

DOING BUSINESS IN KAZAKHSTAN

LEGAL REGULATION IN KAZAKHSTAN

ABOUT SAYAT ZHOLSHY

The history of **Sayat Zholshy and Partners** began on 25 December 1998 in Almaty.

The firm has been rated as one of the largest local law firms in Kazakhstan by The Legal 500 Europe, Middle East and Africa 2008 edition.

Our Mission is to protect business, private property and free competition.

Our Goal is to become the best legal practice in Kazakhstan.

In 2010, Sayat Zholshy & Partners was named “the best” by three distinguished juries:

I. THE LAW FIRM OF THE YEAR 2010 IN KAZAKHSTAN by the majority of votes of over 100 lawyers representing leading Kazakhstan and international law firms at the 5th Forum of Corporate Lawyers by winning in total four awards:

1) Corporate Team of the Year 2010;

2) Antitrust Team of the Year 2010;

3) Litigation Team of the Year 2010;

4) M&A Team of the Year 2010.

This is an improvement of SZP's success of 2009, when the firm won three awards of the qualified jury of the 4th Forum of Corporate Lawyers based on the poll of its members representing over 120 major Kazakhstan and international companies, law firms' clients, and members of the Bolashak Alumni Association:

1) Tax Team of the Year;

2) Litigation Team of the Year;

3) Antitrust Team of the Year.

II. KAZAKHSTAN ARBITRATION TEAM OF THE YEAR 2010 by the majority of votes of prominent lawyers, members of the Kazakhstan International Arbitration headed by its Chairman, Member of the Kazakhstan Academy of Sciences, M.K. Suleimenov.

III. ADVOCATES TEAM OF THE YEAR 2010 by the majority of voters representing the country's elite advocates at the contest held by the Union of Advocates of Kazakhstan.

SZP's team leaders were also recommended as recognized experts by the internationally renowned and authoritative **Who is Who Legal: CIS 2010:**

1) Aidyn Bikebayev, Chairman of the Board of Partners of Sayat Zholshy and Partners – in the field of antitrust (competition) law in Kazakhstan;

2) Vitaliy Vodolazkin, Managing Partner – in the field of litigations and arbitrations;

3) Rustam Ospanov, Senior Partner – in the field of mergers and acquisitions in Kazakhstan.

The *'excellent'* and *'highly professional'* **Sayat Zholshy & Partners** receives very strong feedback from an impressive range of international clients and is considered *'very good value for money'*. Managing partner Vitaliy Vodolazkin is singled out for his *'outstanding litigation guidance'*, while the firm is commended for its *'flexibility that by no means diminishes the quality of its service'*, by **The Legal 500: Europe, Middle East and Africa's legal market overview 2011**.

Since our establishment and up to the present day, we have aimed at providing our clients, meeting their expectations and requirements, with high quality legal services in accordance with international practices and standards applied by international law firms.

To service our clients to the highest possible level and provide legal assistance in Kazakhstan in a timely manner, we have our head office in Kazakhstan's major city of Almaty. The office is conveniently located in the city center and is furnished with up-to-date IT and telecommunications equipment. For our clients' convenience, and where necessary, we ensure that our attorneys and staff are available in other regions of Kazakhstan as well as outside the country.

Sayat Zholshy & Partners's team comprises of a managing partner, five partners, four senior attorneys, and ten attorneys who are graduates from law schools in Kazakhstan, Russia, USA, Germany, and Poland. Our partners have teaching experience in top universities and laws schools of Kazakhstan and are regularly published in leading print and electronic media publications.

Sayat Zholshy & Partners initiated the establishment and was a co-founder of the Taxpayers Association of Kazakhstan which is one of the today's most reputable organizations actively advocating taxpayers' interests before the Parliament, the Government and other government authorities of Kazakhstan.

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

- The American Chamber Of Commerce;
- The Kazakhstan Petroleum Lawyers Association;
- The Almaty Bar Association;
- The Union of Lawyers of Kazakhstan;
- The Taxpayers' Association of Kazakhstan;
- Kazakhstan International Arbitration; and
- The Almaty Chamber of Commerce.

WHY SAYAT ZHOLSHY & PARTNERS?

Guarantees of Confidentiality

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

Pursuant to the 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 the client, or any other persons, as well as any other information relating to the provision of legal assistance;
- 3) Attorney's files, records and documents are exempt from examination, seizure and/or inspection, except when permitted by 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 for 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 by 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.

PREFACE

Since its establishment and up to the present day, Sayat Zholshy & Partners has been committed to contributing to of our CLIENTS' prosperity. We strongly believe that our CLIENTS are the driving force in the making of History 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 to help 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 1 January 2011. 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.

V. Vodolazkin

Managing Partner

Sayat Zholshy & Partners, Lawyers and Attorneys at Law

COUNTRY OVERVIEW

Geography and Landscape

Kazakhstan is a young and rapidly developing country that first appeared on the map after the breakup of the Soviet Union in 1991.

With its territory of 2724900 sq. km. (1048300 sq. miles), Kazakhstan is the 9th largest country in the world after Russia, Canada, China, USA, Brazil, Australia, India, and Argentina. Geographically, the country is located in the center of Eurasia at an almost equal distance from the Atlantic and the Pacific Oceans. Kazakhstan is located in Central Asia and borders Russia to the north, China to the east, Kyrgyzstan, Uzbekistan and Turkmenistan to the south, and the Caspian Sea to the west. The total length of Kazakhstan's border is almost 12200 km with a 600-km border along the Caspian Sea. 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 capital of Kazakhstan is Astana. 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 center.

Currency

The local 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, and 10000 tenge. On 15 November 1993, 12 years after the introduction of tenge, new-style banknotes were issued to replace the old-style notes.

From 15 November 2006 to 14 November 2007, the old-style notes remained in circulation along with the new notes. The old notes could be exchanged for new ones in any second-tier bank during one year after the expiration of the initial period. Thereafter, for a period of ten years, the old notes are accepted for exchange by branches of the National Bank of Kazakhstan but only after an authenticity check.

Population

According to the official statistics, as of beginning of 2011, the population of Kazakhstan exceeded 16.4 mln. people with population density of 5.9 people per square km.

More than 50% of the population are ethnic Kazakhs. Kazakhs have been inhabitants of the Central Asian steppe and historically were a nomadic people. Russians are the second largest ethnic group. Kazakhstan is a multiethnic State with about 125 diasporas representing other groups accounting for 8 mln. people.

Religion

Kazakhstan is a secular State. The major religion is Sunni Islam. Other religious groups also include the Russian Orthodox, Protestant, Roman Catholic churches and other churches and confessions.

Languages

Kazakh and Russian are the two most widely spoken languages. Kazakh, along with Turkish, Kyrgyz, Turkmen, Uzbek and other languages, is a Turkic language.

Climate

The climate of Kazakhstan is determined by its geographic location. Climatically, its territory may be divided into two zones: the south is relatively mild and hot, whereas the north is harsh and cold. Kazakhstan's climate may be classified as continental with extreme differences in climatic conditions during relatively short periods of time. The table below is for comparison of average temperatures in the former capital Almaty in the south and the official capital Astana in the north.

	Winter	Spring	Summer	Autumn
Almaty	-5°C	+15°C	+30°C	+15°C
Astana	-11°C	-3°C	+20°C	-3°C

The climate is similar to Siberia in the north and to Central Asia in the south. The harsh climatic conditions in the north are accompanied by frequent and strong winds.

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 Mendeleev'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, and its recoverable reserves are 2.7 mln. tons. The total reserves in the North Caspian are approximately 3-3.5 billion tons of oil and 2-2.5 trillion cubic meters of gas. 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 2030* development strategy setting out major directions and action plans to increase prosperity and standard of living of Kazakhstan and its people.

Kazakhstan also shows striking growth rates of macroeconomic development. According to the World Economic Forum's *Global Competitiveness Report 2010-2011*, of 139 countries of the world, Kazakhstan is the 72th most competitive. Today, Kazakhstan has a more ambitious goal to join 50 most competitive countries of the world in the near future.

For the last two years, the unstable financial and commodities markets have had a negative impact of Kazakhstan's economic growth rates. According to estimates, GDP growth in Kazakhstan fell to 5-6% in 2011 as compared to 7% in 2010.

According to the Prime Minister of Kazakhstan, the most important achievement in 2010 was that the government managed to halt unemployment and food prices. The new economic policy in 2011 will be aimed at shifting the emphasis from anti-crisis measures to post-crisis development.

The number of unemployed in 2010, as compared to 2009, increased by 0.1% to 493,800. The unemployment rate in 2010 was 5.8% as compared to 5.7% in 2009.

As at 1 January 2011, the nominal monthly average wage in private sector was 77,464 tenge, which is an increase by 16.2% as compared to 2010. As at 1 January 2011, the inflation rate in was 1.7%. It is expected that in 2011 inflation rates will reach 6-8%.

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 the all branches of power and accountability of authorities to the people of the country, signs laws and international treaties and determines Kazakhstan's development programs.
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 appointed by the President. It presents to the Parliament draft budgets and laws, ensures their enforcement and manages the administration. Members of the Government are ministers and heads of agencies.
6. The Constitutional Council's supervises compliance of regulatory legal acts and actions of government authorities 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 in 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 a national referendum on 10 August 1995 which is celebrated as a national holiday.

Pursuant to Article 4 of the Constitution of the Republic of Kazakhstan, the effective law 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* dated 24 March 1998. Pursuant to Article 4 of 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) was 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 order 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.

No 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 different levels, the provisions of the act of a higher level apply. 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 acts 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 Republic of 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 constantly improved and still undergo changes and amendments.

The General Part of the Civil Code governs such matters as legal status of private 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 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:

- The Law of the Republic of Kazakhstan *On Private Entrepreneurship* dated 31 January 2006;
- The Law of the Republic of Kazakhstan *On Joint Stock Companies* dated 13 May 2003;
- The Law of the Republic of Kazakhstan *On Limited and Additional Liability Partnerships* dated 22 April 1998;

- The Law of the Republic of Kazakhstan *On Farming* dated 31 March 1998;
- The Law of the Republic of Kazakhstan *On Bankruptcy* dated 21 January 1997; and
- The Law of the Republic of Kazakhstan *On Business Partnerships* dated 2 May 1995.

Kazakhstan is the only CIS country that, by law, grants private entrepreneurs the right to participate in drafting regulatory legal acts applicable to private entrepreneurship effective as of 1 July 2006. In particular, central government and local executive authorities send drafts of regulatory legal acts affecting the interests of private entrepreneurs to accredited private business associations for the purposes of an expert statement. Such expert statement is made in the form of recommendations and must be appended to the draft of a regulatory legal act during its 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 and representative offices.

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 differences between a representative office and a branch are as follows:

- 1) A representative office may only operate as a representation performing the functions of protection of the interests of the legal entity and enter into transactions and other legal actions on behalf of the legal entity; 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 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 justice and statistics authorities must be notified of any change of the CEO of the structural subdivision

Subsidiary

A subsidiary is a legal entity the prevailing part of whose charter capital is contributed by another legal entity under an agreement or otherwise. The parent organization may determine decisions of its subsidiary.

Traditionally, legal entities in Kazakhstan are registered as Limited Liability Partnerships (LLPs), or Joint Stock Companies (JSCs).

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 the consent of the other shareholders. If any person buys 30% or more of shares of a JSC must make an announcement in print media with an offer to other shareholders to sell their shares to such person.

Pursuant to the Law On Joint Stock Companies, the minimum charter capital requirement of a joint stock company is 50,000 monthly calculation indexes, which, as of 1 January 2011, is equal to KZT 75,600,000 (or approximately \$516,393).

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

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 company's affairs. The board of directors is responsible for general strategic management of the company. Management of its day-to-day operations is the responsibility of the Executive body which may be a single-member (Director, General Director, President, etc.) body or a collegial body (Board, Committee, etc.). The JSC may also appoint an internal audit service to control its financial and business affairs.

Members of the board of directors and the executive body are recognized as officials of the company. JSC's officials may not represent shareholders in General Shareholders' Meetings. Outside employment of members of the JSC's executive body always requires consent of the JSC's board of directors.

The company is required to publish annually their consolidated annual financial statements (or non-consolidated annual financial statements if there are no subsidiaries) and auditors' report within the time periods set forth by the authorized body, or in the manner and within the time periods set forth by the National Bank of the Republic of Kazakhstan upon approval of the authorized body, when and where permitted or required by the laws of the Republic of Kazakhstan.

Limited Liability Partnership

LLPs are 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 have strict control over the management's actions or, where necessary, sale of 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 partnership 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" and, once the LLP is registered,

they become "Members". An LLP exists and operates under the foundation agreement (if there are several founders) and the charter.

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

Interests of all members in the charter capital and, accordingly, their interests in the value of the property of a business partnership (interest in property) are proportionate to their contributions to the charter capital, unless otherwise is provided for by its foundation documents.

Obligations of the members and those of the LLP are separate and several from those of each other. The partnership 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.

An 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.

An LLP's governing bodies are the General Meeting of Members (or the Sole Member) and the Executive Body. The Executive Body may be a single-member (Director, General Director, President, etc.) body or collegial body (Board, Committee, etc.).

The Charter (or Articles of Association) of the LLP may provide for setting up supervisory and/or audit/control bodies of the LLP (respectively, the supervisory body and audit commission/auditor).

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 for comparison of the 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 151,200 tenge as of 1 January 2011 (approx US\$ 1032). No maximum limit. For small-sized LLPs the charter capital must be at least 100 tenge (which is less than 1 USD).
Letter from tax authorities confirming that the parent company has no outstanding tax liabilities.	Not required to be registered with justice authorities	Must be registered with justice authorities
Registration of the branch's or LLP's expatriate chief executive.	Required	
Documents confirming the Branch's or LLP's corporate seat.	Must be registered with justice authorities	
Specimen signature form to open and maintain bank accounts signed and stamped notarized by a Kazakhstan notary or a foreign notary with consular legalization.	Required	
Presence of the Branch Manager or LLP's CEO in Kazakhstan to manage the operations and 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 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	The Parent Company will be the shareholder (member).	The LLP will be the shareholder (member). A single-member LLP may not be a sole founder 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.	
Corporate income tax /Taxable income -the difference between the aggregate annual income and deductions/	from 1 January 2009 to 1 January 2013 – 20%; from 1 January 2013 to 1 January 2014 – expected rate is 17.5%.	
Value-added tax (VAT)	12% Registration as VAT-payer is mandatory in order to assess and offset VAT	
Property tax	From 0.1% to 1.5%	
Social tax	11%	
Individual income tax	10% (5% on dividends)	
Tax on net income * /Net income – taxable income net of assessed corporate income tax/	15%	N/A
Repatriation of income	Net income after payment of tax in Kazakhstan may be freely repatriated with no additional taxes and cumbersome formal currency control formalities.	Transfer of net income in favor of Members in the form of dividends is subject to income tax at the source of payment at the rate of 15%*. Transfer of income in favor of Members on a contractual basis (e.g. as a service/management fee) may: - require compliance with currency control formalities; - fall within transfer pricing regulations; - be subject to income tax at the source of payment at the rate of: from 1 January 2011 – 15 %; and VAT at the rate of 12 %, or require compliance with the procedure for payment using escrow bank deposits to avoid tax at the source of payment.
Employment of an accountant	Highly recommended promptly after registration	

or an audit firm to keep proper accounting records, file reports with relevant authorities and pay taxes.		
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
Currency control	May receive funds from Kazakhstan companies in tenge or foreign currency. There is no requirement to register transactions with currency control authorities or obtain a license in case of transactions with non-residents.	May receive funds from Kazakhstan companies only in local currency, tenge. Please see <i>Currency Control</i> for information on registration or licensing of transactions with non-residents.

* without regard to relevant Double Tax Treaties.

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

	Small business entity	Medium business entity	Large business entity
	Average annual number of employees / value of assets per year		
Unincorporated private entrepreneur	Not more than 50 employees	Over 50 employees	N/A
Legal entity	Not more than 50 employees and Not more than 60,000 MCIs*	Over 50 but not more than 250 employees or not more than 325,000 MCIs	Over 250 employees or over 325,000 MCIs

* Monthly calculation index (MCI) in 2011 = 1,512 tenge.

Documents and information required for registration

The below is a list of documents and information required from a foreign company (the "Company") to have its register its structural subdivision or subsidiary in Kazakhstan:

- 1) legal address (corporate seat) of the Company;
- 2) bank details of the Company;
- 3) types of activities of the Subsidiary/Structural Subdivision;
- 4) types of activities of the Company (for registration of the Structural Subdivision);
- 5) the name of the Subsidiary/Structural Subdivision;
- 6) the amount of the charter capital of the Subsidiary;
- 7) apostilled copies of the Company's foundation documents (the Charter, Memorandum of Association, etc.)
- 8) an extract from the trade register or any other document certifying that the Company is a duly incorporated legal entity under the laws of a foreign State;
- 9) a document certifying that the Company is a registered taxpayer in its home country of incorporation specifying the number of tax registration (or its equivalent);
- 10) a copy of the Company's document appointing its CEO or any other officer authorized to sign documents (sealed with the Company's seal);
- 11) documents certifying the location/place of business of the Subsidiary/Structural Subdivision. Such documents may be in the form of: 1) a notarized copy of the lease agreement or sale and purchase agreement, and 2) a document certifying its rights to the immovable property bearing a stamp of the registration of the rights to the immovable property, or any other document under the civil legislation of the Republic of Kazakhstan, or, if the owner of the premises is a private individual, a notarized consent of such private individual to provide such premises as a corporate seat/place of business of a legal entity;

- 12) copies of documents certifying the identity of the CEO of the Subsidiary/Structural Subdivision and a certificate of his registration as a taxpayer in the Republic of Kazakhstan or, if the CEO of the Subsidiary/Structural Subdivision is a foreign national, notarized copies of his passport and certificate of his registration as a taxpayer in Kazakhstan.
- 13) the place of residence of the CEO of the Subsidiary/Structural Subdivision;
- 14) a certificate from Kazakhstan tax authorities certifying that the Company has no outstanding taxes or other mandatory payments to the budget of the Republic of Kazakhstan (for the purposes of registration of the Subsidiary in Kazakhstan);
- 15) the bank in which the Subsidiary/Structural Subdivision intends to open bank accounts; and
- 16) the proposed category of the Subsidiary/Structural Subdivision (small-scale, medium-scale or large business entity).

If documents cannot be apostilled, then copies of the documents listed in 7) - 9) above must be legalized in the consulate of Kazakhstan located in the country of origin of such documents or in the consulate of the country responsible for Kazakhstan. If there are no consular relations between such country and Kazakhstan, copies of the documents will have to be legalized through the consulates of Kazakhstan and such country located in a third country.

If the country of the Company's incorporation has signed an agreement with the Republic of Kazakhstan recognizing official documents (e.g., the CIS countries), then copies of documents in 7) - 9) may be notarized by a notary in the Company's country of incorporation and no apostille or consular legalization is required.

The following documents are required under the laws of the Republic of Kazakhstan:

For a subsidiary:

- 1) the Company's resolution to register a Subsidiary;
- 2) a power of attorney issued by the Company for receiving letters from tax authorities;
- 3) a power of attorney issued by the Company for legalization of foundation documents of the Company (as applicable);
- 4) a power of attorney issued by the Company for signing the charter of the Subsidiary and the foundation agreement of the subsidiary (if it has 2 or more members);
- 5) a power of attorney issued by the Company to register the Subsidiary;
- 6) the charter of the Subsidiary; and
- 7) the foundation agreement of the Subsidiary (if it has 2 or more members).

The Charter and the Foundation Agreement must be notarized.

If founders of the legal entity have determined that they will be operating under a standard charter, no charter is required for State registration of such legal entity. In such event, three notarized copies of an application in the form determined by the Ministry of Justice of the Republic of Kazakhstan must be filed with the registration authorities.

For a structural subdivision:

- 1) the Company's resolution to register the structural subdivision;
- 2) the regulation (similar to by-laws) of the structural subdivision;
- 3) a general power of attorney issued by the Company to the CEO of the structural subdivision for signing the Regulation of the structural subdivision and to manage its affairs;
- 4) a general power of attorney issued by the Company for legalization of the foundation documents of the Company (as applicable); and
- 5) a general power of attorney issued by the Company for registration of the structural subdivision.

State registration (re-registration) of small-scale business entities and record registration (re-registration) of their branches and representative offices must be completed no later than three business days of the date of filing the application with required documents. State registration (re-registration) of medium- and large-scale business entities operating under a standard charter and record registration (re-registration) of their branches and representative offices must be completed no later than three business days of the date of filing the application with required documents and State registration (re-registration) of other legal entities and record registration (re-registration) of their branches and representative offices must be completed no later than ten business days of the date of filing the application with required documents.

Documents and information for liquidation and de-registration

De-registration of a structural subdivision:

- 1) an application;
- 2) a resolution of the Company to wind up the structural subdivision stamped with the Company's seal or a court ruling to dissolve and de-register the structural subdivision;
- 3) a document certifying the powers and authorities of the officer who signed the resolution to wind up or de-register the structural subdivision;
- 4) a certificate of payment of State duty (6.5 MIC, i.e. KZT9,828 or approximately USD 67);

- 5) originals of the record registration certificates, regulation of the structural subdivision, statistical card (originals of tax and VAT registration certificates in Kazakhstan must be filed with the tax authorities prior to obtaining a certificate that the structural subdivision has no outstanding tax liabilities);
- 6) a certificate from the local tax authority in the place of business of the structural subdivision that it has no outstanding tax liabilities.

The department of justice will de-register the structural subdivision within 10 days of the date of filing the application with all required documents.

Liquidation of JSCs

A resolution on voluntary liquidation of a JSC is made by the general meeting of shareholders that determines the liquidation procedure to be agreed upon and supervised by its creditors in accordance with the laws of the Republic of Kazakhstan.

In the events required by the laws of the Republic of Kazakhstan, involuntary liquidation is carried out by courts.

Unless otherwise is provided for by the laws of the Republic of Kazakhstan, a claim to wind up the JSC may be filed with a court by interested parties.

A liquidation committee is appointed by court ruling or resolution of the company's general meeting.

The liquidation committee has powers and authorities to manage the affairs of the company during its liquidation and to perform acts as determined by the laws of the Republic of Kazakhstan.

In the event of voluntary liquidation, the liquidation committee must include representatives of the company's creditors, major shareholders and other persons in accordance with the resolution of the general meeting of shareholders.

The company's liquidation procedure and the order of priority of settlement of its creditors claims is determined by the laws of the Republic of Kazakhstan.

In the event of liquidation of a company, its authorized shares, including outstanding shares, must be cancelled in the manner prescribed by the laws of the Republic of Kazakhstan.

Distribution of the property of the company under liquidation between its shareholders

The property of the company under liquidation remaining after the settlement of creditors' claims is distributed by the liquidation committee between its shareholders in the following order of priority:

- 1) first, payments on shares that must be redeemed;
- 2) second, payment of dividends declared but not paid on preferred shares; and
- 3) third, payment of dividends declared but not paid on common shares.

The remaining property is distributed between all shareholders in proportion to the number of their shares.

The claims of each priority category are settled after the full settlement of the claims of the superior category.

If the property of the company under liquidation is not sufficient to pay dividends declared but not paid on the company's preferred shares and payment of their value, such property is distributed in full between the preferred shareholders in proportion to their shares.

Liquidation of limited liability partnerships

The liquidation procedure applicable to limited liability partnerships (LLPs) includes the following actions:

- 1) The LLP's members make a resolution to wind up the LLP, appoint a liquidation committee (the "Committee") and determine the procedure and time periods for the liquidation. The liquidation assumes the powers and authorities to manage the property and affairs of the LLP as of the time of its appointment.
- 2) The LLP notifies in writing of its voluntary liquidation:
 - the local justice authority – immediately;
 - the local tax authority – within 3 business days.
- 3) The Committee makes a public announcement of the liquidation of the LLP and of the procedure and time periods for creditors' claims in the official print media of the central justice authority. Creditor's claims may not be accepted after 2 months of the time of publication.
- 4) Upon expiration of the time period for creditors' claims, the Committee prepares an interim liquidation balance sheet which must contain data on the structure of the LLP's property, list of claimed made by its creditors and the results of their review. Such balance is approved by the LLP's member(s). Within 3 business days of the date of approval of the interim liquidation balance sheet, the LLP files with its local tax authority a tax application for documentary audit in connection with the liquidation (such audit must commence no later than within 20 business days of receipt of the application by the tax authorities) together with its liquidation tax return, value-added tax registration certificate and an application for VAT de-registration;
- 5) Upon completion of settlements with creditors, the Committee prepares a liquidation balance sheet to be approved by the LLP's members.

- 6) Upon completion of the documentary audit and payment of outstanding tax liabilities, outstanding mandatory pension payments and social payments in full, the LLP files with the local tax authority its liquidation balance sheet together with a certificate of closing of the LLP's bank accounts from the bank, and/or organization performing certain banking operations. The LLP is de-registered by the tax authority upon obtaining a certificate of no outstanding tax liabilities to be filed with the local justice authorities.
- 7) Once such certificate of no outstanding tax liabilities is obtained, the LLP must file an application with the customs authorities that it has no outstanding customs liabilities to obtain a relevant certificate.
- 8) Once the certificate of no outstanding tax liabilities is obtained, the LLP must file with its banks applications to close its bank accounts. Once the bank accounts are closed, the banks will make a relevant record and issue a certificate in due form.
- 9) Once all the above actions are taken, the LLP files with its local internal affairs authorities an application to remove and discard the LLP's seal and then obtains a document confirming that the seal has been discarded and destroyed.
- 10) The LLP files an application with the local justice authorities together with the aforesaid documents as well as its charter, certificate of State (re-)registration, statistical card and document certifying payment to the budget of the State duty on State registration of liquidation of legal entities.
- 11) Within 10 days of the time of receipt of the documents, the registration authority will:
 - verify whether the liquidation procedure set by law and the LLP's charter has been complied with;
 - issue an order of registration of the liquidation of the legal entity, revocation of the State (re-)registration certificate and its removal from the Register to be served to the LLP;
 - make an entry into the Register and the electronic register of legal entities, branches and representative offices on winding-up the legal entity.

NOTE:

A debtor must file a bankruptcy petition with a court if the owner of its property, its authorized body, founders or competent body of the legal entity determines to wind up such debtor and its property is not sufficient to settle the claims of its creditors in full. Otherwise, the chief executive of the debtor will be jointly liable to its creditors.

FOREIGN WORK PERMITS

The procedure for obtaining foreign work permits in Kazakhstan (the "Work Permit") is quite complicated. There are quotas for foreigners who are permitted to work in Kazakhstan determined by law and these quotas are distributed between oblasts (Kazakhstan provinces). In 2011, the quota is 44,540 people (Order No. 451-Ө dated 31 December 2010 of the Minister of Labor and Social Protection of the Republic of Kazakhstan).

The Government of the Republic of Kazakhstan, by its Resolution No. 71 dated 2 February 2011, substantially amended the Rules for Issuing Foreign Work Permits in the Republic of Kazakhstan.

Violations of these Foreign Work Permit Rules 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 face difficulties in expanding their presence in the country precisely because they cannot obtain a sufficient number of Work Permits.

Work Permits in Kazakhstan, unlike in other countries, are issued to the employer and not to the worker. As such, the employer bears the responsibility for obtaining a Work Permit.

No Work Permit is required for the following categories of workers who are:

- working in the capacity of chief executive officers of branches or representative offices of foreign legal entities;
- present in Kazakhstan for business trip purposes provided that the duration of such business trip does not exceed 60 calendar days per calendar year;
- seconded to a Kazakhstan legal entity, branches and/or representative offices of foreign legal entities under a relevant agreement for a period not exceeding 60 calendar days. Secondment of foreigners to a Kazakhstan legal entity, branches and/or representative offices of foreign legal entities in accordance with a relevant list approved by the authorized body is permitted if Kazakhstan personnel of such Kazakhstan legal entity, branch and/or representative office of a foreign legal entity is seconded to the legal entity outside Kazakhstan for the purposes of professional training, retraining and/or development. The term of such secondment may not exceed 180 calendar days within a calendar year;
- working in the capacity of chief executive officers of organizations that have contracts with the Government of the Republic of Kazakhstan if the value of investments under such contracts exceeds 50 mln. US dollars and those working in the capacity of chief executive officers of Kazakhstan legal entities that are engaged in investing in the priority types of activities and have a relevant contract with competent investment authorities;
- officers of diplomatic missions and international organizations, employees of consulates accredited in the Republic of Kazakhstan;
- present in the country under international treaties signed by the Republic of Kazakhstan for provision of charitable and/or humanitarian aid and provision of grants/donations;
- representatives of foreign mass media accredited in the Republic of Kazakhstan;
- crew members of marine and riverine craft, aircraft, and rail and road transport vehicles;
- working as actors, directors, conductors, choirmasters, choreographers, artists, private tutors, professional athletes and coaches;
- permanently residing in the Republic of Kazakhstan;
- awarded the status of refugee or political asylum in the Republic of Kazakhstan;
- full time students who contemporaneously work part time in educational organizations of the Republic of Kazakhstan while not studying;
- working as teachers/tutors in general secondary, technical, vocational, postsecondary and higher educational organizations of the Republic of Kazakhstan in accordance with the international treaties on cooperation in the field of education signed by the Republic of Kazakhstan, but not to exceed 25% of the staff of such organization;
- faculty members of higher educational organizations awarded special status in accordance with the laws of the Republic of Kazakhstan;
- ethnic Kazakh repatriates (oralman);
- professionals specializing in construction of the space missile complex and operation of the ground space infrastructure engaged under international agreements on aerospace co-operation signed by the Republic of Kazakhstan;
- working in the regional financial center of the city of Almaty in the capacity of chief executive officers and professionals holding postsecondary and higher education degrees documented in the manner prescribed by the laws of the Republic of Kazakhstan;
- working in the national management holding company, National Medical Holding JSC and health care organizations whose charter capital is fully owned by National Medical Holding JSC and holding job titles of at least heads of structural subdivisions and higher education degrees documented in the manner prescribed by the laws of the Republic of Kazakhstan;
- employed as members of boards of directors (supervisory boards) of the national management holding company National Medical Center JSC and health care organizations whose charter capital is fully owned by National Medical Holding JSC;

- engaged in health care and consulting activities in the National Medical Holding JSC and health care organizations whose charter capital is fully owned by National Medical Holding JSC;
- employed by the Nazarbayev University as chief executives, managers and specialists holding a tertiary (college or university) degree evidenced by a document in the manner provided by the laws of the Republic of Kazakhstan;
- seconded to the Nazarbayev University under agreements on introduction and fulfillment of education programs and/or provision of educational services; and
- working in the Central Asian Regional Environmental Center operating under the Agreement on the Operating Conditions of the Central Asian Regional Environmental Center.

Foreign work permits are granted for four categories of foreign workers:

- 1) **1st grade** – chief executives, their deputies, financial and technical directors and chief engineers, chief designers, chief technologists, chief power engineers, chief metallurgists, chief architects, chief geologists, and chief geophysicists;
- 2) **2nd grade** – senior managers and specialists meeting the qualification requirements prescribed by the index of qualifications for senior managers, specialists and other employees;
- 3) **3rd grade** – skilled workers in accordance with the Unified Wage Rates and Skills Index of Blue-collar Occupations and Professions and the Blue-collar Workers Wage Rates and Skills Requirements;
- 4) **4th grade** – workers employed for seasonal agricultural work in accordance with the international conventions signed by the Republic of Kazakhstan on cooperation in managing labor migration and social protection of migrant workers.

Prior to applying for a Work Permit in Kazakhstan, the employer company must determine and take into account the following:

- 1) the number of foreign workers to be employed in Kazakhstan and their country of citizenship;
- 2) the ratio of 1st grade foreign specialists to 1st grade Kazakh specialists (as of 1 July 2011 to 1 January 2012 the number of 1st grade foreign specialists must not exceed 50% of the total number of 1st grade workers and as of 1 January 2012 this number must not exceed 30% of the total number of 1st grade workers);
- 3) the ratio of 2nd and 3rd grade foreign specialists to 2nd and 3rd grade Kazakh specialist (as of 1 July 2011 to 1 January 2012 the number of 2nd and 3rd grade foreign specialists must not exceed 30% of the total number of 2nd and 3rd grade workers and as of 1 January 2012 this number must not exceed 10% of the total number of 2nd and 3rd grade workers);
- 4) the region in Kazakhstan where it intends to employ foreign workers;
- 5) job titles of foreign workers;
- 6) professional credentials/recommendations of foreign workers taking into account the specific features of the vacancy:
 - work record; and
 - education;
- 7) the age of foreign workers (not younger than 23 and not older than 63 for men and 58 for women);
- 8) whether special conditions of the work permits issued in the previous and current year have been met;
- 9) parameters and qualities showing that foreign workers have an objective advantage over Kazakhstan professionals;
- 10) local workers hiring plans;
- 11) plans for substitution of foreign workers with local personnel; and
- 12) plans for training/re-training and professional development of local personnel.

