into custody or penalized in connection with any testimonial evidence provided by them in the capacity of a witness/victim or any opinions issued by them in the capacity of an expert with respect to the criminal case for which they were summoned.

The summoned person will lose the aforementioned warranties if he/she does not leave Kazakhstan within fifteen days or within any other term determined by an international treaty ratified by Kazakhstan starting from the date of receipt of a written notice from the authorities conducting criminal proceedings that there is no need to participate in the proceedings, or if such person voluntarily returns to Kazakhstan. Such term does not include the time during which the person could but did not leave Kazakhstan through no fault of his/her.

The Code of Criminal Procedure regulates the proceedings on cases under procedural agreements.

Criminal investigation of cases under procedural agreements shall be performed in the following forms:

1) deal of confession – applies to crimes of insignificant or moderate gravity or grave crimes, provided that the suspect/defendant accepts suspicions/ accusations; or
2) deal of cooperation – applies to all categories of crimes, when the suspect/ defendant assists with the investigation and clearance of crimes committed by a criminal group, or extremely grave crimes committed by other persons, or extremist and terrorist crimes.

A procedural agreement shall not be executed with a person who committed a criminal violation in the state of insanity or who developed a mental disease after he/ she committed a crime.

The execution of a procedural agreement shall not serve as the ground for exemption of a person from civil and legal liability to the persons recognized as victims and the civil plaintiff.

The procedural agreement in the form of a deal of confession may be executed subject to the following conditions:

1) the suspect/defendant expresses his/her wish to voluntarily sign such procedural agreement;
2) the suspect/defendant does not challenge the suspicions/accusations and available evidence of the committed crime, and the nature and extent of damages caused by such crime; and
3) the suspect/defendant agrees to sign the procedural agreement.

The procedural agreement in the form of a deal of confession may not be executed:

1) with respect to cumulative offences, when at least one of them does not meet the requirements of the Code of Criminal Procedure; or

2) when at least one of the victims refuses to sign the procedural agreement.

Please see below the effects of such procedural agreement execution in the form of a deal of confession:

1) prejudicial proceedings are completed within the term established by the Code of Criminal Procedure starting from the effective date of the procedural agreement;
2) court trial of the deal of confession is conducted in the manner prescribed by the Code of Criminal Procedure; and
3) the victim who agreed to sign such procedural agreement loses the right to change the claimed amount of damages.

The suspect/defendant may decline a procedural agreement before the moment when court retires to the decision room.

A procedural agreement does not deprive the victim/civil plaintiff of his/her right to file a civil claim through the respective criminal proceedings or through civil proceedings.

The parties' refusal to sign a procedural agreement does not preclude them from applying again for execution of such agreement.

The suspect/defendant/culprit may apply for execution of a procedural agreement in the form of a deal of confession at any time during the criminal proceedings until the moment when court retires to the decision room. A procedural agreement may be executed on the prosecutor's initiative.

A procedural agreement in the form of a deal of cooperation may be executed between the prosecutor and suspect/defendant/culprit/convict with the involvement of his/her defence attorney in compliance with the Code of Criminal Procedure subject, if necessary, to the confidentiality and security measures provided by the Code of Criminal Procedure. Such agreement shall be approved by the prosecutor of the respective oblast or similar status, by his/her associates and, if a convict, by the Prosecutor-General of the Republic of Kazakhstan or his/her associate.

After the procedural agreement in the form of a deal of cooperation is approved by the prosecutor of the respective oblast or similar status, by his/her associates and, if a convict, by the Prosecutor-General of the Republic of Kazakhstan or his/her associate, the prosecutor who signed such procedural agreement shall immediately arrange for clearance of the crime being the subject of the procedural agreement and for exposure of guilty persons. The same prosecutor shall reckon the need either to cancel or to change the restraint measure applied to the suspect/defendant.

The court allows conciliation proceedings when:

1) the procedural agreement in the form of a deal of cooperation is signed in the course of prejudicial inquiry; or
2) the procedural agreement in the form of a deal of cooperation is signed in the course of court proceedings.

Conciliation proceedings are not permissible when a party voices his/her dissent with the procedural agreement before the moment when court retires to the decision room.

Based on the results of the procedural agreement review in the course of conciliation proceedings, the court shall adopt one of the following motivated decisions:

1) to remand the criminal case to the prosecutor in the absence of grounds for application of such procedural agreement;
2) to remand the criminal case to the prosecutor for the execution of a new procedural agreement, if the court disagrees with the crime classification, the claimed amount, or the type and extent of the punishment established by such procedural agreement;
3) to deny the conciliation proceedings and to remand the criminal case to the prosecutor, if the court doubts the guilt of the accused;
4) to drop the criminal case, if the court finds the facts set forth in the Code of Criminal Procedure; or
5) to issue an indictment prescribing a punishment, to adjudicate on a civil claim, or to apply a penalty established by the procedural agreement.

Special Considerations Relating to the Status of Foreign Nationals

Criminal proceedings with respect to foreign nationals and stateless persons are conducted in accordance with the Code of Criminal Procedure of the Republic of Kazakhstan. The Code of Criminal Procedure of the Republic of Kazakhstan provides for special procedures for criminal proceedings against or involving persons with diplomatic and other immunities and privileges set out in the international treaties of the Republic of Kazakhstan.

Those foreigners and stateless persons (who do not permanently reside in the Republic of Kazakhstan) who committed a crime outside Kazakhstan are criminally liable under the Kazakhstan Criminal Code if their crime was directed against the Republic of Kazakhstan and if the crime is covered by an international treaty of the Republic of Kazakhstan, unless such foreigners have been convicted in another state and brought to the criminal liability in the Republic of Kazakhstan.

Those foreigners and stateless persons who committed a crime outside Kazakhstan and are staying in Kazakhstan may be extradited to a foreign state for bringing them to criminal liability or for enduring their punishment in compliance with an international treaty of the Republic of Kazakhstan.

When a foreigner is detained, the respective authorities shall immediately or, if not possible, within twenty four hours notify the respective embassy, consulate or another representation of the detainee's home state through the Kazakhstan Ministry of Foreign Affairs in the manner prescribed by the joint order of the Kazakhstan Ministry of Foreign Affairs and Prosecutor-General.

