

## PREFACE

In 2018, Sayat Zholshy & Partners celebrated its 20<sup>th</sup> anniversary. All these years we have been working for our clients' success by delivering the highest quality legal aid in compliance with international standards. During this period we obviously made a huge leap forward and consolidated our lead position in the Kazakhstan market of legal services.

*Doing Business in Kazakhstan 2019* is the 14<sup>th</sup> issue of this annual brochure published since 2006. The brochure is aimed at the development of entrepreneurship in Kazakhstan. We know that every successful business is backed by passionate characters who strive to promote not only their own business but the entire country and nation. Our mission is to support business environment.

Over the years we have distributed hundreds of thousands of the *Doing Business* brochure hardcopies free of charge. On the Internet, our brochure has gone viral on many different sites.

One brochure, of course, cannot cover all issues faced by the business community, but we have attempted to cover all key legal aspects of doing business in Kazakhstan.

In our brochure you will find information on how to properly, from legal perspective, set up, maintain and develop a business in Kazakhstan, as well as the fundamental principles of labour/employment, corporate, tax, civil, customs, antitrust, criminal and other areas of law.

The information contained in this brochure is of a general nature and reflects the provisions of the current Kazakhstan legislation effective as at 1 May 2019.

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.

**Aidyn Bikebayev**  
**Managing Partner**

## ABOUT SAYAT ZHOLSHY

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

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

For example, in 2019, *Who's Who Legal*, an international rating agency, recommended SZP Managing Partner Aidyn Bikebayev and Partner Amir Begdesenov as acknowledged experts in the fields of unfair competition and antitrust law, and Partner Arman Berdalın as a corporate governance specialist.

*The Legal 500* has recognized SZP Senior Partner Vitaliy Vodolazkin as one of the elite leading lawyers and included him in *The Legal 500 Hall of Fame*. *The Legal 500 EMEA 2018* singled out our Firm in such areas of practice as *Commercial*, *Corporate and M&A*; *Dispute Resolution*; *Real Estate and Construction*; and *Tax and Customs*. Senior Partner Arman Berdalın and Partner Amir Begdesenov were highly praised as leading experts in such areas of practice as *Commercial*, *Corporate and M&A*; and Partner Yelena Tyureikina was singled out in the *Tax and Customs* area. According to *The Legal 500 EMEA 2018*, "**Sayat Zholshy & Partners** has a highly professional and strong tax practice with expertise in transactions, double-tax treaties and transfer pricing".

In 2018, international guide *Chambers and Partners* recognised SZP's achievements in such areas of practice as *Corporate and Finance* and *Dispute Resolution*. Senior Partners Vitaliy Vodolazkin (a leader of the *Dispute Resolution* practice) and Arman Berdalın (a leader of *Corporate Law and M&A* practice) were recognized by *Chambers Global 2018* and *Chambers Asia Pacific 2018* as leading Kazakhstan lawyers. Arman Berdalın was ranked as one of the most acknowledged Kazakhstan corporate law and M&A specialists. One client comments: "He's very polite, very intelligent, very smart. I only have the best impression of him." He regularly advises on transactions, joint ventures and other commercial projects. Clients appreciate his proactive approach, describing him as "an extremely hands-on, practical and client-oriented professional." Senior Partner Vitaliy Vodolazkin was recommended by *Chambers* as a lawyer with a wide-ranging experience in dispute resolution and ranked as "a litigator who can handle any legal issue in court." Another source says: "He's smart, zealous, and quite impressive in getting results."

*AsiaLaw Profiles 2018* rated our Firm as an outstanding Kazakhstan law firm for such areas of practice as *Competition & Antitrust* and *Dispute Resolution & Litigation*, as a highly recommended firm for *Corporate/M&A*, *Energy & Natural Resources*, *Labour & Employment* and *Restructuring & Insolvency*, and as a recommended firm for *Banking & Finance*, *Intellectual Property* and *Projects & Infrastructure*.

It is worth noting that Sayat Zholshy & Partners is the only law firm on the Kazakhstan market of legal services whose *Competition & Antitrust* practice was ranked as outstanding and *Restructuring & Insolvency* as highly recommended. Partner Amir Begdesenov was ranked as the Rising Star Lawyer in two areas of practice overseen by him – *Competition & Antitrust* and *Intellectual Property*. According to a partner at a rival firm, "the firm is famous for this practice". "I have been extremely impressed by the quality of work of this firm. The IP team is extremely responsive and knowledgeable and I could not fault their performance," says a client.

According to the latest survey conducted by *International Financial Law Review* (IFLR1000) – a guide to the world's leading financial and corporate law firms and lawyers – Sayat Zholshy & Partners, once again, advocated its professionalism and was distinguished by IFLR1000 experts in such areas of practice as *Financial & Corporate* and *Project Development*. The guide singled out Senior Partner Arman Berdalin as “highly regarded” in M&A practice.

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

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

The Firm comprises 1 managing partner, 6 partners, 3 counsels, 3 senior associates and 18 associates educated in Kazakhstan, Russia, USA, Germany and Poland. Our Partners read lectures in Kazakhstan universities and publish their works in leading print and digital magazines.

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

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

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

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

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

## **WHY SAYAT ZHOLSHY & PARTNERS?**

### **Guarantee of Confidentiality**

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

Pursuant to the 5 July 2018 Law of the Republic of Kazakhstan *On Advocacy and Legal Assistance*:

- 1) examination of an attorney as a witness in the circumstances that have been made known to them in the course of their professional duties performance is prohibited;
- 2) demanding or requesting or making other efforts to obtain information/materials related to provided legal assistance from an attorney (attorneys' office) or any of their assistant/intern/employee without a prior consent of the attorney or client is prohibited, unless otherwise provided by Kazakhstan law;
- 3) attorney-client privilege consists of:
  - the fact that the attorney has been approached for legal advice; and
  - the information on the contents of oral or written negotiations with a person seeking assistance and any other person regarding the nature and results of actions undertaken on behalf of the person seeking assistance, as well as any other information relating to the provision of legal assistance;
- 4) attorney's files, records and documents and other related materials and documents, as well as attorney's assets, including mobile communications, audio equipment and computer hardware, are exempt from examination, inspection, caption, seizure and/or check-up, except when permitted by Kazakhstan law; and
- 5) attorneys and attorney firms bear statutory liability for disclosing attorney-client privileged information.

### **International Standards of Practice**

As a local law firm, we have a deep knowledge of the national law and culture and, on the other hand, we are committed to the highest international standards. Such unique combination makes us stand out against competition and promote our clients' business.

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

### **High Level of Professionalism**

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

- 1) requirements to job applicants, including:
  - excellent academic education in the chosen field of expertise;
  - leadership abilities; and
  - competence in foreign languages;
- 2) competitive salaries to our associates;
- 3) ongoing professional training and development of our employees;

- 4) focus on specific fields of law;
- 5) partner supervision of associates; and
- 6) regular in-house workshops and seminars to discuss some of the most interesting legal cases and pressing problems of the current legislation.

### **Team Spirit**

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

## COUNTRY OVERVIEW

### *Geography and Landscape*

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

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

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

### *Capital City*

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

### *Currency*

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

### *Population*

According to the country's official statistics, as at 1 January 2019, the population of Kazakhstan is 18,395,660.

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

### *Religion*

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

### *Languages*

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

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

### *Public Holidays*

The following days are public holidays in Kazakhstan:

New Year – 1 and 2 January;  
International Women's Day – 8 March;  
Nauryz Meiramy - 21-23 March;  
Kazakhstan People's Unity Day - 1 May;

Defender of the Fatherland Day – 7 May;  
Victory Day - 9 May;  
Capital City Day - 6 July;  
Constitution Day - 30 August;  
Kazakhstan First President's Day - 1 December;  
Independence Day – 16-17 December.

The above public holidays are non-working days in the Republic of Kazakhstan.

**As per Kazakhstan labour law, the following days are non-working in Kazakhstan:**

Orthodox Christmas – 7 January;  
Kurban Ait (the first day celebrated under the Islamic lunar calendar) – 11 August in 2019;

### *Climate*

The Kazakhstan climate is sharply continental and strongly seasonal. The average temperatures in January range between -19°C (in the North and North-East) and +1°C (in the South), and the average temperatures in July range between +17°C and +31°C, respectively.

### *Natural Resources*

Kazakhstan is a country with a diverse range of natural resources. Out of 110 elements on the periodic table, 99 have been discovered in the bowels of Kazakhstan, 70 of which have been explored and over 60 are being produced.

To date, there have been discovered 493 deposits containing 1,225 minerals. Kazakhstan ranks the first worldwide by the proven reserves of zinc, tungsten and barite, the second – by silver, lead and chromite, the third – by copper and fluorspar, the fourth – by molybdenum, and the fifth – by gold.

Presently, Kazakhstan has 14 prospective oil basins located virtually throughout its entire territory where only 160 oil and gas fields have been explored. Today, Kazakhstan's forecasts are 300 major deposits of gold, of which 173 have been explored in detail. Over 100 coal deposits, including the biggest Ekibastuz deposit and the Karaganda coal basin, have been explored in Kazakhstan.

### *Economy*

Kazakhstan is pursuing a development strategy named '*Kazakhstan 2050: New Political Course of the Established State*' the key objective of which is the entry of Kazakhstan to the club of top 30 most developed countries of the world before 2050 and further implementation of such major projects as Kashagan and Karachaganak.

According to the World Bank's *Ease of Doing Business 2019* ranking, Kazakhstan ranks the 28<sup>th</sup> among 190 countries.

As at the end of January 2019, the Kazakhstan GDP growth reached 2.9%. The average monthly nominal wages in January 2019 were determined at the level of KZT166,100. At the year-end, the unemployment rate was 4.8% of the total economically active population.

For the first 9 months of 2018 gross inflow of direct investment in Kazakhstan reached 17,339 billion US dollars (according to the Kazakhstan National Bank) which is 8.36% (1,337 million US dollars) higher than for the same period of 2017.

## 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. All former Presidents of the Republic of Kazakhstan, except abdicated presidents, hold the title of an ex-President of the Republic of Kazakhstan.
2. Apart from the Parliament and the Supreme Court, the President appoints all principal authorities, including the Government.
3. The President ensures coordination of all branches of power and accountability of authorities to the people of the country, signs laws and international treaties, and approves government programs and roadmaps.
4. The First President of the Republic of Kazakhstan enjoys a special status, so-called "Yelbassy Nursultan Nazarbayev", that entitles him to:
  - appeal to the people and government authorities/officers of Kazakhstan with regard to the most important issues of the national building initiative, domestic and foreign policies, and national security that are subject to compulsory consideration by appropriate government authorities and officers; and
  - address the Parliament and Houses of the Parliament of the Republic of Kazakhstan and the Government of the Republic of Kazakhstan when discussing the most urgent national issues; rule the Assembly of the People of Kazakhstan; head the Security Council of the Republic of Kazakhstan; and be a member of the Constitutional Council of the Republic of Kazakhstan.

Any significant initiative concerning the domestic or foreign policy of the Republic of Kazakhstan must be pre-approved by the First President of the Republic of Kazakhstan (Yelbassy).

5. 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 and controls the Government. 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 People of Kazakhstan.

Deputies of the Senate are elected by local representative bodies for 6 years. 15 deputies of the Senate are appointed by the President and are called to represent in the Senate certain national, cultural and other material interests of the society.

The election and dismissal of the Chairman and judges of the Supreme Court of the Republic of Kazakhstan, on the recommendation of the President of the Republic of Kazakhstan, are reserved to the Senate.

6. The Government is formed by the President. It presents draft budgets and laws to the Parliament, ensures their enforcement and manages their administration. Members of the Government include the Prime Minister, deputies thereof, ministers and other officers.
7. The Constitutional Council: (i) resolves disputes arising out of or in connection with the election of a President of the Republic of Kazakhstan and Members of the Parliament, and the national referendum; (ii) prior to Presidential approval,



reviews all laws adopted by the Parliament for their compliance with the Kazakhstan Constitution; (iii) reviews all resolutions adopted by the Parliament and its Chambers for their compliance with the Kazakhstan Constitution; (iv) prior to ratification by the Republic of Kazakhstan, reviews all international treaties for their compliance with the Kazakhstan Constitution; (v) issues official interpretation of the Constitution provisions; and (vi) issues opinions to the extent provided by the Constitution. To the extent provided by the Constitution, the Constitutional Council considers state-of-the-nation addresses and court requests. The Constitutional Council consists of 7 members, 3 of whom (including the Chairman) are appointed by the President, 2 are appointed on the recommendation of the Upper House of the Parliament and 2 are appointed on the recommendation of the Lower House of the Parliament. Besides, all ex-presidents of the Republic of Kazakhstan are life members of the Constitutional Council.

8. The Security Council is an advisory and deliberative body set up by the President for elaboration of solutions and facilitation of the performance by the Head of the State of his duties in such domains as national security and defence; maintenance of sovereignty, independence and territorial integrity of the Republic of Kazakhstan; maintenance of social and political stability in the country; and protection of constitutional civil rights and freedoms. The First President of the Republic of Kazakhstan is the Head of the Security Council for life.

9. The judicial branch comprises the Supreme Court (the judges are appointed by the Senate) and local courts (the judges are appointed by the President). Besides, the President may establish other courts, including specialised courts (e.g. military, financial, economic, administrative, juvenile, etc.).

The Astana International Financial Centre (the “**AIFC**”) is not part of the courts system and enjoys a special status. The AIFC adjudicates on disputes between members, bodies and/or foreign employees of the AIFC. The AIFC Court applies the civil procedure rules of England and Wales and/or standards/requirements of the leading international financial centres. The AIFC Court Chairman and judges are appointed and dismissed by the President of the Republic of Kazakhstan on the recommendation of the AIFC Governor.

10. 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, mainly continental, countries, is built on the traditions of the Romano-Germanic (Continental) legal system. Unlike the Anglo-Saxon legal system (England and USA), where legal precedents are primary sources of law, the Continental system has a unified hierarchy of written legal sources.

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

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

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

The hierarchy of the sources of law in Kazakhstan is determined by the Law of the Republic of Kazakhstan *On Legal Acts* of 6 April 2016. Pursuant to Article 10 of the Law, the Constitution of the Republic of Kazakhstan has the highest legal force. Following the Constitution, all regulatory legal acts have the following hierarchy:

- 1) laws amending the Constitution;
- 2) constitutional laws of the Republic of Kazakhstan;
- 3) codes of the Republic of Kazakhstan;
- 4) consolidated acts and laws of the Republic of Kazakhstan;
- 5) regulatory resolutions of the Parliament of the Republic of Kazakhstan and its Chambers;
- 6) regulatory legal decrees of the President of the Republic of Kazakhstan;
- 7) regulatory legal resolutions of the Government of the Republic of Kazakhstan;
- 8) regulatory legal orders of ministers of the Republic of Kazakhstan and other heads of central government authorities, and regulatory legal resolutions of the Central Election Committee of the Republic of Kazakhstan, Accounts Committee for Control over Execution of the Kazakhstan Republican Budget, National Bank of the Republic of Kazakhstan and other central government authorities;
- 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), regulatory decisions of Akims and regulatory legal resolutions of audit committees.

None of regulatory legal acts of a lower level in the hierarchy may contradict regulatory legal acts of upper levels. In case of discrepancy between regulatory acts of the same level, the most recently adopted act shall apply.

All acts of the Chairman of the Security Council of the Republic of Kazakhstan and regulatory resolutions of the Constitutional Council of the Republic of Kazakhstan and the Supreme Court of the Republic of Kazakhstan do not fall within this hierarchy.

Regulatory resolutions of the Constitutional Council of the Republic of Kazakhstan are based only on the Constitution of the Republic of Kazakhstan and no other regulatory act may contradict them.

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

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

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

The following regulatory legal acts could be singled out from the totality of regulatory legal acts applicable to business activity in Kazakhstan, along with the Constitution, Civil Code and Entrepreneurial Code of the Republic of Kazakhstan:

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

Since 1 July 2006, Kazakhstan is the only CIS country that, by law, grants sole proprietors the right to participate in drafting and reviewing regulatory legal acts, draft international treaties of the Republic of Kazakhstan and international agreements to which Kazakhstan is going to accede that affect the interests of businesses. In particular, central government and local executive authorities send draft regulatory legal acts affecting the interests of sole proprietors to accredited private business associations for their expert opinion which is issued in the form of recommendations and must be appended to the draft regulatory legal acts during their review and adoption, including subsequent discussion of the drafts with the appropriate government authorities.