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

1. Search for local workers:

- 1) filing information of vacant positions with employment authorities; and
- 2) publication of announcements of vacant positions in national and local periodicals in the Kazakh and Russian languages;

There is no requirement to search for local workers in the event of extension of work permits and intended employment of foreign workers if the foreign workers are:

- 1) chief executives of Kazakhstan legal entities if no less than 50% of the charter capital of such entities is owned by foreign legal entities and/or private individuals;
- 2) members of board of directors of Kazakhstan joint stock companies if no less than 50% of their shares is owned by the State or foreign legal entities or private individuals;
- 3) faculty members and research workers of higher education and research organizations;
- 4) foreign workers of organizations participating in project implementation under the 30 Corporate Leaders of Kazakhstan Program and foreign personnel of contractors engaged in start-up, commissioning and installation of process equipment for organizations participating in project implementation under the 30 Corporate Leaders of Kazakhstan Program;
- 5) foreign workers employed by organizations involved in implementation of projects included in the Industrialization Map of Kazakhstan for 2010-2014, including contractors carrying out work related to commissioning, start-up and installation of plant and equipment; and

- 6) seasonal agricultural workers in accordance with international labor migration cooperation agreements and social protection of migrant workers.

2. Filing an application with local employment authorities appending thereto the following documents:

- 1) original copies of national and local periodicals with announcements on available vacancies specifying qualification requirements for the job published not earlier than 2 months and not later than 15 calendar days prior to the date of the announcement;
- 2) search results from employment authorities;
- 3) if suitable Kazakhstan candidates meeting qualification requirements are found, the reason for the employer's refusal (if any) to hire such Kazakhstan citizens to the vacancy;
- 4) information that the special requirements (if any) of the Work Permits issued for the previous and current calendar year if such requirements have become due.
- 5) information on the foreign workers to be employed;
- 6) documents confirming qualifications of the foreign workers to be employed;
- 7) notarized translations of education certificates;
- 8) work record of the worker appending thereto written proof of such worker's work experience on the official letterhead of the employer who previously employed the worker or any other documented confirmation of such employment recognized in the Republic of Kazakhstan;
- 9) calculation of Kazakhstan personnel content in accordance with the prescribed form;
- 10) opinion of the central science and education executive body of the Republic of Kazakhstan confirming that the foreign worker meets professional qualification requirements for foreign nationals and stateless persons to be employed as faculty members or research workers of higher education and research organizations.
- 11) a notarized copy (together with a translation into the State or Russian languages) of the employment contract between the foreign employer and foreign worker to be employed specifying the amount of compensation of such foreign worker as may be required by the laws of the Republic of Kazakhstan; and
- 12) a notarized copy (together with a translation into the State or Russian languages) of the contract for performance of work or provision of services as may be required by the laws of the Republic of Kazakhstan.

3. Evaluation by local employment authorities qualifications of the foreign workers to be employed and issue of a Work Permit within 15 business days, save for when:

- 1) not all required documents are filed and/or the documents are not in the due form;
- 2) the special requirements (if any) of Work Permits issued for the previous and current calendar year if such requirements have become due;
- 3) the distributed quota has been exceeded;
- 4) the foreign worker to be employed does not meet category and qualification requirements;
- 5) the evaluation results of the qualifications of the foreign worker to be employed is not sufficient to meet the minimum limit requirement (i.e. the foreign worker has not been awarded the required amount of points);
- 6) there are suitable candidates available in the domestic labor market; and/or
- 7) the employer has employed other foreign workers without Work Permits, leased foreign workers to other legal entities or natural persons and has violated the Kazakhstan to foreign personnel content maximum ratio requirements. In such event Work Permits are withheld for twelve months of the date when such violation is established.

Foreign workers to be employed are awarded eligibility points based on the following selection criteria:

1) education:

post-graduate or advanced graduate degree in the field required for the position the foreign worker seeks to fill - 25 points;

undergraduate degree - 20 points;

technical and vocational qualification - 15 points;

2) work experience in specialization field matching the principal type of activity of the employer's organization:

1 - 3 years - 15 points;

4 - 6 years - 20 points;

7 - 10 years - 25 points;

over 10 years - 30 points;

3) specialization (occupation) from the list of occupations that are in highest demand in the domestic market as updated annually by the central executive body on the basis of the suggestions and recommendations of local executive bodies - 25 points.

The minimum limits required for foreign workers to be eligible for employment are as follows:

1st grade workers - 40 points;

2nd grade workers - 40 points;

3rd grade workers - 45 points.

Work Permits are valid within the respective administrative division (oblast) of Kazakhstan. However, effective 26 February 2011, employers are permitted to use such Work Permits for two or more regions (oblasts) subject to approval of the Ministry of Labor and Social Protection of the Population of the Republic of Kazakhstan and after initially obtaining a permit valid for one region.

Also, employers may only second foreign workers who have been awarded Work Permits to entities and/or organizations in other administrative divisions for a period of no more than 60 calendar days per calendar year.

4. The local authority notifies the applicant in writing of its decision within 5 business days of the date of such decision:

- 1) in the event of a positive decision, the employer must, within 20 business days, submit to the local authority documented guarantees that the foreign workers will leave Kazakhstan for their place of permanent residence upon the expiration of Work Permits (i.e. a copy of an agreement between the employer and its bank and documented proof of payment of guarantee deposits to the employer's bank account);
- 2) in the event of a refusal to issue a Work Permit, the authorized body must provide reasons for such refusal.

Work Permits may be extended no more than twice depending on the categories of workers.

A breach of the procedure for employment of foreign workers 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 the foreign worker is deported, Kazakhstan migration authorities may deny new visas or entry to Kazakhstan for such worker in the future.

Violations of the work permits statutory requirements and regulations may also entail refusal of future Work Permits for foreign workers to be employed in the Republic of Kazakhstan.

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 register 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 visas, business visas and work visas. 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 top managers of foreign firms and companies that are investing in Kazakhstan's economy and have contracts with the Government of the Republic of Kazakhstan if such contracts' investment value is over 50 mln. US dollars.

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

Investor visas give their holders the right to enter, stay in and leave the Republic of Kazakhstan within the period specified by the visa. Investor visas are usually issued for a period of up to one year.

Investor 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 at the request from government authorities and agencies of the Republic of Kazakhstan and foreign State missions accredited to the Republic of Kazakhstan.

Business Visa

Business visas are issued to foreign national arriving and staying in the Republic of Kazakhstan for business purposes (e.g., a business trip, business negotiations that are of strictly business and commercial nature, etc.).

Under the standard procedure, business visas require a letter of invitation from the inviting party and in certain events permission from internal affairs authorities. 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 and the Ministry of Internal Affairs, the Department of Internal Affairs of oblasts and the cities of Astana and Almaty for a period of up to 1 year.

If the place where the visa is obtained is different from that specified in the letter of invitation (also a "visa support document"), the visa is issued at the place of application (apart from consulates in the Republic of Kazakhstan) subject to subsequent notification thereof to the Ministry of Foreign Affairs of the Republic of Kazakhstan.

Business visas do not give the right to family members of holders of business visas to enter Kazakhstan

Work Visa

Work visas are issued to foreign nationals arriving in Kazakhstan for employment purposes.

In order for a foreign national to obtain a work visa, the inviting party (employer) is required to have a foreign Work Permit. Certain categories of foreign nationals and stateless persons, including, among others, chief executive officers of branches or representatives offices of foreign legal entities (a list of such categories is determined by the laws of the Republic of Kazakhstan) are exempt from this requirements to have a work permit to work 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 and may be extended upon expiration of the initial term through a new visa issued by the Ministry of Internal Affairs or internal affairs authorities.

Family members of the working holder of the work visa who are entering the country together with such holder of the work visa are not permitted to work in Kazakhstan. Any subsequent employment of such family members in Kazakhstan requires that they obtain a foreign work permit from their employer (save for when no such permit is required) and a new work visa.

Registration of Foreign Nationals

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

Depending on visa types and categories and the issuing body, passports are registered by departments of the Ministry of Foreign Affairs abroad or border control departments of the Border Police of the National Security Committee. Passports are registered by putting a stamp or mark on visa stickers or by issuing a migration card at the time of issuing the visa or crossing the border.

Registration is issued for a period of up to 90 days of the date of issue of the visa but not exceeding the term of the visa. Registrations may be extended by internal affairs authorities at the place of temporary stay of the foreign visitor.

LICENSING

Activities that require licensing are determined by the legislation of the Republic of Kazakhstan. The principal law governing licensing is the Law of the Republic of Kazakhstan On Licensing No. 214-III dated 11 January 2007.

A license is a permit issued by a competent authority to a private individual or legal entity to carry out certain types of activities.

Licensable activities may be carried out only with a license.

Licenses are issued to applicants by licensors who are determined by legislative acts of the Republic of Kazakhstan and/or the Government of the Republic of Kazakhstan.

The Government authority supervising relevant competent authorities in the field of licensing is appointed by the Government of the Republic of Kazakhstan (currently, these functions are performed by the Ministry of Economic Development and Trade of the Republic of Kazakhstan).

Areas of Licensing

Licensing is required for certain activities in the following areas:

- 1) industry;
- 2) utilization of nuclear energy;
- 3) circulation of poisonous substances;
- 4) technical security;
- 5) transportation;
- 6) circulation of narcotic drugs, psychotropic substances and precursors;
- 7) provision of information security;
- 8) special technical devices for performance of investigation activities;
- 9) circulation of arms, military equipment and certain types of weapons, combustible substances and items containing combustible substances;
- 10) use of the outer space;
- 11) informatization and communications;
- 12) education;
- 13) mass media;
- 14) agriculture and forestry, land management, land surveying and cartography;
- 15) health care;
- 16) services to private individuals and legal entities;
- 17) gambling;
- 18) veterinary;
- 19) forensics;
- 20) culture;
- 21) financial field and activities related to concentration of financial resources;
- 22) architecture, urban planning and construction;
- 23) manufacture of State symbols of the Republic of Kazakhstan;
- 24) production and circulation of ethyl alcohol and alcohol products, production of tobacco goods;
- 25) activities in commodities markets; and
- 26) export and import of goods.

Information on specific types of licensable activities may be obtained from any of our offices.

There are various types of licenses that differ as follows:

1. By the licensee:

- 1) issued to citizens and legal entities of the Republic of Kazakhstan;
- 2) issued to foreign legal entities, foreign nationals, stateless persons and international organizations.

2. By scope:

- 1) general – issued to carry out a certain activity for an indefinite term;
- 2) single-term – issued to carry out a certain business activity within the permitted term, scope, weight or quantity (either in kind or in cash), to carry out activities in gambling within the term as determined by the Law of the Republic of Kazakhstan On Gambling and to carry out activities on development of construction of residential buildings from the funds of interestholders within the limits set by the Law of the Republic of Kazakhstan On Interest Holding in Residential Construction Projects; and

- 3) operational – to carry out certain banking operations and classes of insurance.

The following documents are required to obtain a license:

- 1) an application;
- 2) a notarized copy of the applicant's Charter (other than for export and import operations) and, for legal entities - a notarized copy of the applicant's certificate of State registration as a legal entity
- 3) for private individuals - a copy of a personal identity document;
- 4) for private entrepreneurs - a notarized copy of the applicant's certificate of State registration as a private entrepreneur
- 5) a notarized copy of the applicant's registration with tax authorities;
- 6) a documented proof of payment to the budget of the license fee to carry out certain activities; and
- 7) information and documents in accordance with qualification requirements.

Legal acts on certain types of licensable activities may also determine additional and specific requirements for the list of documents.

In the manner established by law, the applicant is liable for the accuracy, completeness and promptness of the information contained in its documents.

Unless otherwise is required by legal acts, licenses are issued within no later than one month and for small-scale entrepreneurs no later than within 10 days of the date of filing the application together with all required documents.

In certain cases, licensors may require that the licensee provide proof of its compliance with the qualification requirements by the time set by the licensor.

No license is granted if:

- 1) the laws of the Republic of Kazakhstan prohibit licensees of a particular category from carrying out a particular activity;
- 2) not all documents required under the laws of the Republic of Kazakhstan are provided. Upon provision of all required documents by the applicant, the application is reviewed in accordance with the standard procedure;
- 3) the license fee to carry out a particular activity has not been paid if the application is for such activity;
- 4) the applicant does not meet the qualification requirements;
- 5) a court ruling has taken effect prohibiting the licensee from carrying out a particular activity; and
- 6) a court, upon a petition made by a law-enforcement officer has banned the applicant from obtaining licenses.

Licenses are terminated only in the following events:

- 1) expiration of the license term;
- 2) full performance of the activities (operations) for which the license is issued;
- 3) revocation of the license;
- 4) cessation of the activities of the private individual, liquidation of the legal entity, and/or reorganization of the legal entity other than reorganization in the form of merger, acquisition, spin-off or transformation;
- 5) voluntary return of the license and/or the appendix thereto to the licensor;
- 6) removal of a particular category and/or subcategory of activity from the list of licensable activities; and/or
- 7) removal of the licensee has been from those requiring a license.

INVESTMENT IN KAZAKHSTAN

The Republic of Kazakhstan has a favorable 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, Belgo-Luxembourg Economic Union, Russia, India, Switzerland, Mongolia, Poland, Saudi Arabia, Italy, Hungary, Egypt and certain other countries. The legislation of the Republic of Kazakhstan 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 Law of the Republic of Kazakhstan *On Investment* dated 8 January 2003 (the "Investment Law"). This law determines the legal and economic basis for encouraging investment, provides guarantees of investors' rights investing in Kazakhstan and determines measures for government support for investment and the procedure for resolution of disputes involving investors.

Defined Terms

The Investment Law defines investment as follows:

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 in entrepreneurial activities and fixed assets produced and received by concessioners (successors) under concession agreements.

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

The definition of investment activities reads as follows:

Investment activities – activities of private individuals and legal entities related to participation in the charter capital of commercial organizations or creation or increase of fixed assets used in entrepreneurial activities as well as to fixed assets produced and created by concessioners (successors) under concession agreements.

The Investment Law 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 Investment Law sets forth the following definition of investor:

Investors – private persons or legal entities investing in the Republic of Kazakhstan.

Which means that the legislation of the Republic of Kazakhstan applies the domestic regime to foreign investors and does not differentiate between foreign and Kazakhstani investors.

The Investment Law introduces a new definition of minority investor.

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

Investment benefits – targeted privileges provided pursuant to the legislation of Republic of Kazakhstan to legal entities of the Republic of Kazakhstan that are implementing an investment project or a strategic investment project.

One of such investment benefits provided by the government are government in-kind donations:

government in-kind donations – 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 or a strategic investment project with subsequent free transfer of ownership or land use.

The Investment Law also contains a definition of "legal entity of the Republic of Kazakhstan":

Legal entity of the Republic of Kazakhstan – a legal entity, including with foreign participation established in the manner prescribed by the legislation of the Republic of Kazakhstan.

Guarantees of Investors' Rights

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

Guarantees of Investors' Rights in the event of nationalization and 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. Forcible 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 the legislation of the Republic of Kazakhstan, 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 made 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 take into account the losses from depreciation of the value of such property.

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

This guarantee applies to acts issued by government authorities that do not comply with the legislative acts of the Republic of Kazakhstan and to illegal actions (omissions) of officials of such government authorities. In such cases, investors are entitled to damages. Investors are provided with full and unconditional protection of rights and interests which is provided by 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 legislative acts of the Republic of Kazakhstan for the purposes of provision of national and environmental security, health care and ethics.

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 its activities after payment of taxes and other compulsory payments to the budget and to open bank accounts in the local and/or foreign currency in accordance with the banking and currency legislation of the Republic of Kazakhstan.

Dispute Resolution

If a dispute may not be settled through negotiations, such dispute is referred for resolution to Kazakhstan courts in accordance with international agreements and statutory acts of Kazakhstan or to international arbitrations determined by agreement between the parties. Investors from countries that have bilateral agreements on mutual protection of investment with Kazakhstan or are parties to the Energy Charter Treaty may refer to provisions of these acts providing for an option to refer an investment dispute to an international commercial arbitration even in the event of no arbitration clause.

Government Investment Support

In order to create a favorable 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, investors may be provided with government support for investment in the form of investment benefits.

There are two categories of investment benefits:

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

Currently, investment benefits only apply to Kazakhstan legal entities. As such, if a foreign investor seeks investment benefits provided by the Investment law, such investor should set up a Kazakhstani legal entity.

The competent authority governing investment is the Committee for Investment under the Ministry of Industry and New Technologies of the Republic of Kazakhstan (the "Investment Committee"). The Investment Committee has wide powers to make independent decisions on granting investment benefits and determine whether investors comply with all requirements of the Investment Law to be eligible for benefits.

Investment benefits are granted in the priority fields of activities the list of which is approved by the Government of the Republic of Kazakhstan. The current list has been in effect since 2003 and includes the following:

Priority Types of Activities Eligible for Investment benefits:

1. Crop and animal husbandry, hunting and related services;
2. Fishing and aquafarming;
3. Production of food;
4. Production of beverages;
5. Production of textile goods;

6. Manufacture of clothes,;
7. Manufacture of leather and related goods;
8. Manufacture of wood and cork products, other than furniture; manufacture of straw products and plaiting materials;
9. Manufacture of paper and paper products;
10. Production of coke and refined products;
11. Production of chemicals;
12. Production of essential drugs;
13. Manufacture of rubber and plastic products;
14. Production of other non-metal mineral products;
15. Metallurgical industry;
16. Manufacture of fabricated metal products, other than machinery and equipment;
17. Manufacture of computers, electronic and optical products;
18. Manufacture of electrical equipment;
19. Manufacture of equipment not elsewhere classified;
20. Manufacture of automatic vehicles, graders and semi-trailers;
21. Manufacture of other transport vehicles;
22. Manufacture of furniture;
23. Manufacture of other finished goods;
24. Repair and installation of machinery and equipment;
25. Electric power supply, gas and steam supply, and air conditioning.
26. Water collection, treatment and distribution;
27. Waste collection, processing and disposal; waste utilization;
28. Civil construction;
29. Land transport and pipeline transportation;
30. Water transport;
31. Air transport;
32. Storage and warehousing and supporting transport activities;
33. Accommodation management services;
34. Communications;
35. Real estate operations;
36. Education;
37. Healthcare activities; and
38. Sports, recreational and entertainment, activities.

The above list does not include a more detailed description of the aforesaid types of activities.

Investment benefits are provided subject to the following conditions:

- 1) the proposed investment activity is in the list of the priority types of activities;
- 2) the applicant has submitted a required documented proof that the Kazakhstan legal entity that filed the application has sufficient financial, technical and organizational resources for implementation of the proposed investment project.

Exemption from Customs Duties

Equipment and its components imported for the purposes of implementation of an investment project are exempt from customs duties. Exemption from customs duties is granted for the term of validity of the investment contract, no longer than 5 years of the time of its registration .

Government in-kind donations

Government in-kind donations are granted by the Investment Committee 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 fulfillment of the investment commitments under the 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 no more than 30% of the value of investment in fixed assets of a Kazakhstan legal entity.

BANKING LEGISLATION

The massive consolidation of the banking sector and full privatization of the Savings Bank makes the reforms in the Kazakhstan banking sector unique to the country. As at 1 January 2011, there were 39 banks in Kazakhstan's financial market (as compared to the 230 that were operating prior to the reforms). As at 1 January 2011, the value of total assets of Kazakhstan banks was 12,031,500,000,000 tenge (approximately 82 bln. US dollars).

The principal regulatory acts governing banking in Kazakhstan are:

- The Law of the Republic of Kazakhstan *On Banks and Banking Activities in the Republic of Kazakhstan* dated 21 August 1995;
- The Law of the Republic of Kazakhstan *On the National Bank of the Republic of Kazakhstan* dated 30 March 1995;
- The Law of the Republic of Kazakhstan *On Government Regulation and Supervision of the Financial Market and Financial Organizations* dated 4 July 2003; and
- The Law of the Republic of Kazakhstan *On the Development Bank of Kazakhstan* dated 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 and the Agency of the Republic of Kazakhstan on Regulation and Supervision of the Financial Market and Financial Organizations play 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; and
- 4) promoting stability of the financial system.

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 regarding banks as well as other financial organizations are performed by a special government authority which reports directly to the President of the Republic of Kazakhstan, the Agency of the Republic of Kazakhstan on Regulation of the Financial Market and Financial Organizations.

The objectives of the Agency of the Republic of Kazakhstan on Regulation and Supervision of the Financial Market and Financial Organizations 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 fulfillment of their assumed obligations.

For the purposes of regulation and supervision of banking activities, the Agency of the Republic of Kazakhstan on Regulation and Supervision of the Financial Market and Financial Organizations performs the following functions:

- licensing of banking activities;
- issuance of binding regulations concerning banks;
- establishment of binding ratios and limits for financial performance indicators of banks;
- control of compliance by banks with the established capital requirements and ratios as well as requirements of the legislation of the Republic of Kazakhstan on accounting and financial statements; and
- application of sanctions and other enforcement measures to banks.

The development of the banking legislation is aimed at improvement of the mechanism of regulation of the activities of banks 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.

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

- 1) acceptance of deposits, opening and maintenance of bank accounts of legal entities;
- 2) acceptance of deposits, opening and maintenance of bank accounts of private individuals;
- 3) opening and maintenance of correspondence accounts of banks and organizations performing certain bank transactions;
- 4) opening and maintenance of metals accounts of 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, exchange, recounting, sorting, packing and storage;
- 6) transfer transactions: performance of instructions of private individuals and legal entities on money payments and transfers;
- 7) discounting transactions: discounting of notes and other debentures of private individuals and legal entities;
- 8) bank lending transactions: provision by a bank, mortgage organization, broker and/or dealer entitled to maintain accounts of customers as nominal holders and a legal entity whose controlling stake is owned by the State or national holding company or national management company 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 fulfillment of obligations thereunder;
- 13) issuance by banks of bank guarantees providing for fulfillment in monetary form; and
- 14) issuance by banks of bank guarantees and other warranties for third parties ensuring fulfillment in monetary form.

The Development Bank of Kazakhstan holds a special place among all other second-tier banks. Unlike conventional banks, its priority area of activity is funding and development of projects significant for the government, presence in the fields in which commercial banks are either not represented or poorly represented. The Law of the Republic of Kazakhstan *On the Development Bank of Kazakhstan* determines the following goals for the Development Bank of Kazakhstan:

- 1) mid-term (for a period of up to 5 years and longer) and long-term (for a period of up to 10 years and longer and up to 20 years) lending for investment projects;
- 2) lending for export operations of residents of the Republic of Kazakhstan to encourage exports of products manufactured within the Republic of Kazakhstan;
- 3) encouragement of lending to the industrial sector of the Republic of Kazakhstan by issuing guarantees under loans and borrowings from other lenders, as well as co-financing;
- 4) improvement of mechanisms of funding of investment projects implemented by the Government in order to provide the public with wider opportunities to improve their housing conditions. A system of housing construction savings has been introduced in Kazakhstan for this purpose. This system is based on the model that has been present in Germany since 1928. The Law of the Republic of Kazakhstan *On Housing Construction Savings in the Republic of Kazakhstan* was adopted on 7 December 2000.

Unlike in mortgage loans, the system of construction savings provides private borrowers with an option to save a certain amount of deposit to buy property in the Housing Construction Savings Bank (the "HCSB"). The HCSB will then lend the remaining amount to such borrower at lower rates as compared to conventional commercial banks. Also, the system of housing construction savings provides for payment of premiums to depositors by the government from the budget of Kazakhstan.

As such, the system of construction savings makes it possible for lower-income borrowers who are unable to obtain mortgages to improve their housing conditions.

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 and the Agency of the Republic of Kazakhstan for Regulation and Supervision of the Financial Market and Financial Organizations prepared and adopted respective resolutions and regulations:

Certain other respective amendments were also made to:

- 1) the Civil Code of the Republic of Kazakhstan — to clarify the specifics of Islamic banking;
- 2) the Tax Code — with respect to taxation of Islamic financial institutions;

- 3) the Law On Banks and Banking – with respect to matters relating to setting up a legal framework for operation of Islamic banks, removal of restrictions impeding introduction of Islamic banking, and determination of the forms and methods of government regulation and supervision of the activities of Islamic banks;
- 4) the Law On Securities Market — aiming to specify the definitions of Islamic securities and the order of their issue and circulation;
- 5) the Law On Investment Funds — with respect to the requirements applicable to Islamic investment funds;
- 6) the Law On State Registration of Immovable Property Rights and Transactions with Such Property — with respect to the registration of rights to immovable property acquired by Islamic banks acting as trustees using funds from investment deposits;
- 7) the Law On Compulsory Insurance of Deposits Held in Second Tier Banks of the Republic of Kazakhstan — with respect to exemption of interest-free call deposits and investment deposits held in Islamic banks from the provisions of this Law.

Amendment were also made to Article 52–8 of the Law On Banks and Banking which deals with financing of trading operations by banks who act as trading agents providing commercial loans. The purpose of this amendment is to comply with the Islamic financing principles prohibiting Islamic banks from granting commercial loans for sale and purchase of merchandise not owned by the bank.

It has been also suggested to review the concept of originator in the Law On Securities Market to include, in addition to Islamic banks, the national holding company, the national management holding company and legal entities whose all voting shares (entire participation interest) are fully owned by the national management holding company (subject to consent of the national management holding company). In addition, the Law on Securities Market removed the requirement for to set up councils for the principles of Islamic financing for each management company of an Islamic investment fund.

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.

In addition, the Law of the Republic of Kazakhstan *On Banks and Banking Activities* was amended in 2009 to include a new Chapter on restructuring of banks.

In particular, restructuring of a bank means a complex of administrative, legal, financial, organizational and technical and other measures and procedures to be implemented by the bank on the basis of the bank restructuring plan (the "restructuring plan") in order to rehabilitate its financial position and improve quality of operations.

Restructuring of a bank may be required due to the bank's failure to fulfill claims of certain creditors with respect to the obligations within periods exceeding seven calendar days of the date when they become due and payable due to the lack or insufficiency of the bank's funds.

The bank files a restructuring petition with a court in accordance with the procedure established by the civil procedural legislation of the Republic of Kazakhstan.

Matters relating to restructuring of financial organizations are reviewed by special financial courts.

Once the court ruling to restructure the bank becomes effective, the bank may:

- 1) suspend enforcement of sale and purchase, exchange, gift agreements and other transactions involving disposal of property of the bank and execution of loan and other lending agreements involving credit risk; and
- 2) suspend in full or in part fulfillment of the obligations of the bank.

Approval of a restructuring plan requires consent from creditors who are entitled to no less than two thirds of the bank's obligations to its creditors where obligations to such creditors are proposed for restructuring.

Restructuring of a bank is performed with respect to all obligations of the bank to its creditors that are proposed for restructuring in accordance with the restructuring plan subject to approval of the restructuring plan by the bank's creditors in the manner established by the Law.

A court may rule to cease restructuring of a financial organization upon application from the competent authority on regulation and supervision of the financial market and financial organizations on the following grounds:

- 1) expiration of the term of restructuring of the financial organization as determined by the court restructuring ruling has expired;
- 2) fulfillment of the complex of measures provided by the restructuring plan;
- 3) early termination of the restructuring of the financial organization in the event that:
 - there are sufficient grounds to believe that the financial restructuring of the financial organization will not result in improvement of the financial performance results of the financial organization;
 - there is no approval of creditors of the financial organization obtained in the manner established by the laws of the Republic of Kazakhstan;
 - the measures provided for by the restructuring plan have not been taken;
 - the instructions of the competent authority issued in the course of restructuring have not been fulfilled.

Fulfillment of the measures set out by the restructuring plan results in discharge of the obligations in relation to which previously issued court rulings and/or arbitration and mediation awards exist that grant claims for the restructured obligations.

The Law of the Republic of Kazakhstan **On Amendments to Certain Legislative Acts of the Republic of Kazakhstan Concerning Matters Related to Mortgage Lending and Protection of Rights of Consumers of Financial Services and Investors** was adopted in February 2011. This Law provides, inter alia, for the following key amendments to the banking legislation:

- 1) introduction of the maximum permitted annual effective interest rate which includes interest, all kinds of commissions and other fees charged by banks for lending and servicing loans and which is calculated in the manner provided by the laws of the Republic of Kazakhstan;
- 2) prohibition of indexation of payments by banks in bank loan agreements by pegging them to any foreign currency equivalents;
- 3) prohibition for banks to grant loans to persons incorporated in offshore jurisdictions;
- 4) prohibition for banks to unilaterally discontinue granting of new loans under signed loan agreement(s), with certain exceptions;
- 5) prohibition for banks to restrict borrower's and pledger's right to choose insurance companies and/or assessors;
- 6) limitation of the maximum default interest applied by banks for defaulting on obligations under loan agreements;
- 7) introduction of a new set of measures to be applied by banks in recovering debt of insolvent debtors;
- 8) introduction of a requirement for banks to provide borrowers, prior to signing mortgage loan agreements, with loan payment schedules calculated using different payment methods to choose a loan payment method;
- 9) prohibition for banks to apply new commissions;
- 10) additional disclosure requirements for banks in bank loan agreements (e.g. a full list of fees, commissions with their amounts and rates charged when disbursing a loan);
- 11) additional requirements for banks to disclose information on websites;
- 12) prohibition on charging default interest or other loan prepayment penalties other than in the events of partial loan prepayments or prepayment of the full amount of the principal within the period of up to one year of the date of the disbursement of the loan;
- 13) prohibition for banks to unilaterally increase the interest rates set forth at the date of signing of a bank loan agreement with legal entities, with certain exceptions;
- 14) introduction of the institute of banking ombudsman (an independently acting natural person dealing with settlement of disagreements arising from mortgage loan agreements between the bank or organization carrying out other bank operations and the borrower who is a natural person upon such person's application in order to reach an agreement satisfying the rights and legally protected interests of the borrower and the bank or organization carrying out other bank operations);
- 15) prohibition of extrajudicial disposal of collateral proved that the pledger (a natural person) under a housing mortgage loan makes a waiver of such disposal to the registering body where such mortgage loan is registered and files the same in due time.

FINANCIAL LEASING

After the adoption of the Law of the Republic of Kazakhstan *On Financial Leasing* dated 5 July 2000 and introduction of certain positive amendments to the tax and custom legislation of the Republic of Kazakhstan, financial leasing services are becoming more popular in Kazakhstan.

Normally, a financial leasing contract has three parties: the Lessor, the Lessee and the Seller. The Lessor acquires the ownership from the Seller 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;
- 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;
- 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;
- net lease – when technical maintenance of the leasing item and its current repairs are performed by 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;
- 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

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

Licenses to carry out leasing activities are only required for banks and organizations performing certain types of banking operations.

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);
- 2) the lessee acquires the property as a fixed asset, property investment or biological assets.

Until 1 January 2012, transfer of property under financial lease is exempt from the value added tax subject to the aforesaid two conditions and the condition described below:

- 3) the transferred property is acquired without the value added tax (goods meeting the criteria set forth by the Resolution of the Government of the Republic of Kazakhstan manufactured in a bonded warehouse under the bonded warehouse procedure and realized from this territory to the rest of the territory of the territory of the Republic of Kazakhstan) or the transferred property which is imported prior to 1 January 2009 without the value added tax (import of property imported by the lessor to be transferred under financial lease under a financial lease agreement) is on the list of goods set forth in Article 250.1 of the old Tax Code.

The taxpayer has the right to reduce the taxable income with respect of certain types of income, including payment received under financial lease of fixed assets, property investment 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 are free

from the 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* dated 2 July 2003. This law governs such matters as:

- issue, placement, circulation and redemption of issue-grade securities and other financial instruments;
- specific features of establishments and operation of securities market participants;
- determination of the procedure for regulation 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 is comprised by 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 accordance with the legislation of the Republic of Kazakhstan. 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; operates as a joint stock company (save for brokers and/or dealers without the right to maintain customers' accounts, registrars, transfer agents).