Subject to an international treaty between the Republic of Kazakhstan and the respective foreign state or a mutual agreement between the Kazakhstan Prosecutor-General and the competent authorities/officials of such foreign state, the following persons may be extradited to their home state:

1) a foreigner sentenced by a court of the Republic of Kazakhstan to a term of imprisonment, or a Kazakhstan national sentenced by a court of foreign state to a term of imprisonment – for further service of sentence; and
2) a foreigner who committed in the Republic of Kazakhstan a socially dangerous act being insane or who developed a mental disease after committing such act and, therefore, may not be sentenced and penalized, and in relation to whom a Kazakhstan court has issued a ruling to apply compulsory measures of a medical nature,

   as well as a Kazakhstan national who committed in a foreign state a socially dangerous act being insane or who developed a mental disease after committing such act and, therefore, may not be sentenced and penalized, and in relation to whom a court of such foreign state has issued a ruling to apply compulsory measures of a medical nature;

   - for further compulsory medical treatment.

If the convicted offender is a national of a foreign state, the respective institution of the Kazakhstan penal enforcement system shall explain to such convict his/her right to appeal to the Kazakhstan Prosecutor-General or to the competent authorities of his/her home state for his/her extradition to such state for further service of sentence on the grounds and in the manner prescribed by the Code of Criminal Procedure.

Convicted foreigners and stateless persons enjoy in the Republic of Kazakhstan the freedoms and rights and incur the obligations which are provided by the Constitution and laws of the Republic of Kazakhstan and international treaties.

Convicted foreign nationals and stateless persons have the right to maintain contact with diplomatic missions and consulates of their home countries accredited in the Republic of Kazakhstan; and nationals of countries that do not have diplomatic missions and consulates accredited in the Republic of Kazakhstan may maintain contact with diplomatic missions of the country that have assumed the functions of protecting their interests or with international organizations conducting their defence.

Foreigners convicted to imprisonment and serving their sentences in Kazakhstan correction facilities may be transferred, for further service of sentence, to those states where they belong, in compliance with the procedure established by international treaties ratified by Kazakhstan or in accordance with written mutual agreements between the Kazakhstan Prosecutor-General and the competent authorities/officers of the respective foreign state, subject to the procedure prescribed by the Kazakhstan Code of Criminal Procedure.

Non-Liability

Transferring/obtaining property and providing/procuring monetized services as compliment or remuneration for earlier undertaken legitimate actions, in the absence of preliminary arrangements, provided that the value of such property or services does not exceed two monthly calculation indices, are not deemed as offence due to their low significance and are applied disciplinary or administrative measures.

The person who, at the moment of a socially dangerous act (as defined by the Criminal Code) was insane, i.e. could not realize the real nature and social danger of such act or omission or could not control such act due to a chronic mental disease, temporary mental derangement, dementia or any other disorder of the mental faculties, is not subject to criminal liability. The person found insane may be applied compulsory measures of a medical nature provided by the Criminal Code.

The person who committed a minor criminal offence or committed an offence for the first time may be exempt from criminal liability taking into account his/her personality, voluntary surrender, assistance with the investigation/clearance of the criminal offence or reparation for the damage caused by such criminal offence. Such exemption does not apply to the persons who committed terrorist/extremist crimes, crimes committed by a criminal group, child molestation, and grave or extremely grave crime against a person, unless otherwise explicitly provided by the respective articles of the Special Part of the Criminal Code. The restriction does not apply to underaged persons who committed a crime against sexual inviolability of another person aged 14 to 18 years.

The person who exceeded the limits of necessary defence because of fear, fright or confusion caused by a socially dangerous infringement may be exempt from criminal liability with regard to the circumstances.

A person may be exempt from criminal liability if he/she fulfils all the terms and conditions of a procedural agreement. This provision does not apply to persons who commit crimes against sexual inviolability of underaged persons, unless such crime is committed by an underaged person against sexual inviolability of another person aged 14 to 18 years.

The person who committed a minor criminal offence or a crime of insignificant or moderate gravity that did not involve death, may be exempt from criminal liability, provided that he/she has reconciled with the victim/plaintiff (including the mediation procedure) and made up for the damages.

The person who committed a minor criminal offence for the first time or a crime of insignificant or moderate gravity that did not involve death or grievous bodily harm, which is applied by the respective article (or a part thereof) of the Special Part of the Criminal Code a penalty, among other primary punishments, may be exempt from criminal liability subject to bail surety.

The person who committed a criminal offence shall be exempt from criminal liability through judicial proceedings, if the court recognizes that, by the date of trial, the committed offence stopped to be socially dangerous due to the change of conditions.

The person who committed a minor criminal offence for the first time or a crime of insignificant or moderate gravity shall be exempt from criminal liability through judicial proceedings, if the court determines that due to his/her irreproachable behaviour such person, as at the trial date, may not be deemed as socially dangerous.

A person shall be exempt from criminal liability if the following statutes of limitations have expired:

1) one year after a minor criminal offence;
2) two years after a crime of insignificant gravity;
3) five years after a crime of moderate gravity;
4) fifteen years after a grave crime; and
5) twenty years after an especially grave crime.

The aforementioned statutes of limitations shall be determined from the date of a crime commitment until the effective date of the respective verdict.

The person who after a committed crime developed a mental disease depriving him/her of the opportunity to realize the real nature or social danger of his/her action/omission or to control such action/omission shall be released by court from the applicable punishment and, if such person is serving a sentence, he/she shall be absolutely discharged. The court may apply to such persons compulsory measures of medical character provided by the Criminal Code.

The person suffering from any other serious disease which prevents him/her from serving the sentence, other than life imprisonment, shall be exempt by court from the applicable punishment, otherwise the punishment may be substituted by lighter punishment, considering the nature of his/her disease, the gravity of committed crime, the personality of the convict and other circumstances.

The person convicted for a minor criminal offence or a crime of insignificant or moderate gravity may be released by court from punishment in case of a force majeure event having particularly serious implications for his/her family, including, but not limited to, fire, calamity and grave illness or death of the sole family member capable to work.

A person convicted for a criminal violation shall be released from punishment if his/her sentence has not been enforced within the following terms starting from the effective date of such sentence:

1) one year in case of a minor criminal offence;
2) three years in case of a crime of insignificant gravity;
3) six years in case of a crime of moderate gravity;
4) ten years in case of a grave crime; and
5) fifteen years in case of an especially grave crime.

Subject to an act of amnesty, the person who committed a minor criminal offence or a crime of insignificant or moderate gravity may be exempt from criminal liability.