## FORMS OF BUSINESS ORGANIZATION IN KAZAKHSTAN

### ***Branches and Representative Offices***

Kazakhstan law defines 'structural subdivision' as a separate subdivision of a legal entity which is located outside the place of its incorporation. Structural subdivisions are not legal entities.

The most common forms of structural subdivisions are branches and representative offices, while branches are more versatile due to their wider authority.

### ***Subsidiary***

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

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

### ***Joint Stock Company (JSC)***

Joint stock companies are legal entities who issue shares in order to raise funds to carry out their business activities.

Shareholders' risks are limited to the value of their shares. Shareholders are liable for the obligations of the JSC if it is established that the shareholders' actions have resulted in the bankruptcy of the JSC.

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

The minimum charter capital requirement to a joint stock company is about 340,000 US dollars.<sup>1</sup>

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

All JSCs must have the following corporate bodies:

- general meeting of shareholders / sole shareholder (the supreme body);
- board of directors (the body responsible for general strategic decision-making);
- sole or collegial executive body (the body responsible for day-to-day management of the JSC operations).

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

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

### ***Limited Liability Partnership***

Limited liability partnership (LLP) is the most common legal form of a legal entity in Kazakhstan covering over 95% of all legal entities in the country. Registration

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<sup>1</sup> Certain JSCs (e.g. banks, insurance organisations, etc.) might be applied a higher minimum charter capital requirement.

formalities, corporate matters and transaction approval procedures applicable to LLP are much more straightforward than those applicable to JSC. If there is no need to protect the interests of foreign minority shareholders in their relations with local majority shareholders or to have strict control over the management's actions or, where necessary, to sell an interest/shareholding in your company, we recommend registering your legal entity in the form of LLP.

Please note that, even though one of the key functions of a JSC is to raise investment through issue of shares or other securities and financial instruments in capital markets, this mechanism is relatively uncommon in Kazakhstan.

An LLP is a legal entity with limited liability founded by one or more private individuals or legal entities whose charter capital is divided into participation interests (shares). The founding persons are referred to as "founders". LLP members include the LLP founders and anyone who acquires an interest in the LLP's charter capital after its incorporation.

Interests of all members in the charter capital and, accordingly, their interests in the asset value of the LLP (interests in assets) are proportionate to their contributions to the charter capital, unless otherwise provided by the LLP's constituent documents.

An LLP may have a zero charter capital if its revenues throughout a year do not exceed 2,000,000 US dollars and the annual average number of its employees is below 100. When an LLP exceeds the thresholds, its minimum charter capital requirement is rather moderate, i.e. approximately 700 US dollars.

In the event of disposal of a participation interest in the LLP's charter capital to a third party, its members must comply with the other members' right of first refusal (pre-emption right) to acquire their interests. This requirement does not apply to any gratuitous disposal of an interest. LLP's constituent documents may restrict or condition the disposal of interests in the LLP to non-members of such LLP.

LLP and its members are individually and severally liable for their own obligations. The general rule is that LLP is not liable for obligations of its members, while members are liable for the LLP's obligations to the extent of their contributions to the LLP's charter capital. Members of 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.

All LLPs must have the following corporate bodies:

- general meeting of members / sole member (the supreme body); and
- sole and/or collective executive body (the body responsible for day-to-day management of the LLP operations).

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

LLPs are not prohibited from setting up other corporate bodies (e.g. board of directors); however, due to the specifics of Kazakhstan law, the activities of such bodies might be hindered and the decisions made thereby might be challenged.

By general rule, LLPs are not obliged to publish their financial statements (such obligation may arise only when it is explicitly provided by Kazakhstan law).

Considering the foregoing, as well as our experience and common practice, we can infer that, in the vast majority of cases when a company decides to start its business in Kazakhstan, it sets up a subsidiary in the form of an LLP or opens its structural

subdivision (i.e. a branch or representative office, depending on the company's objectives).

It is worth noting that, according to the recent legislative amendments which enter into force this year, LLPs and structural subdivisions have similar startup advantages and disadvantages by a number of criteria, e.g. foreign employment, charter capital, management requirements, currency regulations, etc.).

Nevertheless, we would recommend opting for LLP due to its wider prospects in terms of profit repatriation (i.e. potential exemption from withholding tax) and coverage of the parent company's risks associated with its Kazakhstan subsidiary operations (since the parent company is fully liable for obligations of its structural subdivision (as opposed to the LLP members).

### **Sole Proprietorship**

Citizens of the Republic of Kazakhstan and oralmans may run business as sole proprietors not incorporated as legal entities and not registered otherwise.

However, when a Kazakhstan citizen or oralman hires permanent staff or when income from their business activity exceeds 12-fold minimum wages, they must get registered as a sole proprietor. Such registration is a simple and easily realisable notification procedure. Registration of a sole proprietorship does not form a legal entity.

We believe it important to emphasize that individuals other than Kazakhstan citizens and oralmans are not permitted to engage in business activity.

### **Special Legal Structure Requirements to Certain Types of Business**

Kazakhstan law sets out special legal structure requirements to certain types of business. In the table below we list some of such businesses:

	<b>Type of Business</b>	<b>Legal Structure</b>
1.	Air carrier providing scheduled air services	JSC
2.	Joint stock investment fund	JSC
3.	Insurance/re-insurance organisation	JSC
4.	Voluntary pension savings fund	JSC
5.	Second-tier bank	JSC
6.	Microfinance institution	LLP or another form of business partnership

## FOREIGN WORK PERMITS

The procedure for obtaining foreign work permits in Kazakhstan ("Work Permits") is quite complicated.

There are legislatively determined quotas for foreigners permitted to work in Kazakhstan which are distributed between oblasts (Kazakhstan provinces).

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

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

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

- 1) fee-based Work Permits; and
- 2) Work Permits for intragroup secondees from World Trade Organisation member states.

### 1. Fee-based Work Permits

Work Permits are granted for four categories of foreign workers:

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

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

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

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

1. small businesses;
2. government institutions and enterprises;
3. foreign nationals arriving to Kazakhstan for self-employment purposes;

4. foreign nationals obtaining permits within the quotas allocated to their respective home states with which the Republic of Kazakhstan has ratified international treaties on cooperation in labour migration and social protection of migrant workers; and
5. branches and representative offices of foreign companies the headcount of which does not exceed 30 people.

**Please see below the step-by-step process of Work Permit issuance:**

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

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

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

#	Economic activity	Rate, monthly calculation index (MCI)					
		First category foreign employees			Second category foreign employees	Third category foreign employees	Fourth category foreign employees
		1 year work permit	2 year work permit	3 year work permit			
1	Agriculture, forestry and fishery	137	274	411	158	179	200
2	Mining and quarry operations	154	308	462	178	202	225
3	Processing	154	308	462	178	202	225
4	Power/gas/steam supply and air conditioning	137	274	411	158	179	200
5	Water supply; sewage and supervision over collection and disposal of waste	137	274	411	158	179	200
6	Construction	171	342	513	198	224	250
7	Wholesale and retail trade; cars and motorcycles repair and maintenance	154	308	462	178	202	225
8	Transportation and warehousing	137	274	411	158	179	200
9	Accommodation and meals	137	274	411	158	179	200
10	Information and telecommunications	137	274	411	158	179	200



1 1	Finance and insurance	137	274	411	158	179	200
1 2	Real estate operations	137	274	411	158	179	200
1 3	Professional, scientific and technical activities	137	274	411	158	179	200
1 4	Administrative and ancillary services	137	274	411	158	179	200
1 5	Mandatory social security	137	274	411	158	179	200
1 6	Education	137	274	411	158	179	200
1 7	Healthcare and social services	137	274	411	158	179	200
1 8	Arts, entertainment and recreation activities	137	274	411	158	179	200
1 9	Other services	154	308	462	178	202	225
2 0	Households engaging servants and producing goods and services for their own use	137	274	411	158	179	200
2 1	Exterritorial organisations and agencies	137	274	411	158	179	200

**Step 4.** The competent government authority issues the Work Permit.

The first category Work Permits may be issued for one, two or three years and may be extended for one, two or three years. The second and third category Work Permits may be issued for 12 months and may be extended for 12 months maximum three times.

## **2. Work Permits for Intragroup Secondees from World Trade Organisation Member States**

Work Permits are granted for two categories:

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

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

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

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

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

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

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

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

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

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

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

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

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

## VISAS

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

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

### **Investor Visa**

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

Investor visa holders may bring their family members to stay with them in Kazakhstan.

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

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

### **Business Visa**

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

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

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

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

### **Work Visa**

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

In order for a foreign national to obtain a work visa, the inviting party (employer) is required to have a foreign Work Permit or the foreign national should have a permit for employment. Certain categories of foreign nationals and stateless persons, including, among others, chief executive officers of branches or representative offices of foreign legal entities, and chief executive officers of Kazakhstan entities with 100% foreign ownership structure and deputies thereof (a list of such categories is determined by Kazakhstan law), are exempt from the requirement to have a Work Permit in Kazakhstan.

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

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

### **Registration of Foreign Nationals**

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

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

Registration is issued for a period specified in the application, but not exceeding the term of the visa. Registration of foreigners arriving from the states with which Kazakhstan has signed international treaties on visa free travel and sojourn is issued for maximum 30 days, and foreigners arriving from the Customs Union Member States for 90 days with potential extension for the same period.

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

Please see below the list of economically developed and politically/migratorially stable states whose citizens are not required to provide an invitation letter when applying for A3, B1, B3, B10 or B12 visas:

1. Australia
2. Republic of Austria
3. United States of America
4. Kingdom of Belgium
5. United Arab Emirates
6. Republic of Bulgaria
7. Federative Republic of Brazil
8. Federal Republic of Germany

- |                                   |   |
|-----------------------------------|---|
| 9. Hellenic Republic              | 30. Principality of Monaco                                  |
| 10. Kingdom of Denmark            | 31. Kingdom of the Netherlands                              |
| 11. New Zealand                   | 32. Kingdom of Norway                                       |
| 12. Japan                         | 33. Sultanate of Oman                                       |
| 13. State of Israel               | 34. Republic of Poland                                      |
| 14. Hashemite Kingdom of Jordan   | 35. Portuguese Republic                                     |
| 15. Republic of Ireland           | 36. Romania   |
| 16. Republic of Iceland           | 37. Kingdom of Saudi Arabia                                 |
| 17. Kingdom of Spain              | 38. Republic of Singapore                                   |
| 18. Italian Republic              | 39. Slovak Republic   |
| 19. Canada                        | 40. Republic of Slovenia                                    |
| 20. State of Qatar                | 41. United Kingdom of Great Britain<br>and Northern Ireland |
| 21. Republic of Cyprus            | 42. Republic of Finland                                     |
| 22. Republic of Korea             | 43. French Republic   |
| 23. Republic of Latvia            | 44. Republic of Croatia                                     |
| 24. Republic of Lithuania         | 45. Czech Republic  |
| 25. Principality of Liechtenstein | 46. Swiss Confederation                                     |
| 26. Grand Duchy of Luxembourg     | 47. Kingdom of Sweden                                       |
| 27. Republic of Hungary           | 48. Republic of Estonia                                     |
| 28. Federation of Malaysia        |   |
| 29. Republic of Malta             |   |

### **Visa-free Regime for Citizens of a Number of Foreign States**

Citizens of the following 45 countries are entitled to visa-free travel to the Republic of Kazakhstan:

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

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

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

## LICENSES AND NOTICES (LICENSING)

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

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

Permits are subdivided into two categories:

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

Notices apply to those types of activities and operations which represent a low level risk but require notification of government authorities of the commencement or completion of such types of activities and operations.

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

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

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

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

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

### *Spheres of licensing*

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

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

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

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

Licenses are differentiated as follows:

1. By subject:

- 1) citizens and legal entities of the Republic of Kazakhstan; and
- 2) foreign entities without branches or representative offices in the Republic of Kazakhstan, foreign citizens, stateless persons and international organisations.

2. By scope of activities:

- 1) general license issued for a certain type of activities for an indefinite period of time;
- 2) single-use license issued for a certain economic operation for a limited period of time, scope, weight or quantity (in physical or monetary terms); for gambling business activities for a term determined by the Kazakhstan Law *On Gambling Business*; and for activities related to housing construction at the expense of stakeholders within the scope determined by the Kazakhstan Law *On Share Participating in Housing Construction*; and
- 3) operational license issued for certain banking operations and certain class insurance operations.

Licenses are not issued when:

- 1) a certain type of activity is prohibited by Kazakhstan law in relation to the given category of subjects;
- 2) the license fee has not been paid;
- 3) the applicant does not meet qualification requirements;
- 4) the licensor has been informed by the competent government authorities that the applicant does not meet qualification requirements;



- 5) there is an effective court judgment/indictment, with respect to the applicant, on the suspension or prohibition of the activities or certain types of activities subject to licensing;
- 6) court, based on marshal's recommendations, has temporarily prohibited the issuance of a license for an insolvent applicant; and
- 7) the documents filed by the applicant and/or the information/data contained in such documents are unreliable or misleading.

A license terminates when:

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

A license must be reissued in the following cases:

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

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

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

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

## INVESTMENT IN KAZAKHSTAN

The Republic of Kazakhstan has a favourable investment climate.

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, and guarantees of legal protection of investors' activities on the territory of the Republic of Kazakhstan.

Moreover, Kazakhstan has ratified the 1985 Seoul Convention Establishing the Multilateral Investment Guarantee Agency and the 1997 Moscow Convention on Protection of Investor Rights. Kazakhstan has also joined the 1965 International Convention on Settlement of Investment Disputes between States and Nationals of Other States (the ICSID Convention) that established the International Centre for Settlement of Investment Disputes. This Convention is applied as may be agreed between the parties to the dispute. Kazakhstan has also signed bilateral agreements on mutual protection of investment with a number of countries, including: USA, United Kingdom, France, Turkey, Tajikistan, Bulgaria, Kuwait, Belgium-Luxembourg Economic Union, Russia, India, Switzerland, Mongolia, Poland, Saudi Arabia, Italy, Hungary, Egypt and some other countries.

Kazakhstan law recognizes priority of international treaties ratified by the Republic of Kazakhstan over its national legislation. Should an international treaty ratified by the Republic of Kazakhstan provide for rules different from those contained in the national legislation, the rules of the international treaty shall apply.

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

### Defined Terms

The Entrepreneurial Code defines investment as follows:

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

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

The definition of investment activities reads as follows:

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

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

The Entrepreneurial Code defines 'investor' as a natural person or legal entity who invests in the economy of the Republic of Kazakhstan, and 'major investor' as a natural

person or legal entity whose investment in the economy of the Republic of Kazakhstan exceeds the amount equivalent to 2,000,000 monthly calculation indices.

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

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

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

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

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

### ***Guaranteed Investors' Rights in the event of Nationalization or Requisition***

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

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

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

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

### ***Guaranteed Legal Protection of Investors' Activities in the Republic of Kazakhstan***

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

between investors and government authorities of the Republic of Kazakhstan, unless contracts are amended as may be agreed between the parties.

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

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

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

### ***Guaranteed Use of Income***

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

### ***Dispute Resolution***

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

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

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

### ***Government Investment Support***

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

There are four categories of investment benefits:

*The benefits granted to investment projects (including priority investment projects):*

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

*The benefits granted to priority investment projects:*

- 3) tax preferences; and
- 4) investment subsidies – are granted for specific investment projects;
- 5) exemption from import customs duties; and
- 6) exemption from taxes as provided by Kazakhstan law.

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

In Kazakhstan, the Ministry of Foreign Affairs (the “MFA”) is responsible for investments. The MFA is vested with broad powers to make independent decisions on investment preferences.

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

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

### ***Exemption from Customs Duties***

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

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

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

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

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

- 1) participants of special economic zones – for a fifteen-year period, but in any case within the operation period of the relevant special economic zone;
- 2) free warehouse owners – for maximum fifteen years from the date of the relevant special investment contract registration; and

- 3) Kazakhstan legal entities participating in agreements for industrial assembly of motor vehicles – for maximum fifteen years from the date of the relevant special investment contract registration.