The below are the types of activities that may be carried out by professional securities market participants:

- brokerage activity;
- dealer activity;
- maintenance of securities holders registers;
- investment portfolio management;
- pension fund assets investment portfolio management;
- custodian activities;
- transfer agency activities;
- organization of trading involving securities and other financial instruments.

Non-professional securities market participants

Non-professional securities market participants include individual investors (private individuals and legal entities), institutional investors (investment and mutual funds, pension funds, etc.), issuers (persons issuing securities), self-regulating organizations (association/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 are determined by the Resolution of the Board of the Agency on Regulation and Supervision of the Financial Market and Financial Organizations dated 26 May 2008. 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. General requirements for **issuers to be admitted to listing on the special trading floor** of the Regional Financial Center of the city of Almaty are set forth by the Order of the Chairman of the Agency of the Republic of Kazakhstan for Regulation of the Operations of the Regional Financial Center of the city of Almaty No. 04.2-09/119 dated 8 May 2008.

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 emergence in the stock market of such major players as pension funds boosted the development of non-government bonds. 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 purposes 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 86 members, including banks, broker and dealer companies, investment companies and pension fund assets management companies.

One of the strategic directions of further development of Kazakhstan's financial sector is creation of the regional financial center in the city of Almaty. The special RK Law *On the Regional Financial Center of the city of Almaty* was adopted on 5 June 2006. Pursuant to this Law, the regional financial center of the city of Almaty represents a special legal framework governing relations of participants of the financial center and parties concerned which is aimed at development of the financial market of the Republic of Kazakhstan. The goals of the financial center are development of the securities market, ensuring its integration into international capital markets, attraction of investment to the economy of Kazakhstan, and introduction of Kazakhstan capital to international securities markets. The management functions of the financial center are performed by a special government authority, the Agency of the Republic of Kazakhstan on Regulation of the Activities of the Regional Financial Centre of Almaty City.

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 Almaty City issued an order whereby the Kazakhstan Stock Exchange was appointed as the operator of the regional financial center of the city of Almaty (the RFCA). The Agency is an indirect (through ownership of 100% of shares of the newly established joint stock company Regional Financial Center of Almaty City) major shareholder of KASE and is actively involved in the management of the stock exchange.

The RFCA has created conditions for introducing new types of securities to the capital market. In pursuance of the Strategic Plan for 2009-2011, it works specifically on introducing new financial instruments, including development and implementation of new listing rules to attract new domestic and international issuers. Pursuant to the new listing rules, the non-government securities admitted to listing are divided into two main categories, shares and debt securities.

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 various and quality additional exchange services.

The Law of the Republic of Kazakhstan *On Securities Market* provides for an option to place 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.

INSURANCE

The legislation governing insurance in the Republic of Kazakhstan may be divided into two categories: governing the requirements for establishment and operation of insurance entities and governing relations between insurance entities and their clients. The legislation governing relations in the insurance market is primarily based on the Civil Code of the Republic of Kazakhstan (Special Part) No. 409-I dated 1 July 1999, the Law of the Republic of Kazakhstan *On Insurance Activities* No. 126-II dated 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. Mandatory types of insurance are governed by individual regulatory acts.

The first category comprises legislation governing establishment, operations and cessation of activities 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 Agency of the Republic of Kazakhstan on Regulation and Supervision of the Financial Market and Financial Organizations 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;
- 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 Agency of the Republic of Kazakhstan on Regulation and Supervision of the Financial Market and Financial Organizations is required for establishment of the insurance company, appointment of CEOs and top managers, acquisition of the status of major participant of an insurance organization and reorganization (liquidation) of the insurance company;
- the amount of the charter capital of a newly established insurance company must be 1.1 to 1.6 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, solvency margin;
- ban on preferential treatment by insurance organization of its affiliates;
- ban on possession, use and disposal of voting shares of an insurance company by legal entities incorporated in offshore jurisdictions as well as by private individuals who are founders (shareholders) of such legal entities (exemptions are insurance (reinsurance) organizations incorporated in offshore areas with credit rating at least "A" awarded by one of the rating agencies the list of which is determined by a competent authority).

The second category is represented by the legislation directly governing the relations of the 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 the insurance company or the 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 employees against accidents at work;
- 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.

The terms and conditions of voluntary insurance are determined upon agreement between the parties, i.e. the insurance company and the insured party. 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 Agency of the Republic of Kazakhstan on Regulation and Supervision of the Financial Market and Financial Organizations also has authority required to supervise and control conclusion and fulfillment 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. is an essential attribute of stable business environment for Kazakhstan and foreign investors.

CURRENCY REGULATION

The primary law governing currency relations is the Law of the Republic of Kazakhstan *On Currency Regulation and Currency Control* dated 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 procedure of currency regulation and currency control. This Law applies to Kazakhstan residents outside the Republic of Kazakhstan.

The following defined terms are essential for the purposes of currency regulation: "resident", "non-resident", "currency valuables", "commercial loan" and "financial borrowings".

Residents include:

- citizens of the Republic of Kazakhstan wherever located;
- foreign nationals and stateless persons holding a document granting the right to permanently reside in the Republic of Kazakhstan;
- 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;
- 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 who do not 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 provided otherwise by the international (intergovernmental) agreement on their establishment;
- diplomatic and other official representations of foreign states.

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;
- unvalued securities issued by residents if used in transactions between residents and non-residents and between non-residents;

Commercial loan – deferral of export payment or export or import advance payment directly between vendors (sellers) and recipients (buyers) of goods (work, services).

Financial borrowings include:

- loans (other than commercial loans);
- deposits in banks made by their subsidiaries established abroad for the purposes of raising funds in international capital markets;
- moneys provided as security of the obligations of the debtor;
- funding by third parties of acquisition of goods (work, services) and other transactions and fulfillment by third parties of the debtor's obligations to its creditors resulting in the creation of an obligation of the person for whom the obligation is fulfilled to repay the money and other property with or without interest to the person who provided such funding and/or fulfilled such obligation;
- financial leasing and renting of immovable property (other than movable things equated by the legislative acts of the Republic of Kazakhstan with immovable property) subject to subsequent purchase.

The principal currency regulation authority in the Republic of Kazakhstan is the National Bank of the Republic of Kazakhstan. The National Bank determines:

- the procedure and requirements for performance of activities related to organization of foreign currency exchange transactions;
- the procedure for performance by residents and non-residents of currency transactions, including the following currency control regimes: registration and notification;
- the procedure for performance of monitoring of currency transactions of non-residents operating within the Republic of Kazakhstan;
- forms of accounting and reporting on currency transactions mandatory for all residents and non-residents.

Licensable in the Republic of Kazakhstan are the activities related to organization of foreign currency exchange transactions by authorized bodies. 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;
- 2) financial borrowings between residents and non-residents for a period of over 180 days and shorter periods if the actual date of payment of the funds or otherwise fulfillment of the obligations exceeded 180 days;
- 3) direct investment (10% and more) by non-residents in the Republic of Kazakhstan and residents abroad;
- 4) payments between residents and non-residents related to acquisition of a fully exclusive rights to intellectual property as well as transfer and receipt by residents of money and other property in fulfillment 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 in the following events:

- 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;
- the amount of the currency transaction involving transfer of funds (transfer of property) outside from the Republic of Kazakhstan and/or creation of claims of the resident to the 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 in the established form issued by the National Bank of the Republic of Kazakhstan.

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

- 1) settlements between residents and non-residents in connection with export/import of work, services;
- 2) acquisition of securities, payment of contributions to ensure participation in the charter capital that do not constitute direct investment, transactions with derivative financial instruments between residents and non-residents;
- 3) direct investment (10% and more) made under a brokerage services agreement with a resident broker or under an investment portfolio management agreement with a resident management company;
- 4) own transactions of banks related to direct investment abroad and direct investment of non-residents in banks;
- 5) payments of residents in favor of non-residents, payments of non-residents in favor of residents related to the acquisition of ownership over immovable property as well as transfer of money and other property in trust management by residents to non-residents (or non-residents to residents);
- 6) opening by resident legal entities (other than banks and the National Post Service) of accounts in foreign banks;
- 7) other transactions provided for by the regulatory legal acts of the National Bank of the Republic of Kazakhstan.

Resident parties of such transactions are required to notify the National Bank of the Republic of Kazakhstan of the performance of the aforesaid transactions only in the following events:

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

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

The currency regulation regimes established by the Law of the Republic of Kazakhstan *On Currency Regulation and Currency Control* do not apply to currency transactions with non-residents when one of the parties to such transaction 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.

Currency transactions between non-residents within the Republic of Kazakhstan may be performed without any restriction other than in the event of the special currency regime introduced in the Republic of Kazakhstan by a relevant act issued by the President of the Republic of Kazakhstan. The 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 the special currency regime may not exceed 1 year.

The restrictions that may be applied under the special currency regime include:

- requirement to place an interest-free deposit in the amount determined as a portion of the currency transaction for a fixed period of time in an authorized bank or the National Bank of the Republic of Kazakhstan;
- requirements to obtain a special permit from the National Bank of the Republic of Kazakhstan to perform currency transactions;
- requirements of compulsory sale of foreign currency received by residents;
- restrictions on use of accounts in foreign banks, setting of dates for repayment of currency earnings and limits on the volumes, amounts and transaction currency under currency transactions;
- other temporary currency restrictions introduced by the act of the President of the Republic of Kazakhstan.

Residents are entitled to 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 are entitled to receive and transfer without restrictions dividends, interest and other income earned from deposits, securities, borrowings and other currency transactions with residents in the manner established by the Law of the Republic of Kazakhstan *On Currency Regulation and Currency Control*.

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

Foreign currency in cash 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 obtaining of a transaction certificate requirement in accordance with the Law of the Republic of Kazakhstan *On Currency Regulation and Currency Control* must be made by non-cash transfer.

Resident and non-resident private individuals are entitled to, within the amount limited to 10,000 US dollars 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 transaction certificate, registration or notification requirement.

Residents and non-residents may sell and buy foreign currency in the Republic of Kazakhstan only from and to authorized banks entitled to organization of foreign currency exchange transactions, through currency exchange offices of such authorized banks and currency exchange offices of authorized organizations.

Resident and non-resident private individuals are entitled to export foreign currency in cash from the Republic of Kazakhstan in the amounts not exceeding 10,000 US dollars without documents confirming the origin of the exported foreign currency in cash. In the event of exporting foreign currency in cash from the Republic of Kazakhstan in the amounts exceeding 10,000 US dollars, the amounts in excess of 10,000 US dollars must be accompanied by documents confirming legal origin of such amounts to be submitted to the customs authorities of the Republic of Kazakhstan.

Foreign currency in cash imported or exported to and from the Republic of Kazakhstan by resident and non-resident private individuals in the amounts exceeding 3,000 US dollars and national currency in cash in the amounts exceeding the equivalent of 3,000 US dollars must be declared to the customs authority of the Republic of Kazakhstan in a customs declaration showing the entire amount of the imported or exported foreign and/or national currency of the Republic of Kazakhstan in cash.

Import and export to and from the Republic of Kazakhstan of payment documents (promissory notes, checks, including travelers' checks) denominated in the national and foreign currency are exempt from customs declaration and are free from any restrictions.

Financial Monitoring

The Law of the Republic of Kazakhstan *On Preventing Legalization (Laundering) of Illegal Income and Funding of Terrorism* No. 191-IV was adopted on 28 August 2009 and became effective on 8 March 2010.

Pursuant to this Law, subjects of financial monitoring will be responsible for proper checking of their customers in the following events:

- 1) establishment of business relations with the customer;

- 2) performance of transactions involving money and/or other property subject to financial monitoring;
- 3) there are grounds to question the accuracy of the previously received information on the private individual or legal entity.

Subjects of financial monitoring include:

- 1) banks and organizations performing certain types of banking operations;
- 2) exchanges;
- 3) insurance (reinsurance) organizations and insurance brokers;
- 4) pension 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, operation or management of legal entities or bodies and sale and purchase of enterprises;
- 8) audit firms;
- 9) gambling business and lottery organizers;
- 10) postal service operators providing money transfer services.

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;
- 2) purchase, sale and exchange of foreign currency in cash through currency exchange offices;
- 3) withdrawal of money through a check or promissory note in a single transaction and in a series of transactions performed within seven consecutive calendar days;
- 4) exchange of banknotes with one denomination for banknotes with another denomination in a single transaction and in a series of transactions performed within seven consecutive calendar days;
- 5) withdrawal of money from or placement of money to a customer's bank account in a single transaction and in a series of transactions performed within seven consecutive calendar days
- 6) crediting or transfer of money to a customer's bank account by a private 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 transfer of money by a customer in favor of such persons in a single transaction and in a series of transactions performed within seven consecutive calendar days
- 7) transfer of money 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 a single transaction and in a series of transactions performed within seven consecutive calendar days;
- 8) opening of a savings account (deposit) in favor of a third party and/or placement of money to such account in a single transaction and in a series of transactions performed within seven consecutive calendar days;
- 9) gratuitous payments and transfers of money by a customer in favor of a third party;
- 10) purchase (sale), import to or export from the Republic of Kazakhstan of items of cultural value;
- 11) transactions by a legal entity within less than 3 months of the time of its State registration;
- 12) import to or export from the Republic of Kazakhstan of currency in cash save for import or export by the National Bank of the Republic of Kazakhstan, banks and the National Post Service Operator;
- 13) payment of insurance benefit or receipt of insurance premium;
- 14) placement, transfer of voluntary pension contributions to pension funds and pension payments from voluntary pension contributions in pension funds;
- 15) receipt or transfer of property under financial lease contracts;
- 16) transactions involving provision of services, including contractor services, transportation, freight forwarding, storage, commissioning and trust management of property;
- 17) sale and purchase and other transactions with precious metals, precious stones and precious metals or precious stones items;
- 18) transactions with immovable and other property subject to mandatory State registration; and

19) transactions with securities.

The aforesaid transactions are subject to financial monitoring if they are made in cash (other than the transactions in 6), 7), 9), 11) and 18) above) in the amounts equal to or exceeding:

- for transactions in 1) above - in the amounts equal to or exceeding 1 mln. tenge or amounts in foreign currency equal to or exceeding 1 mln. tenge;
- for transactions in 6), 7) and 9) above - in the amounts equal to or exceeding 2 mln. tenge or amounts in foreign currency equal to or exceeding 2 mln. tenge;
- for transactions in 2)-5), 8), 10)-17) above - in the amounts equal to or exceeding 7 mln. tenge or amounts in foreign currency equal to or exceeding 7 mln. tenge;
- for transactions in 18) and 19) above in the amounts equal to or exceeding 45 mln. tenge or amounts in foreign currency equal to or exceeding 45 mln. tenge.

In this regard, suspicious transactions are subject to financial monitoring regardless of the amounts that are paid or may be paid in such transactions. A transaction may be classified as suspicious transaction based on the following criteria:

- 1) if the consummated transaction has no apparent economic substance;
- 2) performance of actions aimed at avoiding the procedures of financial monitoring;
- 3) there are grounds to believe that the consummated transaction is aimed at financing of terrorism and/or extremism.

The information and data related to a transaction which is subject to financial monitoring must be filed with the subjects of financial monitoring with competent authorities in the manner established by such competent authorities upon agreement with relevant government authorities.

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 legal advice provided in relation to representation and protection of private individuals and legal entities before interrogation bodies, pretrial investigation bodies and courts.

REGULATION OF FOREIGN TRADE

The Law of the Republic of Kazakhstan *On Regulation of Foreign Trade Activities* No. 544-II dated 12 April 2004 establishes general rules regarding government regulation of foreign trade.

This Law sets forth an exhaustive list of methods of regulation of foreign trade activities, namely:

- 1) customs tariff regulation (application of customs duties, tariff privileges and preferences and tariff quotas);
- 2) non-tariff regulation (bans and restrictions on imports and/or exports of certain goods, granting of exclusive rights to export and/or import certain goods, licensing of foreign trade activities, monitoring of exports and/or imports of certain goods, involvement in application of international economic sanctions, imposition of technical, pharmaceutical, sanitary, veterinary, phytosanitary and environmental standards, norms, requirements, and quality assurance of imported goods.);
- 3) suspension of sale and/or ban of sale of certain goods in accordance with the procedure established by the legislation of the Republic of Kazakhstan;
- 4) protectionist, antidumping and compensation measures;
- 5) participation of the Republic of Kazakhstan in international economic sanctions applied against one or more states.

The Government of the Republic of Kazakhstan plays the key role in regulating foreign trade activities. The Government adopts decisions on application of the aforesaid measures.

Special procedures are applied to regulation of production and circulation of alcohol and tobacco products and certain types of petroleum products.

Export Credit Insurance

In order to encourage foreign trade activities, the Government has introduced a system of export credit insurance (i.e., loans provided for exporting goods and services from the Republic of Kazakhstan).

The Government by its Resolution dated 12 May 2003 established a Joint Stock Company, Kazakhstan Export Credit Insurance Corporation, fully owned by the State.

This Corporation provides insurance of risks of loss related to buyers' failure to fulfill financial obligations under contracts that may arise out of occurrence of events of political and/or commercial nature.

Since export credit insurance is voluntary, exporters or banks providing loans to exporters may act as insured parties under such insurance.

Export-Import Currency Control

The purpose of export-import currency control is to ensure compliance with the legislation of the Republic of Kazakhstan by residents and non-residents of the Republic of Kazakhstan, including requirements for repatriation of foreign and national currency of the Republic of Kazakhstan.

One of the main mechanisms of export-import currency control is a transaction certificate (Rules for Implementation of Export-Import Currency Control in the Republic of Kazakhstan No. 86 dated 17 August 2006 approved by a Resolution of the Board of the National Bank of the Republic of Kazakhstan).

Exporters/importers must prepare a transaction certificate separately for each foreign trade contract if the value of the goods delivered under the contract as at the date of its execution exceeds an amount equal to 50,000 US dollars in the following events:

- 1) movement of goods through the customs border of the Republic of Kazakhstan under one of the customs regimes that are accounted in the customs foreign trade statistics as exports or imports under contracts on sale or purchase of goods signed by the exporter or importer;
- 2) declaration of goods to customs authorities for export purposes (release for free circulation) following transfer of ownership to such goods from residents to non-residents (or from non-residents to residents) that have been previously been declared under a currency regime other than export regime (release for free circulation);
- 3) movement of goods through the customs border of the Republic of Kazakhstan under one of the customs regimes that are accounted for in the customs foreign trade statistics as exports or imports under contracts on performance of work or provision of services if the value of such goods exceeds an amount equal to 50,000 US dollars as of the date of execution of such contract;
- 4) movement of goods through the customs border of the Republic of Kazakhstan under lease contracts for a period exceeding 1 calendar year that provide for transfer of ownership to the goods to the lessee in the event that the lessor or the lessee is a non-resident;
- 5) change of service bank with an authorized bank that is not the transaction certificate bank in the event of suspension or withdrawal of a license to carry out banking or other transactions from the transaction certificate bank and if there are no grounds to cancel the transaction certificate;

6) assignment to the resident by the exporter or importer of the right of claim against the non-resident if the value of claims against the non-resident exceeds an amount equal to 50,000 US dollars.

Transaction certificates must be obtained from the authorized bank prior to making payments and/or transfers and prior to customs clearance of the goods.

If the issued transaction certificate provides for settlements to be made within time periods exceeding 180 calendar days, the exporter/importer must, prior to obtaining the transaction certificate, obtain a relevant registration certificate and/or notification certificate of currency transactions from the National Bank of the Republic of Kazakhstan.

The issued transaction certificate serves as the basis for customs clearance of goods and execution of payment documents for payments under the import contract.

Transaction certificates under export/import contracts are opened and cancelled by exporters/importers in their servicing banks.

A transaction certificate may be cancelled on the following grounds:

1) the parties have fully fulfilled their obligations under the contracts or there is a balance of the non-resident's or resident's outstanding debt not exceeding an amount equal to 50,000 US dollars, including in the event of discharge of obligations through provision of a payoff, setoff, if the debtor and the creditor are the same person, if the obligations cannot be fulfilled due to adoption of an act of a government authority, if there is a documented proof and written confirmation of the exporter or the importer of the discharge of the obligations of the parties under the contract;

2) return to the non-resident of the previously received goods or return to the importer of the unused advance payment if there is a written confirmation of the importer of the termination of such contract;

3) return to the exporter of the previously shipped goods in the event of the non-resident's failure to fulfill its obligations to pay for the goods or return to the non-resident of the currency received by the exporter in payment of the export contract in the event of the exporter's failure to fulfill its obligations to ship the goods if there is a written confirmation of the exporter of the termination of such contract;

4) submission of documents confirming waiver of the claims of the non-resident who has fully fulfilled its obligations to the exporter or importer in the event of the exporter's or importer's failure to fulfill its obligations to the non-resident;

5) confirmation from an authorized body that the exporter or the importer registered as a private entrepreneur has left the Republic of Kazakhstan for its permanent place of residence;

6) expiration of the contract and no cash flows under the transaction certificate for a period of 1 calendar month of the last date of fulfillment by the parties of their obligations on the condition that the parties have fulfilled their obligations in equal proportions or there is a balance of the non-resident's or resident's outstanding debt not exceeding an amount equal to 50,000 US dollars;

7) there is a court ruling or a document issued by another competent government authority of a foreign State on winding up the non-resident or declaring it bankrupt;

8) liquidation of the exporter or the importer in the manner established by the legislation of the Republic of Kazakhstan if there are no successors;

9) receipt by the exporter or importer of insurance benefit in the event of occurrence of an insured accident under the contracts for insurance of risks of non-resident's failure to fulfill its obligations;

10) receipt of money to the exporter's or importer's bank account under a factoring agreement;

11) suspension or withdrawal of the license from the transaction certificate bank to carry out banking and other transactions;

12) discounting of a promissory note submitted by the non-resident and issued by the importer for settlement purposes under the contract if the parties have fully fulfilled their obligations under the contracts or there is a balance of the non-resident's outstanding debt not exceeding an amount equal to 50,000 US dollars;

13) assignment by the exporter or importer of its debt to a third party under documents confirming the non-resident's consent thereto and if there is a written notice from the exporter or the importer of termination of such contract given to the transaction certificate bank;

14) assignment or transfer by the exporter or the importer to a third party of the right of claim against the non-resident if there are confirming documents (assignment agreement, mutual obligations reconciliation report, certificate of transfer and acceptance of goods, shipping documents, etc.) and a written notice of the exporter or the importer of the termination of such contract;

15) death of the exporter or the importer registered as a private entrepreneur if there are no successors or assigns;

16) change by the exporter or the importer of the transaction certificate bank servicing the contract for which the transaction certificate is issued;

17) there are no flows of cash or goods under the transaction certificate for a period of 3 years of the date of issuance of the transaction certificate;

18) when the transaction certificate is registered under a separate record in a branch of the National Bank of the Republic of Kazakhstan, the servicing bank is notified by the branch of the National Bank of the Republic of Kazakhstan of possible closing of the transaction certificate;

other events provided for by the legislation of the Republic of Kazakhstan.

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 the Law of the Republic of Kazakhstan *On Export Control* No. 300-III dated 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, work 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 in the lists determined under international export control regimes;
- 6) mass destruction weapons;
- 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.

CUSTOMS LEGISLATION

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), the Eurasian Economic Community (EurAsEC) and the Customs Union.

On 10 October 2000, in Astana, the Republic of Belarus, the Republic of Kazakhstan, the Kyrgyz Republic, the Russian Federation and the Republic of Tajikistan signed the Agreement on Establishment of the Eurasian Economic Community (the EurAsEC), the main goal of which is to effectively promote the establishment of Customs Union and Single Economic Area by the contracting parties. The supreme body of the EurAsEC is the Interstate Council comprising heads of states and government of the parties to the Agreement.

On 6 October, 2007, in Dushanbe, the heads of states of the Republic of Belarus, the Republic of Kazakhstan and the Russian Federation signed the Agreement on Establishment of Single Customs Territory and Formation of Customs Union. The Customs Union Commission was established at the same time and is the single permanent regulatory body of the Customs Union. The Kyrgyz Republic has also expressed its intention to accede to the Agreement.

The objective of the Customs Union is to introduce free movement of goods within the single customs territory where no customs duties and economic restrictions (other than special protectionist, antidumping and compensation measures) are applied to mutual trade in goods originating from the single customs territory and from third countries and released for free circulation in such single customs territory. In this regard, the parties apply the single customs tariff and other unified measures of regulation of trade in goods with third countries.

On 25 January 2008, in Moscow, the heads of governments of the Republic of Belarus, the Republic of Kazakhstan and the Russian Federation signed the Agreement on the Single Customs Tariff Regulation that introduces application of the Single Customs Tariff within the Single Customs Territory.

The **Single Customs Tariff** (the SCT) itself was approved by the resolution of the Interstate Council of the EurAsEC No. 18 dated 27 November 2009 and by resolution of the Customs Union Commission No. 130 dated 27 November 2009 and came into effect on 1 January 2010. These resolutions also approved the following effective as of 1 January 2010.

- **The Customs Union Foreign Trade Unified Goods Nomenclature (CU FT UGN);**
- List of the developing countries – users of the system of tariff preferences of the customs union;
- List of the least developed countries – users of the system of tariff preferences of the customs union;
- List of goods originating and imported from the developing and least developed countries the import of which is subject to tariff preferences;
- List of goods and tariffs in respect to which, during the transition period, one of the members states of the customs union applies rates of import customs duties different from those of the Single Customs Tariff of the customs union;
- List of sensitive items in respect to which the decisions of the Customs Union Commission on changing rates of import customs duties are made on the basis of consensus;

On 27 November 2009, in Minsk, the Interstate Council of the EurAsEC also adopted Resolution No. 17 on signing the Agreement on the **Customs Code of the Customs Union** which became effective on 1 July 2010 subject to compliance by the parties to the agreement with the mandatory interstate procedures. However, following the signing of the Agreement on Application of International Treaties in Connection with the Establishment of the Customs Union dated 28 May 2010, the Agreement on the Customs Code of the Customs Union has been applicable in Kazakhstan and Russia since 1 July 2010.

The formation of the single customs territory of the Customs Union comprises three stages:

- 1) The preliminary stage. During this stage (ended on 1 January 2010) two primary tasks were achieved:
 - finalization of the preparation of the legal framework of the Customs Union (including approval of the Single Customs Tariff of the Customs Union, prepared and presented the Customs Code of the Customs Union for approval);
 - a gradual move of the agreed types of government control, other than border control, to the external boundary of the single customs territory (development and approval of the plan from competent government control authorities);This stage is fully completed.
- 2) Stage One (1 January 2010 to 1 July 2010). The first stage covered the matters related to customs tariff and non-tariff regulation of external trade and, in particular, introduced the Uniform Goods Nomenclature of Foreign Economic Activity of the Customs Union and the Single Customs Tariff.
This stage is fully completed.
- 3) Stage Two (1 July 2010 to 1 July 2011). This stage continues the work on merging the customs territories of the three countries into a Single Customs Territory and, among other things, was aimed at, effective 1 July 2010:
 - enacting of the Customs Code of the Customs Union;
 - abolishing customs procedures for goods moved within the customs territories of the Republic of Belarus, the Republic of Kazakhstan and the Russian Federation and moved between the territories of the Customs Union member states.

- moving all types of government control from the border between Russia and Belarus to the external borders of the two states;

Effective 1 July 2011:

- moving the agreed types of government control from the border between Russia and Kazakhstan to the external borders of the two states;
- abolishing customs procedures for goods originating from third countries (i.e. countries that are not members of the Customs Union) and released for free circulation within the territories of the Republic of Belarus, the Republic of Kazakhstan and the Russian Federation and moved within the customs territory of these states.

The Customs Code of the Customs Union contains a number of references to national legislations of the Customs Union member states and on 30 June 2010, the new Code of the Republic of Kazakhstan *On Customs Affairs* No. 296-IV was enacted to replace the old Customs Code of the Republic of Kazakhstan.

Customs Procedures

Customs affairs in the Republic of Kazakhstan are governed by the customs legislation of the Customs Union and the customs affairs that are not covered by such legislation are governed by the customs legislation of the Republic of Kazakhstan.

The Customs Code of the Customs Union determines 17 types of customs procedures:

- 1) Release for domestic consumption (a customs procedure whereby foreign goods are located and used within the customs territory of the Customs Union without limitations with respect to their use and disposition unless otherwise is provided by the Customs Code of the Customs Union);
- 2) Re-import (a customs procedure whereby goods that have been previously exported from the customs territory of the Customs Union are imported back to the customs territory of the Customs Union within established dates exempt from import customs duties and taxes and from measures of non-tariff regulation of goods);
- 3) Bonded warehouse (a customs procedure whereby foreign goods are held under customs control in a bonded warehouse within an established period of time exempt from customs duties and taxes and from measures of non-tariff regulation of goods);
- 4) Duty free trade (a customs procedure whereby goods are sold by retail in duty-free shops to natural persons departing from the customs territory of the Customs Union or to foreign diplomatic missions, and missions of international organizations, consulate offices equivalent to them, as well as diplomatic agents, consulates' officers and their cohabiting family members, exempt from customs duties, taxes and from measures non-tariff regulation);
- 5) Inward processing within the customs territory (a customs procedure whereby foreign goods are used for processing operations within the customs territory of the Customs Union within established time periods with full conditional exemption from payment of import customs duties and taxes and from measures of non-tariff regulation and are subsequently exported from the customs territory of the Customs Union);
- 6) Processing for domestic consumption (a customs procedure whereby foreign goods are used for processing operations within the customs territory of the Customs Union within established periods of time exempt from customs duties and subject to prohibitions and restrictions, as well as restrictions with respect to use of special protectionist, antidumping and compensatory measures provided that the products derived from them are held under the release for domestic consumption procedure with payment of import customs duties at the rates applicable to processing products);
- 7) Processing outside the customs territory (a customs procedure whereby goods of the Customs Union are exported from the customs territory of the Customs Union for processing operations outside the customs territory of the Customs Union within established time periods with full conditional exemption from payment of export customs duties and free from measures of non-tariff regulation and subsequent import of the products derived from them to the customs territory of the Customs Union);
- 8) Temporary import (admission) (a customs procedure whereby foreign goods are used within the customs territory of the Customs Union with full or partial conditional exemption from payment of import customs duties, taxes and free from measures of non-tariff regulation and subsequently held under the re-export customs procedure);
- 9) Temporary export (a customs procedure whereby goods of the Customs Union are exported and used for a set period of time outside the customs territory of the Customs Union fully exempted from payment of export customs duties and from measures of non-tariff regulation and subsequently held under the re-import customs procedure);;
- 10) Export (a customs procedure whereby goods of the Customs Union are exported outside the territory of the Customs Union and are designated to be permanently located outside its boundaries);
- 11) Re-export (a customs procedure whereby goods previously imported to the customs territory of the Customs Union or the products derived from the goods held under the processing within the customs territory procedure are exported from such territory exempt from and/or subject to refund of such paid amounts of import customs duties, taxes and from measures of non-tariff regulation;;
- 12) Customs transit (a customs procedure whereby goods are transported within the customs territory of the Customs Union, including across the territory of a non-member state of the Customs Union, from the customs departure point to the customs entry point exempt from payment of customs duties, taxes and subject to applicable prohibitions and restriction other than measures of non-tariff and technical regulation ;

- 13) Destruction (a customs procedure whereby foreign goods are destroyed under customs supervision exempt from payment of import duties, taxes and from measures of non-tariff regulation);
- 14) Abandonment of goods in favor of the State (a customs procedure whereby foreign goods are transferred without compensation to the possession of a Customs Union member-state exempt from customs payments and from measures of non-tariff regulation);
- 15) Free customs zone;
- 16) Free warehouse;
- 17) Special customs procedure (a customs procedure which defines for customs purposes the requirements and conditions for use and/or disposition of certain categories of goods within or outside the customs territory of the Customs Union).

The "free customs zone" and "bonded warehouse" procedures are defined by the international treaties between the Customs Union member-states. In particular, the Agreement on the Matters Pertaining to the Free (Special) Economic Zones Within the Customs Territory of the Customs Union and the Customs Procedure of the Free Economic Zone (St. Petersburg, 18 June 2010) provides that the order of establishment, the terms and conditions and the period of operation of a free economic zone within a Customs Union member-state is defined by the laws of such state.