Economic Crimes

Violations of standards, rules and regulations approved by the State in the fields of licensing, immigration, tax, customs and labour relations, environment that have resulted in heavy or very heavy damages normally entails criminal liability of the chief executive officer of a legal entity or structural subdivision who made the erroneous decision.

In making operational decisions, special attention should be given to the analysis of the requirement to obtain licenses and other mandatory permits and consents. Some of the most common mistakes include: excessive reliance on poorly qualified agents offering their services on obtaining licenses/permits; commencement of operations prior to obtaining or after expiration of the term of licenses/permits; incomplete list of activities in licenses/permits. Certain violations of licensing requirements are also prompted by the omissions in and non-systematic and frequent amendments and changes to the national legislation in this field.

Consequences of illegal business activities may include: imprisonment of the responsible manager with or without confiscation of property in accordance with criminal procedure; confiscation of company's assets and income in accordance with administrative procedure; invalidation/voidance or annulment of transactions and restitution in accordance with civil procedure.

Repeated (twice or more) instances of hiring foreign labour in violation of the established procedure are subject to significant fines, or correctional works of the same extent, or public works for up to three hundred (300) hours, or arrest for ninety (90) days.

A failure to pay or evasion of taxes and other obligatory payments to the budget and violation of customs rules may also entail criminal liability of the chief executive and the company may be subject to a fine in the amount of 30% - 50% of the outstanding tax liabilities in accordance with administrative procedure.

Many business people in Kazakhstan become victims of corruption crimes. It should be noted that bribing of a person authorized to perform state duties, either directly or through a mediator, entails criminal liability. Bribers who have not voluntarily informed law enforcement authorities of the fact that they had been subject to extortion may also be held liable.

In addition, it is not a rare case when extorting officers unreasonably accuse business people of committing a crime. In such events, we recommend that the victims of extortion immediately seek legal assistance from an attorney.

PROCUREMENT

For avoidance of unreasonable public expenditure, for provision of vendors with equal access to public purchasing opportunities and for maintenance of fair competition among potential vendors, Kazakhstan applies legislative control to procurement procedures in certain sectors of the national economy.

The most properly regulated sectors in terms of procurement include the following:

1) Public procurement implying the procurement, on a paid basis, of goods, works and services by government authorities, agencies and enterprises and by the legal entities in which at least fifty percent of voting shares (interests in the authorized capital) are held by the government, and corporate affiliates thereof, except for national management holdings, national holdings, national management companies, national companies and corporate affiliates thereof, the Kazakhstan National Bank and its departments and structural subdivisions, the legal entities in which at least fifty percent of voting shares (interests in the authorized capital) are held or managed by the Kazakhstan National Bank, and corporate affiliates thereof;
2) Procurement of goods, works and services by subsoil users and their contractors in the course of subsoil use operations;
3) Procurement of goods, works and services by JSC Samruk-Kazyna National Welfare Fund (the "Fund") and the legal entities in which at least fifty percent of voting shares (interests) are directly or indirectly held by the Fund on the right of ownership or trust management.

Public Procurement

Among the aforementioned sectors public procurement is most properly described and regulated by Kazakhstan Law *On Public Procurement* No. 434-V of 4 December 2015 (the "Law").

The Law came into force on 1 January 2016 with the following exceptions:

1) Article 31 came into force on 1 April 2016; and
2) Article 43.26 will come into force on 1 January 2017.

The Law superseded the previous Kazakhstan Law *On Public Procurement* of 21 July 2007.

The Law regulates any relations arising from the procurement of goods, works and services required for proper operation and for performance of public functions or statutory activities by a customer, save for:

1) services procured from individuals under employment contracts;
2) services procured from individuals who are not engaged in entrepreneurial activities under fee-based service contracts;
3) services that require travel expenses;

4) government assignments, as well as the goods/works/services procured for the performance of such assignments in compliance with the Kazakhstan budget legislation;
5) any contributions, including the contributions to authorized capital of legal entities;
6) goods/works/services procured by national management holdings, national holdings, national management companies, national companies and corporate affiliates thereof, the Kazakhstan National Bank and its departments and structural subdivisions, the legal entities in which at least fifty percent of voting shares (interests in the authorized capital) are held or managed by the Kazakhstan National Bank, and corporate affiliates thereof;
7) goods/works/services designed for military or dual use/application as a part of defence order; and
8) goods/works/services procured in the course of the operations specified in Article 5-1.2(11) of the Kazakhstan Banking Law.

In Kazakhstan public procurement can be performed through a tender (either an open tender or a prequalification tender or a two-stage tender), request for quotation, single-source procurement, auction or commodity exchange.

Public procurement through a tender

The Law introduced a new method of procurement, i.e. prequalification of potential vendors included into the register of qualified potential vendors, while the public procurement through a tender involves potential vendors selected as the result of competitive bidding procedure whose bids meet the relevant requirements to qualification and tender documentation.

Since 1 January 2016, apart from the registers of customers, public procurement agreements and unreliable participants of public procurement, Kazakhstan maintains a register of qualified potential vendors.

The register of qualified potential vendors is a list of the potential vendors who meet the qualification requirements set forth in the guidelines for the formation and maintenance of registers in relation to public procurement.

Tender documentation is developed by the public procurement authority, in Kazakh and Russian, in the digital form determined by the public procurement regulations, subject to the provisions of the Kazakhstan legislation concerning state secrets. Tender documentation must contain, apart from qualification requirements, the following:

1) full name and address of the public procurement authority;
2) technical specification, including the detailed description of functional, technical, qualitative and performance characteristics of procured goods/works/services, consistent with the Kazakhstan technical regulations. If necessary, the technical specification must list the applicable technical regulatory documentation. When procured works require project estimate documentation, technical specification is replaced with the relevant project estimate documentation;

3) quantity/scope of procured goods/works/services;
4) place of delivery/performance/provision of goods/works/services;
5) determined terms of delivery/performance/provision of goods/works/services and warranty of quality of the offered goods/works/services;
6) payment conditions and draft public procurement contract;
7) criteria, except for price, used to choose the winner of a tender, including the specific value of each criterion and the calculation of bid price;
8) requirements to the bid contents, including the estimates of transportation and insurance costs, customs duties, taxes (except for VAT) and fees, and other expenses required by the delivery/performance/provision of goods/works/services, save for the prices of procured goods/works/services;
9) currency or currencies in which a bid must be expressed and the exchange rate at which the bid price must be reduced to a common currency for the purpose of comparison and evaluation;
10) requirements to the language of a bid and public procurement contract in compliance with the Kazakhstan legislation concerning languages;
11) terms and conditions for submission, contents and security of a tender bid;
12) clause regarding the potential vendor's right to modify or withdraw their bid before the bidding deadline;
13) procedure, method and deadline for presentation of a bid and the validity period thereof;
14) procedure for the preliminary discussion of draft tender documentation;
15) date and time of bid opening;
16) detailed description of the procedure for opening, consideration, evaluation and comparison of bids;
17) information on representatives of the customer and public procurement authority authorized to represent the parties in the coming tender;
18) terms, conditions, types, scopes and methods of securing the performance of a public procurement contract; and
19) funds allocated for the procurement of goods/works/services through the tender.