### **Government In-kind Donations**

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

Government in-kind donations may be granted in the form of land plots, buildings, structures, machinery and equipment, computers, measuring and control devices and apparatus, transport vehicles (other than automobiles), and production and household appliances. The maximum limit for a government in-kind donation is 30% of the value of investment in fixed assets of a Kazakhstan legal entity.

### **Tax Preferences**

Tax preferences are granted to Kazakhstan entities in the manner and on the terms established by Kazakhstan tax law.

*Types of tax preferences:*

*The tax preferences for priority investment projects:*

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

*The tax preferences: -*

*for investment projects (except for priority investment projects) - exemption of materials and/or supplies from import VAT under investment contracts;*

*for specific investment projects – exemption of raw and/or other materials imported under a specific investment contract from value added tax in compliance with Kazakhstan tax law.*

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

### **Investment Subsidies**

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

An investment subsidy is granted through the recovery of maximum 30 percent of actual expenses for construction and installation works and procurement of equipment, excluding VAT and excises, stipulated by the work program of an investment project.

Such investment subsidy based on the actual expenses for construction and installation works and procurement of equipment is subject to documentary evidence, but in any case not more than the amount of costs specified in pre-project documentation, including the state expert review, in the manner provided by Kazakhstan law.

An investment subsidy is granted after consultation with local executive authorities on the level of an oblast, republican-status city or capital city where a certain project is implemented, and upon the final and complete commissioning, as determined by an investment contract, provided that the investor has performed all investment obligations.

## BANKING LEGISLATION

As at 1 January 2019, 28 banks are operating in the Kazakhstan financial market. As at 1 January 2019, the aggregate assets of Kazakhstan second-tier banks make up 25,241 billion tenge (approximately 67 billion US dollars).

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

The principal regulatory acts governing banking in Kazakhstan are:

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

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

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

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

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

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

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



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

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

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

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

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

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

In particular, a bank holding company is a legal entity (other than where the owner is the state or a national managing holding company or an entity specialising on improvement of loan portfolio quality of second-tier banks or subsidiaries of the Kazakhstan National Bank, and other than where the Law *On Banks and Banking* requires otherwise) who, in accordance with a written consent of the authorized body, can own, directly or indirectly, twenty five or more percent of the bank's outstanding shares (excluding preference shares and shares repurchased by the bank) or is able to:

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

A banking conglomerate is a group of legal entities comprised of a bank holding company (if any) and a bank or subsidiaries thereof and/or organizations where the bank holding company and/or its subsidiaries have significant capital participation.

A bank conglomerate may not include national management holding companies, bank holding companies that are not residents of the Republic of Kazakhstan, as well as nonresident subsidiaries and organizations in which a nonresident bank holding company has significant capital participation.

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

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

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

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

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

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

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

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

- 1) acceptance of deposits from, opening and maintenance of bank accounts for legal entities;
- 2) acceptance of deposits from, opening and maintenance of bank accounts for individuals;
- 3) opening and maintenance of correspondence accounts for banks and organizations performing certain bank transactions;
- 4) opening and maintenance of metals accounts for individuals and legal entities reflecting physical quantities of refined precious metals and coins minted in precious metals owned by another person;
- 5) cash transactions: acceptance and payment of cash by banks and the National Post Service, including changing, exchanging, recounting, sorting, packing and storing;
- 6) transfer transactions: performance of instructions from individuals and legal entities on money payments and transfers;
- 7) discounting transactions: discounting notes and other debentures for individuals and legal entities;

- 8) bank lending transactions: granting cash loans by a bank, mortgage organization or any subsidiary of a national agriculture-related management holding company on the basis of serviceability, maturity and recoverability;
- 9) organization of currency exchange transactions;
- 10) collection of banknotes, coins and valuables;
- 11) acceptance of payment documents (other than promissory notes) for collection;
- 12) opening (issuance) and acceptance of letters of credit and fulfilment of obligations thereunder;
- 13) issuance of bank guarantees securing performance of financial obligations; and
- 14) issuance of bank guarantees and other warranties securing performance of financial obligations by third parties.

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

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

Nowadays, Islamic banks operate side by side with 'conventional banks' in Kazakhstan.

In Kazakhstan Islamic banking regulations were introduced 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 related to the organization and operation of Islamic banks and the arrangement of Islamic financing.

In pursuance of the aforementioned law, the Kazakhstan National Bank drafted and adopted a number of relevant resolutions and regulations.

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

## INSURANCE

The legislation governing insurance in the Republic of Kazakhstan may be divided into two categories: (i) the legislation setting out the requirements to establishment and operation of insurance entities, and (ii) the legislation governing the relations between insurance entities and their clients.

The first category consists of the legislative acts which regulate the establishment, operation and liquidation of insurance entities (insurance companies, insurance brokers, actuaries, etc.).

Insurance legislation is characterized by heavy regulations, strict requirements to financial stability and powerful mandate of the Kazakhstan National Bank to regulate activities of insurance market participants. Among the key terms of insurance business it would be worth noting the following:

- insurance companies may operate only as joint stock companies;
- foreign insurance companies may not carry out insurance activities in Kazakhstan (with effect from December 2020, this restriction is lifted in relation to certain companies determined by Kazakhstan law);
- an insurance company must obtain a license and an appropriate permit from the Kazakhstan National Bank for each type of insurance;
- the charter capital of a newly established insurance company must range between 10 million and 71 million US dollars depending on the branch and class of insurance (i.e. general insurance, life insurance, etc.); and
- ban on direct or indirect possession, use and disposal of voting shares in an insurance company by legal entities incorporated in offshore jurisdictions with the exemption of insurance (reinsurance) organizations being subsidiaries of nonresident insurance (reinsurance) organizations of the Republic of Kazakhstan with the minimum required credit rating awarded by one of the rating agencies the list of which is determined by the competent authority.

The second category consists of the legislative acts which directly regulate the relations between an insurance company and its clients with respect to the insurance of risks.

Insurance in the Republic of Kazakhstan may be compulsory or voluntary.

The terms and conditions of the following compulsory types of insurance are determined by law and may not be changed by an insurance company or a client: Please see below the list of the most commonly used types of compulsory insurance:

- compulsory environmental insurance;
- compulsory insurance of civil liability of owners of transport vehicles;
- compulsory insurance of the employer's liability to employees for work-related bodily injury or disease;
- compulsory social insurance; and
- compulsory social health insurance.

The terms and conditions of voluntary insurance are determined by an agreement between the parties, i.e. the insured and the insurer.

## FINANCIAL LEASING

The most commonly used type of leasing is financial leasing that means the leasing of investment activity when a lessor acquires from a seller the ownership of a leased item and transfers the same to a Lessee, on a fee basis, for temporary possession and use on the terms and conditions set out in a lease agreement for a period of up to one year.

The above definition of financial leasing was adopted by Kazakhstan law quite recently and, unlike the previous version of the applicable law, it provides for (i) a shorter minimum period of possession and use of assets (i.e. “over one year” instead of “at least three years”), and (ii) broader opportunities for application of financial leasing (now a lessee is not obliged to use a leased item only for business purposes).

A financial lease agreement must meet one or more of the following criteria:

- 1) the terms and conditions for transfer of a leased item to the lessee's ownership and/or granting to the lessee the right to buy the leased item at a fixed price are determined by a lease agreement;
- 2) the term of leasing should exceed 75% of the service life of the leased item; or
- 3) the present (discounted) value of lease payments for the entire leasing term should exceed 90% of the value of the leased item to be transferred.

Types of financial leasing:

- leaseback – when a seller sells a leased item to a lessor, provided that the seller obtains such leased item under lease acting as the lessee;
- secondary lease – when, in the event of expiration or termination of a lease agreement, a leased item remaining in ownership of the lessor is leased out to another lessee;
- bank lease – the lessor is a bank;
- full lease – when technical maintenance of a leased item and its current repairs are performed by the lessor;
- sublease – when a lessee (sublessor) transfers the property previously received from the lessor to third parties (sublessees) for temporary possession and use for a fee and for a term determined by a sublease agreement;
- net lease – when technical maintenance of a leased item and its current repairs are performed by the lessee; and
- Islamic lease – a type of lease provided by Islamic banks subject to a license issued by the Kazakhstan National Bank and by other non-banking legal entities incorporated in the form of a joint stock company.

A leasing license is required only for banks and other non-bank legal entities incorporated in the form of a joint stock company for the purpose of Islamic leasing.

Where provided by applicable Kazakhstan laws, a lease agreement creates an incentive for a lessee to seek tax preferences, e.g. reduction of taxable income or exemption from VAT on lease payments.

## STOCK MARKET AND SECURITIES

The Kazakhstan Government regulates stock market through its central bank named as “the National Bank of the Republic of Kazakhstan” ([www.nationalbank.kz](http://www.nationalbank.kz)) (hereinafter referred to as the “Kazakhstan National Bank”).

How to issue and sell stock in 5 steps:

1. a general meeting of founders/shareholders shall adopt a resolution on the quantity (or increase in quantity) of shares authorised for issuance;
2. upon the issuance and approval of the relevant prospectus, the emission of such authorised shares shall be registered with the Kazakhstan National Bank;
3. the board of directors of a joint stock company shall adopt a resolution on the placement (offering) of the authorised shares;
4. the shares shall be placed (offered); and
5. the placement report shall be registered with the Kazakhstan National Bank.

The overall duration of the process is about 2 months, depending on particular conditions. The bond-issuing process has the same conceptual framework.

### Securities Market

The Kazakhstan securities market is split into two main sections:

#### 1. *Over-the-counter securities market*

Over-the-counter (OTC) securities market is a platform for trading securities and other financial instruments where transactions in securities and other financial instruments, including foreign exchange and derivative financial instruments, are executed without compliance with the internal regulations of a stock exchange and quotation service of the OTC securities market.

#### 2. *Regulated securities market*

Regulated (formal) securities market is a platform for trading securities and other financial instruments where transactions are executed in compliance with the internal regulations of a stock exchange and quotation service of the OTC securities market.

### Kazakhstan Stock Exchange (KASE)

KASE can be characterised by versatility and flexibility. It integrates the money market with the foreign exchange market, and the futures market with the securities market.

However, we have to admit that the Kazakhstan's stock market is one of the underdeveloped stock markets in the world. Its annual trading volume is just about 850 million US dollars.

In spite of that, according to Bloomberg (2017), KASE Index is in the Top Three fastest growing stock exchange indices in the world supporting positive dynamics for stock market development in Kazakhstan.

It is worth noting that some companies use KASE listing for tax optimisation rather than fundraising purposes. The reason for that is the exemption of profits distributed by the KASE listed companies from income tax. Moreover, capital gains arising on disposal of securities officially listed at KASE are also exempt from taxation.

We also see positive changes in the KASE listing process. The Kazakhstan National Bank and KASE have developed three lists of securities on the stock exchange, namely:

- Main

The main list includes only large companies which are imposed higher and more stringent requirements.

- Alternative

The alternative list covers small- and mid-size businesses which are applied not so rigid listing requirements.

- Mixed

The mixed list includes specific securities, such as Islamic, derivative, government, equity fund and microfinance securities.

KASE charges the following listing fees:

<b>Types of fee</b>	<b>Main and Mixed Lists</b>	<b>Alternative List</b>
Prepaid charge	approx. US\$750 for debt securities approx. US\$375	
Fee for processing of a listing application	0.025% of the issued stock value (ranges between US\$750 and US\$7,500) Not applicable to debt securities For simplified listing - US\$750	0.015% of the issued stock value (ranges between US\$750 and US\$3,750) Not applicable to debt securities For simplified listing - US\$750
Admission fee	0.025% of the issued stock value (ranges between US\$750 and US\$22,500) For debt securities - US\$750 For simplified listing - US\$750	0.015% of the issued stock value (ranges between US\$750 and US\$11,250) For debt securities - US\$750 For simplified listing - US\$750
Annual fee	0.025% of the issued stock value (ranges between US\$750 and US\$15,000) For debt securities - US\$375 For simplified listing - US\$750	

The listing process takes up to 30 days, including the time required for decision-making by the KASE Listing Commission. There is also a simplified listing procedure, although its application depends on the terms and types of issued securities.

## **Islamic Securities**

The issue and trading of Islamic securities is also regulated by Kazakhstan law.

The key principles of Islamic finance are as follows:

- 1) an issuer of Islamic securities may not charge interest and may not ensure yield on such securities; and
- 2) the proceeds from issuance and placement (offering) of Islamic securities may not be used to finance any of the activities connected with the production and/or trading of tobacco, alcohol, weapons and ammunition; gambling business; or any other types of business activity the financing of which is prohibited by the Islamic Finance Council.

The Islamic Finance Council may also introduce other regulations binding upon issuers of Islamic securities.

Subject to Kazakhstan law, the following securities fall under the category of Islamic securities:

- 1) shares and units of Islamic investment funds;
- 2) Islamic lease certificates [i.e. securities issued by an Islamic special finance vehicle with a predetermined maturity the holders of which acquire the right to receive income from lease/financial lease agreements];
- 3) Islamic participation certificates [i.e. securities issued by an Islamic special finance vehicle with a predetermined maturity in order to use the raised funds for launching a new investment project OR developing a current investment project OR financing business activity either through a simple partnership agreement or through incorporation of an entity in the form of a joint stock company or limited liability partnership]; and
- 4) other securities recognised by Kazakhstan law as Islamic securities.

Islamic securities emission must be registered with the Kazakhstan National Bank in the same manner as any other equity securities emission.

## **Astana International Financial Centre (AIFC)**

The Astana International Financial Centre (AIFC) has been operating since 1 January 2018. The operations of AIFC-related companies are governed by the AIFC internal regulations based on the principles of English law and aimed to raise the attractiveness of Kazakhstan for foreign companies and investors. Kazakhstan law applies only to the extent not covered by the AIFC regulations.

Astana International Exchange (AIX) was formed in 2017 as one of the pillars of Astana International Financial Centre. AIX's shareholders include, apart from AIFC, Goldman Sachs, Shanghai Stock Exchange, the Silk Road Fund and NASDAQ.

The AIX's key listing requirements include the following:

- 3 years of audited financial statements and working capital statements covering 12 months;
- minimum public float of at least 25% (AIX reserves the right to decrease this minimum amount, should it decide in its discretion to do so) for equity issuers; and
- appropriate minimum market cap should be at least 1 mln US dollars.



## MERGERS AND ACQUISITIONS

It is important to realise that from the perspective of Kazakhstan law the term “Mergers and Acquisitions” is not a legal term. Such forms of reorganization as merger or acquisition can only be seen in a very limited number of M&As.

### Legal procedures applicable to business acquisitions

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

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

### Comparison of the two most common types of business acquisitions:

Criteria	Acquisition of interests/shares in LLP/JSC	Acquisition of core assets
<b>Speed of acquisition</b>	Usually high	Usually low
<b>Related expenses</b>	Small	Can be significant
<b>Historic risks</b>	Remain the same	Minimized
<b>Special permits, licenses</b>	Remain in force	Cease to exist
<b>Contracts with counterparties</b>	Remain in force	Cease to exist
<b>Obligations</b>	Remain in force	Usually cease to exist

### Specifics of Kazakhstan laws pertaining to consummation of M&A transactions

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

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

Case List	
<b>Financial organizations</b>	
1.	Acquiring the status of a major participant of a bank / bank holding company.
2.	Obtaining consent to set up an insurance (reinsurance) organization.
3.	Obtaining by an insurance (reinsurance) organization or insurance holding consent to set up or to acquire a subsidiary and significant participation interest in charter capital of other legal entities.