The following six special economic areas 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 harbor and partially within the administrative boundaries of the city of Aktau in the Mangystau Oblast) – valid until 1 January 2028;
- 2) The Information 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) – valid until 1 January 2028;
- 3) The Ontustik Special Economic Zone (within the territory of the Sairam District of the South Kazakhstan Oblast) – valid until 1 July 2030;
- 4) The New City of Astana Special Economic Zone (within the administrative border of the city of Astana) – valid until 2027.
- 5) The National Industrial Petrochemical Technology Park Special Economic Zone (within the territory of the Atyrau Oblast) – valid until 31 December 2032.
- 6) The Burabay Special Economic Zone (within the territory of the Shuchinsk District of the Akmola Oblast) – valid until December 2017.

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 Customs Union.

Goods moved across the customs border of the Customs Union are subject to mandatory customs clearance under one of the aforesaid customs procedures. As mentioned above, no customs clearance is required for goods moved within the customs territories of the Republic of Belarus, the Republic of Kazakhstan and the Russian Federation.

Classification of goods

Within the Customs Union, classification of goods is governed by the Uniform Foreign Trade Goods Nomenclature which is based on the Harmonized Commodity Description and Coding System of the World Trade Organization.

Customs declarations

Placement of goods under a customs procedure commences from the time of submitting to customs authorities a customs declaration and other documents required therewith and ends when the goods are released into the declared customs procedure.

For customs declaration of goods, depending on the declared customs procedures and the persons moving the goods, the following types of customs declarations apply:

- 1) declaration for goods;
- 2) transit declaration;
- 3) passenger customs declaration;
- 4) declaration for motor vehicles.

Customs declarations for goods are submitted by the customs applicant or by a customs broker acting in the name and on behalf of the applicant.

Customs applicants may be:

- 1) a person of a member state of the Customs Union who:
 - has entered into a foreign trade transaction or in whose name (on whose behalf) such transaction is made;

- has the right to possess, use and/or dispose of the goods - where no foreign trade transaction exists;
- 2) foreign persons:
- a natural person moving goods for personal use;
 - a person eligible for customs privileges in accordance with the Customs Code of the Customs Union
 - an organization which has a representative office duly set up within the territory of a member state of the Customs Union – in the event of declaring temporary import, re-export, and release for internal use customs procedures only with respect to the goods imported for such representative offices' own needs;
 - a person having the right to dispose of the goods outside the transaction where one of the parties to such transaction is a member state of the Customs Union;
- 3) for the purposes of customs transit procedure – persons specified in paragraphs 1) and 2) above, as well as:
- a carrier, including customs carriers;
 - a forwarding agent who is a person of a member state of the Customs Union.

Customs declarations for goods imported to the customs territory of the Customs Union must be filed before the expiry of the period of temporary storage of goods (2 months), unless otherwise is provided by the Customs Code of the Customs Union.

Customs declarations for goods exported from the customs territory of the Customs Union must be filed before their exit from the customs territory of the Customs Union, unless otherwise is provided by the Customs Code of the Customs Union.

Goods are released by customs authorities no later than 1 (one) business day after the date of registration of the customs declaration, subject to compliance with the following conditions:

- 1) the customs authorities have been provided with licenses, certificates, permits and/or other documents required for releasing goods in accordance with the Customs Code of the Customs Union and/or other international agreements of the Customs Union member states, save for when under the laws of the Customs Union member states such documents may be provided after release of the goods;
- 2) the persons have complied with the requirements and conditions for placing the goods under the chosen customs procedure in accordance with the Customs Code of the Customs Union, international agreements of the Customs Union members states or the laws of the Customs Union members states;
- 3) customs duties and/or taxes have been paid with respect to the goods or such payment has been ensured in accordance with the Customs Code of the Customs Union.

TAXATION

Introduction

On 10 December 2008, the Republic of Kazakhstan adopted a new Code of the Republic of Kazakhstan No. 99-IV *On Taxes and Other Compulsory Payments to the Budget (the Tax Code)* which became effective on 1 January 2009 (the "Tax Code"). Taxation in Kazakhstan is governed by the Tax Code and regulatory legal acts adopted under and in accordance with the Tax Code. The Tax Code determines rates of taxes and other mandatory payments, the procedure for their assessment and payment, the scope of powers of tax authorities with respect to ensuring fulfillment 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.

All private individuals and legal entities who recognized as taxpayers under the tax legislation of the Republic of Kazakhstan, including foreign nationals, must register with tax authorities in accordance with the procedure determined by the Tax Code. A failure to obtain State registration as a taxpayer and, as a consequence, pay taxes may entail administrative and criminal liability. Kazakhstan legal entities and foreign legal entities operating in the Republic of Kazakhstan through permanent establishments, if they are classified as taxpayers or tax agents, are liable for payment and withholding of the following taxes:

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;
12. flat tax; and
13. single land tax.

The Corporate Income Tax (CIT)

The income of Kazakhstan legal entities and foreign legal entities doing business in Kazakhstan through permanent establishments, net of expenses related to earning its total annual income is subject to the corporate income tax at the rate of 20%.

In the course of a tax year, taxpayers pay the corporate income tax by monthly advance payments (in equal installments). The amount of advance payments due for the tax period prior to filing a corporate income tax return for the previous tax period (which ends at 31 March of the year following the accounting year), is calculated as one fourth of the total amount of advance payments calculated in the assessed amounts of advance payments for the previous tax period. The amount of the advance income tax payments due for the period after the filing the corporate income tax return for the previous tax period is calculated as three fourths of the amount of the corporate income tax calculated for the previous tax period. In the event the amount of the actual assessment of tax exceeds the assessed amounts of advance payments by over 20% entails administrative liability in the form of penalty of 40% of the excess amount of actual tax. In this regard, taxpayers are entitled to file, within the accounting tax period, additional calculations of the amount of the corporate income tax advance payments, other than corporate income tax advance payments due for the period before filing the corporate income tax return for the previous tax period.

The Tax Code determines a list of persons exempt from assessment and payment of the corporate income tax advance payments. Such persons, among others, include:

- 1) taxpayers whose total annual income with adjustments for the tax period preceding the previous tax period does not exceed an amount equal to 325,000 monthly calculation indexes as determined by the law on the budget of the Republic of Kazakhstan and effective as of 1 January of the relevant financial year (in 2011, the amount of the monthly calculation index is 1,512 tenge);
- 2) newly created (established) taxpayers (other than those established as a result of reorganization through division or separation) - within the tax period during which they obtained State (record) registration with justice authorities and within the following tax period;
- 3) newly registered as taxpayers with tax authorities non-resident legal entities operating in Kazakhstan through permanent establishments without opening a branch or representative office – within the tax period during which they are registered with tax authorities and within the following tax period;
- 4) non-profit organizations and organizations operating in the field of social services; and
- 5) autonomous educational organizations.

Taxation of income of a foreign legal entity depends on whether or not it operates through a permanent establishment in the Republic of Kazakhstan. The most common form of a permanent establishment is a branch.

Corporate income tax on income of a foreign legal entity operating in Kazakhstan through a permanent establishment is assessed and paid in accordance with the standard procedure, i.e. that applicable to Kazakhstan legal entities at the rate of 20%. 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.

It should be noted that non-resident legal entities operating in the Republic of Kazakhstan through a permanent establishment must also pay the net profit tax at the rate of 15%. Net profit means taxable income less the amount of the corporate income tax.

Corporate income tax from taxable income of foreign 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 said 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 heaven earned from performance of work, provision of services and/or sale of goods regardless of the actual place of their performance (provision and/or sale) 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 in the Republic of Kazakhstan having a permanent establishment in the Republic of Kazakhstan if such received work, services and/or goods are related to the operations of such permanent establishment	20 %
2) insurance premiums payable under risk insurance policies	10 % (from 1 January 2012– 15 %)
3) insurance premiums payable under risk reinsurance policies	5 %
4) income from provision of international transportation services	5 %
5) capital gain income, dividends, interest, royalty	15 %
6) other income recognized by the Tax Code as non-residents' income from Kazakhstan sources	20 %

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 corporate income tax. In addition, international treaties may provide for lower income tax rates compared to the national legislations 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 1 January 2011, Kazakhstan has double tax treaties with Austria, Azerbaijan, Armenia, Belarus, Belgium, Bulgaria, Great Britain, Hungary, Georgia, India, Iran, Italy, Canada, China, Korea, Kyrgyzstan, Latvia, Lithuania, Malaysia, Moldova, Mongolia, The Netherlands, Norway, Pakistan, Poland, Russia, Romania, Singapore, Slovakia, United States, Tajikistan, Turkmenistan, Turkey, Uzbekistan, Ukraine, Finland, France, Germany, Czech Republic, Switzerland, Sweden, Estonia, and Japan. The Republic of Kazakhstan has also ratified a double tax treaty with Spain (which was not yet effective as at 1 May 2011) and signed, but not yet ratified, double tax treaties with Luxembourg and UAE. The Government of the Republic of Kazakhstan also adopted resolutions on signing double tax treaties with Saudi Arabia and Kuwait

Investment Tax Benefits (ITB)

Pursuant to the Tax Code, all taxpayers who are Kazakhstan legal entities are eligible for tax benefits, subject to the following exceptions:

- 1) organizations carrying out activities within the territories of special economic zones;
- 2) taxpayers who are manufacturers of and/or sellers of spirits, alcohol and tobacco products; and
- 3) taxpayers applying the special tax regime for legal entities who are producers of agricultural products, aquaculture (fishery) and rural consumer cooperatives.

Investment tax benefits are applied at the taxpayer's option in accordance with the Tax Code and are offered in the form of deductions of the value of the subjects of such benefits and/or subsequent expenses on reconstruction and modernization.

Subjects of the investment tax benefits include commissioned for the first time in the Republic of Kazakhstan industrial buildings and structures, machinery and equipment that, for a period of no less than 3 tax periods following the commissioning tax period, comply with all of the following requirements:

- 1) constitute assets with service life of more than 1 year manufactured and/or received by the concessionaire (successor or legal entity established exclusively by the concessionaire for the purposes of fulfillment of the concession agreement) under the concession agreement, or fixed assets;
- 2) used by the taxpayer applying the benefits in the activities aimed at generating income;
- 3) do not constitute assets that, due to the specific nature of their use, are directly causally related to the performance of the activities under the subsoil use contract(s);
- 4) in tax accounting, future expenses incurred by the subsoil user in connection with such assets are not required to be allocated between the activities performed under the subsoil contract(s) and non-contractual activities.
- 5) Investment tax benefits are applied based on one of the following methods:
 - 1) deductions after commissioning;
 - 2) deductions prior to commissioning.

The after-commissioning deduction method means deduction of the initial value of the subjects of investment benefits determined in accordance with the Tax Code by equal installments for the first three tax periods of operation or in a single installment within the tax period during which it was put into operation.

The pre-commissioning deduction method means deduction of the costs of construction, manufacture, purchase, assembling and installment of the subjects of investment benefits including future costs of reconstruction and modernization of industrial buildings and structures, machinery and equipment prior to their commissioning within the tax period during which such costs are actually incurred.

Individual Income Tax (IIT)

The individual income tax is applied to the following income of natural persons:

- 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 pension funds;
 - d) income in the form of dividends, interest, 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 private entrepreneurs;
 - c) income of attorneys, private notaries, and private law enforcement officers; and
 - d) other income.

The aforesaid income is subject to the IIT at the rate of 10%, other than income in the form of dividends taxable at the rate of 5%. The assessment and withholding and payment of tax from income taxable at the source of payment is made by tax agents. The assessment, withholding and payment of tax from income not taxable at the source of payment is made by the taxpayers.

The Tax Code contains a wide list of income of private individuals that are exempt from taxation in the Republic of Kazakhstan and are not recognized as income.

The following resident taxpayers must file individual income tax returns no later than by 31 March of the year following the accounting tax period:

- 1) private entrepreneurs (other than those applying a special tax regime to small-scale businesses operating under a license or simplified tax return procedure for incomes included in the taxable base of such private individual entrepreneurs);
- 2) private notaries, private law enforcement officers, and attorneys;
- 3) private individuals who have received property income;
- 4) private individuals who have received other income, including outside the Republic of Kazakhstan;
- 5) private individuals who have money held on bank accounts with foreign banks located outside the Republic of Kazakhstan.

Social Tax

In Kazakhstan, employers, including foreign legal entities operating in the Republic of Kazakhstan through permanent establishments, are payers of the social tax.

The following employer's expenses are subject to the social tax:

- 1) any employees' income and benefits paid in monetary form or in kind, including received in the form of material gain, as well as paid under civil contracts signed by the employer and third parties in accordance with the legislation of the Republic of Kazakhstan when employees under such contracts receive income in kind or in the form of material gain;
- 2) income of non-resident natural persons:
 - 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 in the form of material gain, including expenses on providing such private individuals with material and social benefits incurred by the resident or non-resident employer under the employment agreement (contract) or by any other person under an agreement for provision of services (performance of work). In this regard, such expenses include expenses on meals, accommodation of such private individual, education of their children in educational institutions and their recreational expenses, including travel and holiday expenses of their family members;
- 3) income of expatriate personnel provided 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%. Private entrepreneurs, other than those operating under special tax regimes, private notaries and private law enforcement officers and attorneys pay the social tax in the amount equal to 2 monthly calculation indexes as determined by the law on the budget 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 the Law of the Republic of Kazakhstan *On Compulsory Social Insurance* No. 405-II dated 25 April 2003 must be deducted from the amount of the social tax. The tax period for assessment of the social tax is a calendar month.

Value Added Tax (VAT)

Payers of the value added tax in the Republic of Kazakhstan are:

- 1) persons registered as payers of the value added tax in the Republic of Kazakhstan:
 - private entrepreneurs;
 - resident legal entities other than State institutions;
 - non-residents operating in the Republic of Kazakhstan through branches or representative offices;
 - trust managers that have turnovers related to sale of goods, work and services under trust management agreements with the founders of the trust or with the beneficiaries in other cases of creation of trust management;
- 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.

Registration as a value added tax payer may be mandatory and voluntary. Under the voluntary registration procedure, the person concerned is required to file an application for registration as a VAT-payer with the tax authority at the place of its incorporation without prior arrangement.

If the minimum turnover which is equal to 30,000 monthly calculation indexes (in 2011, 30,000 monthly calculation indexes are equal to 45,360,000 tenge) is exceeded, Kazakhstan legal entities, non-residents operating in the Republic of Kazakhstan through a branch or representative office and private entrepreneurs are required to file an application for registration as a VAT-payer with the tax authority at the place of their incorporation within no later than 10 business days of the date of expiration of the month during which the excess turnover occurred.

The amount of the turnover is determined on an accrual basis:

- by newly established resident legal entities, branches and representative offices through which non-residents are operating in the Republic of Kazakhstan – from the date of State (record) registration with the justice authorities;
- by private individuals newly registered with tax authorities as private entrepreneurs – from the date of registration with tax authorities;
- taxpayers deregistered as VAT-payers in accordance with the decision of the tax authority in the current calendar year – from the date following the date of deregistration as a VAT-payer in accordance with the decision of the tax authority;
- other taxpayers – from 1 January of the current calendar year.

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

The tax bases for VAT purposes are:

- 1) taxable turnover;
- 2) taxable import.

Taxable turnover is the turnover of the VAT-payer:

- 1) related to sale of goods (work 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;
- 2) related to acquisition of work 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.

If the work 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 work and/or services constitute turnover of their receiving taxpayer of the Republic of Kazakhstan who is required to pay the VAT for the non-resident in accordance with the Tax Code. The amount of the 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 (work and/or services) may offset the amounts of VAT payable for received goods, including fixed assets, work and services, if they are used or will be used for the purposes 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% percent. A VAT-payer is required to pay the tax payable to the budget at its place of incorporation for each tax period no later than on the 25th day of the second month following the accounting tax period. VAT on imported goods is payable on the date determined by the customs legislation of the Republic of Kazakhstan for payment of customs duties. The tax period for VAT purposes is a calendar quarter.

Specifics of VAT on Exports and Imports of Goods, Performance of Work 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 Work and Provision of Services in the Customs Union, which governs VAT applied to exports and imports of goods, performance of work and provision of services as well as its tax administration in the mutual trade relations of the Customs Union members states.

In addition to 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 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;
- a non-resident legal entity 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 mission 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 and/or attorneys importing goods in order to practice as notaries and attorneys;
- natural persons importing goods for the purposes of carrying out business activities in accordance with the laws of the Republic of Kazakhstan; and
- natural persons importing motor vehicles that are subject to state registration with relevant government authorities of the Republic of Kazakhstan.

In the event of export of goods to the Customs Union member states or in the event of work performed on processing of customer-supplied and owned raw materials (on a give-and-take basis), the VAT-payer must submit to the tax authorities together with the VAT return:

- 1) an application for import of goods and payment of indirect taxes received from the taxpayer of a Customs Union member state importing the goods (including the products derived after processing of such raw materials);
- 2) register of VAT invoices on goods sold to the Customs Union member states within the tax period or work performed in relation to processing of customer-supplied and owned raw materials (on a give-and-take basis) in the form of annex to the VAT return.

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 no later than by 20th day of the month following the tax period. The taxpayer is also required to submit the following documents to the tax authority together with such indirect tax return:

- 1) a application (applications) for import of goods and payment of indirect taxes in the established form in paper (4 hard copies) and electronic formats.
- 2) a bank statement evidencing actual payment of indirect taxes on the imported goods and/or any other payment document as provided by the banking legislation of the Republic of Kazakhstan evidencing fulfillment of the tax obligation on payment of indirect taxes on imported goods, or a document issued by the competent authority evidencing that the taxpayer is granted the right to change the date of payment of the taxes, or documents evidencing that it is exempt from VAT. It should be noted that these documents are not required in the event of a different procedure of VAT payment as well as in the event of an overpaid amount on the value-added tax accounts for the imported goods which is subject to offsetting against future VAT payments on imported goods provided that the taxpayer has requested offsetting such overpaid amounts on other taxes and payments or refunding them to the settlement account.
- 3) shipping documents confirming movement of the goods from the territory of a member state of the Customs Union to the territory of the Republic of Kazakhstan;
- 4) invoices made in the form required by the laws of a member state of the Customs Union upon shipment of the goods in the event that such invoices are required by the laws of such member state of the Customs Union;
- 5) agreements (contracts) for acquisition of the goods imported to the territory of the Republic of Kazakhstan from the territory of a member state of the Customs Union;
- 6) an information message (in the events required by the Tax Code) given to a taxpayer of the Republic of Kazakhstan by a taxpayer of another member state of the Customs Union or by a taxpayer of a state which is non a member of the Customs Union (signed by the chief executive officer (individual private entrepreneur) and bearing the organization's seal) who is selling the goods imported from the territory of a third member state of the Customs Union;
- 7) commission or agency agreements (contracts) (if any);
- 8) agreements (contracts) for acquisition of the goods imported to the territory of the Republic of Kazakhstan from the territory of another member state of the Customs Union under commission or agency agreements (in the events provided by the Tax Code).

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) gasoline (other than aviation gasoline) and diesel fuel;
- 5) motor transport vehicles designed for transportation of 10 or more passengers with engine capacity of over 3,000 cubic centimeters, other than minivans, busses and trolleys;
light-duty motor vehicles and other motor transport vehicles designed for transportation of passengers with engine capacity of over 3,000 cubic centimeters (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 centimeters;
- 6) crude oil and gas condensate;
- 7) alcohol-containing medical products registered in accordance with the laws of the Republic of Kazakhstan as drugs.

Excise taxes are paid by private individuals and legal entities, including non-resident legal entities and their structural subdivisions that:

- 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 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 4)-6) 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; and
- 6) carry out picking (packing) of excise goods set forth in 5) above.

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;
 - shipping of excise goods by the manufacturer to its structural divisions;
 - 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 of gasoline (other than aviation) and diesel fuel;
- 3) retail 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;
- 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 and beer, are subject to marking with control marks and tobacco goods are subject to marking by excise duty stamps or control marks in accordance with the procedure and conditions determined by the Government of the Republic of Kazakhstan.

The tax period for the purposes of payment of excise duties is a calendar month. By general rule, the taxpayer must pay excise duties no later than by the 20th day of the month following the accounting tax period, subject to certain exceptions.

Export Rent Tax

Export rent tax is paid by private individuals and legal entities selling for export crude oil, gas condensate, coal, other than subsoil users exporting volumes of crude oil and gas condensate produced under subsoil use contracts. The tax base for the purposes of export rent tax are volumes of crude oil, gas condensate, coal sold for export.

The rates of the rent tax on export of crude oil and gas condensate 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 the rent tax on exports of coal is 2.1%.

The tax period for payment of the export rent tax is a calendar quarter. Taxpayers must pay to the budget the assessed amount of the export rent tax no later than on the 25th 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 excess profit tax.

Special charges of 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 mandatory 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 states 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 purposes of taxes and other mandatory payments to the budget when such agreement (contract) contains express tax stability provisions with respect to such taxes and mandatory 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 paid by a subsoil user for acquiring of the subsoil use right in the contract territory.

Subscription bonuses are paid by private individuals and legal entities who are winners of 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).

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 following contracts:

- 1) for production of minerals in the following events:
 - each commercial discovery of mineral resources within the contract territory previously reported by such subsoil user within the relevant contract territory under the exploration contract;
 - a discovery made in the course of additional exploration resulting in an increase of the recoverable mineral reserves initially approved by a government body of the Republic of Kazakhstan authorized for these purposes;
- 2) for combined exploration and production for each commercial discovery of mineral resources within the contract territory, including discoveries made in the course of additional exploration resulting in an increase of the recoverable mineral resources initially approved by a government authority of the Republic of Kazakhstan authorized for these purposes.

Commercial discovery bonuses are paid 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 the recoverable mineral resources approved by the government body authorized for these purposes within the contract territory.

The tax base for the purposes of assessment of a commercial discovery bonus is the value of the volume of the recoverable 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 the 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 the subsoil use contract.

Historic cost recovery charge is paid by subsoil users who have signed subsoil use contracts in accordance with the procedure determined by the legislation of the Republic of Kazakhstan 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 in accordance with the provisions of the Tax Code.

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 minerals extraction tax with payments in kind in accordance with an amendment 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. In particular, the fixed mineral extraction tax rates on crude oil, including gas condensate, are set out in progressive tax scale (when tax rates increase as the annual volumes of production of crude oil and gas condensate increase. The rates vary from 5% for annual production volumes of up to 250,000 tons to 18% for annual production volumes exceeding 10 mln. tons). If crude oil and gas condensate are sold in the domestic market of the Republic of Kazakhstan in the manner determined by the Tax Code, the set rates are reduced by applying the reduction ratio of 0.5.

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 purposes of mineral extraction tax is a calendar quarter.

Excess Profit Tax

The excess profit tax is paid by subsoil users in relation to the operations performed under each separate subsoil use contract, other than production sharing agreements (contracts) signed between the Government of the Republic of Kazakhstan or the competent authority and the subsoil user prior to 1 January 2009, 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) as well as under contracts for construction and operation of underground facilities not related to exploration or production.

The tax base for the 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 amount of the subsoil user's deductions determined (net income and deductions) for the purposes 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%).

Land Tax

Private individuals and legal entities holding land plots (or shares in land in the event of joint shared ownership) under the land ownership right, permanent land use right and primary temporary free land use right are required to pay the 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 the 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 the land plot.

Foreign nationals, stateless persons and foreign companies may own land plots that have been (or are being) designated for construction of industrial and civil, including residential, buildings (structures and facilities) in accordance with their designation, or already developed lands, including lands designated for maintenance of buildings (structures and facilities) in accordance with their designation.

Legal entities and private entrepreneurs, private notaries and attorneys make their own assessments of the amounts of the land tax on the land plots used in their business activities that are payable in equal installments within the tax period, but no later than on 25 February, 25 May, 25 August and 25 November of the current year.

Private entrepreneurs 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 of the date of creation of such rights, to file an application for registration for tax purposes with the tax authority at the location of the land plot

Assessments of the land tax payable by private individuals are made by tax authorities. Private individuals must pay the land tax no later than on 1 November of the current year.

Tax on Transport Vehicles

The tax on transport vehicles is paid by private 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 paid by the lessee.

The taxable base are transport vehicles (including aircraft and railway rolling stock), other than trailers, that are subject to State registration and/or registered in Kazakhstan. Open-pit dump trucks with loading capacity of 40 tons and over and special-purpose medical transport vehicles are not subject to the transport vehicles tax.

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

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

Legal entities pay the transport vehicles tax to the budget at the place of their registration by making current payments by no later than on 5 July of the relevant tax period. Private individuals are required to pay this tax by no later than on 31 December of the accounting tax period.

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) private entrepreneurs 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; and
- 4) private individuals holding taxable items under the right of ownership.

Taxable items of legal entities and private entrepreneurs includes buildings and structures regarded as such in accordance with the classification set out by a competent technical regulatory government authority and accounted for as fixed assets or investment in real property in accordance with the international financial reporting standards and the requirements of the legislation of the Republic of Kazakhstan on accounting and financial reporting, as well as building and structures are concession facilities under concession agreements;

Legal entities (subject to certain exceptions that include 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).

Private entrepreneurs 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 must calculate the amount of transport vehicle tax for the relevant tax period (a calendar year). Current payment must be made in equal installments no later than by 25 February, 25 May, 25 August and 25 November of the current year.

Taxable items of private individuals includes residential buildings, country houses (dachas), garages and other structures, constructions and premises held by them under the right of ownership as well as incomplete construction projects from the time of commencement of residence or operation.

The tax base for residential buildings, country houses (dachas) or incomplete construction projects for private individuals is the value of the taxable items determined as at 1 January of each year by the government body authorized to register rights to real property and related transactions based on the base value of 1 square meter of the residential building (depending on the type of the residential area), the usable living space of the premises and various other multipliers and ratios.

The tax on property of private individuals is assessed based on the value of the taxable items at the rates set out in a progressive tax scale: starting from 0.05% for taxable items whose value is 1 mln. tenge or less to 1% for items whose value is over 120 mln. tenge. Assessment of the property tax for private individuals is made by tax authorities no later than 1 August of the tax period at the location of the taxable item regardless of the taxpayer's place of residence. Natural persons must pay this tax no later than by 1 October of the accounting tax period.

Special Tax Regimes

Taxpayers are entitled to choose either the general tax regime or 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 compulsory payment to the budget and for filing relevant tax returns.

The special tax regimes effective in the Republic of Kazakhstan are the following:

- 1) special tax regime for small business entrepreneurs which comprises:
 - special tax regime based on one-time coupons (will be cancelled effective as of 1 January 2013);
 - 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 addition to the definition of the Law of the Republic of Kazakhstan *On Private Entrepreneurship* dated 31 January 2006 of small business entrepreneurs, the Tax Code has its own criteria for classifying taxpayers as small businesses. Pursuant to the Tax Code, the special tax regime for small business entrepreneurs may not be applied by:

- 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 is also a founder of another legal entity applying a special tax regime;

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) organization and carrying out of lotteries (other than state-run (national) 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;

State registration of private individuals carrying out unincorporated entrepreneurial activities does not require prior approval and is made through their registration as private entrepreneurs with local tax authorities at the place of business specified at the time of application for State registration as a private entrepreneur. No registration is required for private individual entrepreneurs if taxpayers apply the special tax regime based on one-time coupons.

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 one-time coupons** will be cancelled effective as of 1 January 2013 and will be applied until that date by:

- 1) citizens of the Republic of Kazakhstan and Kazakhstan repatriates (oralmans) carrying out the following activities on an occasional basis (in total for no longer than 90 days per calendar year):
 - sale (other than in fixed shops) of newspapers and magazines, seeds and planting materials (nursery plants and transplants), gourds, natural flowers grown in country house (dacha) plots and household plots, products of subsidiary agricultural farming (farm households), gardening, horticulture and summer cottage plots, animal and bird feed, brooms and besoms, wild berries, honey, mushrooms and fish;
 - land cultivation services of owners of personal tractors; and
 - grazing of domestic animals and poultry;
- 2) citizens of the Republic of Kazakhstan and Kazakhstan repatriates (oralmans), private entrepreneurs and legal entities carrying out activities related to sale of goods, performance of work and provision of services in bazaars, other than in kiosks and fixed shops (isolated blocks) within the territory of the bazaar.

One-time coupons are documents certifying the right to apply the special tax regime and confirming that the individual income tax, other than the individual income tax subject to withholding at the source of payment, has been paid to the budget.

One-time coupons are issued by the authorities determined by the local executive authorities (akimats) prior to the commencement of business operations. The value of one-time coupons is determined by local representative bodies (maslikhats) on the basis of average daily data chronometric observations and inspections carried out by tax authorities taking into account the location, type and conditions of the activities, the quality and size of the item/facility used to earn income as well as other factors affecting the efficiency of the activities.

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

- 1) do not use hired labor;
- 2) carry out activities as individual entrepreneurs;
- 3) their income for the tax period does not exceed 200 times of the minimum wage set out by the law on the budget of the Republic and effective as at 1 January of the relevant financial year (as of 1 January 2011, 200 times of the minimum wage is equal to 3,199,800 tenge).

The tax base for taxpayers applying the special tax regime on the basis of a license or is the income for the tax period (calendar year) comprising all types of incomes received (receivable) within and outside the Republic of Kazakhstan.

The value of the license is determined by applying the rate of 2% to the tax base. The value of the license is payable to the budget in the form of:

- 1) individual income tax – in the amount of 1/2 of the value of the license;
- 2) social tax – in the amount of 1/2 of the value of the patent less the amount of social payments assessed in accordance with the Law of the Republic of Kazakhstan *On Compulsory Social Insurance* dated 25 April 2003.

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

- 1) for private entrepreneurs:
 - the maximum permitted number of employees for the tax period is no more than 25, including the private entrepreneur;
 - the maximum permitted income for the tax period (calendar quarter) is 10 mln. tenge;
- 2) for legal entities:
 - the maximum permitted number of employees for the tax period is no more than 50;
 - the maximum permitted income for the tax period (calendar quarter) is 25 mln. tenge.

Taxpayers make their own assessments of taxes under simplified tax returns by applying the rate of 3% to the tax base for the accounting tax period (calendar quarter). The assessed amount of taxes is adjusted to the lower figure by 1.5% of the amount of the tax per employee based on the average number of employees if the average monthly wage of employees as at

the end of the accounting period amounted to at least 2 minimum monthly wage for individual entrepreneurs and at least 2.5 minimum monthly wages for legal entities as provided by the Law On the Budget of the Republic and in effect as at the first day of the tax accounting period.

Special tax regime for farms/farm households

This tax regime provides for a special order of budget settlements based on payment of the single land tax and applies to activities of farms/farm households related to agricultural production, aquaculture (fishery) products, processing and sale of own agricultural products and aquaculture (fishery) produced by such households save for activities related to production, processing and sale of excisable goods.

Farms/farm households are entitled to apply the special tax regime if they hold land plots under the right of private ownership and/or under the right of land use (including the right of secondary use of land).

Payers of the single land tax are not required to pay the following types of taxes and other mandatory payments to the budget:

- 1) individual income tax - on income earned from the activities of the farm/farm household, including income in the form of sums allocated from the state budget for the purposes of covering the expenses (costs) related to the activities that are subject to this special tax regime;
- 2) value added tax - on turnovers from the activities subject to this special tax regime;
- 3) land tax and/or land use fee on land plots used in the activities subject to this special tax regime;
- 4) tax on transport vehicles – on taxable items/tax bases the list of which is set out by the Tax Code; and
- 5) property tax – on taxable items/tax bases held under the right of ownership and used directly for production, storage and processing of own agricultural products.

The tax base for assessment of the single land tax is the assessed value of the land plot.

Assessments of the single land tax on plough lands are made by applying the rates set out by the Tax Code (from 0.1% to 0.5%) based on the total area of land plots to the total assessed value of the land plots.

Assessments of the single land tax on grazing lands, natural hay fields and other land plots used in the activities subject to the special tax regime are made by applying the rate of 0.1% to the total assessed value of the land plots.

Payers of the single land tax make monthly assessments of the amounts of social tax at the rate of 20% of the monthly calculation index set out by the law on the budget of the Republic and effective as at the first day of the month for which the social tax assessment is made per each worker and for the head and adult members of the farm/farm household.

The special tax regime for legal entities producing agricultural products, aquaculture (fishery) products and agricultural consumer cooperatives

This regime provides for a special order of assessment of the corporate income tax, value added tax, social tax, land tax, land use fee; property tax and tax on transport vehicles and applies to:

- 1) activities of legal entities producing agricultural products, aquaculture (fishery) products related to:
 - production of agricultural products, aquaculture (fishery) products using land, processing and sale of such agricultural products of own production;
 - full-scale production of livestock and poultry (including breeding), starting from young stock, bee-farming, aquaculture (fishery) as well as processing and sale of such production of own production;
- 2) activities of agricultural consumer cooperatives related to:
 - sale of agricultural products, aquaculture (fishery) products produced by farms/farm households who are members (partners) of such cooperatives
 - processing of agricultural products, aquaculture (fishery) products produced by farms/farm households who are members (partners) of such cooperatives and sale of products obtained from their processing.