Tender documentation may contain any other supplementary information ensuring better understanding by potential vendors of the tender terms and conditions.

To minimize corruption risks the Law introduced the notion of preliminary discussion of draft tender documentation by potential vendors.

Comments to draft tender documentation and requests for clarification of certain provisions thereof may be sent to the customer, public procurement authority and sponsor of the tender within five business days after the announcement of the relevant public procurement. In the absence of comments, the tender documentation may be approved.

In case of any comments, the customer and public procurement authority must, within five business days after expiration of the period allowed for preliminary discussion of tender documentation, adopt any of the following decisions:

1) to introduce the necessary amendments to the draft tender documentation;
2) to reject comments to the draft tender documentation providing the reasons for such rejection; or
3) to clarify provisions of the tender documentation.

Upon the adoption of the aforementioned decision, the tender documentation shall be deemed approved.

A bid is a form of potential vendor's agreement with the terms and conditions set out in tender documentation and their consent to the receipt of information about such potential vendor proving their conformance to qualification requirements and restrictions established by the Law.

A bid is submitted by a potential vendor to the public procurement authority in a digital form through the public procurement web-portal before the bidding deadline specified in the tender documentation.

Provisions of the Law also raise the responsibility of participants of public procurement through anti-dumping measures. For example, when public procurement is performed through a tender, bidders are allowed to specify dumping prices if they deposit, apart from the security for the performance of a public procurement contract, an amount equivalent to the reduced amount of the lowest admissible bid not recognized as dumping.

Bids are considered by the tender committee which is called to identify the potential vendors who meet the qualification requirements and requirements to tender documentation.

Based on the results of bids analysis with regard to their conformance to the qualification requirements and requirements to tender documentation, the tender committee executes a prequalification protocol to be signed by the chairman, secretary and all members of the tender committee on the date of decision-making on bids pre-qualification.

A bid is opened by the web-portal automatically upon the completion of analysis for conformance of the bid to the qualification requirements and requirements to tender documentation. The public procurement web-portal automatically compares bid prices and chooses the winner based strictly on lowest bid.

When bid prices are equivalent, the winner (or the second bidder determined by prequalification results) becomes the bidder who has the most extensive experience in the market of the procured goods/works/services, including similar goods/works/services subject to the tender. When several bidders have equal experience and equal prices, the winner (or the second bidder determined by prequalification results) becomes the bidder whose bid was submitted earlier.

A protocol on tender results is automatically generated and posted on the public procurement web-portal with simultaneous notification of all members of the tender committee and bidders via email.

A protocol on tender results may be appealed by any bidder in the manner prescribed by the Law.

A public procurement tender may be declared void on one of the following grounds:

1) no one submitted a bid;
2) less than two bids submitted;
3) none of bidders was accepted; or
4) only one bidder accepted.

When a public procurement tender is declared void, the customer must adopt one of the following decisions:

1) re-tendering exercise;
2) amendment of tender documentation and re-tendering; or
3) public procurement from a single source.

When a public procurement tender fails, the customer may procure goods/works/services from a single source subject to the following conditions:

1) no one submitted a bid, provided that the potential vendor invited to participate in public procurement from a single source is selected by the customer;
2) less than two bids submitted, provided that the invitation to participate in public procurement from a single source is sent to the potential vendor who submitted a bid. The value of the public procurement contract must not exceed the bid price of the potential vendor specified in the bid;
3) none of bidders was accepted, provided that the invitation to participate in public procurement from a single source is sent to the potential vendor whose bid price was the lowest, considering the bid discount, save for those potential vendors who violated Article 6 of the Law; or
4) only one bidder accepted, provided that the invitation to participate in public procurement from a single source is sent to the accepted bidder on the terms and conditions set forth in their bid, and the value of the public procurement contract does not exceed their bid price.

Public procurement through prequalification tender applies only to those goods/works/services which are approved by the competent authority and is conducted in the following sequence:

1) in the first stage, the competent authority, in consultation with the Kazakhstan National Chamber of Entrepreneurs and other non-profit organisations, forms a register of qualified potential vendors; and
2) in the second stage, the customer announces a public procurement tender among potential vendors included into the register of qualified potential vendors.

Public procurement through a request for quotation

Public procurement through a request for quotation applies to homogeneous goods/works/services, provided that the annual output of such homogeneous goods/works/services in value terms does not exceed four thousand-fold monthly calculation index determined for the respective financial year by the republican budget law, and the decisive factor is price.

Public procurement from a single source

Public procurement from a single source applies to failed public purchases and direct agreements on public procurement.

When a public purchase fails, the customer may opt for public procurement from a single source subject to the following conditions:

1) a public procurement tender/auction is declared void on the grounds provided by the Law. This provision does not apply to those public procurement tenders/auctions the results of which were invalidated in compliance with Kazakhstan laws; and
2) public procurement through a request for quotation is declared void on the grounds provided by the Law, or the measures undertaken by the public procurement authority did not entail the execution of a public procurement contract.

Article 39.3 of the Law provided for 54 methods to arrange public procurement from a single source under a direct public procurement contract.

Kazakhstan Law No. 36-VI of 28 December 2016 introduced amendments into the Law which extended the list of conditions under which public procurement from a single source may be based on a direct public procurement agreement, in particular:

- procurement of goods/works/services for the purpose of preventing, suppressing and combatting terrorism or extremism by competent authorities.

Public procurement through an auction or commodity exchange

Public procurement through an auction is arranged on-line via the public procurement web-portal and is managed by a single operator of electronic public procurement transactions.

Goods are auctioned in a single lot.

When goods may be delivered to several points, the auction lot must specify all of them.

An auction may be attended by potential vendors whose bids have been pre-qualified for the auction with respect to their conformance to qualification requirements and requirements to auction documentation.