4.	Obtaining consent from the Kazakhstan National Bank to voluntary reorganization of an insurance (reinsurance) organization.
<b>Antitrust (antimonopoly) laws</b>	
5.	<p>Applying to antitrust authority for consent to economic concentration in the following events:</p> <ol style="list-style-type: none"> <li>1) reorganization of a market entity through merger or acquisition;</li> <li>2) acquisition by a person (group of persons) of voting shares (participation interests, stakes) in the charter capital of a market undertaking where such person (group of persons) acquires the right to dispose of more than fifty percent of said shares (participation interests, stakes), provided that prior to the acquisition such person (group of persons) has not disposed of shares (participation interests, stakes) in such market undertaking or has disposed of fifty or less percent of the voting shares (participation interests, stakes) in the charter capital of such market undertaking; and</li> <li>3) acquisition of the right to own, possess and use, including in consideration for payment (transfer) of the charter capital, by a market undertaking (group) fixed production assets and/or intangible assets of another market undertaking, provided that the book value of the property constituting the subject matter of the transaction (interrelated transactions) is more than ten percent of the book value of the fixed production assets and the intangible assets of the market undertaking disposing of or transferring the property.</li> </ol>
6.	<p>Notifying antitrust authority of transactions recognized as economic concentration in the following cases:</p> <ol style="list-style-type: none"> <li>1) acquisition by a market undertaking of the rights (including under a trust deed, joint venture agreement or agency agreement) permitting to give instructions binding upon another market undertaking in carrying out its business activities or to perform the functions of its executive body; and</li> <li>2) participation of same natural persons in executive bodies, boards of directors, supervisory boards or other governing bodies of two or more market undertakings, provided that such natural persons determine in the market undertakings the terms and conditions of carrying out their business activities.</li> </ol>
<b>Subsoil and subsoil use laws</b>	
7.	Complying with the state's right of first refusal with respect to the acquisition of the alienated subsoil use right (or part thereof) and/or facilities related to the subsoil use right for strategic fields or blocks, with or without consideration.
8.	Applying for consent to alienation of a subsoil use right and other rights related thereto.
<b>Strategic Facilities</b>	
9.	Obtaining the Government's consent to encumber or alienate strategic facilities.

10.	Complying 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).
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### Restrictions on foreign participation in Kazakhstan resident legal entities

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

	<b>Statutory Restrictions</b>
1.	Foreign nationals and legal entities are prohibited from owning, using, disposing of and/or managing, directly and/or indirectly, more than 20% of shares (participation interests, stakes) in a legal entity who is the owner of a mass media outlet in the Republic of Kazakhstan or from carrying out activities in this field.
2.	Foreign citizens, stateless persons and foreign entities without forming a legal entity in Kazakhstan are prohibited from managing and operating telecom backbone/trunk lines.
3.	Individuals and corporations (either individually or within a group) are prohibited from purchasing or otherwise acquiring ownership of more than 10% of voting shares (participation interests, stakes) in an entity that owns and/or operates or manages telecom lines as a long-distance carrier without a prior consent of the government telecommunications and information authorities and national security authorities.
4.	Foreign citizens, stateless persons and foreign entities are prohibited from possessing, using, disposing of and/or managing, either directly or indirectly, cumulatively more than 49% of voting shares (participation interests, stakes) in an entity that is engaged in telecommunications activity as a long-distance carrier possessing ground lines (cable, including fibre optic, and radiorelay lines) without a favourable resolution of the Kazakhstan Government based on the opinion of the government telecommunications and information authorities issued in consultation with national security authorities.
5.	Legal entities incorporated in offshore jurisdictions may not, either directly or indirectly, own and/or use and/or dispose of voting shares in Kazakhstan resident insurance/reinsurance companies.
6.	Legal entities incorporated in offshore jurisdictions may not, either directly or indirectly, own and/or use and/or dispose of voting shares in Kazakhstan resident banks.
7.	Foreign citizens, stateless persons, foreign corporations, as well as legal entities over 50% of shares/interests in which are held by foreign citizens, stateless persons or foreign corporations, are denied the right to use any land until

	31 December 2021 (moratorium). After such moratorium is lifted, the aforementioned persons may be granted the right to use land for a period of up to 25 years.
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## **CORPORATE GOVERNANCE**

### **Corporate Structure**

Corporate structure is a central element of the corporate governance system which represents the system of corporate bodies and their interrelationship expressed by the distribution of powers.

Since a limited liability partnership (LLP) and a joint stock company (JSC) are the most popular forms of business organisation in Kazakhstan, we deem it necessary to consider them in detail.

JSC must constitute the following corporate bodies:

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

LLP has a much simpler structure that must consist just of two corporate bodies, namely:

- supreme body – a general meeting of participants (or, in an LLP where all interests are held by one person – such sole participant); and
- executive body – a collegial body or a person who performs the executive functions at their sole discretion.

LLP may also set up a Supervisory Board and Audit Committee (Auditor) who are called to exercise control and supervision over the performance of the executive body; however, they are not authorised to make management decisions.

LLP may set up other bodies, although, technically, there is a risk that their decisions are recognised null and void due to certain legislative considerations.

### **Joint Stock Companies (JSC)**

#### *General Meeting of Shareholders*

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

The total time limit for the convocation of an extraordinary general meeting is 30 days.

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

### *Board of Directors*

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

Under the JSC law, a board of directors must consist of at least three members, minimum 30% of which must be independent directors. However, the legislative requirements to independent directors are aimed, primarily, at the independence of such directors and, in fact, they do not apply to professional qualifications of independent directors.

The JSC's board of directors must set up various committees for consideration and issuance of recommendations to the board on the most vital issues, including the following:

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

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

### *Executive Body*

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

## **Limited Liability Partnership (LLP)**

### *General Meeting of Participants*

The supreme body of LLP is a general meeting of participants (or a sole participant) to be held annually within 3 months after the closure of a financial year. Apart from the annual general meeting, an LLP may convene extraordinary general meetings of participants.

The total time limit for the convocation of an extraordinary general meeting is 30 days (which can be changed if an LLP has less than 7 participants).

A general meeting of participants is the body which is responsible for the most important and strategic decisions; however, when necessary, the authority of a general meeting may be very broad due to the fact that it is authorised to make decisions on any matters, even those which are not on the primary list of its powers. A general meeting may also overrule decisions of any other corporate body of LLP which relate to internal affairs of LLP.

The relationship between participants and the relationship between participants and the LLP are regulated by a memorandum of association (foundation agreement) and articles of association (charter). In Kazakhstan companies such legal instrument as a corporate agreement is hardly ever applied. Such agreements are not prohibited, though, in practice, the provisions of a corporate agreement might conflict with law, memorandum and articles of association. Therefore, the provisions of such corporate agreement would be hardly enforceable or unenforceable in Kazakhstan.

### *Executive Body*

The executive body administers the day-to-day operations of an LLP. The executive body may be either collective or sole. The executive body may resolve on any matters related to the LLP operations which are not reserved to other bodies or officers of the LLP.

### **Protection of Minority Shareholders/Participants**

One of the key principles of corporate governance is the equitable treatment of shareholders/participants. Nevertheless, the ability to influence JSC/LLP operations is directly proportional to the number of shares/interests held in the authorised capital.

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

- the right of minority shareholders/participants to make common cause with other shareholders/participants in order to adopt decisions on the agenda issues of a general meeting of shareholders/participants;
- the right of minority shareholders/participants to demand buyout of their shares/interests by the JSC/LLP on the grounds provided for by Kazakhstan law;
- the legislative provision of the requirement that any decisions of a general meeting of shareholders/participants related to the JSC/LLP operations must be adopted by the supermajority of votes; and
- the right of minority shareholders/participants to file a lawsuit in court seeking the prosecution of JSC/LLP officers and/or to challenge decisions of corporate bodies.

It is worth noting that LLP legislation is less demanding and scrupulous thus giving leeway to major participants of an LLP to abuse their powers through lawful mechanisms for restriction of the minority participants' involvement in LLP management.

## BANKRUPTCY

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

### ***Declaration of Bankruptcy***

Bankruptcy may be voluntary or involuntary. A court may declare a debtor bankrupt after they file a voluntary bankruptcy petition. A debtor must file a bankruptcy petition with a court when the owner of its assets, or its authorized body, or any of its founders, or a competent body thereof decides to dissolve the debtor and when its assets are not sufficient to fully satisfy claims of its creditors. When the debtor fails to file a bankruptcy petition, the chief executive thereof is subject to subsidiary liability for the debtor's obligations to creditors.

Involuntary bankruptcy may be declared or rehabilitation proceedings may be initiated subject to a petition from creditor(s) or other concerned parties (as might be provided by law) claiming that the debtor is insolvent.

A debtor is deemed insolvent when they meet at least one of the following criteria:

- 1) the borrower does not discharge their obligations to compensate creditor for damages inflicted on human health and life, to pay alimony, to pay salaries and other compensations under employment agreement, to make contributions to the state social security fund, to make mandatory contributions to the pension fund and professional pension schemes, to make obligatory health insurance deductions and/or contributions, and to pay fees under copyright agreements for three months after the due date, provided that the total amount of such obligations exceeds a hundredfold monthly calculation index determined for the current financial year by the republican budget law;
- 2) the borrower does not discharge their obligations to compensate creditor for taxes and other obligatory payments to the budget, including obligations of the debtor's branches and representative offices, for four months after the due date, provided that the total amount of such obligations exceeds one hundred and fifty monthly calculation indices determined for the current financial year by the republican budget law; and
- 3) the borrower does not discharge their obligations to other creditors for three months after the due date, provided that the total amount of such obligations of **an individual entrepreneur** exceeds three hundred monthly calculation indices determined for the current financial year by the republican budget law, **OR** the total amount of such obligations of **a legal entity** exceeds one thousand monthly calculation indices determined for the current financial year by the republican budget law.

The above requirements do not apply to bankruptcy petitions against missing debtors.

Insolvency of a debtor is a sufficient ground for a court to declare such debtor bankrupt.



### ***Deliberate and False Bankruptcy***

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

The debtor's assets owner, or authorised body, or founder(s) and/or officers may be subjected to subsidiary liability by creditors to the extent of the debtor's assets for deliberate acts resulting in the debtor's insolvency (deliberate bankruptcy). An officer of a corporate bankrupt guilty of such deliberate insolvency shall compensate the bankrupt's assets owner for any loss caused by such deliberate acts leading to insolvency.

When a bankruptcy petition is filed by a debtor who is capable to fully satisfy creditors' claims (false bankruptcy), such creditors may claim for damages caused by the debtor and for imposition of subsidiary liability on the parties responsible for such decision to apply for bankruptcy.

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

When a bankruptcy receiver identifies elements of deliberate or false bankruptcy, or when bankruptcy is declared on prosecutor's demand under Article 47.1(1) of the Bankruptcy Law, the receiver must, within one month, apply to law enforcement authorities for prosecution of the responsible officers.

### ***Effects Bankruptcy Proceedings***

Upon the initiation of bankruptcy proceedings:

- 1) the debtor's assets owner, authorised body, founder(s)/participant(s) and all corporate bodies shall be prohibited from using or disposing of the debtor's assets outside the normal course of business without a prior consent of the interim receiver;
- 2) enforcement of earlier court judgments, arbitration awards and decisions of state revenue authorities and the debtor's owners (founders/participants) or bodies with respect to the debtor's assets shall be suspended, safe for damages to individuals to whom the debtor may be liable for causing harm to their life or health, excluding non-pecuniary damages;
- 3) any creditors' actions against the debtor shall not exceed the extent of bankruptcy/rehabilitation proceedings prescribed by the Bankruptcy Law, unless such actions relate to the performance of third party guarantees and indemnities or foreclosure on assets pledged by a third party;
- 4) no cash may be withdrawn from the debtor's bank accounts at the request of a creditor, or state revenue authority or another government authority responsible for the assessment and/or collection of obligatory payments to the budget,

including those which must be satisfied without further notice/acceptance, and none of the debtor's assets may be foreclosed on; and

- 5) none of shares/interests in the debtor may be disposed of.

A bankruptcy case must be heard in court within maximum two months from the date of the relevant bankruptcy petition filing.

### ***Management of Debtor's Assets and Affairs***

Upon declaration of bankruptcy by a court, the right to manage the debtor's assets and affairs is vested in an interim receiver.

The debtor's officers shall, within three business days after the issuance of the bankruptcy ruling, transfer to the interim receiver the constituent, accounting and title documents, seals, stamps and any tangible and intangible assets belonging to the bankrupt.

The interim receiver may:

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

Further, upon the commencement of bankruptcy procedure, based on the resolution of a creditors' meeting, the competent authority shall appoint a bankruptcy manager of the debtor to whom the former interim administrator shall assign all their powers.

A creditors' meeting and creditors' committee are also vested with considerable authority with respect to the debtor's assets.

### ***Settlements with creditors***

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

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

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

After all creditors' claims are discharged, the interim receiver must submit to the court the final report on his/her activity approved by the creditors' meeting accompanied by the liquidation balance sheet and the statement on distribution of assets remaining after settlement of liabilities to creditors. The court must approve the final report of the

interim receiver and liquidation balance sheet and issue a ruling on the discharge of bankruptcy within fifteen calendar days after submission thereof.

### ***Debt Relief***

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

### ***Winding-up of Bankrupt Legal Entities (Liquidation)***

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

### ***Rehabilitation proceedings***

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

Rehabilitation proceedings may be applied to a debtor in response to the relevant application either from the debtor itself or from a creditor.

The reason for the debtor's/creditor's application to court for invocation of rehabilitation process can be the debtor's insolvency or threat of insolvency or the debtor's inability to perform its financial obligations on due date within the nearest twelve months, if there is a chance that the debtor will restore its solvency.

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

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

Kazakhstan law defines rehabilitation plan as a set of coherent measures aimed at the rehabilitation of a debtor through rehabilitation or accelerated rehabilitation proceedings which are performed by mutual consent of the debtor and creditors (or homogeneous group of creditors) in order to re-establish the solvency of an operating entity and to

retain its employees, specifying the deadlines, including the schedule for discharge of creditors' claims, as well as achieved results, used resources and potential risks. A rehabilitation plan must describe certain measures for re-establishment of the debtor's insolvency (rehabilitation measures) and set out the schedule for discharge of liabilities to creditors.

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

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

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

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

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

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

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

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

## CURRENCY REGULATION

As at 1 May 2019, the primary regulatory legal act governing currency matters in the Republic of Kazakhstan is Law of the Republic of Kazakhstan *On Currency Regulation and Currency Control* No. 57-III of 13 June 2005. On 1 July 2019, Law of the Republic of Kazakhstan *On Currency Regulation and Currency Control* No. 167-VI of 2 July 2018 will be put into effect. The new Law introduces a number of substantial novelties in currency regulation when compared to the previous Law of 13 June 2005.

The aforementioned Laws govern civil relations arising in connection with the exercising by residents and nonresidents of rights to currency valuables and determines the goals, objectives and procedures of currency regulation and currency control. These Laws apply to Kazakhstan residents outside the Republic of Kazakhstan.

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

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

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

### **Nonresidents include:**

- citizens of the Republic of Kazakhstan holding a document granting the right to permanently reside in a foreign state;
- foreign nationals and stateless persons (except for those who have a document granting the right to permanently reside in the Republic of Kazakhstan);
- all legal entities established in accordance with the legislation of foreign states, their branches and representative offices, wherever located [*Note: with effect from 1 July 2019, subject to Kazakhstan tax law, branches and representative offices of foreign companies acting as permanent establishments of such foreign companies in the Republic of Kazakhstan will be recognised as residents of the Republic of Kazakhstan for the purposes of currency regulation and control*];
- international organizations, unless otherwise provided by an international (intergovernmental) agreement on their establishment; and
- diplomatic and other official representations of foreign states.

### **Currency transactions include:**

- transactions implying the transfer of ownership and other rights to currency valuables and the use of currency valuables as a means of payment; and

- import, sending and remittance to the Republic of Kazakhstan, as well as export, sending and remittance from the Republic of Kazakhstan of any currency valuables, national currency, securities and payment documents the face value of which is expressed in the national currency, and unvalued securities issued by residents [*Note: with effect from 1 July 2019, currency transactions will also include the transfer of currency valuables under brokerage services agreements or trust management agreements*].

**Currency valuables include:**

- foreign currency;
- securities and payment documents denominated in foreign currency;
- unvalued securities issued by nonresidents;
- 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 nonresidents and between nonresidents [*Note: with effect from 1 July 2019, if exported (remitted) out of Kazakhstan or imported (remitted) into Kazakhstan*]; and
- unvalued securities issued by residents, if used in transactions between residents and nonresidents and between nonresidents [*Note: with effect from 1 July 2019, if imported out of Kazakhstan or imported into Kazakhstan*].