The special tax regime for legal entities producing agricultural products, aquaculture (fishery) products and agricultural consumer cooperatives may not be applied by:

- 1) legal entities that have subsidiaries and/or structural subdivisions;
- 2) legal entities affiliated with other legal entities that apply the special tax regime;
- 3) agricultural consumer cooperatives whose members (partners) are members (partners) of other agricultural consumer cooperatives.;
- 4) legal entities in which other legal entities hold participation interest exceeding 25%;
- 5) legal entities whose founders are also founders of another legal entity applying the special tax regime.

The special tax regime for legal entities producing agricultural products, aquaculture (fishery) products and agricultural consumer cooperatives does not apply to taxpayers' activities related to production, processing and sale of excisable goods.

Under the special tax regime applied to legal entities producing agricultural products, aquaculture (fishery) products and agricultural consumer cooperatives, the amounts of the corporate income tax, value added tax, social tax, land tax, land use

fee, property tax and tax on transport vehicles assessed in accordance with the general procedure are subject to reduction by 70%.

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) routine (scheduled) tax audits (carried out in accordance with the tax audits schedule approved by the competent authority on an annual basis); 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, if, during an unscheduled documentary tax audit (other than additional audit) with respect to the same tax period and the same matter, tax authorities discover any violations of the tax legislation of the Republic of Kazakhstan committed by the taxpayer not established during any of the previous tax audits, no administrative sanctions will be applied to such taxpayer for such violations.

30 calendar days prior to a routine (scheduled) comprehensive and/or routine 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.

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. 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 of 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.

Upon completion of the tax audit, in the event of any violations established, the tax authority issues a notice of the findings of the tax audit which must be sent to the taxpayer (tax agent) no later than 5 business days of the date of service of the tax audit report to the taxpayer. The taxpayer may dispute such notice with a superior tax authority within 30 business days of the date of service of the notice to the taxpayer or with a court within 3 months of the date of receipt of the notice.

In response to the taxpayer's appeal, the superior tax authority issues a reasoned decision within no later than 30 business days of the date of filing of the appeal of the taxpayer or no later than 45 business days of the date of filing of the appeal of a major taxpayer who is subject to monitoring.

Taxpayers then may file an appeal against the decision of the superior tax authority issued in response to its appeal against the notice with a competent government authority (i.e. the Tax Committee of the Ministry of Finance of the Republic of Kazakhstan) within 30 business days of the time 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 of the date when the taxpayer became aware that his appeal was denied by the superior tax authority in full or in part.

In all events when a taxpayer files an appeal with a superior tax authority, a subsequent appeal with the competent government authority or similar appeals with courts the enforcement of the disputed tax notice is stayed until a written decision is made.

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 mandatory payments to the budget (including tax default interests) respectively for private entrepreneurs and farms/farm households and 1% for legal entities.

Liability for Tax Violations and Crimes

The legislation of the Republic of Kazakhstan provides for administrative and criminal liability for commitment of tax violations.

In practice, taxpayers and tax agents are subjected to administrative sanctions for the following most common violations:

- a failure to file tax returns in due time;
- concealment of taxable items;
- violations in maintenance of tax records;
- understatement of amounts of taxes and other mandatory payments in tax returns;
- excess amounts of the assessments of the actual CIT for the tax period over the amounts of assessed advance payments during a tax period by over 20%;
- failure to withhold or partial withholding by tax agents and other authorized bodies (organizations) of the amounts of taxes and other mandatory payments subject to withholding and payment to the budget;
- violations of marking procedures and rules; and
- violations in the order of application of cash registers.

Citizens are held criminally liable for evading taxes or other mandatory payments to the State budget, or taxes or other mandatory payments to the State budget from organizations, if such actions result in a failure to pay taxes or mandatory payments to the budget in large scale amounts.

Large scale amounts are amounts exceeding 500 monthly calculation indexes for private individuals (as of 1 January 2011, 500 MCIs are equal to 756,000 tenge) and 5000 monthly calculation indexes for organizations (as of 1 January 2011, 5000 MCIs are equal to 3,024,000 tenge).

If, following a tax audit, an organization is assessed by tax authorities, in a tax notice, taxes or other mandatory payments to the budget in amounts exceeding 2000 MCIs, the tax authorities must refer the materials of the case to the relevant department for combating corruption and economic crime (the Financial Police) to determine whether the actions of the employees have constituent elements of crime and whether the offending person are to be charges with criminal liability.

TRANSFER PRICING

The Law of the Republic of Kazakhstan *On Transfer Pricing* adopted on 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.

Bodies authorized to control transfer prices are tax and customs authorities of the Republic of Kazakhstan.

Exercise of Control in Transfer Pricing

Transfer pricing control is applicable to the following transactions:

- 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;
 - 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 work and provision of services when one of the parties thereto is a non-resident operating in the Republic of Kazakhstan without a permanent establishment; transactions for sale and purchase of goods, performance of work 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) monitoring of transactions;
- 2) inspections; and
- 3) other procedures established by the laws of the Republic of Kazakhstan.

Monitoring is required with respect to international business transactions involving goods (work/services) the list of which is approved by the Government of the Republic of Kazakhstan (e.g., crude oil, gold, sugar, construction operations, marketing services, etc.). Parties to such transactions must keep records of the monitoring of the transactions and report to the Tax Committee of the Ministry of Finance of the Republic of Kazakhstan by no later than 15 April 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.

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;
- 3) inspections carried out by competent authorities as to compliance with the tax and customs 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 of transfer pricing, competent authorities are entitled to request from the parties to the transaction, government authorities and third parties information required determining the market price and differential as well as other data required to monitor the 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 the laws of the Republic of Kazakhstan. Adjustments are made only if they increase or may subsequently increase the amounts of taxes and other mandatory payments to the budget.

Adjustments 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 heaven country;
- 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;
- fulfill their obligations under transactions made by way of set-off of similar counterclaims (including set-off through assignment).

Based on adjustments of the taxable items and tax-related items, taxes and other mandatory 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.

The innovation of the Law of the Republic of Kazakhstan *On Transfer Pricing* dated 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 the transaction which sets out the method and source of information used for determining the market price for a fixed period (but no longer than 3 years).

Methods for Determining the Market Price

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

- 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** that is applied by comparing the transaction price for goods (work/services) with the market price, taking into account the price range, for identical (or, in their absence, similar) goods (work/services) in comparable economic conditions. In determining the market price for the goods (work/services), information on prices for goods (work/services) existing at the time of sale of such goods (work/services) is taken into account.

The comparable uncontrolled price method is applied to determine the market price by way of external and/or internal comparison. In an external comparison, the comparison is 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 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 (work/services) is determined as the sum of the costs (expenses) incurred and the mark-up ("plus element of profit").

In determining the costs (expenses), the costs (expenses) related to production (acquisition) and/or sale of goods (work/services), transportation, storage, insurance and other costs (expenses). 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, tax authorities and other sources of information.

The resale minus method is the method whereby the market price for goods (work/services) is determined as the difference between the price for which such goods (work/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 (work/services) are bought by the buyer from the seller) and the margin. The margin must be within the margin range.

The profit split method determines the profit from the 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 the 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;
- volumes of sale;
- costs.

Sources of Information Used for Determining the Market Price

For the purposes of determining the market price for the goods (work/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 the transaction price from the market price;
- 4) information programs used for the purposes of transfer pricing, information provided by the parties to the transaction and other sources of information.

The legislation of the Republic of Kazakhstan provides for administrative liability for a failure to provide reports on the monitoring of the transactions for the purposes of transfer pricing control, documents required for inspections related to transfer pricing and in the events if the difference between the data of monitoring reports and the data received in the course of the inspection exceeds 2000 monthly calculation indexes. The amount of the administrative fine ranges from 30 to 750 MCIs (as of 1 January 2011, 45,360 tenge - 11,134,000 tenge).

EMPLOYMENT AND LABOR LAW

Employment Legislation

The primary legislative act governing labor relations is the Labor Code of the Republic of Kazakhstan No. 251-III 3PK dated 22 May 2007. In addition certain matters related to labor and employment are also covered by a number of laws and regulatory acts of the Republic of Kazakhstan.

Labor Contracts

Labor relations normally arise out of labor contracts which must be made only in written form. By general rule, a person may enter into labor relations upon reaching the age of 16. However, with written consent of one of the parents, carers, guardians or adoptive parents, labor contracts may be signed with:

- 1) citizens who have reached the age of 15 years if they are gaining secondary education in secondary education institutions;
- 2) students who have reached the age of 14 years to perform work during extracurricular hours which is not harmful to health and does not interfere with studies;
- 3) persons under the age of 14 years in cinematography, theaters, theater and concert organizations, and circuses to participate in the production and/or performance, without causing damage to the health and moral development, extracurricular work which is not harmful to the health and does not interfere with studies.

Labor contracts may not be entered into with foreign nationals and stateless persons temporarily staying in the Republic of Kazakhstan prior to obtaining a foreign work permit from the local executive authority.

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

- 1) for an indefinite term;
- 2) for a fixed term of no less than one year. If a labor contract is re-entered (or extended) it is deemed to have been concluded for an indefinite term;
- 3) for the term of performance of a particular work;
- 4) for the term of replacement of a temporarily absent employee;
- 5) for the term of performance of seasonal work.

Labor contracts with chief executives of legal entities (Director, Chairman of the Board of Directors, etc.) and other members of their executive bodies are normally signed by the owner of the legal entity's property – the employer - or its authorized representative. Such labor contracts, as opposed to labor contracts with other employees, may be terminated at the option of the owner of the legal entity's property – the employer.

Labor contracts may be signed for multiple employments/secondary/part-time employment either with the CEO's current employer (at the place of primary employment) or with several employers.

Employers may terminate labor contracts at their discretion subject to one of the following grounds: liquidation (winding-up), staff reduction, 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.

The law also permits collective employment agreements to govern social-labor relations between employers and employees. By general rule, collective employment agreements are optional. However, if initiated by employees, the employer must take measures to participate in drafting, discussing and signing a collective employment agreement. Collective employment agreements are signed for the term determined by the parties.

Working Time and Time Off

Working hours may be normal, reduced and part-time. Normal working hours may not exceed 40 hours per week. Reduced working hours are applied to minors (aged 14 to 16) and persons engaged in heavy-duty labor – 24 and 36 per week, respectively. 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. Total daily working hours at the place of primary and secondary employment may not exceed the established daily working time limits by more than 4 hours. By 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. In addition, labor 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 labor and social leaves. The annual labor leave may not be less than 24 calendar days. A different term of the leave may be provided by laws for certain categories of employees. In addition, workers engaged in heavy-duty physical labor and work in harmful (highly harmful) and hazardous (highly hazardous) working conditions are granted additional annual paid labor leaves. The social leave (unpaid leave, study leave, maternity/paternity leave, adoption leave releases the employees from work for a certain period for the purposes of creating favorable 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 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 the accounting period (1 month to 1 year). The duration of working time within the accounting period may not exceed the established limit.

The duration of one shift may not exceed 30 calendar days. Paid annual work leave may not take place during the rest time between shifts.

Labor Compensation and Other Payments

The amount of labor compensation is determined on an individual basis depending on the qualification of the employees, the degree of complexity of work, the quantity and quality of work as well as on working conditions but no less than the minimum wage determined by the law on the budget of the Republic for the relevant year. As of 1 January 2011, the minimum wage is 15,999 tenge. Wages and salaries are paid only in monetary form no later than on the first day of the month following the accounting month.

In the event of a temporary disability, the 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.

Financial Liability

The employer is financially liable to the employee for: damages caused by illegal deprivation of the employee of the opportunity to work in his or her place of work; damages caused to the employee's belongings; harm caused to life and/or health of the employee.

The employee is financially liable to the employer for: damage caused by loss or damage of the employer's property and for damages caused by actions (omissions) of the employee.

Normally, the employee is financially liable to the employer within the limits of its average monthly pay. Holding an employee fully financially liable is governed by the approved list of grounds for full financial liability: there is a contract between the employer and the employee on full financial liability, the damage caused by the employee under the influence of alcohol or drugs, etc.

Resolution of Labor Disputes

Individual labor disputes are resolved by grievance commissions and courts. Because although decisions made by grievance committees are binding but lack means of enforcement, most labor disputes are referred to courts.

Labor disputes may be resolved through judicial process or reconciliation. If a dispute is resolved through reconciliation, it should be initially referred to the grievance committee and to employment tribunal if the parties fail to reach agreement through the grievance committee.

In addition, the parties to the dispute may also resolve 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 labor. For this purpose, there is a requirement of compulsory insurance of employees against accidents at work.

Employers provide professional training, retaining and development for the employees or other persons with whom they do not have labor 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 labor 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 of the remaining work term.

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

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:

- the Law of the Republic of Kazakhstan *On Natural Monopolies and Regulated Markets* No. 272-I dated 9 July 1998;
- the Law of the Republic of Kazakhstan *On Competition* No. 112-IV dated 25 December 2008;
- the Law of the Republic of Kazakhstan *On Private Entrepreneurship* 124-III dated 31 January 2006,

and a number of other legislative and regulatory acts and regulations.

The anti-monopoly body is the Agency of the Republic of Kazakhstan for Protection of Competition. The Agency of the Republic of Kazakhstan for Regulation of Natural monopolies previously responsible for anti-monopoly affairs is currently, despite its name, is a cross-sectored regulator responsible for licensing and tariff regulation with respect to natural monopolies and other market entities. **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/work) 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/work) due to the technological specifics of production and provision of such type of services (goods/work). The Law *On Natural Monopolies* recognizes the following services (goods/work) as those of natural monopolies:

- 1) on transportation of oil and/or petroleum products via major pipelines;
- 2) on storage and transportation of gas or gas condensate via major and/or distribution pipelines, operation of gas-distribution plants and gas-distribution pipelines connected therewith;
- 3) on transmission and/or distribution of electricity;
- 4) on production, transmission, distribution and/or supply of heat power;
- 5) on technical dispatch of grid output and consumption of electricity;
- 6) on arrangement of balancing of production and supply of electricity;
- 7) services of mainline rail network;
- 8) services of railway lines with railway transport facilities under concession agreements;
- 9) services of access roads;
- 10) flight navigation services;
- 11) services of ports and airports;
- 12) telecommunication services provided that there is no competitive service operation due to the technological inability or economic inadvisability of provision of this type of services, other than all-in-one communications services;
- 13) on providing for property lease (rent) or use of cable conduit system and other fixed assets technologically connected with connecting telecommunication networks to the public service telecommunications network;
- 14) water supply and/or sewerage system;
- 15) postal services to the general public.

The freedom of operation of natural monopoly entities is substantially restrained by a number of restrictions, including: restrictions on activities not related to the fields of natural monopolies, on holding, under the right of ownership and/or economic operation, property not related to production or provision of the regulated services.

The activities of natural monopoly entities are controlled by competent government authorities who are entitled to regular prices for goods, work or services of natural monopolies, to impose administrative liability in the event of establishing violations in the actions of natural monopoly entities and file claims with judicial authorities against antimonopoly law offenders, to exercise control over reorganization and liquidation of natural monopoly entities, their procurements and acquisition, in certain cases, of participation interests in the charter capital of natural monopoly entities by legal entities or private individuals.

Monopolistic Activities

Monopolistic activities restricted by the Law *On Competition* are:

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

Monopolistic activities are subject to criminal, civil and administrative liability. Administrative liability is imposed as fixed fines or fines determined as a percentage of the earned monopolistic proceeds and in the form of forfeiture of the monopolistic proceeds. In addition to the above, in the event that a dominant or monopolistic market participating has been held

administratively liable for monopolistic activities twice within one calendar month and continues to carry out actions restricting competition, the anti-monopoly authority, for the purposes of development of competition, is entitled to file a court claim on compulsory division 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 threat of their restriction of competition. The list of violations set out in the law is not exhaustive. Offenders committing violations in the form of anticompetitive agreements and anticompetitive collaboration include private individuals and legal entities carrying out business activities and foreign legal entities (and their branches and representative offices).

The sufficient ground to qualify as violation in the form of abuse of the dominant or monopolistic position, in addition to the possibility of restriction of competition as a result of such abuse, is the threat of impairment of the legal rights of consumers. The competition law sets out an inexhaustible list of types of abuse of the dominant or monopolistic position. Dominant or monopolistic 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 goods market.

Dominant or monopolistic position is defined as the position of a market participant or several market participants in the relevant goods market whereby the market participant or several market participants are able to control the relevant goods market, including significant influence on the general conditions of circulation of goods. In this regard, the competition law may qualify a market participant as holding a dominant or monopolistic position based exclusively on the size of such participant's share in the goods market. Article 12 of the competition law recognizes a position of a market participant as dominant position, if:

- 1) its share in the relevant goods market is 35 or more percent;
- 2) the total share of no more than three market participants holding the largest shares in such market is 50 or more percent; and
- 3) the total share of no more than four market participants holding the largest shares in such market is 70 or more percent;

and a position of financial organizations as dominant position, if:

- 1) the total share of no more than 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 no more than three financial organizations holding the largest shares in the relevant market of financial services is 70 or more percent.

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

All market participants whose position in the relevant goods market is recognized as dominant or monopolistic must be included in the State register of market participants holding a dominant or monopolistic position in the relevant goods market. Market participants included in such register are required to provide the antimonopoly authority with information in accordance with the list set out by the legislation. In addition, prices for goods, work and services of market participants holding a dominant or monopolistic position in regulated goods market (namely in the field of: railway transport, electric and heat power industry, petroleum products and gas, transportation of oil, civil aviation, ports, telecommunications and postal services) are subject to government regulation. The Government of the Republic of Kazakhstan, at the proposal of the antimonopoly and competent authorities, also determined the nomenclature of goods, work and services that are subject to State-regulated prices in different goods markets.

Unfair Competition

The Law *On Competition* also governs matters relating to prevention, discovery and restraining unfair competition. Unfair competition includes any competitive actions aimed at receiving or providing illegal property and violating legal rights of consumers. Liability for this violation may be imposed against private individuals and legal entities engage in business activities and foreign legal entities (their branches and representative offices).

Control of Economic Concentration

In addition to the above, the antimonopoly authority is authorized to exercise control of economic concentration. Economic concentration is defined as direct or indirect control of business activities of a market participant imposed 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, stakes) in the charter capital of a market participant whereby such person (group of persons) acquires the right to dispose of more than 25 percent of such shares (participation interests, stakes) if, prior to the acquisition, such person (group of persons) did not have the right to dispose of the shares (participation interests, stakes) of such market participant or had the right to dispose of 25 or less percent of voting shares (participation interests, stakes) in the charter capital of such market participant;

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

Consent of the antimonopoly agency to consummation of the aforesaid transactions is required in the events if the total book value of assets of the reorganized market participants (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 2,000,000 MCIs as in effect at the date of application, or if one of the persons participating in the transaction is a market participant holding a dominant or monopolistic position in the relevant goods market.

Consent to economic concentration involving financial organizations may be given 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 government authority for regulation and supervision of the financial market and financial organizations.

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 (work/services) to goods 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 is entitled, in addition to imposing respective administrative liability, to demand that the economic concentration carried out without consent of the antimonopoly authority be invalidated in accordance with the established procedure if such concentration has resulted in creation or strengthening of the dominant or monopolistic position of the market participant or group of persons and/or restriction of completion.

It should be noted that, although the requirement to obtain consent from the 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 result in a risk of loss of the acquired business and/or investment

Other Powers of the Anti-Monopoly Authority

In addition to prevention, establishment and restraining monopolistic activities and unfair competition and control of economic concentration, the antimonopoly authority also exercises control of provision of government aid, prevents anticompetitive actions of the government authorities of the RK and exercises control of the government's participation in business activities. These types of control are exercised by way of prior approval from the antimonopoly authority of government aid and 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

General Provisions of Protection of Intellectual Property Rights

Intellectual property law in Kazakhstan undergoes serious development.

The Civil Code of the Republic of Kazakhstan provides for a division of the intellectual property rights into the following categories: (1) copyright, (2) related rights, utility models and industrial designs, (4) selection achievement rights, (5) semiconductor topography rights, (6) rights to protection of undisclosed information, (7) right to means of identification of parties to civil law relations, goods and services.

The intellectual property rights are provisionally divided into two groups: (1) copyright which also often includes related rights and (2) industrial property rights (patent rights) which covers all other categories.

The government authority responsible for registration of intellectual property and property rights related thereto in the Republic of Kazakhstan is the Committee on Intellectual Property Rights of the Ministry of Justice of the Republic of Kazakhstan (CIPR).

Kazakhstan is a party to the Convention Establishing the World Intellectual Property Organization, the Paris Convention for the Protection of Industrial Property, the Madrid Agreement Concerning the International Registration of Marks and the Patent Cooperation Treaty.

Kazakhstan ratified the Eurasian Patent Convention on 18 July 1998, joined the Berne Convention for the Protection of Literary and Artistic Works on 10 November 1998 and the Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms on 7 June 2000.

The primary legislative acts of the Republic of Kazakhstan governing intellectual property, in addition to the Civil Code, are:

- The Law of the Republic of Kazakhstan *On Copyright and Related Rights* dated 10 June 1996;
- The *Patent Law of the Republic of Kazakhstan* dated 16 July 1999;
- The Law of the Republic of Kazakhstan *On Trademarks, Service Marks and Appellations of Origin of Goods* dated 26 July 1999;
- The Law of the Republic of Kazakhstan *On Legal Protection of Semiconductor Topographies* dated 29 June 2001; and
- The 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. Copyright and Related Rights

The Law *On Copyright 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. The 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 unlawful access to protected computer information entails criminal civil and administrative 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. An innovation patent and a patent certify the priority, authorship and exclusive right to an industrial property. An innovation patent for an invention is granted for a term of three years of the date of application which may be extended at the request of the patent holder for additional term but for no longer than two years. A patent for an invention is granted for twenty years of the time of application.

Applications for provisional patents and patent must be filed with the National Institute of Intellectual Property of the Committee on Intellectual Property Rights of the Ministry of Justice of the Republic of Kazakhstan (NIIP).

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 of the date of application which may be extended for an additional term at the request of the patent holder but for no longer than 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 ten years of the date of application which may be extended for an additional term at the request of the patent holder but for no longer five 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 private individuals and/or legal entities. To be valid, the assignment or license agreement must be registered with the NIIP. Infringement of the rights of patent holders entails civil, criminal and administrative liability.

Trademarks, Service Marks and Appellations of Origin of Goods

The right to a trademark or service mark is based on its registration with the NIIP, 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 licenses to use trademarks must be registered with the NIIP.

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 of 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). A topography is original if it is the result of the author's creative work and is deemed original until proved otherwise.

The author of the topology is a natural person whose creative work resulted in its creation.

The author of the topology or another rightholder may register a topology by making an application for registration with the authorized body but no later than two years of the date of the first use of the topology if such use took place.

The exclusive right to a topology is valid for a period of ten years of the date of registration of the topology.

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.

Legal regulation of relations arising in connection with development of mineral deposits in Kazakhstan originates from the declaration of its independence in 1991.

Today, petroleum operations in Kazakhstan are governed by two principal laws: the Law of the Republic of Kazakhstan *On Subsoil and Subsoil Use* No. 2828 dated 27 January 1996 and the Law of the Republic of Kazakhstan *On Oil* No. 2350 dated 28 June 1995. The former of the two laws governs conduct of petroleum operations and relations in connection with sound management of mineral resources and the Law of the Republic of Kazakhstan *On Oil* governs relations arising only in connection with petroleum operations onshore, offshore and in inner water bodies of Kazakhstan and is applicable in addition to and in conjunction with the Law of the Republic of Kazakhstan *On Subsoil and Subsoil Use*. The latest amendments to the Law of the Republic of Kazakhstan *On Subsoil and Subsoil Use* were adopted in October 2007 and to the Law of the Republic of Kazakhstan *On Oil* in December 2008.

In July 2008, the Ministry of Energy and Natural Resources of the Republic of Kazakhstan drafted a new Law of the Republic of Kazakhstan *On Subsoil and Subsoil Use* which was submitted by the Government of Kazakhstan to the Majilis of the Parliament of Kazakhstan. The draft law introduces a number of essential amendments, including, among others, consolidation of the two existing sectoral laws *On Subsoil and Subsoil Use* and *On Oil* into one law, abandonment of contracts for combined exploration and production, abandonment of concessions and production sharing agreements (PSAs). The draft law also sets out new requirements for determining winners of tenders for subsoil operations and regulates the procedure for pledge of subsoil use right, enforcement of the priority right of the State, etc. The new law is not expected to come into force before 2010.

The Subsoil Use Right

Pursuant to the current legislation of Kazakhstan, the subsoil use right arises from:

- provision of the subsoil use right directly by the State;
- transfer of the subsoil use right by the subsoil user or disposal of a participation interest (block of shares) in a legal entity who is a subsoil user to another entity;
- transfer of the subsoil use right, by universal succession, in the event of reorganization of a legal entity who is a subsoil user.

Virtually all types of subsoil use operations are carried out on the basis of temporary subsoil use for a fee.

Procedure for Granting the Subsoil Use Right

By general rule pursuant to the applicable legislation of Kazakhstan, the subsoil use right is granted by the State on the basis of results of tenders for conducting the following operations:

- government geological survey of mineral resources;
- exploration;
- production;
- combined exploration and production;
- construction and/or maintenance of underground facilities not related to exploration and/or production.

Exceptions from this rule apply to signing of subsoil use contracts through direct negotiations in the following events:

- operations on production involving a person holding an exclusive subsoil use right to production in connection with a commercial discovery under an exploration contract;
- operations on construction and/or maintenance of underground facilities not related to exploration and/or production;
- operations on exploration and/or production involving a national company;
- operations on exploration and/or production of widespread mineral resources in construction (reconstruction, repair) of railways and public highways and bridges.

The draft of the new RK Law *On Subsoil and Subsoil Use* excludes combined exploration and production from the list of operations eligible for the subsoil use right.

A tender for the subsoil use right is conducted by a Competent authority (the Ministry of Energy and Mineral Resources of the Republic of Kazakhstan). The right to carry out exploration, production and combined exploration and production is granted on the condition that potential bidders have committed to:

- hire Kazakhstan personnel;
- use, on a tender basis, Kazakhstan producers of goods, work and services in contractual work related to subsoil use operations;
- develop and use advanced technologies, modern and processing facilities, major and other pipelines and to construct and jointly use infrastructure and other facilities.

Winners of tenders for the subsoil use right are determined based on the following criteria:

- commencement and rate of exploration;
- commencement of production and economically and technically feasible level of production and maximum minerals extraction ratio;
- amount of the subscription bonus;
- amount of investment and dates and terms of financing of the project;
- participation in social development of the region;
- compliance with the health, safety and environment requirements of the legislation of the Republic of Kazakhstan;
- commitments on hiring Kazakhstan personnel in percentage terms to the total number of field personnel as well as proposals related to arrangement of financing of training and retraining of Kazakhstan personnel;
- commitments on procurement of goods, work and services of Kazakhstan origin in percentage terms to the total value of goods, work and services required to perform operations under the contract;
- proposals related to development and use of advance technology, modern and processing facilities, major and other pipelines, construction and joint use of infrastructure and other facilities.

The draft law *On Subsoil and Subsoil Use* has minimized the list of criteria for determining winners of the tender for the subsoil use right to the following criteria:

- the amount of the subscription bonus; and
- the amount of deductions to the budget for the purposes of socio-economic development of the region and its infrastructure.

Tender results must be published in an official printed publication. Contracts are signed with the winners of the tender based on its results.

Subsoil Contracts

In August 1999, Kazakhstan introduced a new system whereby the rights of an investor were determined by subsoil use agreements 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.

Currently, the Ministry of Energy and Mineral Resources of Kazakhstan is the competent authority responsible for ensuring compliance with the interests of the Republic of Kazakhstan in connection with execution and fulfillment of subsoil use contracts.

As stated above, the subsoil use contract is awarded to the winner of the tender based on its results. A draft subsoil use contract is provided by the subsoil user and, prior to its signing, such contract is required to undergo several compulsory expert examinations by relevant government authorities. Upon completion of such expert examinations, the competent authority and the subsoil user agree upon the final terms and conditions of the contract and sign the contract. In practice, formalities related to execution of subsoil use contracts are rarely finalized within less than 6 months. Pursuant to the draft law, the term for finalization of formalities must not exceed 18 months of the date of the competent authority's decision to sign the contract for exploration contracts and 24 months for production contracts.

Subsoil use contracts must be registered with the competent authority to come into force unless a later date is provided by the contract.

The current Law *On Subsoil and Subsoil Use* and the Law *On Oil* provide for the following types of subsoil use contracts:

- concession contracts; and
- independent contractor and paid service contracts (service contracts).

Subsoil use contracts may be granted for exploration, production as well as for combined exploration and production.

Pursuant to the draft law *On Subsoil and Subsoil Use*, types of contracts are determined depending on the types of subsoil use operations:

- contracts for exploration;
- contracts for production and primary processing;
- contracts for construction and/or operation of underground facilities not related to exploration or production;
- contracts for government geological survey of mineral resources.

Pursuant to the applicable legislation, exploration contracts may be signed for a term of up to 6 years which maybe extended twice for an additional 2 years. Pursuant to the draft law *On Subsoil and Subsoil Use*, exploration contracts may be extended only in the event of offshore petroleum exploration operations.

Production contracts may be signed for a term of up to 25 years and for up to 45 years for major and unique deposits of minerals which may be extended (the term of such extension is not defined). Pursuant to the draft law, a contract term is determined on the basis of the term defined by the exploration work program.

Contracts for combined exploration and production are signed for a term comprising the term of exploration and production subject to possible extensions.

In the event of discovery of mineral resources, the aforesaid terms may be extended for a period required to assess the commercial discovery.

Pursuant to the draft law *On Subsoil and Subsoil Use*, contracts must contain a choice of law provision defining the legislation of the Republic of Kazakhstan as the governing law under the contracts.

Suspension and Termination of Subsoil Use Contracts

The competent authority may suspend subsoil use operations for a period of up to 6 months in the events when:

- the subsoil user violates the terms and conditions of the contract;

- the subsoil user persistently violates the requirements of the legislation of the Republic of Kazakhstan with respect to Kazakhstan content, conservation of mineral resources, protection of the environment and operational safety.

In addition, the competent authority and the subsoil use and protection authorized body may suspend exploration and/or production if continued subsoil use operations are hazardous or harmful to life or the environment. In such event, the competent authority or the subsoil use and protection authorized body may give binding instructions to the subsoil user to take actions preventing or reducing the risk of negative consequences arising out of such circumstances. In this regard, the Republic of Kazakhstan is released from any liability for the occurrence of circumstances serving as grounds for suspension of the subsoil use operations.

The Law of the Republic of Kazakhstan *On Subsoil and Subsoil Use* determines the list of grounds under which a contract for exploration and/or production may be terminated by the competent authority at its sole discretion:

- the subsoil user's refusal to remedy the causes for the decision to suspend the exploration, production or combined exploration and production or its failure to remedy such causes in due time);

- failure to comply with the requirements of the competent authority in the event of the subsoil user's violation of the terms and conditions of the contract;

- impossibility to remedy the causes for the suspension of the subsoil use operations;

- failure to comply with legal requirements with respect to the priority right of the State;

- material violation by the subsoil user of the obligations set out by the contract or work program;

- the subsoil user's bankruptcy; and

- other events as required by law.

It should be noted that the current law does not grant to the subsoil user a similar right to terminate the contract at its discretion. The draft law *On Subsoil and Subsoil Use* has corrected this deficiency.

Important Legal Considerations

Subsoil Use License

The amendments to the Law of the Republic of Kazakhstan *On Subsoil and Subsoil Use* and the Law of the Republic of Kazakhstan *On Oil* adopted in 1999 have no retroactive effect. Therefore, according to article 2.3. of said amendments, all subsoil use licenses issued prior to the adoption of the amendments remain in force until the time of their expiration, including any extensions provided that the relevant legislation was in force at the time of issue of such licenses. Subsoil use licenses issued prior to 1999 may only be suspended, withdrawn or cancelled in accordance with the rules defined by the subsoil use legislation that had been in force prior to 1999. The competent authority is responsible for any functions in relation to the previously issued and existing subsoil use licenses.