Public procurement through a commodity exchange must be arranged in compliance with the Kazakhstan legislation concerning commodity exchanges within the range of approved exchange commodities and via two-way auction-based scheduling.

When the annual volume of public procurement of goods included into the list of exchange commodities does not exceed the minimum permissible lot specified in

the list of exchange commodities, the customer may opt for another method of public procurement.

Agreements on public procurement must be drafted on the basis of the model agreements approved by the competent authority. This requirement does not apply to those agreements on public procurement which are deemed as public agreements executed in compliance with Kazakhstan laws.

The customer must deliver a draft public procurement contract certified with the respective electronic digital signature to the winner via the public procurement portal:

1) within five business days after expiration of the period allowed for appeal of tender/auction results; or
2) within five business days after determination of the winner through the procedure of the request for quotation.

If the award procedures, including the procedure for appeal of prequalification tender results, are completed prior to the adoption of the respective budget (development plan), a draft public procurement contract must be sent to the winner within five business days after the adoption of such budget (development plan).

A draft public procurement contract must be certified by the electronic digital signature of the winner of the respective tender/auction/request for quotation within three business days after the post of the relevant notice (with the draft public procurement contract attached) on the public procurement web-portal.

Procurement of goods, works and services by subsoil users and their contractors in the course of subsoil use operations

Legal regulation of the procurement of goods/works/services by subsoil users and their contractors in the course of subsoil use operations is similar to the public procurement regulation procedure, although simpler. The procurement in this sector is regulated by Article 77 of Kazakhstan Law *On Subsoil and Subsoil Use* No. 291-IV of 24 June 2010 and Joint Order of the Kazakhstan Minister for Investment and Developments No. 253 of 27 February 2015 and Kazakhstan Minister of Energy No. 241 of 27 March 2015 *On Approval of the Guidelines for Procurement of Goods, Works and Services in the Couse of Subsoil Use Operations*.

Subsoil users may procure required goods/works/services through the register of goods/works/services used in the course of subsoil use operations and manufacturers/performers/providers thereof or through other electronic procurement systems found in the Kazakhstan segment of the Internet and synchronized with the register of goods/works/services used in the course of subsoil use operations and manufacturers/performers/providers thereof.

Procurement of goods, works and services by JSC Samruk-Kazyna National Welfare Fund (the "Fund") and the legal entities in which at least fifty percent of

voting shares (interests) are directly or indirectly held by the Fund on the right of ownership or trust management

The procurement in this sector is regulated by Article 19 of Kazakhstan Law *On the National Welfare Fund* No. 550-IV of 1 February 2012 and the respective Regulations approved by Resolution of the Board of Directors of the Fund No. 126 of 28 January 2016.

The Regulations were put into effect on 18 April 2016 in pursuance of the international obligations assumed by the Republic of Kazakhstan upon its accession to the World Trade Organisation and Eurasian Economic Union.

The new Regulations pursue, first of all, the objection to support domestic producers of goods and providers of services/works. Hence, the subsoil companies of Samruk-Kazyna Group were granted a "transition period" during which domestic vendors retain some of their preferences. The transition period applies to subsoil use contracts executed before 1 January 2015 and will expire on 1 January 2021.

The aforementioned preferences include billback allowance of **up to 20%**, exemption from whatsoever security and advance payment of **at least 30%**. Nevertheless, the Regulations do not exempt domestic vendors from penalties for non-performance of their contractual obligations.

Another important novelty is the preliminary discussion of draft tender documentation with potential vendors. From now on, the customer or tender sponsor must, at least ten (10) business days before the tender documentation approval, post on their official website the draft tender documentation. Any comments and requests for clarification may be delivered to the customer or tender sponsor within five business days after such tender documentation was posted on the website.

Besides, the national register of domestic manufacturers has been modified and, currently, it is registering all (both domestic and foreign) manufacturers and their goods.

Subject to the new Procurement Regulations approved by Resolution of the Fund's Board of Directors No. 126 of 28 January 2016, the Customer must give preference to disabled vendors of goods/works/services (disabled adults engaged in business activities) entered into the Holding's register of entrepreneurs with disabilities, entities falling within the Holding and manufacturers of procured goods entered into the Holding's register of manufacturers.

The Regulations set out the following compulsory criteria for evaluation and comparison of tender applications from potential vendors ensuring a provisional price reduction:

1) a potential vendor shall be a bona fide vendor on the Holding's list of bona fide vendors (1% provisional price reduction);
2) a potential vendor shall be a manufacturer of procured goods on the Holding's list of manufacturers (5% provisional price reduction);

3) a potential vendor shall have at least 5-year experience on a homogeneous market of procured goods/works/services (1.5% provisional price reduction for a 3-year experience and 0.5% for each subsequent year of experience, but in any case not more than 2.5%) confirmed by appropriate documents (either originals or notarised copies), including consignment bills and transfer and acceptance certificates issued in relation to procured goods/works/services); and
4) a potential vendor shall have certified management system(s) conforming to Kazakhstan national standards and meeting the objectives of performed procurement supported by a notarised copy of the management system certificate or by a copy authenticated by the issuer of the certificate (1% provisional price reduction).

Considering the current economic situation in Kazakhstan, the Regulations were amended with a view to introduce new provisions for regulation of relations between the Fund companies and vendors in the conditions of national currency exchange rate fluctuation. For example, prices for goods/works/services and relevant (long-term) procurement contract amounts can grow in the period of reducing tenge exchange rage starting from the date of contract award until the date of the relevant procurement contract signing. Such adjustment of a draft procurement contract is permissible within the amounts allocated for the procurement of such goods/works/services in a long-term procurement plan. Nevertheless, the vendor must justify to the Customer such increase in the procurement contract value and provide a detailed calculation of production costs and/or factors triggering such increase in costs supported by documentary evidence.

Subject to the new Regulations, when the national currency exchange rates substantially plunge, potential vendors may resort to the following measures without a risk of security forfeiture:

- revoke their tender application and/or refuse to sign the long-term procurement contract within the period starting from the envelopes opening date until the date when such procurement contract has to be signed; and
- refuse to stand the advance payment/downpayment security and/or to perform the procurement contract within the period starting from the date of the procurement contract signing until the date when such advance payment/downpayment security shall be paid and/or the procurement contract shall be performed under the contract.