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

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

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

Registration of the aforesaid currency transactions with the National Bank of the Republic of Kazakhstan is required only if they meet any of the following criteria:

- the amount of a currency transaction involving property (funds) incoming to the Republic of Kazakhstan and/or creation of obligations of a resident to return the property (to repay the funds) to a nonresident exceeds an amount equivalent to 500,000 US dollars; or

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

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

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

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

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

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

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

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

**With effect from 1 July 2019**, all currency transactions will be monitored by the Kazakhstan National Bank applying the following measures:

- 1) record registration of foreign currency contracts that provide for and/or result in capital flows (i.e. the transactions between Kazakhstan residents and nonresidents connected with the transfer of ownership and other rights to currency valuables, including financial loans; capital subscriptions; transactions in securities, interests and derivatives; acquisition of rights to real property (except for movable property equated or ascribed by Kazakhstan law to real property); acquisition of exclusive intellectual property rights; transfer of cash and other assets in discharge of a joint operator's obligation; transfer of cash and other assets under discretionary/trust management agreements; transfer of cash and financial instruments to securities market professional traders who transact on behalf of their clients and put clients' cash and financial instruments into their operating or suspense accounts; and gratuitous transfer of cash and other currency valuables).

The threshold value of foreign currency contract qualifying for such record registration is 500,000 US dollars, regardless of whether a foreign currency contract provides for import/export of cash/assets into/from Kazakhstan;

- 2) receipt of notifications from authorised banks in the form of foreign exchange transaction reports containing the information about cash payments and/or remittances made in connection with such transactions.

The threshold amount of such foreign exchange cash payment and/or remittance to be reported in an authorised bank's notification to the Kazakhstan National Bank is 50,000 US dollars;

- 3) receipt of notifications from Kazakhstan residents about their accounts with foreign banks and subsequent record registration of such accounts.

Please note that only corporate residents of Kazakhstan (except for banks and branches/representative offices of foreign organisations) are obliged to notify the National Bank of their foreign bank accounts. Individual residents' transactions associated with the remittance of cash from their own foreign bank accounts to Kazakhstan authorised bank accounts (or vice versa) are reported to the Kazakhstan National Bank by the authorised bank performing such transactions; and

- 4) regular updating of information through reports from branches/representative offices of foreign non-financial organisations operating in Kazakhstan for over one year concerning their transactions with residents and nonresidents.

The aforementioned obligation to report is imposed on branches/representative offices of those foreign non-financial organisations which are engaged in the scientific research and development and provide the services related to the production of crude oil, natural and associated gas and other mineral resources,



construction services, architectural, engineering and other technical services that are explicitly listed by the Kazakhstan National Bank.

Foreign currency transactions between residents are prohibited, unless otherwise explicitly provided by Kazakhstan law.

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

Foreign currency transactions between residents and nonresidents are not restricted, provided that they are performed in compliance with the aforementioned currency regimes and other applicable requirements.

Residents and nonresidents may sell and buy foreign currency in the Republic of Kazakhstan only from and to authorized banks allowed to perform foreign currency exchange transactions through currency exchange offices of such authorized banks and currency exchange offices of authorized organizations.

Resident and nonresident individuals may export foreign and national currency in cash (except for precious metal coins) and traveller's checks from the Republic of Kazakhstan in the amounts not exceeding the equivalent of 10,000 US dollars without customs declaration and documents confirming the origin of the exported cash in foreign currency. When such amount is exceeded, cash in foreign and national currency (other than precious metal coins) and traveller's checks imported or exported to and from the Republic of Kazakhstan by resident and nonresident individuals must be declared in a customs declaration, unless they are imported to or exported from a Eurasian Economic Union member state.

### **Import/export currency control**

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

- 1) export proceeds in national and/or foreign currency ; and
- 2) national and/or foreign currency cash transferred by a resident in favour of a nonresident for the purpose of settlements under an import contract when the nonresident fails to perform or incompletely performs their contractual obligations.

With effect from 1 July 2019, Kazakhstan legislator introduces a new definition of export and import. Export means a transfer of goods from a Kazakhstan resident to a Kazakhstan nonresident, or a partial transfer of exclusive intellectual property rights from a Kazakhstan resident to a Kazakhstan nonresident, or performance of works, provision of services and lease of assets by a Kazakhstan resident in favour of a Kazakhstan nonresident. Import means a transfer of goods from a Kazakhstan nonresident to a Kazakhstan resident, or a partial transfer of exclusive intellectual property rights from a Kazakhstan nonresident to a Kazakhstan resident, or performance of works, provision of services and lease of assets by a Kazakhstan nonresident in favour of a Kazakhstan resident,

Residents must comply with the requirement of repatriation of national and foreign currency within the repatriation time period; therefore, a currency contract must determine the term for discharge of liabilities by nonresidents.

Authorised banks, as well as branches of the Kazakhstan National Bank, monitor whether export/import contracts exceeding the US\$50,000 threshold comply with the repatriation requirement. Such foreign currency contracts are subject to record registration.

Please note that those contracts with nonresidents which do not imply the movement of goods across the Kazakhstan border do not require a registration number.

## **Financial Monitoring**

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

- 1) banks and organizations performing certain types of banking operations;
- 2) exchanges;
- 3) insurance (reinsurance) organizations, insurance brokers and mutual insurance associations;
- 4) the unified pension savings fund and voluntary pension savings 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 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 a client;
  - management of bank accounts or securities accounts;
  - accumulation of funds for establishment, operation or management of a company;
  - establishment, sale and purchase, operation or management of legal entities;
- 8) accounting firms and professional accountants engaged in accounting business activities, and audit firms;
- 9) gambling business and lottery organizers;
- 10) postal service operators providing money transfer services;
- 11) microfinancial institutions;
- 12) payment organisations;
- 13) individual entrepreneurs and legal entities engaged in leasing activities as unlicensed lessors;

- 14) pawnshops;
- 15) individual entrepreneurs and legal entities transacting in precious metals and precious gems, as well as jewellery made thereof;
- 16) individual entrepreneurs and legal entities providing agency services in connection with real estate sale and purchase transactions; and
- 17) social health insurance fund.

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

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

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

- 1) receipt of a prize, including in electronic form, from betting, gambling in a gambling establishment or lottery, in the amount equivalent to or exceeding KZT3,000,000, or its equivalent in foreign currency;
- 2) purchase, sale and exchange of foreign currency (in cash) through currency exchange offices in the amount equivalent to or exceeding KZT10,000,000, or its equivalent in foreign currency;
- 3) withdrawal of money through a check or promissory note in the amount equivalent to or exceeding KZT10,000,000, or its equivalent in foreign currency;
- 4) withdrawal of cash from or placement of money to a customer's bank account, as well as receipt/disbursement of cash from/to a customer, unless otherwise provided by paragraphs 11) and 12) below, in the amount equivalent to or exceeding KZT10,000,000, or its equivalent in foreign currency;
- 5) credit or transfer of money to a customer's bank account by an individual or legal entity registered, residing or domiciled, respectively, in an offshore jurisdiction and holding an account with a bank registered in an offshore jurisdiction, or consummating cash and/or other property transactions with such persons, in the amount equivalent to or exceeding KZT5,000,000, or its equivalent in foreign currency;
- 6) transfer of cash abroad to accounts (deposits) opened in the name of an anonymous holder and receipt of money from abroad from accounts (deposits) opened in the name of an anonymous holder in the amount equivalent to or exceeding KZT5,000,000, or its equivalent in foreign currency;
- 7) gratuitous payments and transfers of money by a customer in favour of a third party in the amount equivalent to or exceeding KZT7,000,000, or its equivalent in foreign currency;

- 8) cash purchase/sale, import to or export from the Republic of Kazakhstan of items of cultural value in the amount equivalent to or exceeding KZT45,000,000, or its equivalent in foreign currency;
- 9) transactions by a legal entity within less than 3 months from the date of its state registration in the amount equivalent to or exceeding KZT10,000,000, or its equivalent in foreign currency;
- 10) import to or export from the Republic of Kazakhstan of cash, documentary securities payable to bearer, promissory notes or cheques, save for import or export by the National Bank of the Republic of Kazakhstan, banks and the National Post Service Operator, in the amount equivalent to or exceeding KZT10,000,000, or its equivalent in foreign currency;
- 11) cash payment of insurance benefit or receipt of insurance premium in the amount equivalent to or exceeding KZT10,000,000, or its equivalent in foreign currency;
- 12) placement, transfer of voluntary pension contributions to the unified pension savings fund and/or voluntary pension savings fund and cash pension payments from the unified pension savings fund and/or voluntary pension savings fund in the amount equivalent to or exceeding KZT10,000,000, or its equivalent in foreign currency;
- 13) receipt or transfer of property under financial lease contracts in the amount equivalent to or exceeding KZT45,000,000, or its equivalent in foreign currency;
- 14) cash transactions involving provision of services, including contractor services, transportation, freight forwarding, storage, commissioning and trust management of property, except for services implying the lease of safety deposit boxes, in the amount equivalent to or exceeding KZT10,000,000, or its equivalent in foreign currency;
- 15) over-the-counter sale and purchase of precious metals and stones and jewellery made thereof in the amount equivalent to or exceeding KZT10,000,000, or its equivalent in foreign currency;
- 16) transactions with immovable and other property subject to mandatory state registration in the amount equivalent to or exceeding KZT200,000,000, or its equivalent in foreign currency;
- 17) transactions with bonds and government securities, except for repo transactions in a regulated market through open bidding, in the amount equivalent to or exceeding KZT45,000,000 or its equivalent in foreign currency;
- 18) transactions with shares and equity units in mutual investment funds, except for repo transactions in a regulated market through open bidding, in the amount equivalent to or exceeding KZT7,000,000 or its equivalent in foreign currency;
- 19) pawnshop transactions with cash, securities, precious metals and stones and jewellery made thereof, and other valuables (except for national currency coins made of precious metals) in the amount equivalent to or exceeding KZT3,000,000 or its equivalent in foreign currency; and

- 20) contribution and transfer of deductions and/or contributions to social health insurance fund equivalent to or exceeding 7,000,000 tenge, or an equivalent amount in foreign currency.

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

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

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

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

No information or data on a transaction subject to financial monitoring shall be disclosed by attorneys who receive such information and data in connection with legal advice provided in the course of representation and protection of individuals and legal entities in front of interrogation authorities, pretrial investigation authorities and courts, as well as in connection with legal support in the form of advice, clarification, consultation and written opinion with regard to the issues requiring professional legal expertise, and for the purpose of drafting claims, appeals and other legal documents.

## CUSTOMS REGULATIONS

### International Cooperation

Kazakhstan's international cooperation in the customs domain covers, mainly, its membership in the Commonwealth of Independent States (the CIS) and the Eurasian Economic Union (EEU) which replaced the Eurasian Economic Community (EurAsEC).

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

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

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

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

The EEU has the following bodies:

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

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

The customs union of the EEU Member States:

- has an internal commodity market;

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

The unified customs regulations of the EEU comply with the Customs Code of the EEU (effective since 1 January 2018), international treaties, the Treaty on the EEU and other acts regulating customs issues.

Since 1 January 2015, the customs territory of the EEU applies the Unified Commodity Nomenclature of Foreign Economic Activity of the EEU (CN FEA EEU) and the Single Customs Tariff of the EEU (SCT EEU).

### **Customs Procedures**

As at 1 May 2019, the Customs Code of the EEU provides for 17 types of customs clearance:

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

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

Subject to the Treaty on the EEU, the terms and conditions for setup and operation of free/special economic zones are determined by international treaties applicable to the EEU. Since, under the Treaty on the EEU, the international treaties of the EEU Member

States intended for the formation of the regulatory legal framework of the Customs Union and the Single Economic Space effective on the date of its enactment are included in the EEU law and are applied to the extent compliant with the Treaty on the EEU, such customs procedure as “free economic zone” is also regulated by the *Agreement Concerning the Free/Special Economic Zones within the Customs Territory of the Customs Union and Customs Procedures of the Free Customs Zone* (Saint-Petersburg, 18 June 2010). Subject to the aforementioned Agreement, the procedure for setup, as well as the terms and conditions for operation of a free economic zone in a Member State of the Customs Union (EEU) is determined by the national legislation of such Member State.

On 3 April 2019, Kazakhstan adopted new Law *On Special Economic and Industrial Zones* No. 242-VI which regulates the matters related to setup, operation and termination of special economic and industrial zones within the Republic of Kazakhstan. A decision on establishment of a special economic zone is made by the Kazakhstan Government [Note: prior to the adoption of the aforementioned law, the decision-making on the establishment of a special economic zone was vested in the President of the Republic of Kazakhstan].

As at 1 May 2019, the following twelve special economic zones are operating in Kazakhstan:

- 1) the **Aktau Seaport** Special Economic Zone (within the territory of the commercial harbour and partially within the administrative boundaries of the city of Aktau and Munaily Region in the Mangistau Oblast) – effective until 1 January 2028;
- 2) the **Innovation Technologies Park** Special Economic Zone (within the territory of the Alatau village of the Medeu District of the city of Almaty and adjacent territories of the Almaty Oblast) – effective until 1 January 2028;
- 3) the **Ontustik** Special Economic Zone (within the territory of the Sairam District of the South Kazakhstan Oblast) – effective until 1 July 2030;
- 4) the **New City of Astana** Special Economic Zone (within the administrative borders of the city of Nur-Sultan (former Astana), including Industrial Park 1, the urban light rail system and local executive authorities) – effective until 2027;
- 5) the **National Industrial Petrochemical Technology Park** Special Economic Zone (within the territory of the Atyrau Oblast) – effective until 31 December 2032;
- 6) the **Pavlodar** Special Economic Zone (within the territory of the North Industrial District of the city of Pavlodar) – effective until 1 December 2036;
- 7) the **Khorgos – Eastern Gate** Special Economic Zone (within the territory of the Almaty Oblast) – effective until 2035;
- 8) the **Saryarka** Special Economic Zone (within the territory of the Karaganda city and adjacent land of the Bukhar-Zhyrau District of the Karaganda Oblast) – effective until 1 December 2036;
- 9) the **Taraz Chemical Park** Special Economic Zone (Shuski District, Zhambyl Oblast) – effective until 1 January 2037;
- 10) the **Khorgos International Centre for Boundary Cooperation** Special Economic Zone (Panfilov Region of the Almaty Oblast) – effective until 2041;



11) the **Astana-Technopolis** Special Economic Zone (Nur-Sultan (former Astana) City) – effective until 2042; and

12) the **TURKISTAN** Special Economic Zone (within the boundaries of the Turkestan Oblast) – effective until 2043.

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

### **Export Control**

To ensure national security, to strengthen the regime of non-proliferation of weapons of mass destruction, to promote the formation of stable and safe system of international relations, to strengthen international security and stability, and to prevent proliferation of weapons of mass destruction and their means of delivery the Republic of Kazakhstan monitors and controls exports of certain products.

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

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

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

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

### **Kazakhstan's WTO Accession**

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

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

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

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

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

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

## TAXATION

Kazakhstan taxation is regulated by Kazakhstan Code *On Taxes and Other Obligatory Payments to the Budget (Tax Code)* No. 120-VI of 25 December 2017 which entered into force on 1 January 2018 (the "Tax Code") and other regulatory legal acts of the Republic of Kazakhstan, as well as international treaties ratified by the Republic of Kazakhstan. The Tax Code determines rates of taxes and other obligatory payments, the procedure for their assessment and payment, the scope of powers of tax authorities with respect to ensuring fulfilment and enforcement of outstanding tax liabilities, rules for maintaining tax accounting records and filing tax returns, the forms and procedures for tax control to be exercised by tax authorities, the methods of appealing against their decisions as well as actions (non-feasance) of their officers.

The following taxes are applied in the Republic of Kazakhstan:

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

There are also obligatory payments to the budget:

1. state duty;
2. fees;
3. dues for:
  - the use of licenses for certain activities;
  - the use of land plots;
  - the use of surface water resources;
  - environmental emissions;
  - the use of wildlife;
  - the use of forests;
  - the use of specially protected natural areas;
  - the use of frequencies;
  - the provision of long-distance and/or international telephone services and mobile services; and

- outdoor/visual advertisement installations.