Priority Right

In December 2004, a number of material amendments to the Law of the Republic of Kazakhstan *On Subsoil and Subsoil Use* and the Law of the Republic of Kazakhstan *On Oil*, including the introduction of the priority right.

For the purposes of conservation and stabilization of natural resources and achieving economic sustainability of the country's energy sector, new contacts, as well as the previously signed subsoil use contracts, the State was granted the right of priority over the other party to the contract or the founder of the legal entity holding the subsoil use rights, as well as over other persons, to acquire the assignable subsoil use right (or part thereof) and/or a participation interest (block of shares) in a non-resident legal entity, as well as in a legal entity that is capable of controlling or influencing, directly or indirectly, the decisions made by the subsoil user, on the conditions not less favorable than those provided to other purchasers.

However, the wording of such amendments does not provide the Republic of Kazakhstan with an option to acquire any assignable subsoil use right. The terms “disposal/assignment” and “purchaser” are essentially important in determining whether a proposed assignment of rights is subject to a priority right [of acquisition].

The priority right may not be applied to universal succession. This conclusion follows from Article 14 of the Law of the Republic of Kazakhstan *On Subsoil and Subsoil Use* which provides that no consent of a competent authority is required for transfer/assignment of a subsoil use right in the event of universal succession.

Pursuant to Kazakhstan legislation, universal succession occurs in the event of reorganization of a legal entity. The term “reorganization” has a broad meaning and includes the following: mergers of companies, accession, division, separation and transformation. Transactions consummated in relation thereto do not constitute “acquisition” and fall beyond the scope of the priority right. There also are certain problems related to the retroactive effect and stability of the law.

The language of the law on amendments to the subsoil use legislation is ambiguous and there is a risk that the government authorities of the Republic of Kazakhstan may be able to use the existing ambiguities in its favor. Certain investors are still able to seek legal protection by applying the rule that laws are not given a retroactive operation and the principle of stability of law (stabilization clauses) through various types of transactions available to them (including reorganization, universal succession, etc.) that do not grant the State with privileges and rights of priority. Other investors may seek legal protection through international treaties.

The deficiencies of the current subsoil use laws are the absence of the defined procedure for enforcement of the aforesaid priority right by the State. The draft law has corrected this deficiency.

Priority of Kazakhstan Goods and Kazakhstan Content

Pursuant to the Law of the Republic of Kazakhstan *On Subsoil and Subsoil Use*, obligations assumed by potential subsoil users when bidding for the subsoil use right in relation to procurement of goods of Kazakhstan origin together with the obligations to hire Kazakhstan personnel are taken into account in determining the winning bidder. The draft of the new Law of the Republic of Kazakhstan *On Subsoil and Subsoil Use* no longer contains these selection criteria.

Subsoil users engaged in subsoil operations are required to give preference to Kazakhstan personnel and use equipment, materials and finished goods produced in the Republic of Kazakhstan as well as to engage Kazakhstan organizations in performance of work and services, if such services have similar qualities and prices with the homogenous work and services provided by non-residents.

Kazakhstan content (i.e., the ratio between the foreign and local personnel and the procured foreign and Kazakhstan goods (work/services) is defined as percentage of relevant annual volumes. Prior to the amendments made to the Law of the Republic of Kazakhstan *On Subsoil and Subsoil Use*, Kazakhstan content in connection with the subsoil user's procurement of goods (work/services) was determined on the basis of their physical quantities. The current methodology uses monetary values of goods (work/services) whereby Kazakhstan content is determined on the basis of monetary amounts received by Kazakhstan producers and manufacturers.

Transfer and Assignment of Subsoil Use Rights

Subsoil use right may, subject to consent of the competent authority, be transferred, in full or in part, to another person, on a free or paid basis, including by way of disposal of a participation interest (block of shares) in a legal entity who is a subsoil user, including transfer in the form of contribution to the charter capital of the newly set up legal entity, transfer of the subsoil use right as part of the property complex being sold (disposal of a participation interest (block of shares) in a legal entity who is a subsoil user) in the course of administration in the event of bankruptcy of the subsoil user or in the course of privatization of State-owned subsoil entities, as well as by way of pledge of the subsoil use right.

The subsoil use right may not be transferred for a period of first two years of the effective date of the contract, save for transfers made in the course of liquidation of the legal entity, enforcement of the pledged subsoil use right, as well as transfer of the subsoil use right by succession or reorganization of the legal entity. This restriction does not apply if the subsoil use right is acquired by a national company or its subsidiary.

A transaction failing to obtain a permit from a competent authority to the transfer of the subsoil use right will be considered void as of the time of its execution.

To become valid and effective, a transfer of the subsoil use right requires registration of respective amendments to the contract. In the event of partial transfer of the subsoil use right to another person or entity, the subsoil user and such private individual or legal entity must reach a settlement on their mutual obligations arising out of their joint performance of the rights and obligations under the contract. However, no transfer of rights to construction and operation of oil and gas pipelines in offshore zones is permitted. This restriction may impede the business operations of entities involved in offshore operations.

The subsoil use right may be pledged as collateral and the loan received against the pledge of the subsoil use right must be used for the subsoil use purposes only. In the event of enforcement of the subsoil use right in extrajudicial proceedings, the government authorities may not suspend the extrajudicial enforcement. The draft law provides for a more detailed procedure of transfer of the subsoil use right, including its pledge. According to the new procedure, consent from a competent authority will be required not only to the pledge of the subsoil use right itself but also to the pledge of a participation interest in the subsoil use legal entity; the responsibility for obtaining the pledged subsoil use right, participation interests (blocks of shares) in a subsoil use legal entity is

borne by the person intending to participate in an open tender for sale of the respective right; extrajudicial sale of the subsoil use right as pledged collateral is prohibited.

Gas Flaring Ban

Stricter legal requirements with respect to prohibition of flaring of associated gas provoked a dramatic response from subsoil users. The innovation of the law is in the elaboration of this provision whose new wording states that the prohibition does not apply to contractors performing petroleum operations under subsoil use contracts existed as at 1 December 2004 until expiration of the term of performance of the associated and/or natural gas recovery programs provided that they had been approved (agreed upon) with a government authority prior to 1 December 2004 or agreed upon with the environment protection competent authority or authorized body prior to 1 July 2006.

Oil and Gas Exports

Kazakhstan relies upon the domestic and Russian transport infrastructure in its oil and gas exports. Currently, there are three 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 Caspian Sea; and Atasu – Alashankou through which oil is exported to the north of China.

Volumes of oil exports will increase significantly with commencement of operations of the BTC (Baku-Tbilisi-Ceyhan) Consortium pipeline with annual capacity of 50 mln. tons. Oil exports are also expected to increase with completion of the extension of the Atasu-Alashankou pipeline.

Currently, gas pipelines are not operating at full capacity. Many of the existing gas pipelines originate from other Central Asian countries, including Turkmenistan and Uzbekistan and run through Western Kazakhstan and Russia.

Significant volumes of petroleum exports go through the Aktau seaport.

Caspian Sea Development Program

Kazakhstan has fulfilled its obligations of development of oil fields in the Caspian Sea and, in April 2003, approved a plan which calls for increasing offshore production of oil to approximately 2 barrel per day by 2015. Pursuant to the Caspian Offshore Development Program, the Government will offer the Caspian offshore oil and gas fields through tenders. As such, over 100 blocks will be sold through open tenders.

The Caspian Development Program will focus on all developments areas, including expansion of the number of geological explorations and infrastructure development. Kazakhstan has a limited experience in offshore production and operations and foreign companies operating drilling units will have sufficient capacity to maintain the infrastructure and environmental technologies.

Investment opportunities exist in virtually all areas of the petroleum industry, including production of oil, processing, development and construction, transportation and storage, water injection, operational maintenance and environmental technologies. Sub-sectors are also favorable for investment, including such sub-sectors as: drilling and production equipment; turbines, compressors and pumps for pipeline applications; measurement and process control systems, etc.

LAND AND OTHER IMMOVABLE PROPERTY

Land plots

The primary legislative act governing relations arising in connection with land plots is the Land Code of the Republic of Kazakhstan 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 limits with their respective authorities.

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 the right to own/use land by the State;
- 2) transfer of the right to own/use land (under civil transactions);
- 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 for development, or built-in lands, of industrial and civil, including residential, buildings, structures and related complexes, including lands designated for maintenance of buildings and 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 installment sale as determined by the local executive authority.

In the event of renunciation of the citizenship of the republic of Kazakhstan by a Kazakhstan citizen who owns an agricultural land plot, such land plot must be returned to the ownership of the State or the title to the land plot must be re-registered within 1 year for use on the basis of temporary lease for a period of up to 10 years. In the event that the title to the land is returned to the State, the price of the land plot for which such land plot was purchased from the state must be paid to the owner from the funds received from the sale of land plots.

Privately owned legal entities of the Republic of Kazakhstan may have in private ownership land plots designated for agricultural production, forestry, for development, or built-up lands, of industrial and civil, including residential, buildings, construction and related complexes, including lands designated for maintenance of buildings and structures in accordance with their designation.

Citizens of the Republic of Kazakhstan and privately owned legal entities of the Republic of Kazakhstan who are interested in obtaining the right of private ownership to a land plot for the purposes of farming or production of agricultural products may:

- 1) acquire the right of private ownership to the land plot at the price equal to the cadastral (appraised) value of the land plot determined in accordance with the Land Code. In such event, the person who has paid the full price for the land plot is entitled to enter into any transactions with such land plot which are not prohibited by the law;
- 2) acquire the right of private ownership to the land plot at a preferential price determined on the basis of its cadastral (appraised) value. In such event, the person who has paid the full price for the land plot is entitled, upon expiration of the term of restrictions to consummation transactions with the land plot, to enter into any transactions which are not prohibited by law with such land plot at the price which is equal to two years per each ten percent of the reduced cadastral (appraised) value of the land plot. Pledge of the land plot by said person is permitted on the condition of payment of no less than fifty percent of its purchase price. The collateral under such pledge may be only the part of the land plot for which the purchase price is paid.

Foreign nationals, stateless persons and foreign (privately owned) legal entities may have in private ownership land plots designated for development of (or built-up land plots) industrial and civil, including residential buildings, structures and related complexes, including land plots designated for maintenance of buildings and 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 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 10 years to foreign nationals and stateless persons for the purposes of farming and agricultural production) and on a free basis for a period of up to 5 years.

Land users pay a fee/charge for the use of the land plots granted by the state for temporary paid use (lease).

Transfer and assignment of the land use right may be made only by persons who have bought the right of temporary long-term (5 to 49 years) land use on a paid basis save for persons who are granted the right of temporary land use for the purposes of farming or farm household or production of agricultural goods.

Land users are not permitted to enter into transactions related to land use rights, including its assignment in connection to the following lands:

- 1) public (common use) land;
- 2) designated for defense purposes;
- 3) forest land;
- 4) specially protected natural sites; land designated for health-improvement, recreational and historical and cultural purposes;
- 5) service allotments;
- 6) land plots allocated under the right of temporary land use on a free basis and short-term land use on a paid basis;
- 7) land plots allocated under the right of temporary land use for the purposes of farming/farm household and production of agricultural goods, save for pledge and contribution to the charter capital of a business partnership, as payment of shares of a joint stock company or contribution to a production cooperative;
- 8) water reserve lands.

These restrictions do not apply to transactions, including pledge, entered into by land users with respect to the right to use land that is occupied by alienable buildings (structures/constructions) and is designated for their operation and is part of forest and water reserves, specially protected natural sites and land designated for health-improvement, recreational and historical and cultural purposes.

A land plot which owned or used under the right of ownership or land use may be pledged.

No pledge is permitted in the events when transactions with the land plot are prohibited by law. No pledge is permitted with respect to a portion of a land plot if such portion may not be used as a separate land plot in accordance with its designated purpose. Pledge of the entire sub-dividable land plot or its portion is only permitted with contemporaneous pledge of the building or structure located on the land plot to be pledged. 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 procedure for granting land plots by the state and the procedure for pledging land plots is governed by the Land Code.

The right of private ownership/land use with respect to a land plot is terminated in the events of:

- 1) disposal of the land plot to another person;
- 2) a waiver of the owners/land users of its right;
- 3) a loss of the right to own/use land in other events provided for by law.

Seizure of a land plot from the owner/land user is permitted in the events of:

- 1) foreclosure of a land plot for liabilities;
- 2) compulsory acquisition, including by way of purchase, of a land plot for State needs;
- 3) forced seizure of a land plot not used in accordance with its designate purpose or used with violations of the legislation of the Republic of Kazakhstan in the events provided for by the Land Code;
- 4) compulsory acquisition from the owner or land users of the land plot affected by radioactive pollution subject to granting a land plot of equal value;
- 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 held in pledge;
- 3) termination of the labor relations in connection to which the land user was granted a service allotment.

Dwelling

Private individuals or legal entities may have in private ownership legally acquired dwelling regardless of its location in the Republic of Kazakhstan unless otherwise is set forth by the legislation. There are no restrictions as to the number and size of dwellings owned by one private individual 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, disposal subject to life-time support and other civil transactions not contradicting the legislation;
- 3) acquisition of a dwelling inheritance or universal succession;
- 4) acquisition of ownership by the lessee of the dwelling or dwelling property occupied by such lessee in a building of 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;
- 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 labor 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. 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 to ownership a suitable dwelling or is paid a 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;
- 10) on other grounds not prohibited by legislative acts of the Republic of Kazakhstan.

The owner of a dwelling or unfinished residential building is entitled to freely, at his discretion, sell on his own terms, transfer by gift, exchange or will to other persons, pledge, or otherwise disposes of the same in the manner not prohibited by legislative acts. Sale, transfer by gift or will, enforcement of mortgage of a residential building or unfinished residential building entail transfer of the right to own (use) the land plot to the new owner of the residential building within the scope of legal powers and authorities of the previous owner of the residential building.

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.

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) taking (purchase) of the land plot on which the building is located for State needs.

State Registration of Rights to Immovable Property and Related Transactions

In Kazakhstan, rights to immovable property and related transactions are subject to mandatory State registration in accordance with the Civil Code of the Republic of Kazakhstan and provisions of the Law of the Republic of Kazakhstan *On State Registration of Rights to Immovable Property and Related Transactions* dated 26 July 2007 (the "State Registration Law").

State registration in the legal cadastre is required for 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;
- 5) easement in favor of the dominant land plot or another property for a period of no less than one year.

Other rights may be registered at the option of the holder of the right.

Transactions require registration in the legal cadastre in accordance with the laws of the Republic of Kazakhstan.

The following encumbrances of the rights to immovable property require registration in the legal cadastre:

- 1) the right of use for a period of no less than 1 year, including lease, free use, easements, life-term support;
- 2) the right of trust management, including in 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 with the limits of their powers;
- 6) other encumbrances of rights to immovable property set out by the laws of the Republic of Kazakhstan other than overriding interests.

State registration in the legal cadastre is required for:

- 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;
- 5) other changes require State registration in the legal cadastre if so required by legislative acts or agreement between the parties.

No state registration is required for the so called "preemptive interests". Preemptive interests mean rights (encumbrances of 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 in 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 easements 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;
- 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.

The procedure for registration of the right (encumbrance on the right) with respect to civil aircraft, sea vessels, inland vessels, river-sea vessels as objects equal to immovable property is governed by the laws of the Republic of Kazakhstan in the field of civil aviation, merchant shipping and inland water transport.

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 in the legal cadastre in accordance with the State Registration Law are created as of the time of their State registration unless otherwise is provided by legislative acts.

If registration is not denied, the time of filing the application is acknowledged as the time of State registration.

The rights (encumbrances on the rights) to immovable property which is not subject to mandatory State registration in the legal cadastre are created in accordance with the legislative acts of the Republic of Kazakhstan governing relevant relations unless otherwise is agreed upon between the parties.

Transactions which require State registration in accordance with the laws of the Republic of Kazakhstan are deemed to be effective upon their registration unless otherwise is provided by the laws of the Republic of Kazakhstan.

Any previously created rights are subject to record registration in the legal cadastre.

The rights to the immovable property inseparable from a land plot (other than the rights to primary and secondary properties that are subject to registration separately from or together with the State registration of the rights to land plots) are deemed to have been registered contemporaneously with the registration of the rights to such land plot,

In the event of several overriding rights (encumbrances on rights) to the same property, the following provisions apply:

- 1) the rights (encumbrances on the rights) registered in the legal cadastre to an immovable property which are subject to State registration override any non-registered rights and encumbrances;
- 2) the overriding priority of the rights (encumbrances on the rights) created for an immovable property is determined based on the date of creation of the right in accordance with the civil legislation.

Effective as of the time of introduction of the requirement of State registration of immovable property and related transactions, the legal cadastre is the only source of information certifying the registered rights (encumbrances on rights) to immovable property and related transactions

State registration of the rights to immovable property and related transactions is made by application of the holder of the right, parties (participants) to the transaction, the State body (its authorized representative) or other authorized persons filed with the registering authority.

For the purposes of State registration, the applicant (the applicant's authorized representative) must produce a personal identity document and provide the following documents:

- 1) an application for State registration in the established form;
- 2) title documents and other documents identifying the property together with the technical certificate of the immovable property and/or the land plot identification document;
- 3) a copy of the personal identity document of the applicant (private individual) and authorized representative of the applicant;
- 4) a document certifying payment of the duty for State registration of the rights to the immovable property;
- 5) foundation documents for legal entities;
- 6) minutes of meetings (excerpts) of the founders (members, board of directors, shareholders' council) on acquisition or disposal of immovable property in the events required by the legislative acts of the Republic of Kazakhstan or by foundation documents;
- 7) foreign legal entities must provide a legalized excerpt from the trade register or another legalized document certifying that the foreign legal entity is incorporated under the laws of a foreign State together with a notarized translation to the State or Russian languages;

If the application contains information that the total book value of the assets to be purchased or sold exceeds the amounts set out by the antimonopoly legislation of the Republic of Kazakhstan, the applicant, in addition to the aforesaid documents, must submit the prior written consent of the antimonopoly authority.

If the transaction is not notarized, the registering authority must verify the authenticity of the signatures of the parties executing the transaction (or their authorized representatives), their capacity to transact (legal capacity) and expression of intent.

A person must file an application for State registration no later than 6 months of the time of occurrence of the legal fact serving as grounds 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. A failure of private individuals and/or legal entities to comply with such 6-month period entails liability in accordance with the laws of Republic of Kazakhstan.

In the event of pledge, lease or transfer for free use of a portion of an immovable property, the documents filed for registration must contain the map (scheme) or general layout showing the pledged, leased or transferred for free use portion of the immovable property.

Registration is completed within 15 business days of the time of filing the application with the registering authority. 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 registering authority. Expedited State registration of the rights (encumbrances) to immovable property and related transactions is made no later than on the day following the date of filing the application with the registering authority subject to payment to the budget of the State duty in the amount set out by the tax legislation of the Republic of Kazakhstan.

Documents filed for State registration may be refused on the following grounds:

- 1) documents are being filed by an ineligible person or due to a failure to produce identity documents of the applicant or its authorized representative;
- 2) documents contain deletions, additions, crossed out words and other non-stipulated corrections;
- 3) blank forms of the applications filed for registration are not correctly filled in;
- 4) the applicant has filed an incomplete set of documents required for State registration in accordance with the requirements of the State Registration Law;
- 5) the form and content of the filed documents does not comply with the requirements of the legislation of the Republic of Kazakhstan.

State registration may be denied in the following events:

- 1) the parties and properties, the type of the right or encumbrance on the right to immovable property and other properties subject to registration, or the grounds for their creation, alteration or termination do not comply with requirement of the legislation;
- 2) the applicant has filed an incomplete set of documents required for State registration if the failure to file required documents did not constitute grounds for suspension of the registration;
- 3) the form and content of the filed documents does not comply with the requirements of the legislation;
- 4) there are encumbrances preventing State registration of the right or of another property subject to State registration;
- 5) on the grounds of an effective judicial act;
- 6) failure to remedy the circumstances that constituted grounds for suspension of registration during such suspension;

7) the previously created right does not comply with the legislation existing at the time of its creation if registration is required for transfer, alteration, termination or imposition of an encumbrance with respect to such right.

The applicant may apply to the registering authority to suspend registration of the rights (encumbrances on the rights) to its immovable property for a period of no longer than 15 business days of the time of filing the application in the following events:

1) for the purposes of providing to its counterparty the guarantee that no rights of others or new encumbrances arising at the discretion of either of the parties will be registered prior to registration of the relevant rights of such counterparty to the property;

2) loss by the holder of the right of the title documents or in other events when the holder of the right becomes exposed to unreasonable risks of loss of the rights to the property beyond his will save for the events of compulsory termination of the rights to such property on the grounds provided for by the legislative acts 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:

- The Law of the Republic of Kazakhstan On Architectural and Construction Activities in the Republic of Kazakhstan No. 242-II dated 16 July 2001;
- The Resolution of the RK Government No. 425 dated 6 May 2008 On Approval of the Rules for Obtaining Permits for Construction of New and Alteration of the Existing Structures (the "Construction Permit Rules");
- The Resolution of the RK Government No. 918 dated 19 August 2002 On the Rules for Conducting Expert Examination of the Front-End (Feasibility Studies) and Detailed (Specifications and Estimates) Design Documents for Construction Regardless of the Sources of Funding and Approval of Construction Projects Funded by Government Investment;
- The Resolution of the RK Government No. 555 dated 30 June 2007 On Approval of the Rules for Licensing of the Activities and Qualification Requirements in the Fields of Architecture, Urban Planning and Construction;
- RK Construction Rule 1.04-03-2002 Commissioning of Completed after Major Overhauling Residential and Public Buildings and Communal Facilities

The government performs the following regulation of construction activities:

- 1) establishment of a system of government rules and standards mandatory to all entities involved in architectural, urban planning and construction activities;
- 2) licensing of the activities related to planning and surveying, expert assistance and construction and assembling and production of building materials, building products and structures;
- 3) urban planning;
- 4) establishment of the procedure for development, agreement and approval of design and estimation documents;
- 5) architectural and construction control and supervision by a number of government authorities;
- 6) mandatory acceptance and commissioning of certain categories of projects by the State acceptance commission.

Government authorities responsible for regulation and supervision of activities in the fields of architecture, urban planning and construction are:

- 1) the Government of the Republic of Kazakhstan;
- 2) authorized government body for architecture, urban planning and construction – the Agency of the Republic of Kazakhstan for Construction and Housing Maintenance and Utilities;
- 3) other central executive bodies within the limits of their special authorities with respect to affairs related to architectural, urban planning and construction activities;
- 4) local representative and executive bodies of oblasts (cities of national status and capital cities), districts (cities of oblast status) within the limits of their special authorities.

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.

State standards in the field of architecture, urban planning and construction are divided as follows:

- 1) organizational and methodological regulatory documents, including requirement criteria for standardization and certification of building production, surveying, engineering surveys for designing and construction, organization of construction operations, commissioning and construction safety;
- 2) general technical standards, including safety and reliability of structures, fire and explosion safety, protection from hazardous (harmful) natural, human and industrial effects, manufacturing tolerance and dimensional interchangeability and compatibility of building materials, products and structures;
- 3) urban planning standards, including requirements, conditions and limitations for planning, layout, development and improvement of residential areas, territories of horticultural associations of citizens, for preparations of master plans of industrial and agricultural facilities;
- 4) technical standards for designing and construction of residential, civil and industrial buildings and structures, including transport, hydraulic and land reclamation facilities, and major and sectored pipelines and service lines;
- 5) regulatory documents for utility lines for residential area or their parts, separate buildings, structures and their complexes;
- 6) technical standards for building materials, products and structures;
- 7) technical standards for instrumentation of construction and construction and assembling organizations, including all temporary and mobile structures and equipment;
- 8) regulatory documents for pricing and cost estimates;

- 9) regulatory documents for the State urban planning cadastre;
- 10) regulatory documents for State supervision authorities in the field of architecture, urban planning and construction (State architectural and construction supervision, State fire protection service, State sanitary and epidemiological service, State environmental expert examination committee; State service for safe industrial operations and mining supervision);
- 11) regulatory documents for the order of organization and conducting tenders (bids) for contractual construction operations.

A construction license may be issued for one or several types of construction activities. Licenses are issued by local executive bodies of oblasts (cities of national status, capital cities). The order of licensing of construction activities is determined by the licensing legislation.

Licenseses are natural persons and legal entities holding a license to carry out licensable activities in the fields 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 constructions and reinforcement of structures.

The uniform procedure for completing formalities required for construction of new and modification of existing construction projects and the order of payment (collection of duties) for preparation and issue of permits are set out by the Construction Permit Rules.

Permits (i.e., documents granting the applicant the right to implement its design concept for construction of new or modification of existing projects) are as follows:

- 1) decisions of relevant local executive authority on allocation of a land plot (site, road) for construction of the project stated in the application or permits for use for construction purposes of the land plot owned by the applicant on the basis of the right of ownership or land use;
- 2) permits from relevant local executive body for implementation of the requested modifications of the existing project (or parts thereof);
- 3) permits for construction and assembling operations (commencement of construction) for a specific project (complex) on a land plot allocated (construction site, territory, road) for this purposes.

Permits are issued upon application together with attached documents the list of which is set out by the competent government authority for architecture, urban planning and construction affairs.

Documents filed by the applicant for obtaining a permit to carry out construction and assembling operations (commencement of construction) must be reviewed for no longer than 7 business days of the time of application.

Permits for construction and assembling operations (commencement of the construction) is valid for the entire term of the standard duration of the construction approved as part of the design (design and estimate) documents. If the project is not completed within the standard duration, the client (developer) is required to obtain a new permit to continue construction.

New permits to continue construction are issued upon application together with attached documents the list of which is determined by the competent government authority for architecture, urban planning and construction affairs.

In the event of change of the original client (developer) of the construction project or the general contractor, the initially issued permit must be re-registered upon application of the client (developer).

Persons interested in modifications of residential and non-residential premises in residential buildings and their certain other parts and having a relevant permit from the local executive body, must apply to local (oblasts, cities of national status and capital cities) government architecture and construction supervising authorities to obtain a permit to carry out respective construction and assembling operations.

The application must be filed together with:

- 1) copies of documents certifying the applicant's right of ownership to the premise (part of building) to be modified together with originals for verification of their authenticity by the government authority reviewing the application, or notarized written consent of its owner (co-owners) for their modification;
- 2) design (sketch) of the intended modifications prepared in accordance with the architectural and planning assignment of the relevant local architectural and urban planning authority.

Reconstruction, alteration and remodeling of premises in existing residential buildings carried out within the existing limits of the land plot (territory, road) not affecting the structural and operational designation of the building are made subject to a permit from the local executive body without requirement to obtain a permit for construction and assembling operations.

If the intended reconstruction (alteration, remodeling) of premises (parts of a residential building) or relocation of the boundaries of the premises affects the interests of owners of other premises (parts of the building) adjacent with the premises (parts of the building) to be altered, the application must be accompanied with a notarized written consent of such owners to such alterations.

Decisions to issue or deny permits to construction and assembling operations in connection with reconstruction of premises (parts of a building) must be made within 5 business days of the time of application. Permits to carry out (commence) construction and assembly operations are valid for 12 months of the date of their issue.

Completed construction operations must be accepted by the State acceptance commission or an acceptance commission. A certificate issued by the State acceptance commission or acceptance commission based on the results of the acceptance to commission the project is the primary document for the purposes of State registration of the property right to the completed project.

TRANSPORT AND COMMUNICATIONS

General requirements of legal regulation of the transport industry are set out in Chapter 34 "*Transportation*" and Chapter 35 "*Freight Forwarding*" of the Civil Code of the Republic of Kazakhstan and the Law of the Republic of Kazakhstan No. 156-XIII dated 21.09.1994 On Transport in the Republic of Kazakhstan. The specifics of transportation by different types of transport are governed by special legislative acts, including:

- The Law of the Republic of Kazakhstan dated 06.07.2004 *On Inland Water Transport*.
- The Law of the Republic of Kazakhstan No. 266-II dated 04.07.2003 *On Motor Transport*.
- The Law of the Republic of Kazakhstan dated 17.01.2002 *On Merchant Shipping*.
- The Law of the Republic of Kazakhstan No. 266-II dated 08.12.2001 On Railway Transport.
- The Law of the Republic of Kazakhstan No. 2697 dated 20.12.1995 On the Use of Airspace and Air Activity of the Republic of Kazakhstan.

Certain matters relating to transportation are government by a number of regulatory legal acts and regulations.

Public roads (highways), navigable waterways, lighthouses, aids and navigation marks controlling and ensuring safety of navigation, locks/gates, international sea ports, air navigation facilities of the air traffic control authorities, utility systems related to ensuring safety of aircraft flights and the underground railroad are the property of the state and may not be alienated.

Air navigation facilities of the air traffic service units are the property of the state but may be also privately owned in the events determined by the laws of the Republic of Kazakhstan.

The mainline rail network is the property of the state and may not be privatized. It is transferred to the national company on the conditions and in the manner determined by the Government of the Republic of Kazakhstan.

Access roads and narrow gauge lines, as well as motor roads (highways), other than those mentioned in the beginning of this section, may be state-owned and privately owned. It should be noted that the mainline railway network, major oil pipelines, major gas pipelines, the national electricity grid, trunk network, the national postal network, international airports, seaports that have the status of international importance, aeronautical equipment of air traffic control systems, devices and navigation marks used to regulate and ensure safety of navigation, and public use roads constitute strategic facilities.

The law establishes special rules with regard to the legal status of strategic facilities. For instance, encumbrance of strategic facilities with the rights of third parties or their disposal requires a decision of the Government of Republic of Kazakhstan on issuing a permit and in the manner determined by the Government of Republic of Kazakhstan. If a strategic facility is held in private ownership and its owner intends to sell this facility, the Government of Republic of Kazakhstan has the priority right to buy the strategic facility at the market price.

The legislation establishes the obligation to pay a number of mandatory payments to the budget for the implementation of the activities in the field of transport and communications.

Land plots provided to ensure activities and/or operation of transport and communication facilities, are included in a separate category of land. The procedure for use of such lands is determined by special legislation.

Transport enterprises and carriers in Kazakhstan operate as profit making enterprises. In the event of a decision of local executive authorities to organize transportation for the population, government subsidies are provided for these purposes from respective State budget funds.

A license is required to carry out the following transportation activities:

1) passenger transportation.

This activity includes the following sub-categories of activities:

- railway passenger transportation;
- sea passenger transportation; and
- inland waterway passenger transportation.

2) transportation of dangerous goods.

This activity includes the following sub-categories of activities:

- railway transportation of dangerous goods;
- sea transportation of dangerous goods;
- inland waterway transportation of dangerous goods.

Railway Transport

Construction of railroad sidetracks requires obtaining permits, licenses and approvals, including permits of local authorities and the national railway network operator for relevant technical specification for the construction and a permit to connect the sidetrack with the mainline railway network, permits from communication, sanitary, firefighting and environmental services.

Transportation by the mainline railway network is performed in accordance with the rules for use of the mainline railway network for a charge in the amounts determined by the legislation.

Locomotives, rail cars and self-propelled and other transport vehicles designated for railway transportation of passengers, baggage, cargo, freight baggage and mail must be registered with the Transport Control Committee of the Ministry of Transport and Communication of the Republic of Kazakhstan.

In order to use rail cars in the territories of the CIS countries, including the Republic of Kazakhstan, and in the territories of Latvia, Lithuania and Estonia, freight rail cars with eight-digit numbering starting with "5" must be registered in the automated data bank of freight rail car fleet (Moscow). This registration must be obtained through a home terminal of the railway administration.

Air Transport

The use of airspace for civil aviation purposes mainly includes transportation of passengers, baggage, cargo and mail (air transportation), organization of educational, sporting and entertainment events, development of technical creativity and satisfaction of individuals' needs of aircraft operators.

Pursuant to the legislation, aircraft may be privately owned by legal entities and private individuals.

The following formalities are required to acquire an aircraft for commercial purposes or for personal use:

- obtaining a permit a competent authority for acquisition of ownership of the aircraft;
- State registration of the civil aircraft and rights thereto with a competent authority in the State Register of Civil Aircraft of the Republic of Kazakhstan. The owner of the aircraft registered in the relevant register is issued a certificate of State registration of civil aircraft and rights thereto;
- obtaining required permits, approvals and licenses to operate the aircraft.

Communications

Activities in the field of communications is also thoroughly governed by licensing of communication services, certification of certain categories of communication technologies and facilities, government technical supervision and control of communications and other measures. The basis for legal regulation of this field of civil relations are the provisions of the Civil Code of the Republic of Kazakhstan (Chapter 33, Provision of Services on a Paid Basis) and the Law of the Republic of Kazakhstan No. 567-II dated 05.07.2004 *On Communications*.