OUR TEAM

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Specialization: Litigation and Arbitration. Corporate Finance and Securities

Work Experience:

Vitaliy joined Sayat Zholshy & Partners in 2001, became a partner in 2003 and has been the Managing Partner since January 2008.

He has a wide experience in legal support of operations of major companies in the fields of agriculture, energy, phosphorous production and education.

He has been actively involved in almost all M&A projects of the firm.

Vitaliy was in charge of a number of due diligence projects, including the one for a major Kazakhstan food holding company, processing industry assets in Georgia for further privatization and acquisition thereof, and a number of food and processing companies.

Vitaliy Vodolazkin has participated in numerous large litigations in courts of all levels in the Republic of Kazakhstan and represented clients engaged in the phosphorous industry, as well as subsoil users, in connection with unlawful additional assessment of taxes; represented a leading Kazakhstan bank in connection with its projects related to toxic assets; enforcement of outstanding liabilities from clients; protection of shareholders' interests, etc.

The firm's Litigation Team headed by Vitaliy was recognized as the best in Kazakhstan from 2009 to 2012. *Who is Who Legal: CIS* recommended Vitaliy Vodolazkin in 2010-2015 as a leading litigation and arbitration expert in Kazakhstan. International legal guides, such as *The Legal 500: Europe, Middle East and Africa*, *IFLR1000, Asia Law Profiles* and *Chambers and Partners*, annually recommend Vitaliy as one of the best arbitration and litigation lawyers in Kazakhstan**.**

Relying on the confidential relationship between our Clients and Partners based on trust, Vitaliy Vodolazkin has been appointed to the Board of Directors of one of the leading food holding companies in Kazakhstan to improve the quality of its strategic decisions.

Membership in Associations:

- Almaty Bar Association;
- Kazakhstan Association of Petroleum Lawyers;
- Union of Lawyers of Kazakhstan; and
- Arbitrator of the Kazakhstan International Arbitration.

Education:

- Kazakhstan State Law Academy, Department of Business Law, graduated with honours in 2001.

Languages:

- Russian
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Specialization: Antitrust (Competition) Law

Work Experience:

Chairman of the Board of Partners, Senior Partner of Sayat Zholshy & Partners, he remained the permanent head of the firm for eight years since its establishment through general management of the team of Sayat Zholshy & Partners and direct involvement in clients' projects. In 2007, he was appointed Deputy Chairman of the Committee for Protection of Competition of the Ministry of Industry and Trade of the Republic of Kazakhstan (the Antimonopoly Agency of the Republic of Kazakhstan) and also acted as an advisor to the Prime Minister of the Republic of Kazakhstan. He re-joined Sayat Zholshy & Partners in October 2008.

In 2009-2012, the antitrust (competition) practice of the firm, which is headed by Aidyn, was named the best practice in Kazakhstan.

Aidyn is also a columnist for the leading Kazakhstan weekly periodical, *Business and Power*, and has published about 40 articles and actively commented on articles of other authors. Aidyn is a frequent speaker at various conferences, round tables and forums on urgent matters of legal regulation of business in Kazakhstan.

The firm's Antitrust Team headed by Aidyn was named *The Antitrust Team of the Years 2009-2012* in Kazakhstan. *Who is Who Legal: CIS* recommended Aidyn in 2010-2015 as a leading antitrust law expert in Kazakhstan. International legal guides, such as *The Legal 500: Europe, Middle East and Africa*, *IFLR1000*, *Asia Law Profiles* and *Chambers and Partners*, annually recommend Aidyn as one of the best antitrust (competition) lawyers in Kazakhstan**.**

Aidyn Bikebayev is the author of the only in Kazakhstan monograph on antitrust law titled "*Antitrust Law and Policy in the Republic of Kazakhstan"*.

Aidyn has published over 40 academic essays and articles and frequently commented on the works of other authors in leading publications and periodicals in Kazakhstan. He is a columnist of a leading Kazakhstan weekly newspaper and a frequent speaker at various conferences, round tables and seminars on the topical issues of regulation of business activities.

Complementary Professional Activities:

- Deputy Chairman of the Kazakhstan International Arbitration;
- Almaty City Bar;
- Union of Kazakhstan Attorneys;
- Member of the Management Board of the Kazakhstan Bar Association, an association of commercial lawyers;
- Vice Chairman of the Council for Protection of Competition.

Education:

- Al-Farabi Kazakhstan National University, Law Department, graduated with honours in 1996.

Languages:

- Kazakh
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Specialization: International Cooperation, Criminal Procedure

Work Experience:

Rustam started his professional career in 2000. Before joining Sayat Zholshy & Partners, he worked as a lawyer for a major condensed gas transportation company.

Rustam joined Sayat Zholshy & Partners in 2001 and was admitted to partnership in 2002. In February 2007, he was appointed the Managing Partner of the firm and in January 2008 became the Senior Partner.

Rustam Ilzhanov is actively involved in all affairs of the Firm related to international cooperation. He builds and maintains connections with foreign law firms and organisations as partners. Rustam is the primary contact for all foreign colleagues and new clients and, subsequently, ensures proper communication and coordination of joint activities.

Besides, Rustam represents and protects the interests of foreign clients who have to face the reality of Kazakhstan criminal procedure.

He has been involved in a large number of transactions on sale and purchase of mining assets, attraction of investments in large deposits, and drafted contracts for drilling, development, operation and maintenance of facilities owned by operators of oil fields, and other transactions. He has been actively involved in lending projects for loans to subsoil users from Kazakhstan and international financial institutions, including a convertible loan from the International Finance Corporation.

Membership in Associations:

- Almaty Bar Association;
- Union of Lawyers of Kazakhstan; and
- Arbitrator of the Kazakhstan International Arbitration.

Education:

- Columbia University, New York (USA), LL.M. Specialization in international commercial contracts, legal regulation of foreign investment and legal considerations of the activities of the WTO, graduated in 2000.
- Kazakh State Law University, Department of International Law and Public Service, graduated in 1999. Included in the Gold Book of the Kazakh Law University.

Languages:

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Specialization: Mergers and Acquisitions. Tax Law

Work Experience:

Rustam started his professional career as an in-house council of one of the second-tier banks in 1998.

He joined Sayat Zholshy & Partners as an associate and became a partner in 2001.

In 2009, the tax practice of the firm which is headed by Rustam was named the best practice in Kazakhstan. Rustam's team has been advising a large number of clients on tax-related matters and has been successful in protecting and representing the rights and interests of taxpayers in accordance with administrative procedure, as well as in courts.