## **Corporate Income Tax (CIT)**

Corporate income tax is applied to:

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

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

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

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

It is worth noting that comprehensive annual income of a resident taxpayer accounted for assessment of taxable income shall be reduced by (or adjusted for) the amount of dividend income.

Besides, resident taxpayers are also entitled to decrease of their taxable income by the capital gain on disposal of shares or interests in a legal entity which is not a subsoil user, provided that 50 or more percent of the legal entity's asset value comprises the assets of persons not being subsoil users and the taxpayer has been holding the shares or interests for over three years.

Income taxable at the source of payment, except for nonresident's income from Kazakhstan sources, is applied a **15%** withholding tax.

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

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

CIT on income of a nonresident legal entity operating in Kazakhstan through a permanent establishment is assessed and paid in accordance with the standard procedure, i.e. similar to the procedure applicable to Kazakhstan legal entities. Taxable income includes all types of income related to the operations of the permanent establishment as of the time of commencement of its operations in the Republic of Kazakhstan. Deductions include expenses directly related to earning of income from operations in the Republic of Kazakhstan through a nonresident's permanent

establishment regardless of whether or not such expenses are incurred within or outside the Republic of Kazakhstan, other than non-deductible expenses provided for by the Tax Code.

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

- |  |            |
|--|------------|
| 1) income of a person incorporated in a tax haven recognized by the Tax Code as income of a nonresident from Kazakhstan sources  | <b>20%</b> |
| 2) income from value growth, interest, compensations, royalty and insurance premiums under risk insurance policies   | <b>15%</b> |
| 3) income from international transportation services, insurance premiums under risk reinsurance policies; capital gain arising from the sale of shares/interests in the legal entities participating in the Astana Hub International Technological Park, and dividends received from such legal entities | <b>5%</b>  |
| 4) other income recognized by the Tax Code as nonresidents' income from Kazakhstan sources   | <b>20%</b> |

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, a tax agent (a resident of the Republic of Kazakhstan) may pay income to a foreign company operating without a permanent establishment in the Republic of Kazakhstan free from CIT. Besides, international treaties may provide for lower income tax rates compared to the national laws of the contracting states. Pursuant to the Tax Code, if an international treaty ratified by the Republic of Kazakhstan provides for rules different from those contained in its tax legislation, the rules of such international treaty apply. It should be noted that Kazakhstan tax legislation determines the procedure for administration and application of international treaties. A failure to comply with such procedure entails invalidation of certain international treaty applications.

As at 1 May 2019, the Republic of Kazakhstan has signed double tax treaties with Austria, Azerbaijan, Armenia, Belarus, Belgium, Bulgaria, Canada, China, Czech Republic, Estonia, Finland, France, Germany, Great Britain, Georgia, Hungary, India, Iran, Italy, Japan, Korea, Kyrgyzstan, Latvia, Lithuania, Luxemburg, Macedonia,

Malaysia, Moldova, Mongolia, Netherlands, Norway, Pakistan, Poland, Qatar, Russia, Romania, Saudi Arabia, Serbia, Singapore, Slovakia, Slovenia, Spain, Sweden, Switzerland, Tajikistan, Turkmenistan, Turkey, UAE, United States, Uzbekistan, Ukraine and Vietnam. The double tax treaty with Croatia is signed but still pending ratification. The double tax treaties with Kuwait and Cyprus are still pending execution and subsequent ratification.

### **Individual Income Tax (IIT)**

The IIT is applied to:

- 1) individual income taxable at the source of payment:
  - a) employees' income;
  - b) income in the form of donated assets (works, services);
  - c) income in the form of pension payments;
  - d) income in the form of dividends, interest and prizes;
  - e) income in the form of scholarships/bursaries;
  - f) income under insurance savings plans;
  - g) individual income from a tax agent;
- 2) individual taxable income of a self-assessment taxpayer:
  - a) property income;
  - b) income of sole proprietors;
  - c) income of private practitioners (attorneys, private notaries, private law enforcement officers (bailiffs) and professional mediators);
  - d) other income from non-Kazakhstan sources; and
  - e) consolidated income of controlled foreign companies or permanent establishments thereof determined in the manner prescribed by the Tax Code.

The aforesaid income is subject to the IIT at the rate of **10%**, save for the income in the form of dividends received from Kazakhstan sources which is taxable at the rate of **5%**.

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

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

such individuals for a period exceeding 1 year from the date of the title registration with government authorities.

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

- 1) sole proprietors (other than those applying a special tax regime to small-scale businesses operating under a license or simplified tax return procedure for incomes included into the taxable base of such individual entrepreneurs);
- 2) private practitioners (private notaries, private law enforcement officers (bailiffs), attorneys and professional mediators);
- 3) individuals who have received property income;
- 4) individuals who have received income from non-Kazakhstan sources;
- 5) domestic servants who, subject to Kazakhstan labour law, receive income not from a tax agent;
- 6) Kazakhstan citizens who receive employment income under employment agreements/contracts and/or civil agreements with diplomatic and other similar representations of a foreign state or consular offices of a foreign state accredited with the Republic of Kazakhstan not deemed as tax agents;
- 7) Kazakhstan citizens who receive employment income under employment agreements/contracts and/or civil agreements with international and government organisations, foreign and Kazakhstan non-government public organisations and funds which are relieved of the obligation to assess, withhold and remit individual income tax to be withheld at the source of payment in accordance with international treaties ratified by the Republic of Kazakhstan;
- 8) immigrant workers (residents of the Republic of Kazakhstan) who receive (or are expected to receive) income under employment agreements executed in accordance with Kazakhstan labour law subject to a work permit;
- 9) mediators, except for professional mediators, who receive income in accordance with the Kazakhstan Mediation Law from the parties not recognised as tax agents;
- 10) individuals who receive taxable income from their private farm households registered with the rural household register in compliance with Kazakhstan law from which individual income tax has not been withheld at the source of payment on the score of misinformation of the relevant tax agent by the owner of the private farm household;
- 11) Kazakhstan citizens, repatriates and individuals holding a Kazakhstan residence permit who, as at 31 December of a reporting tax period, have cash in their foreign bank accounts outside Kazakhstan in amounts exceeding 141-fold monthly calculation index (as of 1 January 2019, KZT356,025);
- 12) Kazakhstan citizens, repatriates and individuals holding a Kazakhstan residence permit who, as at 31 December of a reporting tax period, beneficially own the following properties:
  - real estate (rights and/or deals in relation thereto) subject to the state or any other form of registration (accounting) with competent authorities of a foreign state in compliance with the legislation of such foreign state;
  - securities the issuers of which are incorporated outside Kazakhstan;

- interest in the authorised capital of a legal entity incorporated outside Kazakhstan; and
- 13) members of the Parliament of the Republic of Kazakhstan, judges and individuals who are imposed the obligation to file tax returns in pursuance of the Constitutional Law of the Republic of Kazakhstan *On Elections in the Republic of Kazakhstan*, Penal Code of the Republic of Kazakhstan and Anticorruption Law of the Republic of Kazakhstan must disclose their taxable assets and income located either inside or outside Kazakhstan.

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

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

### **Taxation of Income Received by Controlled Foreign Companies**

Any nonresident legal entity (unless it is incorporated in a foreign state with which the Republic of Kazakhstan has signed an international treaty for avoidance of double-taxation and prevention of fiscal evasion) or another foreign type of business organisation with no separate legal identity falls under the category of “controlled foreign company” (“**CFC**”) if it cumulatively meets the following conditions:

- 1)  $\geq 25\%$  of interests/voting shares in a CFC are owned, either directly or indirectly, by a Kazakhstan resident individual or entity; and
- 2) effective profit tax rate applied to CFC is less than 10%; CFC or its constituent document (incorporation document) is registered in a tax haven, or a member responsible for accounting of income and expenses or asset management of a CFC having a different corporate status is registered in a tax haven.

Residents of the Republic of Kazakhstan must notify tax authorities of their interest in/control over a CFC.

Consolidated income of CFC or permanent establishments thereof is included into the taxable income of a resident entity or annual income of a resident individual and is subject to corporate or individual income tax in the Republic of Kazakhstan.

When a resident entity does not have taxable income, consolidated income of CFC or permanent establishments thereof is reduced by the amount of loss from the business activity of such resident. The positive difference between the consolidated income of CFC or permanent establishments thereof and a loss from the resident’s business activity becomes recognised as taxable.

Subject to the Tax Code, under certain circumstances, income of a CFC or its permanent establishment may be exempt from taxation in the Republic of Kazakhstan.



## Social Tax

In Kazakhstan, employers, including foreign legal entities operating in the Republic of Kazakhstan through permanent establishments and nonresident legal entities operating in Kazakhstan through branches or representative offices not leading to the formation of permanent establishments of such nonresident legal entities in the Republic of Kazakhstan, are payers of social tax.

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

- 1) money in cash and/or non-cash forms payable by the employer in favour of the employee by operation of employment agreement, and employee's benefits in kind and/or in the form of material gain;
- 2) payment of income to nonresident individuals:
  - from activities in the Republic of Kazakhstan under an employment agreement (contract) signed with the resident or nonresident employer;
  - allowances paid by resident or nonresident employers in connection with the stay in the Republic of Kazakhstan (expatriate allowances);
  - from their activities in the Republic of Kazakhstan as material gain received from the employer; and
- 3) payment of income to expatriate personnel provided for work in the Republic of Kazakhstan by nonresidents to residents of the Republic of Kazakhstan or to nonresidents operating in the Republic of Kazakhstan through a permanent establishment.

Social tax is paid at the rate of **9.5%**. Sole proprietors (other than those operating under special tax regimes), private practitioners (private notaries, private law enforcement officers (bailiffs), professional mediators and attorneys) assess social tax in the amount equal to 2 monthly calculation indices (as of 1 January 2019, KZT5,050) for themselves, and equal to 1 monthly calculation index (as of 1 January 2019, KZT2,525) for each employee.

Social tax is assessed by applying tax rates to the tax base for a calendar month tax period.

## Value Added Tax (VAT)

VAT payers in the Republic of Kazakhstan include:

- 1) persons registered as VAT payers in the Republic of Kazakhstan:
  - sole proprietors and individual practitioners (i.e. private notaries, private bailiffs, attorneys and professional mediators);
  - resident legal entities other than public institutions and public secondary educational institutions;
  - nonresidents operating in the Republic of Kazakhstan through branches or representative offices;
- 2) persons importing goods to the Republic of Kazakhstan in accordance with the customs legislation of the Eurasian Economic Union and/or the customs legislation of the Republic of Kazakhstan.

Subdivisions of resident legal entities may not be VAT payers.

Registration as a VAT payer is either mandatory or voluntary.

Kazakhstan legal entities, nonresidents operating in the Republic of Kazakhstan through a branch or representative office, sole proprietors and individual practitioners the turnover of which for a calendar year exceeds 30,000 monthly calculation indices (as of 1 January 2019, KZT75,750,000) are subject to mandatory VAT registration.

The tax bases for VAT purposes are:

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

Taxable turnover is the turnover of a VAT-payer:

- 1) related to sale of goods (works and/or services) in the Republic of Kazakhstan, other than the turnover exempt from VAT in accordance with the Tax Code (e.g., transactions with securities, money lending transactions, etc.) and/or turnover occurring outside the Republic of Kazakhstan; and
- 2) related to acquisition of works and/or services from nonresidents, other than the turnover of their structural subdivisions (branches/representative offices); and
- 3) in the form of stock-in-trade (if the taxpayer has been deregistered as a VAT payer).

The Tax Code also determines turnovers that are taxable at the zero rate (export of goods, international transportation, etc.).

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

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

Subject to certain exemptions and conditions determined by the Tax Code, in determining the amount of VAT payable to the budget, the recipient of goods (works and/or services) may offset the amounts of VAT payable for received goods, works and services, if they are used or will be used for the purpose of taxable sales.

The VAT rate is **12%**.

Commercial invoice is a compulsory document to be issued by a VAT payer on sales of goods/works/services (unless otherwise provided by the Tax Code). Certain categories of taxpayers must issue invoices in electronic format.

### **Specifics of VAT on Exports and Imports of Goods, Performance of Works and Provision of Services in the EEU**

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

- resident legal entities;
- structural subdivisions of resident legal entities, if they are a party to an agreement (contract);

- structural subdivisions of resident legal entities upon a respective decision of such legal entities if, pursuant to the terms and conditions of an 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;
- nonresident legal entities carrying out business through a permanent establishment without opening a branch or representative office and registered as taxpayers with Kazakhstan tax authorities;
- nonresident legal entities carrying out business in the Republic of Kazakhstan through their structural subdivisions;
- nonresident legal entities conducting business without setting up a permanent establishment;
- trust managers importing goods as part of business carried out under trust management agreements with trustors or beneficiaries in other events of creation of trust management;
- diplomatic missions of foreign states and their missions with equal status accredited in the Republic of Kazakhstan, persons who are members of diplomatic and administrative and support staff of such missions, including their cohabiting family members; consular services of foreign states accredited in the Republic of Kazakhstan and consular services officers and personnel, including their cohabiting family members;
- private practitioners (private notaries, private law enforcement officers (bailiffs), professional mediators and attorneys) importing goods in order to practise as notaries, to enforce judicial acts and to practise as attorneys, respectively;
- mediators importing goods for the purposes of their mediation activities; and
- individuals importing goods for the purpose of carrying out business activities.

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

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

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

provide for an obligation to notify tax authorities of the import/export of such goods).

### **Excise Duties**

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

- 1) all kinds of spirits;
- 2) alcohol products;
- 3) tobacco products;
- 4) tobacco heating products and e-cigarette nicotine-containing liquids;
- 5) gasoline (other than aviation gasoline) and diesel fuel;
- 6) motor transport vehicles designed for transportation of 10 or more passengers with engine capacity of over 3,000 cubic centimetres, other than minivans, buses and trolleys;  
light-duty motor vehicles and other motor transport vehicles designed for transportation of passengers with engine capacity of over 3,000 cubic centimetres (other than manually-operated motor vehicles or those with manual operation adaptors specifically designed for disabled persons); and  
chassis-box trucks with engine volumes of over 3,000 cubic centimetres (except for the cars with manual steering or manual steering adapter for handicapped people);
- 7) crude oil and gas condensate; and
- 8) alcohol-containing medical products registered in accordance with the laws of the Republic of Kazakhstan as drugs.

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

Excise taxes are paid by the individuals who import excisable goods from the EEU Member States for business purposes and the individuals and legal entities, including nonresident legal entities and their structural subdivisions, which:

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

Therefore, excise tax is applied to:

- 1) the following operations carried out by an excise tax-payer with goods manufactured, produced and/or extracted and/or bottled by such tax-payer:
  - 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;
  - making contributions to charter capital;
  - use of excise goods in payments made in kind, unless they are used for the payment of mineral replacement tax and rent export tax;
  - shipping of excise goods by the manufacturer to its structural subdivisions;
  - use by the manufacturer/producer of the manufactured, produced and/or extracted and/or bottled excise goods for own production needs and for own production of excise goods;
  - movement of excise goods by the manufacturer from the manufacturer's address specified in the license;
- 2) wholesale trade in gasoline (other than aviation) and diesel fuel;
- 3) retail trade in gasoline (other than aviation) and diesel fuel;
- 4) disposal of bankruptcy assets and/or excise goods either seized and/or abandoned or inherited by the State or gratuitously assigned to the State;
- 5) damage and/or loss of excise goods; and
- 6) import of excise goods to the Republic of Kazakhstan.

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

Alcohol products, other than wine stock, beer and malt beverages, and consumer packaged tobacco products must bear control marks.

The tax period for the purpose of excise duties payment is a calendar month.

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

### **Rent Tax on Export**

Rent tax on export is payable by individuals and legal entities exporting crude oil and crude petroleum products falling under position 2709 00 in the Unified Foreign Trade Goods Classification of the EEU (except for subsoil users exporting crude oil and gas condensate produced under production sharing agreements with the Kazakhstan Government or the relevant competent authority signed before 1 January 2009 and subsoil use contracts approved by the Kazakhstan President and subsoil users paying alternative subsoil use tax on their offshore and ultradeep operations) and coal.