Licenses for telecommunication services using radio frequencies or number pool resources are issued on a tender basis. Licenses for other telecommunication services are issued without restrictions.

COURTS AND ARBITRATION

Courts of the Republic of Kazakhstan

The judicial system of Kazakhstan comprises district (city) courts and courts assigned equal status; oblast courts and courts assigned equal status; and the Supreme Court of the Republic of Kazakhstan.

Courts are divided into specialized courts, interdistrict economic courts, Interdistrict courts and administrative courts assigned equal status, military courts, interdistrict juvenile courts, and the specialized court in Almaty.

Specialized interdistrict economic courts, interdistrict juvenile courts and military district courts are assigned the similar status with district courts.

The city courts of Astana and Almaty, the Military Court of the Armed Forces of the Republic of Kazakhstan and the specialized financial court of Almaty are assigned an equal status with oblast courts.

Judicial power is exercised through civil, criminal and other forms of proceedings established by law.

Matters falling under the jurisdiction of courts of first instances are considered by district (city) courts and courts assigned equal status, except for the matters set out by Article 59.8 and Article 66.3 of the Constitutional Law of the Republic of Kazakhstan *On Election in the Republic of Kazakhstan* and by Article 13.5 of the Constitutional Law of the Republic of Kazakhstan *On the Republic Referendum* that fall under the jurisdiction of the Supreme Court of the Republic of Kazakhstan.

Specialized interdistrict economic courts consider civil matters in property and non-property disputes between unincorporated citizens engaged in business activities 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 individual entrepreneurs, 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 ("corporate disputes"):

- 1) related to setting up, reorganization and liquidation of a legal entity;
- 2) related to 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) related to claims of founders, shareholders, participants and members of legal entities ("members of legal entities") in connection with damages caused to a legal entity, annulment of transactions consummated by a third party and/or application of the consequence of the annulment of such transactions;
- 4) related to 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;
- 5) related to issue of securities;
- 6) arising from 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;
- 7) related to annulment of state registration of issue of shares;
- 8) related to convening a general meeting of shareholders of a legal entity; and
- 9) related to contesting decisions and/or actions (omissions) of governing bodies of a legal entity.

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 resident of minors; termination (restriction) or restoration of parental rights; on child adoption; on assignment of minors to special education organizations or special treatment organizations; on disputes arising out of custody, care (guardianship) over minors in accordance with the marriage and family legislation of the Republic of Kazakhstan. If there is no specialized interdistrict juvenile court within a given administrative territorial unit, the matters falling under the jurisdiction of such courts may be resolved by the district (city) court.

The specialized financial court resolves civil matters relating to disputing by participants of the Regional Financial Center of Almaty against actions (omissions) of officials and authorities of the Regional Financial Center of Almaty, other civil matters if one of the parties to the dispute is a participant of the Regional Financial Center of Almaty, as well as civil litigations related to restructuring of

financial organizations and organizations which form a part of a banking conglomerate as a parent company and which are not financial organizations in the events provided for by the laws of the Republic of Kazakhstan.

Civil litigations in courts of first instance and appellate courts are resolved by a single judge who is acting on behalf of the court.

Matters in courts of cassation or supervisory courts are resolved by a panel of the judges of the court. In the event of panel consideration of a matter, the panel must comprise an odd number of judges (at least three) one of whom will be a presiding judge whose responsibilities are performed by the chairman of the panel or by one of the judges upon instruction of the chairman.

Judgments of courts of first instance may be appealed against with appellate, cassation or supervisory courts in accordance with the procedure set out by the Code of Civil Procedure of the Republic of Kazakhstan.

Appeals and protests against judgments issued by district courts and courts assigned equal status are reviewed by a single judge of the oblast court or court assigned equal status.

Appellate courts review the legality and validity of the decisions of courts of first instance in its entirety. Appellate courts may establish new facts under the claim and review new evidence if the parties to the dispute were not able to present the same to the court of first instance for valid reasons.

Rulings of appellate courts may be appealed against in courts of cassation. Cassation appeals or protests against rulings of the appellate court are reviewed by oblast courts and courts assigned equal status comprising at least three judges. In reviewing cassation appeals courts verify the legality and validity of judicial acts of courts of first instance and appellate courts based on the materials of the case within the limits of the arguments of such appeals and protests. Cassation courts review new evidence within the limits of the claim that were not presented to the court of first instance and the appellate court for valid reasons.

Judgments of courts 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. Decisions of the specialized financial court on restructuring of financial organizations and organizations which form a part of a banking conglomerate as a parent company and which are not financial organizations become effective of the date of their issuance and are subject to immediate enforcement.

In the event of an appeal or protest filed with an appellate or cassation court, the decision, unless reversed or set aside, becomes effective on the date of the ruling of the cassation court.

Effective judicial acts of local and other courts may be reviewed in accordance with the supervisory procedure by the Supreme Court of the Republic of Kazakhstan upon a petition of the persons involved in the case and protests of the General Prosecutor of the Republic of Kazakhstan. Effective court judgments, rulings of courts of first instance and appellate courts, other than rulings of such courts impeding further consideration of the case, may not be reviewed through supervisory judicial process.

In exceptional cases, resolutions of the Supreme Court of the Republic of Kazakhstan rendered through supervisory review may be reviewed on the grounds of discovery of information that such resolutions may result in severe irreversible consequences to life or health or to the economy and security of the Republic of Kazakhstan.

The Supreme Court of the Republic of Kazakhstan comprising at least five judges reviews cases upon petitions or protests of the General Prosecutor of the Republic of Kazakhstan against effective judicial acts of local and other courts.

Effective judgments, rulings and resolutions may be reviewed upon discovery of new facts on the grounds provided for by the Code of Civil Procedure of the Republic of Kazakhstan.

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.

Appeals filed with appellate, cassation and supervisory courts are not subject to State duty.

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) will apply. In such event, 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 indexes from private individuals and 20 monthly calculation indexes from legal entities under enforcement documents of non-property nature. 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:

- The Code of Civil Procedure of the Republic of Kazakhstan No. 411-I dated 13 July 1999;
- The Code of Criminal Procedure of the Republic of Kazakhstan No. 206-I dated 13 December 1997;
- The Law of the Republic of Kazakhstan No. 261-IV 3PK dated 2 April 2010 *On Enforcement Procedure and Status of the Court Enforcement Officials*;
- The Penal Code of the Republic of Kazakhstan No. 208-I dated 13 December 1997; and
- The Code of the Republic of Kazakhstan On Administrative Violations No. 155-II dated 30 January 2001.

Mediation Courts and International Commercial Arbitration

The legislation of the Republic of Kazakhstan also provides parties involved in civil relations with an alternative option to resolve disputes in mediation courts or by international commercial arbitration.

A mediation court is a permanent mediation court, exchange arbitration or an ad-hoc mediation court formed by the parties for resolution of a specific matter (the "ad hoc mediation court").

Mediation courts review disputes between parties who are Kazakhstan persons or entities. If any of the parties is a foreign person or entity, disputes are referred for resolution by international commercial arbitration.

A dispute may be referred for resolution to a mediation court in the event the parties have entered into a mediation agreement and in the events provided for by the legislation of the Republic of Kazakhstan on commodity exchanges.

Matters relating to internal procedures of mediation courts and international commercial arbitrations are governed by their established rules.

Pursuant to the Law of the Republic of Kazakhstan *On Mediation Courts* No. 22-III dated 28 December 2004, mediation courts are not authorized to resolve disputes that involve interests of the state, State-owned enterprises, minors, persons declared legally incompetent in the manner established by law, disputes arising from agreements for provision of services, performance of work and production of goods by natural monopolies, entities holding a dominant position in the goods and services market and disputes on bankruptcy procedures unless otherwise is provided by the laws of the Republic of Kazakhstan.

Courts of general jurisdiction courts and other government authorities may not interfere with the activities of mediation courts and international commercial arbitrations. However, if there are grounds established by law, an award of a mediation court or international commercial arbitration may be appealed against with a court of general jurisdiction.

By general rule, awards of mediation courts or international commercial 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 award are governed by reciprocal national treatment.

We recommend that our clients in choosing a mediation court or international commercial arbitration refer their disputes to the Kazakhstan International Arbitration which is headed by a leading civil law expert of Kazakhstan, Professor, Dr. M.K. Suleimenov.

In order for a dispute to be eligible for resolution by arbitration/mediation court, the parties are required to enter into an arbitration agreement or have an arbitration/mediation clause in their contracts. Arbitration/mediation provisions may have the following wording:

"Any disputes and/or discrepancies arising out of or in connection with this contract are subject to final resolution by the Kazakhstan International Arbitration in accordance with its Rules currently in force.

The Arbitration/Mediation Court will comprise _____ arbitrators/referees (single arbitrator/single referee). The place of the arbitration/mediation proceedings will be _____. The language of the arbitration/mediation 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 complies with those accepted by international practice; the mechanism of protection of human rights is well-developed; legal entities are not subject to criminal liability; capital punishment will be abolished in the near future and has been suspended under the moratorium effective as of 17 December 2003.

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.

The Criminal Code of the Republic of Kazakhstan No. 167-I which is currently in force was adopted on 16 July 1997. Pursuant to the declared principles of civil society, the new Criminal Code, unlike the old Criminal Code of the Kazakh Soviet Republic, gives priority to legal protection of the rights of individuals, and not the state.

The Criminal Code of the Republic of Kazakhstan defines the following primary types of penalties:

- a) fines;
- b) deprivation of the right to occupy a certain position or to engage in a certain activity;
- c) community service;
- d) corrective labor;
- e) military service restrictions;
- f) restriction of freedom;
- g) holding in military detention facilities;
- h) imprisonment;
- i) capital punishment;

and additional categories:

- a) confiscation of property;
- b) deprivation of special, military or honorary title, class rank, diplomatic rank, qualification class and State awards.

Life imprisonment may be imposed for commitment of especially serious crimes and as an alternative to capital punishment. Life imprisonment may not be imposed against women and persons who committed crimes prior to reaching the age of eighteen as well as against men who have reached the age of sixty five years by the time of the sentence.

Criminal procedure in Kazakhstan is governed by the Code of Criminal Procedure of the Republic of Kazakhstan No. 206-I adopted on 13 December 1997 which is currently in force. The Code of Criminal Procedure defines as primary principles of criminal procedure judicial protection of human rights and freedoms, protection of dignity and honor, 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. The 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.

The criminal prosecution authority may detain a person suspected of committing a crime that may be sentenced with imprisonment upon one of the following grounds:

- 1) when such person is caught in the commission of a crime or immediately following its commitment;
- 2) when witnesses, including the victims of the crime, expressly name such person as one who have 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;

- 4) when the materials of the investigation with respect to the person that have been obtained in the manner established by law contain valid and reliable information on the committed or imminent serious or specially serious crime.

The victim or any other citizen has the right to detain the person who has committed a crime in order to prevent him or her from committing other offences.

No later than within 3 hours of the time of actual detention, the investigator or interrogator must prepare a record of interrogation identifying the grounds and reasons for detention and its place and time (hour and minute), results of the personal search and the time of the report.

The person making the detention is entitled to, 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 is carrying a gun or is trying to dispose of the evidence revealing the crime committed by him, or in other events where necessary.

Within 72 hours of the time of detention, the suspect is either subject to arrest or release. 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 no longer than 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;
- 7) arrest.

Where necessary, a person subjected 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 subjected 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.

Causes for initiating criminal proceedings are as follows:

- 1) applications from citizens;
- 2) surrender/acknowledgment of guilt;
- 3) publication in mass media;
- 5) discovery of the information of the crime directly by officials or bodied authorized to initiate criminal proceedings.

Grounds for initiating criminal proceedings are the presence of sufficient information indicative of constituent elements of crime, provided that there are no circumstances ruling out criminal proceedings.

If the location of the defendant is unknown, the investigator may instruct interrogation authorities to carry out search for such person. This instruction is referred to in the order to suspend the pre-trial investigation or is issued in a separate order.

Upon acknowledging the all investigation actions with respect to the case have been taken and that the collected evidence is sufficient for formulating charges, the investigator must notify of such the defendant and to explain to him his right to examine all materials of the case, either personally or through an attorney and to file petitions for additional pre-trial investigations or new decisions on the case. Upon completion of the investigation actions and explanation of the rights a relevant report is prepared in accordance with the requirements of the Code of Criminal Procedure of the Republic of Kazakhstan. In the event of the refusal of the defendant to examine the materials of the criminal case, a relevant record is made in the report indicating the motives. If the defendant is outside the Republic of Kazakhstan and refuses to appear before the pre-trial investigation authorities, but if the pre-trial investigation authorities are aware of the location of the defendant, he will be sent by mail a written notice of completion of the investigation with explanation of his rights of which the investigator makes a relevant record in the report of notice of completion of the investigation actions and explanation of rights.

Upon signing by the investigator of the charges, the case is immediately sent to the prosecutor supervising the case.

The Prosecutor reviews the case together with the charges received from the investigator and will, no later than within 10 days, take one of the following actions in relation to the case:

- 1) by his resolution, agrees with the charges and refers the case to a court;
- 2) by his order, removes certain charges or reclassifies the actions of the defendant by applying a legal provision covering a less serious crime;
- 3) terminate criminal proceedings in full or with respect to individual defendants;
- 4) return the case to the investigator together with his written instructions to carry out additional investigation or to reformulate the charges;

- 5) formulates new charges; or
- 6) extends or reduces the list of person to be summoned to appear at court, save for the list of witnesses for the defendant.

The prosecutor orders to take the defendant to trial and immediately files the criminal case, together with the charges, with the court of competent jurisdiction.

Special Considerations Relating to Status 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.

Foreign nationals who have committed a crime against the interests of the Republic of Kazakhstan may be brought to liability in the Republic of Kazakhstan unless convicted in another country.

Foreign nationals convicted to arrest or imprisonment have the right to maintain contact with diplomatic missions and consulates of their countries; and nationals of countries that do not have diplomatic missions and consulates in the Republic of Kazakhstan may maintain contact with diplomatic missions of the country that has assumed the functions of protecting their interests or with international organizations acting in their defense.

If provided for by an international treaty, foreign nationals may be extradited to another state to be brought to court or to serve a sentence.

Non-Liability

The following actions do not constitute a crime: minor acts/incidents not resulting in damages; acts committed by an insane person; unintended harm caused by an action not subject to liability for negligence; voluntary renunciation of criminal purpose; necessary defense within reasonable limits; excessive defense against threat to life and an armed attacker; harm caused to the offender at the time of capture; actions committed in case of extreme necessity, reasonable risk, physical or mental duress or execution of a compulsory order if the person was not aware of its unlawfulness.

In addition, criminal law provides for a wide list of events when a person who has committed a crime may be released from liability or penalty, most important of which include reconciliation with the victim and excessive defense in a state of fright, fear or shock.

Economic Crimes

Violations of standards, rules and regulations approved by the State in the fields of licensing, immigration, tax, customs and labor relations, environment that have resulted in significant damages normally entails criminal liability of the chief executive of the legal entity, structural subdivision who made the erroneous decision.

In making operational decisions, extreme 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 labor in violation of the established procedure are subject to significant fines.

A failure to pay or evasion of taxes and other mandatory payments to the budget and violation of customs rules may also entail criminal liability of the chief executive and the company may be subjected to a fine in the amount of 30% - 50% of the amount outstanding tax liabilities in accordance with administrative procedure.

Many businesspeople 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 subjected to extortion may also be made liable.

In addition, it is not a rare case when extorting officers unreasonably accuse businesspeople of committing a crime. In such events, we recommend that the victims of extortion immediately seek legal assistance from an attorney.

MERGERS AND ACQUISITIONS

Introduction

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. Nevertheless, we can say that in the Republic of Kazakhstan these matters are governed by the following laws and regulations:

- the Civil Code of the Republic of Kazakhstan;
- the Law of the Republic of Kazakhstan No. 415-II dated 13 May 2003 On Joint Stock Companies (the “JSC Law”);
- the Law of the Republic of Kazakhstan No. 220-I dated 22 April 1998 On Limited and Additional Liability Partnerships (the “LLP Law”);
- other laws and regulations pertinent to the subject matter of M&A transactions and/or defining its specific features.

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

- in the event of a *merger* of legal entities, the rights and obligations of each of them are transferred to the newly formed legal entity;
- in the event of an *acquisition* of one legal entity by another legal entity, the latter acquires the rights and obligations of the acquired legal entity;
- no legal equivalent of the term *takeover* exists under Kazakh law.

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 lower
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 in a particular organizational legal form 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 a joint stock company.	Article 74.3 of the RK Law On the Use of Airspace of the Republic of Kazakhstan and on Aviation Activities”
2.	Investments funds must be organized in the form of joint stock companies.	Article 5.1 of the RK Law On Investment Funds
3.	Professional securities market participants (other than brokers and/or dealers without the right to maintain clients’ accounts, registrars and transfer agents) must be organized in the form of joint stock companies.	Article 1.6) of the RK Law On the Securities Market
4.	Quotation organization of over-the-counter securities market must be organized in the	Article 1.14)

	form of joint stock companies.	of the RK Law On the Securities Market
5.	Financial agencies must be organized in the form of joint stock companies.	Article 1.39) of the RK Law On the Securities Market
6.	Stock exchanges must be organized in the form of joint stock companies.	Article 1.44) of the RK Law On the Securities Market
7.	Self-regulating organizations (legal entities organized by professional securities market participants with the aim of introducing single rules and standards for their operations in the securities market) must be organized in the form of associations (unions).	Article 1.63) of the RK Law On the Securities Market
8.	Insurance (reinsurance) organizations must be organized in the form of joint stock companies.	Article 22.1 of the RK Law On Insurance Activities
9.	Pension savings funds must be organized in the form of joint stock companies.	Article 34 of the RK Law On Pension Security in the Republic of Kazakhstan
10.	Banks must be organized in the form of joint stock companies.	Article 1.15 of the RK Law On Banks and Banking
11.	The Kazakhstan Development Bank must be organized in the form of joint stock companies.	Article 1 of the RK Law On the Kazakhstan Development Bank
12.	Organizations providing compulsory insurance of deposits must be organized in the form of joint stock companies.	Article 4.1 of the RK Law On Compulsory Guarantees of Deposits Held with Second Tier Banks of the Republic of Kazakhstan
13.	Stock exchange brokers may be organized in the form of joint stock companies or limited liability partnerships.	Article 1 of the RK Law On Commodity Exchanges
14.	Special financial companies may be organized in the form of joint stock companies or limited liability partnerships.	Article 4.1 of the RK Law On Securitizing»
15.	Audit firms must be organized in the form of limited liability partnerships.	Article 9.1 of the RK Law On Auditing

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

Specifics of the laws must be taken into account in entering into 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 RK Law No. 2444 dated 31 August 1995 On Banks and Banking in the Republic of Kazakhstan (the "Banking Law")
2.	Obtaining by banks of a permit from the AFN to set up and acquire subsidiaries and to have a significant participation interest in its charter capital.	Articles 11-1.1 and 11-1.9 of the Banking

		Law
3.	Obtaining a permit for setting up a bank.	Article 13 of the Banking Law
4.	Prior consent from the AFN to make amendments to the bank's constitution documents, including those that require re-registration with the justice authorities.	Article 28.1 of the Banking Law
5.	Application for the AFN's consent to voluntary reorganization of a bank.	Article 60.1 of the Banking Law
6.	Application for consent to voluntary liquidation of a bank.	Article 69.1-1 of the Banking Law
7.	Obtaining consent to the acquisition of the status of an insurance holding company and of a major participant of an insurance (reinsurance) organization.	Article 26.1 of RK Law No. 126-II dated 18 December 2000 On Insurance (the "Insurance Law")
8.	Obtaining consent to set up an insurance (reinsurance) organization.	Article 27.1 of the Insurance Law
9.	Amendments made to constitution documents of an insurance (reinsurance) organization must be approved by the AFT prior to state registration (re-registration) or notification to the justice authorities.	Article 31.1 of the Insurance Law
10.	Obtaining by an insurance (reinsurance) organization of 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
11.	Obtaining consent from the AFN to voluntary reorganization of an insurance (reinsurance) organization.	Article 62.2 of the Insurance Law
12.	Application for consent to voluntary liquidation of an insurance (reinsurance) organization.	Article 67.1 of the Insurance Law
13.	Obtaining consent from the AFN for acquisition of the status of a major participant of a public pension savings fund.	Article 36-1.1 of RK Law No. 136-I dated 20 June 1997 On Pension Security in the Republic of Kazakhstan (the "Pension Security Law")
14.	Obtaining consent from the AFN for state registration of pension savings funds and for amending their constitution documents.	Article 37 of the Pension Security Law
15.	Obtaining consent from the AFN to set up or acquire a subsidiary and significant participation interest in the charter capital of other legal entities.	Article 41-1.1 of the Pension Security Law
16.	Application for consent for reorganization of a pension savings fund.	Article 43.1 of the Pension Security Law
17.	Application of a pension savings fund for consent for voluntary liquidation.	Article 45.1 of the Pension Security Law
Antitrust (antimonopoly) laws		
18.	<p>Application to the antimonopoly body for consent to economic concentration in the following events:</p> <ol style="list-style-type: none"> 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 twenty five 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 twenty five percent or less of the voting shares (participation interests, stakes) in the charter capital of said market entity; 3) acquisition of the right to own, possess and use, including in consideration of 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. 4) acquisition by a market entity of the rights (including under a trust deed, joint venture agreement, 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; 5) participation of same natural persons in executive bodies, boards of directors, supervisory boards or other governing bodies of two or more market entities provided 	Article 50 of RK Law No. 112-IV dated 25 December 2008 On Competition

	that said natural persons determine in such market entities the terms and conditions of carrying out their business activities.	
Natural monopolies and regulated markets laws		
19.	<p>Application for consent to the following actions:</p> <ol style="list-style-type: none"> 1) alienation and/or other transactions with the property of a natural monopoly if the book value of the alienated property or the property of the natural monopoly towards whom other transactions are made as reflected on the balance sheet as at the beginning of the current year is more than 0.05 percent of the book value of its assets according to the balance sheet as at the beginning of the current year provided that they will not result in increase of tariffs (prices, rates, charges), or their threshold levels, for regulated services (goods, work) of the natural monopoly, in breaches of contracts with consumers, failure of integrated technological systems, in interruption or significant reduction of volumes of the provided regulated services (produced goods, work); 2) acquisition by a natural monopoly, not for own use, of goods (work, services) transported or transferred by it; 3) acquisition by a natural monopoly of shares (participation interests) and other forms of its participation in business organizations carrying out activities permitted for it by the Natural Monopolies Law; 4) acquisition by natural persons or legal persons (or a group of persons) of more than ten percent of voting shares (participation interests) in the charter capital of a natural monopoly; 5) reorganization and liquidation of a natural monopoly. 	Article 18-1.1 of RK Law No. 272-I dated 9 July 1998 r On Natural Monopolies and Regulated Markets (the "Natural Monopolies Law")
20.	Obtaining of prior consent form the Antimonopoly body for state registration and re-registration of a natural monopoly's legal entity as well as registration of the termination of its activities (winding-up).	Article 18-3.2 of the Natural Monopolies Law
Subsoil and subsoil use laws		
21.	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 with or without consideration.	Article 12.2 of the RK Law No. 291-IV dated 24 June 2010 On Subsoil and Subsoil Use (the "Subsoil Use Law")
22.	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		
23.	Obtaining the Government's consent to encumber or alienate strategic facilities.	Article 193-1.3 of the RK Civil Code (the "Civil Code")
24.	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 Civil Code

Restrictions for Foreign Participation in Legal Entities of the Republic of Kazakhstan

Although the legislation of the Republic of Kazakhstan grant "national treatment" to foreign investors, there are certain restrictions for foreign participation in legal entities of the Republic of Kazakhstan. Please refer to the table below for a list of such restrictions:

	Statutory Restrictions	Legal Ground
1.	Participation interest of foreign nationals, stateless persons and/or foreign legal entities in the charter capital of an airline company organized in the form of joint stock company must not exceed 49%.	Article 74.4 of the RK Law dated 15 July 2010 On the Use of Airspace of the Republic of Kazakhstan and Aviation Activities"
2.	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 to carry out activities in this field.	Article 22.5 of the RK Law dated 26 June 1998 On National Security Article 5.2 of the RK

		Law dated 23 July 1999 On Mass Media
3.	Foreign legal entities and national may not: <ul style="list-style-type: none"> manage or operate communication trunk lines; directly and/or indirectly own, use, dispose of and/or manage in total more than 49% of voting shares and participation interests, stakes in legal entities carrying out activities in the field of telecommunications as operators of long-distance and/or international communication, owning land (cable, including fiber-optical and radio relay) communication lines. 	Article 22-1.4 of the RK Law dated 26 June 1998 On National Security
4.	Foreign legal entities, legal entities with foreign participation and foreign nationals may not: <ul style="list-style-type: none"> carry out all types of security guarding; set up or be founders (members, participants) of private security guarding companies; hold a private security guarding company under trust management; set up security divisions of individual entrepreneurs and legal entities; 	Article 5.4 of the RK Law dated 19 October 2000 On Security Guarding
5.	The following persons may not own, use and/or dispose of, directly or indirectly, voting shares in Kazakhstan resident insurance (reinsurance) companies: <ul style="list-style-type: none"> legal entities incorporated in offshore jurisdictions; legal entities having affiliates incorporated in offshore jurisdictions, natural persons who are members (founder, shareholders) of legal entities incorporated in offshore jurisdictions the list of which is determined by the competent authority. 	Article 21.4 of the RK Law dated 18 December 2000 On Insurance
6.	The following persons may not own, use and/or dispose of, directly or indirectly, voting shares in Kazakhstan resident banks: <ul style="list-style-type: none"> legal entities incorporated in offshore jurisdictions; legal entities having affiliates incorporated in offshore jurisdictions, natural persons who are members (founder, shareholders) of legal entities incorporated in offshore jurisdictions the list of which is determined by the competent authority 	Article 17.5 of the RK Law dated 31 August 1995 On Banks and Banking in the Republic of Kazakhstan
7.	A Kazakhstan non-resident legal entity awarded a required rating agency rating may set up as founder or hold shares in a public pension savings fund. Legal entities incorporated in offshore jurisdictions or having affiliated incorporated in offshore jurisdictions or natural persons who are members (founders, shareholders) of legal entities incorporated in offshore jurisdictions may not own, use and/or dispose of, directly or indirectly voting shares of Kazakhstan resident pension savings funds. The aggregate charter capital of public pension savings funds with foreign participation may not exceed twenty five percent of the total stated charter capital of all public savings pension funds of the Republic of Kazakhstan.	Article 36 of the RK Law No. 136-I dated 20 June 1997 r. On Pension Security in the Republic of Kazakhstan
8.	Legal persons incorporated in offshore jurisdictions included on the list determined by the competent authority may not set up or hold shares in a joint stock investment fund.	Article 8.1 of the RK Law dated 7 July 2004 On Investment Funds

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.

Major transactions means:

- a single transaction or a sum total of related transactions resulting in acquisition or alienation by the joint stock company (the "JSC") of property the value of which is $\geq 25\%$ of the total value of the JSC's assets;
- a single transaction or a sum total of related transactions making possible for the JSC to redeem its outstanding securities or sell its redeemed securities in the amount which is $\geq 25\%$ of the total amount of the outstanding securities of one type;
- other transactions qualified by the JSC's charter as a major transaction.

The JSC's affiliates are deemed as *related parties interested in the consummation of the transaction by the JSC* if they are:

- parties to the transaction or are involved therein as representatives or agents;
- affiliates of the legal entity who is a party to the transaction or is involved therein as representative or agent.

	Actions	Legal ground
1.	A person intending to acquire, either on its own or jointly with its affiliates, in the secondary securities market $\geq 30\%$ of the JSC's voting shares must notify accordingly the JSC and the competent authority. 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 to pay for the shares.	Article 25.1 of the RK Law On Joint Stock Companies
2.	A person who, either on its own or jointly with its affiliates, has acquired in the secondary securities market $\geq 30\%$ of the JSC's voting shares, must, within 30 days of the date of acquisition, announce in a mass medium its offer to other shareholders to sell their shares in the JSC (an announcement of an offer to shareholders in an public company must be published on the corporate website).	Article 25.3 of the RK Law On Joint Stock Companies
3.	A resolution on a major transaction to be entered into by the JSC is made by the board of directors. The JSC must within 5 business days of the date of the resolution on the major transaction to be entered by the JSC make an announcement on the transaction in mass media in the Kazakh and other languages.	Article 70 of the RK Law On Joint Stock Companies
4.	A resolution on a related party transaction to be entered into by the JSC is made by a simple majority of votes of the board of directors who are not related parties to such transaction and are not interested in its consummation.	Article 73 of the RK Law 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 RK Law On Limited and Additional Liability Partnerships

Rights and Obligations of Shareholders of Joint Stock Companies and Members of Limited Liability Partnerships

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

Rights and Obligations of Shareholders of Joint Stock Companies

Voting shares— issued and outstanding common and preferred shares with voting rights attached to such shares as provided by the Law of the Republic of Kazakhstan the JSC Law. Voting shares do not include shares redeemed by the joint stock company (the "**Company**") and shares held by nominal holders for the beneficial owner(s) whose details are not registered with the central depository system.

Votes at general shareholders meetings are cast in accordance with the "one share – one vote" principle, other than in the following events:

- limitations to the maximum permitted number of votes on shares issued to one shareholder as provided for by the laws of Kazakhstan;
- cumulative voting in electing members of the board of directors;
- granting of one vote to each person holding the right to vote at the general shareholders meeting on procedural matters related to holding the general shareholders meeting.

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 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 Company's charter (Article 13.5 of the JSC Law).