He acted as a legal advisor for liquidation proceedings of a large Kazakhstan bank and a number of leading phosphorous and energy companies. He has a wide experience in structuring and consummating mergers and acquisitions in compliance with the requirements of the tax, corporate and antitrust legislation.

Rustam has been involved in numerous due diligence projects for large Kazakhstan companies in connection with potential legal risks related to the acquisition of their business operations. He also participated in drafting, consummation and actual fulfilment of transactions on purchase of major enterprises in the energy and gas transportation sectors, and in reorganization of separate legal entities and holdings of companies.

In 2010 *Who is Who Legal: CIS* recommended Rustam as a leading M&A expert in Kazakhstan.

He also represented clients in courts (including natural monopolies and dominant market participants and other market participants) in their relations with antimonopoly and tax authorities in connection with appeals against and invalidation by courts of decisions of officials and acts of such authorities.

Membership in Associations:

- Almaty Bar Association;
- Union of Lawyers of Kazakhstan; and
- Arbitrator of the Kazakhstan International Arbitration.

Education:

- Kazakhstan State Law University, Department of Business Law, graduated with honours in 1998.

Languages:

- Russian
- English

Arman BERDALIN
Partner, Attorney at Law
Head of the Astana Office

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Specialization: Mergers and Acquisitions. Corporate Law. Corporate Governance

Work Experience:

Arman Berdalin is a practicing lawyer who has over 17-year legal experience. Arman Berdalin has extensive experience in structuring and executing business sale and purchase transactions (over 100 purchased assets for billions of US dollars) and settlement of matters related to business relations between shareholders. His experience covers not only Kazakhstan businesses but also cross-border transactions involving transnational corporations. Arman regularly participates in projects for the establishment of joint ventures, in which regard he drafts shareholders' agreements, complex articles of association, regulations and many other documents.

As a head of the Astana SZP office Arman maintains ongoing contact with quasi-government companies. In this sector, SZP contributed to such projects as out-reach to shareholders of second-tier banks (BTA, Alliance Bank and Temirbank), acquisition of shares in mining companies, and restructuring of national companies. Arman also managed the project for legal support of newly established Kazakhstan Integrated Centre for Coordination of Special Economic Zones.

Arman is also experienced in dealing with international development institutions. Over three years, Arman represented SZP in an IFC project (World Bank Group member) aimed to improve corporate governance in Kazakhstan. Moreover, Arman led an SZP project for provision of services to the European Bank for Reconstruction and Development in an effort to review and reform Kazakhstan joint stock companies legislation.

For a number of years, Arman has been annually recommended by various international rating agencies, including *Chambers, Legal500* and *Asia Law Profiles*, who highly evaluate Arman's achievements, for example:

"Arman Berdalin wins prise for his sound corporate and M&A experience. He has made a mark in this field both as a lawyer and as a scholar. Interviewees are impressed with his determination, organizational skills and flair at presenting matters".

For example, he successfully initiated, together with other leading Kazakhstan lawyers, a public association of Kazakhstan commercial lawyers –Kazakhstan Bar Association (KazBar). As one of the key contributors to such cooperation and as a member of the KazBar Management Board, Arman has been admitted to the Interdepartmental Law-drafting Commission of the Kazakhstan Government.

Arman regularly makes presentations at conferences both inside and outside Kazakhstan, and conducts seminars and workshops on the most pressing legal and practical issues (e.g. Samruk-Kazyna Corporate University, Kazakhstan Institute of Management, Economics and Strategic Research). Arman also gives open and in-house seminars for such major market players as Philip Morris Kazakhstan, KazMunayGas and other.

Arman has many publications in legal journals and has been involved as an expert for drafting a number of articles in analytical publications (including foreign).

Membership in Associations:

- Almaty Bar Association;
- Union of Lawyers of Kazakhstan;
- Member of the Management Board of Kazakhstan Bar Association, an association of commercial lawyers;
- Member of the Interdepartmental Lawdrafting Committee of the Kazakhstan Government; and
- Arbitrator of the Kazakhstan International Arbitration.

Education:

- Kazakhstan State Law Academy, Department of Business Law, graduated with honours in 2000.

Languages:

- Russian
- English

Dmitry CHUMAKOV
Partner

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Specialization: Labour Law. Foreign Work Permits, Licenses and other Approvals of Government Authorities. Corporate Law. Family Law

Work Experience:

Before joining Sayat Zholshy & Partners as a Partner in September 2008, Dmitriy was in charge of legal departments (services) of the Ministry of Agriculture of the Republic of Kazakhstan and the largest domestic leasing company for ten years and then worked as a lawyer in the National Legal Service under the Ministry of Justice of the Republic of Kazakhstan.

He participated in negotiations for Kazakhstan's accession to the WTO, acted as an expert representing Kazakhstan in the Eurasian Economic Community (EurAsEC), provided legal support for various projects on allocation of large budgetary loans and subsidies and assisted in implementation of some of the largest investment projects (loans) of international financial institutions in Kazakhstan (IBRD, ADB).

Dmitry has extensive experience in providing legal support to major agricultural, engineering and research companies in connection with their reorganization. He was in charge of the legal work on setting up KazAgro National Holding. He participated in proceedings for liquidation of second-tier banks. He also supervised on a permanent basis matters relating to protection of public interests and interests of the business community in courts of all jurisdictions, including representation of clients in matters relating to administration of legal entities (corporate disputes), collection of debts, contesting transactions and disputes arising from labour regulations. For two years he acted successfully as a member of the board of directors of the largest non-bank lender in the agricultural sector.

Dmitry participated in lawmaking beginning with the drafting of concepts for regulatory legal acts and finishing with the legal support of the process of adoption of the act by a relevant state authority (the Parliament, the Government and Ministries). He co-drafted 29 laws and drafted more than 150 subordinate acts of the Government and Ministries.

Education:

- Kazakhstan State Law University, Department of Business Law, graduated with honours in 1998.

Languages:

- Russian
- English

Amir BEGDESENOV
Partner. Patent Attorney

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Specialization: Antitrust Law. Intellectual Property Law

Work Experience:

Amir joined Sayat Zholshy & Partners in June 2010 as an Associate and was promoted to a Senior Associate in January 2011. In January 2014, Amir became a partner of Sayat Zholshy & Partners responsible for antitrust and intellectual property practice of the Firm.