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

The rates of rent tax on export of crude oil and crude petroleum products are determined by the Tax Code and depend on the world prices of crude oil and gas condensate per barrel: the higher the price the higher is the rate. The minimum rate is 0% and the maximum rate is 32%. The rate of rent tax on exports of coal is 4.7%.

The tax period for payment of rent tax on export is a calendar quarter.

### **Subsoil Users' Taxes and Special Charges**

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

Special charges payable by subsoil users include:

- 1) subscription bonus;
- 2) historic cost recovery charge;
- 3) alternative subsoil use tax;
- 4) royalty; and
- 5) share of the Republic of Kazakhstan under production sharing agreements.

#### ***Subscription Bonus***

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

Subscription bonuses are payable by individuals or legal entities who win tenders for the acquisition of a 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 (awarded) in accordance with the procedure established by Kazakhstan law:

- 1) exploration contract; or
- 2) contract for production of mineral resources (save for subsoil users who have entered into a contract under the exclusive right to acquire a mineral production right following commercial discovery under an exploration contract within the relevant contract territory/subsoil block);
- 3) combined exploration and production contract;
- 4) license for geological study;
- 5) license for use of subsoil area; and
- 6) prospecting license.

The initial amount of subscription bonus is determined on a contract-by-contract basis in accordance with the Tax Code requirements and may be increased when a tender commission of competent authority decides to do so.

Subscription bonus payable under a license for geological study, prospecting, exploration or production of solid minerals (except for a license issued through an auction) is assessed at the rate expressed in the monthly calculation index as effective on the date of the subscription bonus payment.

### **Historic cost recovery charge**

Historic cost recovery charge is a fixed charge paid by a subsoil user in connection with recovery of the total costs incurred by the government on geological survey of a contract area/subsoil block and exploration of mineral deposits prior to signing a subsoil use contract.

Historic cost recovery charge is paid by subsoil users operating under subsoil use licenses/contracts in the respective mineral deposits in relation to which the Government incurred costs on geological survey of the contract area/subsoil block and exploration of deposits prior to signing subsoil use contracts.

The amount of historic costs incurred by the Government in relation to geological survey of a contract area/subsoil block and exploration is determined by the government body authorized for these purposes in the manner prescribed by Kazakhstan law and is payable to the budget:

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

### ***Mineral Extraction Tax***

Mineral extraction tax is paid by subsoil users in monetary form (with limited exceptions) separately for each type of mineral resources, hydrocarbons, ground waters and therapeutic muds produced in Kazakhstan.

Mineral extraction tax for all types of produced minerals, hydrocarbons, ground waters and therapeutic muds, regardless of the method of extraction, is paid at the rates and in the manner determined by the Tax Code.

Mineral extraction tax is payable by subsoil users producing hydrocarbons, minerals, ground waters and therapeutic muds, including extraction of minerals from man-made deposits of minerals for which mineral extraction tax and/or royalty has not been paid, under each separate subsoil use contract (save for the subsoil users who operate solely under a prospecting license).

The tax period for the purpose of mineral extraction tax is a calendar quarter.

### ***Excess Profit Tax***

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

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

The tax base for excess profit tax is the portion of the subsoil user's net income for each separate subsoil use contract for a tax period exceeding the amount of 25% of the subsoil user's deductions for the purpose of assessment of excess profit tax in the manner prescribed by the Tax Code.

Excess profit tax is payable by subsoil users at the rates set out in a sliding scale (the excess tax rate increases as the percentage ratio of net profit distributions to deductions grows). Excess profit tax rate ranges between 10% and 60%.

### **Alternative Subsoil Use Tax**

With effect from 1 January 2018, the following corporate subsoil users may apply an alternative subsoil use tax instead of the aforementioned historic cost recovery charge, mineral extraction tax and excess profit tax:

- 1) the holders of contracts for production and/or combined exploration and production of hydrocarbons in the continental shelf of the Republic of Kazakhstan; and
- 2) the holders of contracts for production and/or exploration and production of hydrocarbons in the fields where the depth of the upper point of hydrocarbon deposit specified in a mining allotment or contract for production or exploration/production of hydrocarbons (in the absence of mining allotment) is maximum 4,500 metres and the depth of the lower point of hydrocarbon deposit specified in a mining allotment or contract for production or exploration/production of hydrocarbons (in the absence of mining allotment) is at least 5,000 metres.

The object of alternative subsoil use tax is determined as the difference between total annual income (as adjusted) and deductions applied in the manner prescribed by the Tax Code for the purpose of alternative subsoil use tax.

The rate of alternative subsoil use tax depends on the global oil price per barrel, i.e. the higher the price, the higher the rate. The minimum tax rate is 0% and the maximum tax rate is 30%.

The tax period for the purpose of alternative subsoil use tax is a calendar year.

### **Tax on Transport Vehicles**

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

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

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

The tax period for the purpose of transport vehicles tax is a calendar year.



## **Land Tax**

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

For tax purposes, all lands are classified into different categories depending on their designation. Land categories are determined by the Land Code of the Republic of Kazakhstan.

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

## **Property tax**

Property tax is paid by:

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

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

- 1) buildings and structures classified as such by the appropriate technical regulator, as well as parts thereof, accounted for as fixed assets or investment in real property in accordance with the International Financial Reporting Standards and Kazakhstan legislation concerning accounting and financial reporting;
- 2) buildings and structures classified as such by the appropriate technical regulator, as well as parts thereof, granted to individuals under long-term housing lease agreements with a purchase option and accounted for as long-term accounts receivable in accordance with the International Financial Reporting Standards and Kazakhstan legislation concerning accounting and financial reporting;
- 3) buildings and structures under concession the title and use rights to which have been assigned under concession agreements;
- 4) depreciable assets (for acquisition and/or creation of which a subsoil user has incurred costs/expenses associated with the preparation of operation blocks/sites to the production of uranium by the method of drillhole in situ leaching since the commencement of production upon a commercial discovery);
- 5) buildings and structures classified as such by the appropriate technical regulator, as well as parts thereof, accounted for, subject to the International Financial Reporting Standards and Kazakhstan accounting and financial reporting legislation, to the extent of the assets of second-tier banks which acquired the ownership thereto after the foreclosure on pledged assets or other collateral, except for the buildings (or parts thereof) and structures specified in paragraph 1) above; and

- 6) buildings and structures actually owned and used/operated without the state registration of titles thereto.

Legal entities (subject to certain exceptions, e.g. non-profit organizations, etc.) assess 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 accounting records).

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

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

The tax on property of private individuals is assessed based on the value of taxable items at the rates set out in a progressive tax scale: ranging between 0.05% for taxable items whose value is up to 2,000,000 tenge and 2,946,600 tenge + 2% of the amount exceeding 450,000,000 tenge for items whose value is over 450,000,000 tenge.

### **Special Tax Regimes**

Taxpayers are entitled to choose between a general tax regime and a special tax regime.

The following special tax regimes are applied in Kazakhstan:

- 1) special tax regime for small businesses, including:
  - special tax regime based on business licenses;
  - special tax regime based on simplified tax returns; and
  - special tax regime using fixed deduction;
- 2) special tax regime for agricultural producers, including:
  - special tax regime for farms and farm households; and
  - special tax regime for agricultural producers and agricultural cooperatives.

A special tax regime applies to small businesses a simplified procedure for assessment and payment of the following taxes:

- 1) individual income tax, except for tax withheld at the source of income – when special tax regime is based on a business license;
- 2) social tax, corporate or individual income tax, except for taxes withheld at the source of income – when special tax regime is based on a simplified tax return; and
- 3) individual or corporate income tax, except for taxes withheld at the source of income – when special tax regime is using fixed deduction.

### ***Special tax regime applied to small businesses***

The special tax regime applied to small-size businesses provides for a simplified procedure to assess and pay social tax and corporate/individual income tax, save for the taxes withheld at the source of income. All other taxes and obligatory payments to the budget must be assessed, paid and reported in accordance with the generally applied procedure.

In spite of the fact that the Entrepreneurial Code provides for the qualification criteria of private enterprises as small and micro businesses, the Tax Code provides its own

criteria for qualification of taxpayers as small and micro businesses. In order to apply a special tax regime, the Tax Code provides certain criteria for qualification of a taxpayer as a small business.

In pursuance of the Tax Code, the special tax regime meant for small businesses may be applied by the taxpayers meeting the following criteria:

- 1) average number of employees for a tax period shall not exceed:
  - 30 people, if the special tax regime is based on a simplified tax return; and
  - 50 people, if the special tax regime uses a fixed deduction;
- 2) income for a tax period does not exceed:
  - 3,528-fold monthly calculation index (as of 1 January 2019, KZT84,908,200), if the special tax regime is based on a business license;
  - 24,038-fold monthly calculation index (as of 1 January 2019, KZT60,695,950), if the special tax regime is based on a simplified tax return [Please note that such income does not include the income of an individual entrepreneur received through non-cash settlements via a three-component integrated system but only up to 70,048-fold monthly calculation index (as of 1 January 2019, KZT176,871,200)]; and
  - 144,184-fold monthly calculation index (as of 1 January 2019, KZT364,064,600), if the special tax regime uses a fixed deduction;
- 3) such businesses are not engaged in any of the following activities:
  - production of excisable goods;
  - storage and wholesale trade of excisable goods;
  - sale of certain petroleum products (gasoline, diesel fuel and masout);
  - conducting lotteries;
  - subsoil use;
  - collection and redemption of glassware;
  - collection, storage, processing and sale of ferrous and non-ferrous scrap and waste;
  - provision of consulting services;
  - accounting and audit;
  - financial, insurance, insurance brokerage and insurance agency;
  - activities in the area of law, justice and judicial system; and
  - financial leasing.

The special tax regime for small businesses may not be applied to:

- 1) legal entities that have branches and/or representative offices;
- 2) branches and representative offices of legal entities;
- 3) taxpayers having other separate structural subdivisions and/or tax entities in various populated locations (other than those carrying out activities related only to property lease/letting);
- 4) legal entities in which other legal entities hold an over 25% participation interest;

- 5) legal entities whose founder or participant is also a founder or participant of another legal entity applying a special tax regime or specific taxation;
- 7) nonprofit organisations; and
- 8) gambling tax payers.

Furthermore, the special tax regime based on a business license or simplified tax return may not be applied by individual entrepreneurs and legal entities that provide services under agency contracts/agreements.

The **special tax regime based on licenses** is applied only to sole proprietors meeting the following requirements (apart from those which are listed above in relation to the special tax regime for small businesses):

- 1) do not use hired labour; and
- 2) carry out activities as individual entrepreneurs.

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

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

The individual income tax included into the value of a license is determined by applying the rate of **1%** to the tax base. Please note that trade-related individual entrepreneurs assess their individual income tax included into the license value by applying the rate of **2%** to the taxable base, except for the income received through noncash settlements which is taxable at **1%** rate.

The tax base for the taxpayers applying the **special tax regime based on simplified tax returns** is the income received for a tax period (6 months) comprising income types set out in the Tax Code and received/receivable in the Republic of Kazakhstan, taking into account relevant adjustments.

Taxpayers make their own tax assessments under simplified tax returns by applying the rate of 3% to the tax base for an accounting tax period (six months). The assessed amount of taxes is adjusted to the lower figure by 1.5% of the amount of tax per employee based on the average number of employees if the average monthly wages of employees as at the end of an accounting period amounted to at least 2 monthly calculation indices for sole proprietors, and at least 29 monthly calculation indices for legal entities (as of 1 January 2019, KZT58,075 and KZT73,225, respectively).

The tax base for the taxpayers applying the **special tax regime using a fixed deduction** is the taxable income determined as the difference between the adjusted income received for a tax period (a calendar year) and the deductions provided for by the Tax Code.

Besides, the taxpayers applying the special tax regime using a fixed deduction may, in determining their taxable income, include in their deductible expenses a fixed deduction in the amount of maximum 30% of income determined in the manner prescribed by the Tax Code, taking into account relevant adjustments. The total amount of deductible expenses, including such fixed deduction, must not exceed 70% of the income adjusted in accordance with the Tax Code.

## **Single Aggregate Payment**

With effect from 1 January 2019, the Kazakhstan legislator introduced a so-called 'single aggregate payment'. A non-registered individual entrepreneur shall be qualified as a payer of such single aggregate payment if they meet all of the following criteria at the same time:

- 1) they have paid the single aggregate payment;
- 2) they do not employ workers; and
- 3) they provide services and/or they sell agricultural products of their own private farm (except excisable products) only to those individuals who are not tax agents.

Besides, annual income of a payer of the single aggregate payment shall not exceed 1,175-fold monthly calculation index (as of 1 January 2019, KZT2,966,875).

The monthly rate of the single aggregate payment (including the payable IIT and social contributions) in the capital city, republican-status cities and oblast-status cities is 1 monthly calculation index (as of 1 January 2019, KZT2,525) and in other localities – half the monthly calculation index (as of 1 January 2019, KZT1,262.50).

## **Tax Audits (Inspections)**

Tax inspections can be conducted in the form of comprehensive, targeted and cross-check audits, as well as in the form of chronometric observations, and are subdivided into the following categories:

- 1) special risk-based tax audits; and
- 2) unscheduled tax audits.

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

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

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

A tax audit report is prepared upon completion of the tax audit and the date of service of such report to the taxpayer (tax agent) is considered the date of its completion. Prior to the issuance of a tax audit report, the following taxpayer groups must be served an interim tax audit report to which such taxpayers may object in writing:

- 1) the taxpayers who are subject to tax monitoring (both who are on the list of major taxpayers subject to monitoring and who have entered into a horizontal monitoring agreement);
- 2) the taxpayers who have signed investment contracts;
- 3) the taxpayers whose taxes and obligatory payments to the budget, mandatory pension contributions, mandatory pension scheme contributions, social contributions and mandatory health insurance liabilities exceed, according to interim reports, 20,000-fold monthly calculation index (as of 1 January 2019, KZT50,500,000).

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

The taxpayer may dispute such notice with a competent authority (Kazakhstan Ministry of Finance) within 30 business days after the date when the notice is delivered to the taxpayer or with a court within 3 months after the date when such notice is received. Appeals against tax audit notices are processed by a specially formed Appeal Commission.

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

The taxpayer may file an appeal against a decision of the competent authority issued in response to its appeal against the relevant notice with a court within 3 months after the date when the taxpayer became aware that their appeal was denied by the competent authority in full or in part.

Claims disputing tax audit notices are subject to a state duty at the rate of 0.1% of the disputed amount of taxes, customs duties and other obligatory payments to the budget (including tax default interests) specified in the notices, but in any case not more than 500-fold monthly calculation index (as of 1 January 2019, KZT1,262,500) for sole proprietors, and at the rate of 1% of the disputed amount of taxes and payments to the budget (including tax default interests) specified in the notices, but in any case not more than 20,000-fold monthly calculation index (as of 1 January 2019, KZT50,500,500) for legal entities.

## TRANSFER PRICING

Law of the Republic of Kazakhstan *On Transfer Pricing* No. 67-IV of 5 July 2008 regulates all matters arising in connection with transfer pricing and is aimed to prevent public revenue losses in international business operations and transactions related thereto.

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

### Control over Transfer Pricing

The following transactions are subject to transfer pricing control:

- 1) international business transactions covering the following:
  - export and/or import of goods;
  - performance of works and provision of services where one of the parties is a nonresident who carries out activities in Kazakhstan without a permanent establishment;
  - transactions consummated by Kazakhstan residents outside the Republic of Kazakhstan in connection with the sale and purchase of goods, performance of works and provision of services;
- 2) transactions consummated in the Republic of Kazakhstan that are directly related to international business transactions (implying the sale and purchase of such goods, performance of such works or provision of such services which later become the subject of an international business transaction):
  - involving minerals for sale produced by a subsoil user who is a party thereto;
  - when one of the parties is eligible to tax benefits; and
  - when one of the parties incurs losses as shown in tax returns for the last two tax periods preceding the year of the transaction consummation.