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 Company's voting shares (Article 1 of the JSC Law) and minority shareholders (shareholders of less than 10 percent of the Company'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 Company in the manner provided by the JSC Law and the Company's Charter; to receive dividends; to obtain information on the Company's activities and review its financial statements; to obtain extracts from the Company's registrar or nominal holder certifying its title to the securities;	Article 14.1

	<p>to nominate candidates to be appointed by the Company's general shareholders meeting to the Company's board of directors;</p> <p>to appeal, through judicial review, against decisions of the Company's bodies;</p> <p>to make written requests to the Company about its activities and obtain justified responses within 11 days of the date of receipt of the requires by the Company;</p> <p>to part of the Company in the event of its liquidation;</p> <p>of preemptive purchase of shares or other securities of the Company convertible into its shares in the manner provided by the JSC Law unless otherwise is provided by statutory acts.</p>	
2.	The right to demand payment of unpaid dividends regardless of the time when the Company incurred the debt.	Article 22.6
3.	If a person acquires, either itself or together with its affiliates, thirty or more percent of the Company's voting shares in the secondary securities market, makes a public announcement with an offer to other shareholders to sell their shares in the Company 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 Company 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 Company'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 authorized to represent such shareholders and the power of attorney of such proxy is not required to specify in writing instructions on the decision to be made on each item of the agenda of the general shareholders meeting.	Article 47.1
8.	If a person acquiring voting shares in the secondary market fails to comply with the due procedure provided for acquisition of such shares, persons not affiliated with such failing person have the right to demand disposition in their favor of part of such failing person's shares exceeding 29% of the company's voting shares.	Article 25.3
9.	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 reasons in written form for refusal to sign the minutes) and to request a copy of the minutes of the general shareholders meeting.	Article 52.5
10.	Appeal, through judicial review, against decisions of the Company's board of directors made in violation of the provisions of the JSC Law and the Company's Charter if such decisions violate the rights and lawful interests of the Company and/or the rights and lawful interests of such shareholder.	Article 58.8
11.	Obtain from the Company information on the Company's activities affecting the interests of the Company's shareholders in accordance with the JSC Law and the Company's Charter.	Article 79.1 and 79.3
12.	<p>Request copies of the Company's documents related to the Company's activities in the manner provided by the Company's Charter subject to certain possible restrictions on disclosure of confidential information, commercial secrets or other information protected by law.</p> <p>Documents governing particular matters related to issue, allocation, circulation and conversion of the Company's securities containing confidential information, commercial secrets or other legally protected information must be provided to a shareholder at its request.</p>	Article 80

Shareholders (depending on the type of shares)		
13.	<p>Rights of common shareholder(s):</p> <ul style="list-style-type: none"> • the right to participate in general shareholders meetings and vote on all matters put to a vote; • the right to receive dividends; • the right to receive part of the Company's assets in the event of its liquidation. <p>Preferred shareholder(s) have priority over holders of common shares to:</p> <ul style="list-style-type: none"> • receive dividends in predefined guaranteed amounts set forth by the Company's charter; • part of the Company's assets in the event of its liquidation <p>Preferred shareholder(s) have the right to participate in management of the Company if:</p> <ul style="list-style-type: none"> • the general meeting of the Company's shareholders makes resolutions on matters that may restrict the rights of holders of preferred shares; • the general meeting of the Company's shareholders makes a resolution on reorganization or liquidation of the Company; • dividends due on preferred share(s) are not paid in full for a period of three months of the time of expiration of the term provided for its payment. <p>Holders of the Company'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 in its agenda.</p>	<p>Article 13.1</p> <p>Article 13.4</p> <p>Article 48.2</p>
Shareholders of less than 10 % of voting shares		
14.	Shareholder(s) of less than ten percent of the Company's shares may be represented at general meetings through proxy and the power of attorney of such proxy is not required to specify in writing instructions on the decision to be made on each item of the agenda of the general shareholders meeting.	Article 47.1
Shareholders of 10% and more of voting shares		
15.	<p>The right to request convening of an extraordinary general meeting of shareholders or to refer to court with a request to obligate the Company to hold an extraordinary meeting of shareholders if the Company's bodies fail to comply with his request to convene an extraordinary meeting of shareholders;</p> <p>the right to offer to the board of directors additional items to be included in the agenda of the general meeting of shareholders;</p> <p>the right to request convening of a meeting of the board of directors;</p> <p>the right to request performance, at its expense, of an audit by the Company's auditor.</p>	Article 14.2
16.	The right to include additional items to the agenda of the general meeting of shareholders subject to the condition that other shareholders of the Company have been notified of such additional items no later than 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.	<p>The right to "block" resolutions restricting rights of a preferred shareholder;</p> <p>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.</p>	<p>Article 13.4.1)</p> <p>Article 43.4</p>
Shareholder(s) of 40% and more of voting shares		
18.	The right to demand presence of a quorum in the event of reconvening a general meeting of shareholders instead of the first convened, but not held, meeting.	Article 45.2

Shareholders of 50 % and more of voting shares		
19.	The right to demand presence of a quorum at the general meeting of shareholders.	Article 45.1
Shareholders of not less than 2/3 of voting 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 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 not less than 95% of the Company's voting shares.	Article 43.4
Shareholder of 100% of voting shares (sole shareholder)		
22.	The right to solely make resolutions on all matters that is defined by the JSC Law and the Company'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 shareholders in JSCs	Governed by the JSC LAW
1.	Pay up their shares; within ten days notify the Company's registrar and nominal holder of the shares in favor of beneficial shareholders of changes in the details and information required for the records in the Company's shareholders registry; not to disclose information related to the Company or its activities which constitutes confidential information, commercial secrets or other information protected by law.	Article 15.1
2.	A person intending to acquire, either itself or together with its affiliates, thirty or more percent of the Company'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 with themselves documents of title to the shares.	Article 39.2
4.	Bear expenses related to production of copies of documents and delivery of documents in the event of requesting for review materials of the agenda of the general meeting of shareholders, unless otherwise is provided by the charter.	Article 44.4
5.	Issue a power of attorney to its proxy with written instructions with respect to each item of the agenda of the general meeting, if Kazakh laws require consent to acquisition to the status of major shareholder or another status, shareholders with the right to hold, use and/or dispose of ten or more percent of the total number of the Company's issued and outstanding (voting) shares.	Article 47.1

Rights and Obligation of Members of Limited Liability Partnerships

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

The number of votes of each member of the limited liability partnership (the "LLP") in voting during a general meeting is proportionate on its participation interest in the LLP's charter capital unless otherwise is provided by the LLP Law or the LLP's charter..

	Rights of Members of LLPs	Governed by the LLP Law
Members (regardless of the size of interest)		
1.	<p>The right to participate in the management of the LLP's affairs;</p> <p>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;</p> <p>the right to gain income from the LLP's activities;</p> <p>the right to receive, in the event of the LLP's liquidation, the value of part of its assets remaining after settlements with creditors or, as may be agreed by all members of the LLP, part of such assets in kind;</p> <p>the right to cease membership in the LLP by disposing of its interest;</p> <p>the right to appeal, through judicial review, against resolutions of the LLP's bodies violating its rights.</p>	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 option. 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 26.2.4)
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 is provided by the LLP's constituent documents.	Article 30.1
6.	<p>The preemptive right over third parties to purchase a member's participation interest or its part when such interest is sold by any member unless otherwise is provided by statutory acts;</p> <p>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 preemptive purchase right within one month of the date of the notice to the LLP's executive body;</p> <p>members have the right to repeat the procedure of exercise of their preemptive right to purchase the interest based on the actual selling price of the interest or its part, if the interest is disposed 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 voided);</p> <p>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 preemptive purchase right.</p>	<p>Article 31.1,</p> <p>Article 31.5,</p> <p>Article 31.6,</p> <p>Article 31.7</p>
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, participate in discussing agenda items and 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 no later than ten days prior to its opening.	Article 46.2

12.	The right to claim through court from members of the executive body in LLP's favor 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: <ol style="list-style-type: none"> 1. to enter into transactions aimed at gaining 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 by the LLP; 3. act for or on behalf of third parties in their relations with the LLP; 4. undertake business activities competing with the activities of the LLP. 	Article 55.3
13.	The right to demand at its own expense financial audits of the LLP.	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 request inclusion of 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 interests 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: <ul style="list-style-type: none"> • amendments to the LLP's charter, including change of its charter capital, location and trade name or approval of the LLP's restated 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; • other matters set forth in the LLP's charter. 	Article 48.2
Member(s) holding >2/3 interest		
22.	The right to demand presence of a quorum if a resolution requires a qualified majority of votes or unanimous vote.	Article 47.4

Member(s) holding $\geq 3/4$ 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
25.	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 $\geq 3/4$ 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): <ul style="list-style-type: none"> • amendments to the LLP's charter, including change of the size of its charter capital, location and trade name or approval of a restated 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; • 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

In addition to the rights, members of limited liability partnership also have obligations which are described in the table below:

	Obligations of LLP Members	Governed by the LLP Law
Members (regardless of the size 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 not later than within one year of the date of its registration); not to disclose information that has been classified by the LLP as commercial secret; notify in writing the executive body, and the registrar in the event of a register of the LLP's members, of changes of the information 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 value of the unpaid 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.	Bear the risk of accidental loss or damage to property subject to all of the following conditions: <ul style="list-style-type: none"> • 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 is provided by the LLP's foundation agreement or charter, pay to the LLP a late payment fee in accordance with Article 353 of the Kazakh Civil Code (if a member has not paid his contribution by due time).	Article 24.3
5.	Within 5 (five) business days of the time of registration of the LLP, transfer funds from a founder's savings account (opened for the purposes 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 by Article 353 of the Kazakh 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 preemptive 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 performance of an audit of the LLP's financial statements (if such member requests such financial audit).	Article 59.3
Member(s) holding >5% interest		
12.	Request to include matters defined by a member or members (if any) in the general meeting agenda items at least 10 days prior to its opening.	Article 46.2

Corporate Disputes

Corporate disputes are among the most complex legal actions in Kazakhstan and up until recently they had not been adequately covered by Kazakh law with the most recent amendments made in January 2012.

Corporate disputes include disputes that may involve, as parties, business entities, associations (unions) of business entities and/or individual entrepreneurs, non-profit organizations having the status of a self-regulating organization in accordance with the laws of the Republic of Kazakhstan and/or their shareholders (participants or members) and that are:

- 1) related to the setting up, formation, reorganization and liquidation of a legal entity;
- 2) related to the ownership of shares in joint stock companies, participation interests in the charter capital of business partnerships, shares of members of cooperatives, their encumbrances and exercise of the rights arising therefrom other than disputes arising in connection with division of inherited property or division of community property of spouses, including shares in joint stock companies, participation interests in the charter capital of business partnerships and shares of members of cooperatives;
- 3) related to claims brought by founders, shareholders, participants and members of legal entities (the "legal entity members") for damages caused to the legal entity, annulment of transactions made by a legal entity and/or application of the consequences of such transactions;
- 4) related to the appointment or selection, termination and suspension of powers and obligations of persons who are or have been members of the legal entity's governing body, as well as disputes arising from civil law relations between such persons and the legal entity in connection with the performance, termination and suspension of their powers;
- 5) related to issue of securities;
- 6) arising in connection with maintenance of registers of holders of securities taking into account the rights to shares and other securities, as well as disputes related to placement and/or circulation of securities;
- 7) relating to annulment of state registration of issues of shares;
- 8) related to convening general meetings of members of legal entities;
- 9) contesting decisions, actions and/or omissions of the governing body of the legal entity.

Corporate disputes are resolved through civil litigation proceedings. Limited liability partnerships/joint stock companies must notify all their members/shareholders of the filing of corporate litigation proceedings with a court. Information on the filing of a litigation must be provided no later than seven business days of the date of receipt by the limited liability partnership/joint stock company of summons or subpoena to appear in court in connection with the corporate civil litigation.

Prevention of Hostile Business and Property Takeovers (Corporate Raiding)

In January 2011, certain amendments were made to the laws of the Republic of Kazakhstan dealing with corporate matters (the so-called "corporate law"). These amendments cover matters related to prevention of hostile business and property takeovers (corporate raiding) and protection of businesses.

In particular, the Law of the Republic of Kazakhstan On Amending Certain Legislative Acts of the Republic of Kazakhstan on Matters Related to Prevention of Business and Property Takeovers (Raiding) dated 11 January 2011 introduces the definition of "raiding" which is in itself an innovation and a step forward to providing a clear understanding of the nature of this offence.

Raiding means illegal acquisition of the ownership right to a participation interest in a legal entity as well as to property and securities of a legal entity or imposition of control over a legal entity resulting from deliberate distortion of voting results or interference with free exercise of rights of the supreme body's decision making process by entering to the minutes of meetings and excerpts therefrom of deliberately false information on the number of votes cast, quorum or voting results or deliberately wrong calculation of votes or ballots, by blocking or restricting actual access of a shareholder, participant or member of the managing body to voting, by failing to notify of convening a meeting or by providing false information on the time and place of the meeting or voting on behalf of a shareholder, participant or member of the governing body under a deliberately forged power of attorney, by violating, restricting or impairing the right of first refusal

with respect to purchase of securities, as well as by deliberately impeding the exercise of the right of first refusal with respect to purchase of securities or other illegal measures that have resulted in material violation of the rights and lawful interests of natural persons and/or legal entities, and/or the state.

The aforesaid Law also made certain amendments to the Criminal Code of the Republic of Kazakhstan providing for criminal liability for raiding.

Further information can be found on Sayat Zholshy & Partners' corporate website under *Mergers and Acquisitions in Kazakhstan* which provides latest news on transactions and changes to Kazakhstan laws as well as analyses of various related.

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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 an individual private entrepreneur 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 compulsory payments to the budget, social security payments to the State Social Insurance Fund and compulsory pension fund contributions.

Declaration of Bankruptcy

Bankruptcy may be voluntary or involuntary. 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 subjected to additional (secondary) liability for the debtor's obligations to creditors.

Declaration of involuntary bankruptcy is made in the event of a petition filed by the creditor or other persons in the events provided for by law. The grounds for the creditor's petition to declare the debtor bankrupt is the debtor's insolvency. The debtor is deemed insolvent if it has failed to fulfill its obligations for a period of three months of the time when such obligations become due.

Courts will hear bankruptcy cases if the amount of claims:

of the creditor with respect to taxes and other compulsory payments to the budget of outstanding tax liabilities, including those of the debtor's branches and representative offices, is not less than 150 Monthly Calculation Indexes;

of other creditors against the debtor is in total not less than 1000 Monthly Calculation Indexes for legal entities. The grounds for the court to declare the debtor bankrupt is 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 by the chief executive or owner of the business entity or individual private entrepreneur acting in own personal interests or in the interests of third parties. False bankruptcy means intentionally misleading bankruptcy announcement made by the chief executive or the owner of the business entity or an individual private entrepreneur with the purpose to mislead the creditors in order to obtain a deferral of payments or an option to make in installments 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 (member) and/or officials of the debtor legal entity are subjected 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

If the bankruptcy receiver identifies elements of intentional or false bankruptcy, the receiver must refer to law enforcement agencies in order to hold the respective officials liable.

Consequences of Initiating Bankruptcy Proceedings

Effective the date of initiating the bankruptcy proceedings:

1) the owner of the debtor's property (or its authorized body), the founders (members), and/or all bodies of the legal entities lose the right of disposition of the debtor's property;

2) enforcement of previous decisions of courts, intermediate courts/arbitrations, tax authorities and the debtor's owners (founders/members) or bodies with respect to its property is suspended, save 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 proceedings;

4) no recovery of money is permitted from the debtor's bank accounts as may be claimed by creditors, tax or any other competent government authority dealing with taxes and other compulsory 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 property is permitted.

Upon completion of the preliminary preparation of the case, but no later than one month after its initiation, the court rules to assign the case for judicial examination. The court must hear the bankruptcy case within no later than two months of the date of filing of the bankruptcy petition with the court.

Management of Debtor's Property and Affairs

In order to achieve the purposes of the rehabilitation and bankruptcy (liquidation) proceedings, all governing bodies of the insolvent debtor are suspended from its management and from exercising the powers and authorities to manage the property and affairs of the debtor are assigned to the rehabilitation manager or receiver (administrator or liquidator) while such proceedings are pending.

The rehabilitation manager and the receiver (administrator or liquidator) act as the debtor's sole authorized governing body.

In the events when the rehabilitation proceedings are initiated by the debtor, the debtor's chief executive may, upon request of the owner of the debtor's property or its authorized body and subject to consent of the creditors' committee, be appointed to act as the rehabilitation manager with the rights and obligations of rehabilitation manager.

As rehabilitation managers and receivers may be appointed natural persons who are private individual entrepreneurs holding a license to carry out activities related to management and administration of the property and affairs of insolvent debtors within bankruptcy proceedings issued by a competent government authority.

The following persons may not be appointed as rehabilitation managers and receivers:

- 1) the debtor's or creditor's officials;
- 2) persons who have been suspended from management of the property and affairs of the insolvent debtor while the license is suspended;
- 3) persons who have acted as chief executives of another legal entity for a period of more than one year prior to the decision to declare the legal entity bankrupt is made. This condition applies for a period of five years after such decision is made;
- 4) members of a business partnerships, shareholders of joint stock companies, members of cooperatives if such partnerships, joint stock companies or cooperatives are either the insolvent debtor or its creditor;
- 5) spouse, lineal ascendants and descendants and siblings of officers of the debtor's or creditor's management officials;
- 6) persons with a record of unexpired or unexpanded conviction.

Depending on the bankruptcy proceedings, in addition to the receiver and rehabilitation manager, the proceedings may also involve participation of a turnaround manager and external administrator. The receiver, rehabilitation manager and turnaround manager must, at the request of the creditors or of the competent authority, demand voiding of the transactions and return of the property transferred by the debtor, including that leased out or provided as security of previous transactions entered into within a period of three years prior to the initiation of the bankruptcy proceedings, from the persons who have received such property on a gratuitous basis, at prices which are considerably lower than the prevailing market prices or without sufficient grounds to the detriment of the interests of other creditors.

On the grounds described above, the property transferred within the three years prior to the initiation to the bankruptcy proceedings to the officers (employees), members of the business partnership, and/or chief executive of the insolvent debtor may be claimed back. These claim back rules also apply to the property transferred to the insolvent debtor's spouse and lineal ascendants and descendants.

In addition to the above, in performing its powers, the rehabilitation manager or receiver may also bring legal actions on the grounds provided by the legislative acts of the Republic of Kazakhstan for claiming back the debtor's property from third parties, for termination of contracts entered into by the debtor, and to take other actions provided for by the civil legislation of the Republic of Kazakhstan aimed at returning the property of the insolvent debtor.

In the events when the property cannot be claimed back due to its loss, damage or subsequent acquisition in good faith by third parties, the original acquirers of the claimed property are liable to the debtor for reimbursement for the so caused losses to the extent of the cost of the property lost, damaged or acquired in good faith by third parties.

Liquidation of the Insolvent Debtor (Receivership)

Insolvent debtors are put under receivership. The time period of the receivership procedure and liquidation is determined by court and may not exceed 9 months.

The competent authority may extend this time period at the request of the receiver made subject to consent of the creditors' committee for an additional period of no more than 3 months. The receivership procedure commences to run from the date when the court ruling declaring the debtor bankrupt becomes effective.

As of the time of commencement of the receivership proceedings:

- 1) the insolvent debtor is prohibited from disposing (save for where the creditors' meeting gives consent to disposition) and transferring the property and from settling its obligations;
- 2) the period of maturity of all of the insolvent debtor's debt obligations are deemed expired;
- 3) the default charge and interest accrual on all of the insolvent debtor's debts is discontinued;
- 4) all statutory restrictions on foreclosure of the insolvent debtor's property are lifted;
- 5) all pending property-related disputes involving the insolvent debtor are terminated save for where court decisions on such disputes have already become effective; All property-related claims may

Of the time of commencement of the proceedings, all property-related disputes may be brought against the debtor only within the receivership proceedings.

The law also provides for the order of priority in the distribution of the bankruptcy assets according to which administrative and legal costs have the highest priority and are paid from the debtor's property. Then under the first priority category follow claims for alimonies deducted from payrolls and/or other income as well as claims of private persons to whom the bankrupt under liquidation is liable for causing hazard to life or health by capitalization of respective periodical payments.

The second priority is given to payments of salaries and wages and compensations to persons who had been employed under employment contracts, social security payments to the State Social Security Fund, compulsory pension contributions deducted from payrolls and fees under authorship agreements.

The third priority is given to creditors' claims for obligations secured by pledge of the property of the bankrupt under liquidation to the extent of the value of the security.

The fourth priority is given to the outstanding amounts of taxes and other compulsory payments to the budget.

The fifth priority is given to settlements with other creditors.

The money remaining after settlement of creditors' claims is transferred by the receiver to the owner of the debtor's property or to its founders (members) in the manner prescribed by the laws of the Republic of Kazakhstan or by the debtor's constitutional documents.

External Administration

After the creditor or the competent authority files a relevant petition, the court rules to initiate proceedings to appoint external administration. The debtor may be placed under external administration proceedings for a period from three months to one year subject to the following conditions:

- 1) there is a tax (and other compulsory payments to the budget) creditor or there are at least three creditors, including the petitioner who has consented to the external administration proceedings;
- 2) insolvency of the debtor.

The purposes of these proceedings are to:

- ensure protection of the debtor's property;
- identify elements of intentional and false bankruptcy (if any);
- carry out analysis of the financial condition, determine the possibility or impossibility of restoring the debtor's financial solvency and actions (omissions) of evading the obligations to creditors;
- creditors' monitoring of the debtor's financial and business activities of and reorganization measures undertaken by the debtor;
- control over consummation of transactions involving disposition of fixed assets, pledge or lease of assets as well as other transactions made at prices that are considerably lower than the prevailing market prices or without sufficient grounds if implementation of such transactions may result in losses for the debtor.

The person appointed in the prescribed manner to carry out the external administration proceedings is called external administrator. The consequences of appointing an external administration are as follows:

- 1) any claims against the debtor may be made only within the external administration proceedings;
- 2) the debtor's officials are prohibited from disposing of their shares or participation interests in the debtor's property;
- 3) no foreclosure of the debtor's pledged property, including in out of court procedure, is permitted.

Rehabilitation Proceedings

Rehabilitation proceedings are applied only to business entities through judicial process provided that there is a petition from the debtor and consent from the creditors' committee and from the competent authority. Rehabilitation manager is responsible for asset management within the rehabilitation proceedings. The term of rehabilitation proceedings may not exceed 3 years. The court may, upon petition of the rehabilitation manager and subject to consent of the creditors' committee and resolution of the competent authority, extend such three-year period but by no more than 6 months.

The rehabilitation manager may refuse to perform the agreements entered into by the debtor prior to the commencement of the rehabilitation proceedings that have not been performed by both parties either in full or in part subject to one of the following conditions:

- 1) if the performance of the agreement may result in losses for the debtor;
- 2) the agreement contains conditions which are onerous versus similar agreements signed under comparable conditions;
- 3) the agreement is signed for a long term (more than one year) or is aimed only at longer term results for the debtor; or
- 4) there are other grounds to believe that performance of the agreement by the debtor will result in adverse consequences for other creditors.

In the event of refusal to perform the agreement on the aforesaid grounds, the counter party may through judicial process claim from the debtor actual damages caused by the termination of the agreement or contest the grounds of the refusal to perform the agreement.

The rehabilitation manager refers to court with an application of completion of the rehabilitation proceedings against the debtor if:

- 1) the purpose of the rehabilitation proceedings against the debtor has been achieved; or
- 2) it has ascertained to itself that this purpose cannot be achieved.

Financial Recovery (Turnaround)

Financial recovery is a rehabilitation measure whereby the owner of the debtor's property (or its authorized body), creditors or other persons provide financial aid to the insolvent debtor or apply other set of measures to mobilize the debtor's reserves and to improve its financial condition. If the rehabilitation plan provides for recovery measures for the insolvent debtor, the plan must contain a written obligation of the recovery team member to transfer money to the debtor and/or the creditors in accordance with the recovery plan specifying the amount and time period.

The recovery team member may assume the obligation to satisfy all creditors' claims within the time periods as may be agreed with them. In this case, the recovery team member or a person appointed by him becomes responsible for the management of the debtor within the powers vested in the rehabilitation manager.

The recovery team member who have assumed the obligation to satisfy all creditors' claims is subjected to secondary liability for the debtor's outstanding obligations after its liquidation unless the recovery team member proves that the purposes of the recovery program have not been achieved due to force majeure or actions of creditors or of the debtor (owner of the debtor's property).

The liability of the recovery team member who has not assumed any obligation to ensure settlement of the claims of the debtor's creditors is determined by the agreement between the recovery team member and the rehabilitation manager approved by the competent authority and the creditors' committee.

Debt Relief

After sale of the debtor's property and distribution of the sale proceeds between the creditors, the insolvent debtor is released from settlement of its remaining obligations and other claims enforceable and accounted for in declaring the legal entity bankrupt. However, the insolvent debtor is not released from obligations if it has concealed part of its property or transferred such part of its property to a third party for purposes of concealment within three years prior to the commencement of the liquidation proceedings, has withheld or falsified required accounting information, including account books and records, invoices, bills and documents.

Winding-up of Bankrupt Legal Entities (Liquidation)

Declaration of a legal entity bankrupt by court entails its liquidation. The operations of the bankrupt entity are deemed to have ceased as of the time of its removal from the State Register of Legal Entities. Orders on removal of the debtor from the register of legal entities issued by the legal entities state registration authorities are presented to the court and to the competent authority and to the debtor's local tax authority.

OUR TEAM

Vitaliy VODOLAZKIN

Managing Partner, Attorney at Law

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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, the phosphorous sector 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 for one of the major food holding company of Kazakhstan, processing industry assets in Georgia for further privatization and acquisition, 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 interests of clients in the phosphorous industry and subsoil users in connection with unlawful additional assessment of taxes; represented interests of a leading Kazakhstan bank in connection with its projects related to toxic assets; enforcement of outstanding liabilities from clients; protection of the interests of clients acting as shareholders, etc.

The firm's Litigation Team headed by Vitaliy was named The Litigation Team of Years 2009 and 2010 in Kazakhstan. Who is Who Legal: CIS recommended Vitaliy Vodolazkin in 2010 and 2011 as a leading litigation and arbitration expert in Kazakhstan. In 2011 Vitaliy Vodolazkin was singled out for his "*outstanding litigation guidance*" by **The Legal 500: Europe, Middle East and Africa**.

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 company of 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;
- Arbitrator of the Kazakhstan International Arbitration.

Education:

- Kazakh State Law Academy, Department of Business Law, graduated with honors in 2001.

Languages:

- Russian;
- English;
- German.

Aidyn BIKEBAYEV

Senior Partner, Chairman of the Board of Partners

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Specialization: Antimonopoly Regulation, Competition and Tariffs.

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 rejoined Sayat Zholshy & Partners in October 2008.

In 2009, the Antimonopoly (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 forum 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 2009-2010 in Kazakhstan. Who is Who Legal: CIS recommended Aidyn in 2010 and 2011 as a leading antitrust law expert 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 work 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;
- Member of the Board of the Almaty Bar Council.

Education:

- Al-Farabi Kazakh State National University, Law Department, graduated with honors in 1996.

Languages:

- Kazakh;
- Russian;
- English.

Rustam OSPANOV**Senior Partner, Attorney at Law**

Tel.: +7 (727) 311 00 20

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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 associated 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 antimonopoly legislation.

Rustam has been involved in numerous due diligence projects for large Kazakhstan companies in connection of potential legal risks related to the acquisition of their business operations. He also participated in drafting, consummation and actual fulfillment of transactions on purchase of major enterprises in the energy and gas transportation sectors, and in reorganizations of separate legal entities and holdings of companies.

In 2010 Who is Who Legal: CIS recommended Rustam as a leading M&As expert in Kazakhstan.

He also represented clients in courts (including natural monopolies and dominant market participants and other market participants) in their relations with the 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;
- Arbitrator of the Kazakhstan International Arbitration.

Education:

- Kazakh State Law University, Department of Business Law, graduated with honors in 1998 .

Languages:

- Russian;
- English.

Rustam ILZHANOV**Senior Partner, Attorney at Law**

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Specialization: Subsoil Use

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

He has been involved in a large number of transactions on sale and purchase of assets of the mining industry, attraction of investment in large deposits, 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.

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:

- Kazakh;
- Russian;
- English.

Dmitry CHUMAKOV**Partner**

Tel.: +7 (727) 311 00 20

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Specialization: Labor Law. Foreign Work Permits, Licenses and other Approvals of Government Authorities. Corporate 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, the largest domestic leasing company for ten years and then worked as a lawyer of 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 institutes in Kazakhstan (IBRD, ADB).

Dmitry has extensive experience in providing legal support for activities of large agricultural, engineering and research companies and matters relating to 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 labor 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 rule-making from preparing draft concepts of regulatory legal acts to legal support of the process of adoption of the act by a relevant state authority (the Parliament, the Government, Ministries). He is co-drafted 29 laws and drafted more than 150 subordinate acts of the Government and Ministries

Education:

- Kazakh State Law University , Department of Business Law, graduated with honors in 1998 .

Languages:

- Russian.

Arman BERDALIN

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Specialization: Mergers and Acquisitions. Corporate Law.

Work Experience:

The firm's Mergers and Acquisitions team headed by Arman was named the M&A Team of the Year 2010 in Kazakhstan.

Arman Berdalin has extensive experience in structuring and execution of business sale and purchase transactions and settlement of matters relating business relations between shareholders.

As part of his experience, Arman worked in various projects, including in the fields of:

agricultural business;

electric power complex;

food business;

subsoil use (mineral deposits and petroleum fields);

transport and communications.

Arman Berdalin lead a legal team working on numerous due diligence investigations for a large number of companies with the total number of such companies reaching 100.

He has also supervised the work of legal services and departments of various clients of the firm.

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) and participated in organization and holding numerous international conferences.

Membership in Associations:

- Almaty Bar Association;
- Union of Lawyers of Kazakhstan;
- Arbitrator of the Kazakhstan International Arbitration.

Education:

- Kazakh State Law Academy, Department of Business Law, graduated with honors in 2000 .

Languages:

- Russian;
- English.

Assel SANDYBAYEVA

Senior Associate, Attorney at Law

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Specialization: Litigation and Arbitration

Work Experience:

Assel started her professional career in Sayat Zholshy & Partners in 2000 and was promoted to Senior Lawyer in 2002.

Assel specializes in the civil process matters, represents and protects interests of clients in courts of all jurisdictions of the Republic of Kazakhstan.

Her work was focused on antimonopoly legislation; she represented interests of clients in their relations with antimonopoly bodies, including appealing against their actions (orders) and representation in courts.

She was also involved in due diligence investigations for transportation, oil and agricultural companies. She provided legal advice on numerous large real estate sale and purchase transactions.

She participated in arbitration proceedings and proceedings on enforcement and appealing against their awards and had a number of publications in various periodicals highlighting matters relating to legal regulation of activities of intermediate and arbitration.

She provided legal advice, on a subscription basis, on activities of major companies in the field of power industry of Kazakhstan, gas service and construction. She lead a working group for recovery of receivables in the amount of 1 billion tenge. Assel also participated in a unique project for merger of two accumulative pension funds.

Complementary Professional Activities:

- Speaker at monthly conferences of the Arbitration Academy of the Kazakhstan International Arbitration;
- Expert of the Science Advisory Council of the Supreme Court of the Republic of Kazakhstan.

Membership in Associations:

- Almaty Bar Association;
- Union of Lawyers of Kazakhstan;
- Arbitrator of the Kazakhstan International Arbitration.

Education:

Kazakh State Law Academy, Department of Business Law, graduated with honors in 2000.

Languages:

- Kazakh;
- Russian;
- English.

Aidos Kussainov
Senior Associate

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Specialization: Labor Law; Work Permits, Licenses and other Approvals of Government Authorities

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 Senior Lawyer in 2005.

Aidos supervises all projects on obtaining and extending 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 governmental authorities

Education:

Lodz University in Poland, Faculty of Law and Administration. Master of Administrative Law, 2001.

Languages:

- Kazakh;
- Russian;
- Polish.

Yelena TYUREIKINA

Senior Associate

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Specialization: Tax Law

Work Experience:

Yelena joined Sayat Zholshy & Partners in January 2009 as a Senior Lawyer. Before joining our team, Yelena several years headed a legal department of a subsidiary of a large transport holding company which owns a large pool of railway cars and headed a legal department of a well-known company involved in geological surveys for subsoil users. Her main duties included all legal matters, corporate matters, legal support for transactions, tax optimization and operational planning of the companies, and legal opinions on various legal matters.

Yelena started her professional career in 1998 in government authorities as chief specialist of the department for supervision of compliance with antimonopoly legislation of the Antimonopoly Committee of the Republic of Kazakhstan for the city of Almaty which was then responsible for control and supervision of natural monopolies and dominant market participants. She also acted as secretary of the Committee's administrative commission.

During her employment as chief specialist of the housing and communal services department of the Administration of the Akim of the city of Almaty, her duties involved matters relating to provision of housing from public housing reserves, coordination of the work of housing cooperatives and public utilities.

Education:

- Kazakh State Law University, Department of Business Law, 1998.

Languages:

- Russian;
- English.

Amir BEGDESENOV**Senior Associate**

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Specialization: Mergers and Acquisitions. Finance and Securities

Work Experience:

Amir joined Sayat Zholshy & Partners in June 2010 as Associate and was promoted to Senior Associate in January 2011.

Amir has considerable experience in structuring and implementation of M&A transactions and is actively involved in the projects of the firm's M&A Department. In addition, Amir is responsible for development of the Finance and Securities specialization in Sayat Zholshy & Partners.

Certain Important Projects:

- Legal assistance in day-to-day activity of a Kazakhstan production company forming part of a major international group created by French investors. SZP's services included participation in negotiations and a number of legal due diligence projects with respect to assets located in Almaty, the Almaty Oblast and Astana, and drafting and preparation of transactions documents.
- Acquisition of a Kazakhstan pension fund. The services provided to the client related to structuring of the transaction, recommendations for compliance with the transaction-related imperative statutory requirements, a comprehensive legal due diligence into the legal status of the target of the acquisition and full legal advice in the course of fulfillment of the transaction.
- Transfer of a dealer network of a leading international producer of handling equipment. The services included a comprehensive legal due diligence with regard to several jurisdictions. At the request of a leading international law firm, SZP was involved in a due diligence of assets located in Kazakhstan.

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;
- Effective corporate structure implementation project for a major producer and seller of grain and other products in the Kostanai Oblast;
- Preinvestment legal due diligence of a major Kazakhstan alcohol producer;
- Several due diligence investigations into major oil and gas companies in connection with labor and environmental laws and compliance with contractual obligations on subsoil use operations;
- Winner of Kazakhstan national rounds and participant of international rounds of the Jessup Moot Court 2007 competition (held annually in Washington, DC).

Education:

- The Abylai Khan Kazakh University of International Relations and World Languages, specialization: International Law, Graduated Summa Cum Laude.

Languages:

- Russian – fluent;
- Kazakh – native;
- English – fluent;
- Chinese (Mandarin) – basic.