Amir has considerable experience in antitrust law and is actively involved in numerous projects where he represents clients in antitrust authorities and courts, and where he provides general advice on antitrust legal issues. He regularly writes articles and makes presentations on antitrust issues at various conferences and forums.

Representative Antitrust Projects

- representation of a major soft drink producer in connection with the challenging of antitrust authorities' claims alleging that the Client executed an anti-competitive agreement. As a result, the Client managed to avoid penalties exceeding 51 million US dollars;
- representation of a major Kazakhstan mobile operator in connection with numerous antitrust investigations;
- legal support of a leading tobacco producer for antitrust compliance;
- representation of a subsidiary of the largest global dairy company in connection with the dismissed investigation on anticompetitive concerted practices, and advice regarding a coerced supply contract and risks arising from the refusal to sign such contract which could be qualified by antitrust authorities as abusive behaviour;
- presentation of a legal opinion to the Supreme Court of Singapore regarding the Kazakhstan antitrust legislation in connection with a dispute between international oil and gas service companies; and
- acquisition of economic concentration consents (Amir participated in over 15 such projects).

Additional Information and Qualifications

- Prior to joining Sayat Zholshy & Partners, Amir worked for 3 years at the Tax and Legal Department of a Big 4 firm in Almaty;
- Amir is also engaged in M&A transactions structuring and implementation. He is actively involved in all M&A projects of the Firm where targets were represented by such companies as a Kazakhstan pension fund, dealer network of the global leading producer of hoisting-and-conveying equipment, a major Kazakhstan integrated zinc plant producing a substantial amount of copper, precious metals and lead, a major Kazakhstan alcoholic beverage producer, and a number of major oil and gas companies;
- Winner of Kazakhstan national rounds and participant of international rounds of the Jessup Moot Court 2007 competition (held annually in Washington, DC); and
- Member of the Kazakhstan Association of Patent Attorneys.

Education:

- The Abylai Khan Kazakhstan University of International Relations and World Languages, specialization: International Law, Graduated Summa Cum Laude.

Languages:
- Russian
- Kazakh
- English
- Chinese

Yelena TYUREIKINA
Partner

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Specialization: Tax Law

Work Experience:

Yelena has extensive legal experience spanning over 18 years, including 8 years in Sayat Zholshy & Partners, and specializes in tax and corporate laws.

Yelena joined Sayat Zholshy & Partners in January 2009 as a senior associate in the Tax and M&A team led by senior partner Rustam Ospanov.

On 1 January 2017, Yelena was admitted to the partnership of Sayat Zholshy & Partners.

Before joining Sayat Zholshy & Partners, Yelena had professional experience in public service and used to head the legal department of a company providing exploration services to subsoil users and the legal service of a holding company operating railway rolling stock.

Yelena's tax practice is broad-based and encompasses advice on various taxation issues, corporate tax planning, pre-assessment of transactions with regard to tax implications, consulting on transaction structuring in terms of tax optimisation (including foreign jurisdictions), legal support of clients in connection with tax audits and challenging of audit procedures and/or findings in higher-level tax authorities, and successful representation of clients in courts in connection with tax disputes.

Education:

- Kazakhstan State Law University, Department of Business Law, 1998.

Languages:

- Russian
- English

Assel SANDYBAYEVA
Of Counsel, Attorney at Law

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Specialization: Litigation and Arbitration

Work Experience:

Assel specializes in the civil process matters, represents and protects interests of clients in courts of all jurisdictions of the Republic of Kazakhstan in connection with economic, antitrust, tax and investment disputes; recovery of debts, penalties and damages; enforcement of obligations; appeal against actions/omissions of government authorities; protection of rights and legitimate interests of shareholders in their relations with joint stock companies and officers thereof; rehabilitation and bankruptcy proceedings; enforcement of judicial acts; etc..

Assel also participates in arbitration proceedings, as well as arbitration award enforcement and challenging proceedings. She addressed and highlighted the current problems of Kazakhstan arbitration regulation in various periodicals.

Assel performs due diligence of entities and real estates and provides legal support in connection with their sale and purchase.

Besides, Assel deals with antitrust issues. She used to represent interests of clients in their relations with antitrust authorities, including appealing against their actions (orders) and representation in courts.

She provided legal advice, on a subscription basis, on activities of major companies in the Kazakhstan power, gas, agribusiness and construction sectors.

Membership in Associations:

- Almaty Bar Association;
- Union of Lawyers of Kazakhstan; and
- Arbitrator of the Kazakhstan International Arbitration.

Education:

- Kazakhstan State Law Academy, Department of Business Law, graduated with honours in 2000; and
- Adilet Higher Law School, Caspian Public University, Master's Programme in Jurisprudence.

Languages:

- Kazakh
- Russian
- English

Aidos Kussainov
Of Counsel

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Specialization: Labour Law; Work Permits, Licenses and other Approvals of Government Authorities. Business Audit

Work Experience:

Aidos Kussainov started his professional career in 2001. Before joining Sayat Zholshy & Partners, he worked as a lawyer in a large tobacco company.

He joined Sayat Zholshy & Partners in 2001 and was promoted to Of Counsel in 2015.

Aidos supervises all projects on obtaining and extension of foreign work permits and certification of the permission lists. He advises clients in their relations with government authorities, including obtaining licenses for different types of activities, permits and opinions. He has represented large oil and service companies during numerous audits conducted by government authorities.

Education:

- Lodz University in Poland, Faculty of Law and Administration, Master of Administrative Law, 2001.

Languages:

- Kazakh
- Russian
- Polish

Yerzhan Toktarov
Senior Associate

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Specialization: Labour Law. Foreign Work Permits

Experience:

Yerzhan joined Sayat Zholshy & Partners in 2007 and was promoted to Senior Associate in 2011.

He provides legal support in connection with labour law issues, including provision of advice, representation of Clients in actions filed by former employees and obtaining and renewal of foreign work permits. He is also involved in legal review of Clients' draft contracts and preparation of legal opinions on legal matters in different fields of law. He appears before courts and arbitrations in civil matters. Yerzhan also performs legal due diligence of businesses.

In 2013, he worked as a member of the team drafting the Kazakhstan Law *On Permits and Notices*.

Membership in Associations:

- Kazakhstan Bar Association (KazBar), an association of commercial lawyers.

Education:

- Almaty Legal Academy, Business Law, Bachelor of Law with distinction, 2008;
- Internship with the Almaty Bar Association, 2011.

Languages:

- Kazakh
- Russian
- English