Competent authorities exercise control by way of:

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

Monitoring is required with respect to international business transactions involving goods (works/services) the list of which is approved by the competent authorities (e.g., crude oil, gold, sugar, construction operations, marketing services, etc.). Parties to such transactions must keep records of transactions monitoring and report to the competent authorities. 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; and
- 3) inspections carried out by competent authorities as to compliance with the tax legislation of the Republic of Kazakhstan and the customs legislation of the EEU

and/or the Republic of Kazakhstan, if there are no sources of information on market prices.

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

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

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

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

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

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

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

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



## Market Price Determination Methods

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

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

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

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

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

The determined costs (expenses) relate to production (acquisition) and/or sale of goods (works/services), transportation, storage, insurance, etc. The mark-up is determined in the manner to ensure the average rate of return established for the relevant field of activity which is calculated based on the rate of return range under comparable economic conditions. The rate of return (profitability) for the relevant field of activity is determined on the basis of the data from the government statistics authorities of the Republic of Kazakhstan, state revenue authorities and other sources of information.

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

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

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

- net book value of assets;
- sales; and

- costs.

### **Sources of Information Used for the Market Price Determination**

For the purpose of determining the market price of goods (works/services) and other data required to apply the methods of market price determination, the following sources of information (subject to the Kazakhstan Government approval) are used in the specified order of priority:

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

### **Three-tier Transfer Pricing Documentation**

In pursuance of the OECD (Organisation for Economic Cooperation and Development) recommendations and Kazakhstan Law *On Transfer Pricing* No. 67-IV of 5 July 2008, all members of an international group operating in Kazakhstan are bound by an obligation to prepare and present the “three-tier” transfer pricing documentation.

An international group means a group of parties (members of such international group), including the parent company of the international group, which cumulatively meet the following criteria:

- 1) the aforementioned group of parties includes at least one party which is recognised as a resident of Kazakhstan or, if it is not recognised as a resident of Kazakhstan, conducts business in Kazakhstan via its structural subdivision or permanent establishment;
- 2) such parties are related to each other by virtue of control and/or interest; and
- 3) such parties prepare consolidated financial statements, or financial statements of such parties are ignored in preparing consolidated financial statements solely on account of their size or materiality as determined by the International Financial Reporting Standards or other internationally recognised standards of financial reporting adopted by stock exchanges for admission of securities to trade.

The “three-tier” transfer pricing documentation obligatory for an international group includes the following documents:

- country-by-country reports;
- prime reports (with effect from 1 January 2019);
- local reports (with effect from 1 January 2019); and
- statement of an international group member (with effect from 1 January 2018).

Local reports must be submitted by a resident member of an international group on an annual basis, and country-by-country and prime reports must be submitted by a resident at the request of competent authority. The reports must be executed in the form and manner prescribed by the competent authority.

## LABOUR LAW

### Employment Legislation

Labour Code of the Republic of Kazakhstan No. 414-V of 23 November 2015 is the fundamental legislative act aimed to regulate all labour matters arising in the Republic of Kazakhstan. Besides, labour matters are covered by a number of laws and regulatory acts of the Republic of Kazakhstan.

### Labour (Employment) Contracts

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

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

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

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

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

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

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

## **Working Time and Time Off**

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

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

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

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

## **Shift or Rotation Work**

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

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

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

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

## **Labour Compensation and Other Payments**

The amount of labour compensation is determined on an individual basis depending on the qualification of an employee, the degree of work complexity, the quantity and quality of work, as well as on working conditions, but not less than the minimum wage determined by the Budget Law of the Republic of Kazakhstan for the relevant year. As at 1 January 2019, the minimum wage is 42,500 tenge. Wages and salaries are paid only in monetary form in the national currency of the Republic of Kazakhstan not later than the first day of the month following the accounting month.

In case of a temporary disability, an employee is paid a social allowance from the employer's funds. The amount of the allowance is determined based on the average monthly pay of the employee. The employer pays maternity and adoption leave subject

to employment contract and/or collective agreement or the employer's act, less social contributions under the Kazakhstan laws concerning obligatory social security.

### **Financial Liability**

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

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

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

### **Labour Dispute Settlement**

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

- 1) by the employer (association of employers);
- 2) if the employer (association of employers) fails to settle a dispute, by a grievance committee;
- 3) if a grievance committee fails to settle a dispute, by labour arbitration; and
- 4) if labour arbitration fails to settle a dispute, by court.

Besides, the parties to a dispute may also settle the dispute through a mediator. The institution of mediation is distinct from the reconciliation procedure and may be held contemporaneously.

### **Other Provisions**

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

Employers provide professional training, retraining and development for the employees or other persons with whom they do not have labour relations under a training contract.

Upon completion of professional training, retraining and development, the trainee is required to work for the employer for a term agreed upon by the parties in the training contract. When a labour (employment) contract terminates earlier than the expiration date set out in the training contract, either at the discretion of the employee or at the discretion of the employer due to the employee's fault, the employee is required to reimburse the employer for the expenses incurred in relation to their training in proportion to the remaining work term.

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

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

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

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

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

offender's expenses for the purchase of commodities in the market of which the given offence has taken place.

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

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

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

Member States may legislatively prohibit the coordination of economic activities when such coordination entails or might entail the consequences which may not be recognized as admissible subject to the admissibility criteria set forth in Exhibit 19 to the Treaty on the EEU.

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

According to the criteria:

- for application of the unified rules of competition, a market is deemed cross-border when the geographic boundaries of a commodity market cover two or more Member States;
- the Eurasian Economic Commission precludes the unfair competition bans violation by businesses (market participants) when:
  - 7) *the business whose activities violate the introduced bans and the competing business(es) or its/their business reputation is/are inflicted damages as a result of such violation are incorporated in different Member States;*
- the Eurasian Economic Commission precludes the violation by businesses (market participants) of the bans on anti-competitive agreements, when:
  - 8) *at least two businesses (market participants) whose activities violate the bans are incorporated in different Member States;*
- the Eurasian Economic Commission precludes the violation by businesses (market participants) of the bans on abusive behaviour subject to the aggregate of the following conditions:
  - 9) the share of sales and purchases of the business dominating in the commodity market, meeting the criteria set forth in paragraph 2 of the criteria description, whose activities lead to violation of the statutory ban, in the total volume of commodities circulating in each Member State affected by the violation is at least 35 percent;
  - 10) the ban violation leads or may lead to exclusion, limitation or elimination of competition in the commodity market, meeting the criteria set forth in paragraph 2 of the criteria description, or to discrimination against other persons in two or more Member States;
  - 11) the aggregate share of sales and purchases of a number of businesses each of which dominates in the commodity market, meeting the criteria set forth in paragraph 2 of the criteria description, and whose activities lead to the ban violation, in the volume of commodities circulating in each Member State affected by the violation is, for maximum three businesses (market participants), at least 50 percent or, for maximum four businesses (market participants), at least 70 percent (this provision does not apply when the share of at least one of the specified businesses is under 15 percent in each Member State);
  - 12) during a long period of time (during at least one year or, if such period is less than one year, during a period of the respective market existence) the reference shares of businesses are constant or subject to minor changes, and the access to the respective commodity market is impeded for new competitors;



- 13) the commodity sold or purchased by businesses may not be replaced with another commodity when consumed (including the consumption for production needs), and the commodity price growth does not give rise to the respective decrease in demand for the commodity; the information about such commodity price, and sale and purchase conditions in the respective commodity market is available for an unlimited number of persons; and
- 14) the ban violation leads or may lead to exclusion, limitation or elimination of competition in the commodity market, meeting the criteria set forth in paragraph 2 of the criteria description, or to discrimination against other persons in two or more Member States.

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

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

Subject to the methodology for assessment and imposition of penalties approved by the Commission, the Commission imposes penalties for violation of common rules of competition in transborder markets and for non-disclosure or untimely disclosure of information, at the Commission's request, or for deliberate misrepresentations in documents provided to the Commission, at the following rates:

- 1) unfair competition inadmissible under Article 76.2 of the Treaty on the EEU entails the imposition of penalty on officers and individual entrepreneurs in the range between RR20,000 and RR110,000, and on legal entities in the range between RR100,000 and RR1,000,000;
- 2) execution by a market entity of an agreement inadmissible under Articles 76.3, 76.4 and 76.5 of the Treaty on the EEU, as well as the participation in such agreement, entails the imposition of penalty on officers and individual entrepreneurs in the range between RR20,000 and RR150,000, and on legal entities in the range between 0.01% and 0.15% of the offender's proceeds from the sale of goods/works/services in the market of which the given offence was committed or of the offender's expenses for the purchase of goods/works/services in the market of which the given offence was committed, but in any event not more than one-fiftieth of the offender's total proceeds from the sale of all goods/works/services and not less than RR100,000. When the offender's proceeds from the sale of goods/works/services in the market of which the given offence was committed exceed 75% of the offender's total proceeds from the sale

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

- 3) coordination of market entities' economic activities inadmissible under Article 76.6 of the Treaty on the EEU entail the imposition of penalty on individuals in the range between RR20,000 and RR75,000, on officers and individual entrepreneurs in the range between RR20,000 and RR150,000, and on legal entities in the range between RR200,000 and RR5,000,000;
- 4) commitment by a dominating market entity of actions recognized as the abuse of dominant position and inadmissible under Article 76.1 of the Treaty on the EEU entails the imposition of penalty on officers and individual entrepreneurs in the range between RR20,000 and RR150,000, and on legal entities in the range between 0.01% and 0.15% of the offender's proceeds from the sale of goods/works/services in the market of which the given offence was committed or of the offender's expenses for the purchase of goods/works/services in the market of which the given offence was committed, but in any event not more than one-fiftieth of the offender's total proceeds from the sale of all goods/works/services and not less than RR100,000. When the offender's proceeds from the sale of goods/works/services in the market of which the given offence was committed exceed 75% of the offender's total proceeds from the sale of all goods/works/services, the penalty ranges between 0.003% and 0.03% of the offender's proceeds from the sale of goods/works/services in the market of which the given offence was committed or from the offender's expenses for the purchase of goods/works/services in the market of which the given offence was committed, but in any event not more than one-fiftieth of the offender's total proceeds from the sale of all goods/works/services and not less than RR100,000; and
- 5) non-disclosure or untimely disclosure of the information set forth in Section XVIII of the Treaty on the EEU and the Protocol of the Commission, including non-disclosure of information or deliberate misrepresentations in documents provided to the Commission, entails the imposition of penalty on individuals in the range between RR10,000 and RR15,000, on officers and individual entrepreneurs in the range between RR10,000 and RR60,000, and on legal entities in the range between RR150,000 and RR1,000,000.

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

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

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

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

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

The Eurasian Economic Commission:

- considers applications/materials on the presence of signs of violation of the common rules of competition, and performs any necessary investigations;
- opens and considers competition rules violation cases;
- issues orders and makes decisions binding upon business entities (market entities);
- requests and receives information;
- delivers an annual report on the competitive situation in transborder markets;
- posts judgments on tried cases regarding violation of the common rules of competition; and
- exercises other powers necessary for implementation of the provisions of the Competition Agreement.

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

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

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

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

- Entrepreneurial Code of the Republic of Kazakhstan No. 375-V of 29 October 2015 (Section 4 '*Economic Competition*');

- Law of the Republic of Kazakhstan *On Natural Monopolies* No. 204-VI of 27 December 2018; and
- other legislative acts and regulations.

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

### **Natural Monopolies**

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

- 1) transportation of oil and/or petroleum products via trunk pipelines, save for their transportation through the Republic of Kazakhstan and their export from the Republic of Kazakhstan;
- 2) storage and transportation of commercial gas via interconnection or trunk gas pipelines and/or distribution networks, operation of group tank facilities, and transportation of crude gas via interconnection pipelines, save for the transportation of commercial gas through the Republic of Kazakhstan and its export from the Republic of Kazakhstan;
- 3) transmission and/or distribution of electricity;
- 4) production, transmission, distribution and/or supply of heat, except for the heat generated by ground, ground water, river, reservoir, sewage from industrial enterprises and power stations, and sewage treatment plants;
- 5) technical dispatch of grid output and consumption of electricity;
- 6) ensuring balance between the production and supply of electricity;
- 7) services of mainline rail network, unless the mainline rail network is used for transportation of containerized cargoes and empty containers, and transit transportation of cargoes through the Republic of Kazakhstan;
- 8) services of railway lines with railway transport facilities under Public-Private Partnership agreements, including concession agreements, in the absence of an alternative railway line;
- 9) services of access roads in the absence of an alternative access road;
- 10) flight navigation services, except for air navigation service provided to international and transit flights;
- 11) services of ports, provided that there is no competition on the market of port services;
- 12) services of airports, except for services provided to transit flights through the Kazakhstan air space requiring technical landing in Kazakhstan airports for non-business purposes and international flights;
- 13) providing for property lease (rent) or use of cable conduit system, except for small business operations; and

14) water supply and/or sewage systems.

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

### **Monopolistic Activities**

Monopolistic activities restricted by the Entrepreneurial Code are:

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

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

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

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

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

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

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

- 3) the total share of maximum four market participants holding the largest shares in such market is 70 or more percent (under certain conditions);

and a position of financial organizations as dominant, if:

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

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

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

### **Unfair Competition**

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

### **Economic Concentration Control**

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

The current legislation recognizes the following as economic concentration:

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

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

Consent of the antitrust agency to consummation of the transactions specified in paragraphs 1), 2) and 3) above or its notification of the transactions specified in paragraphs 4) and 5) above is required when the total book value of assets of the reorganized market participant (group of persons) or the acquirer (group of persons) and market participants whose voting shares/participation interests/stakes are being acquired, or the total volume of sales for the last financial year exceeds 10,000,000 MCIs as in effect at the date of application.

Consent to economic concentration involving financial organizations is required if the value of assets or the size of the own equity of the financial organization exceeds the amounts determined by the antitrust agency together with the National Bank of the Republic of Kazakhstan.

It is particularly important for person considering acquisition of a business in the Republic of Kazakhstan or control over legal entities that are selling goods (works/services) in commodity markets of the Republic of Kazakhstan to comply with the requirements of the antitrust legislation with respect to obtaining prior consent to economic concentration because, if the antitrust authority determines that illegal economic concentration has occurred, it may, in addition to imposing respective administrative liability, invalidate the economic concentration carried out without consent of the antitrust authority in accordance with the established procedure if such concentration has resulted in creation or strengthening of a dominant or monopolistic position of the market participant or group of persons and/or competition limitation.

It should be noted that, although the requirement to obtain consent from antitrust authorities to economic concentration is not new to the legislation of the Republic of Kazakhstan, representatives of the Kazakhstan business community (not to mention foreign companies) often remain unaware of this matter which may give rise to the risk of loss of the acquired business and/or investment.

### **Other Powers of the Antitrust Authority**

In addition to prevention, establishment and restraining of monopolistic activities and unfair competition and control of economic concentration, the antitrust authority also prevents anticompetitive actions of the Kazakhstan government authorities and exercises control over the government's participation in business activities. These types of control are exercised by way of prior approval by the antitrust authority of the establishment of state-owned enterprises and legal entities in which over 50 percent of shares/interests are owned by the State and its affiliates.

## **INTELLECTUAL PROPERTY RIGHTS**

### **Protection of Intellectual Property Rights - General Provisions**

Intellectual property law in Kazakhstan undergoes serious development.

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

Intellectual property rights are provisionally divided into two groups: (1) copyrights, which also often include related rights, and (2) industrial property rights (patent rights), which cover all other categories.

The government authority responsible for control and protection of intellectual property rights, including the function of registration of intellectual property items and property rights related thereto in the Republic of Kazakhstan is the Ministry of Justice of the Republic of Kazakhstan (the "Ministry"). The main mission of the Ministry is to implement the government policy on protection of intellectual property rights and to ensure development of the single patent system of the Republic of Kazakhstan.

In addition, a new body, the National Institute of Intellectual Property (a national public enterprise with the right of economic management) of the Ministry of Justice of the Republic of Kazakhstan (the "NIIP") was set up to perform expertise functions in the fields identified as government monopoly (provision of industrial property protection services).

Kazakhstan is a party to a number of international property agreements:

- Paris Convention for the Protection of Industrial Property (20 March 1883);
- Madrid Agreement Concerning the International Registration of Marks (14 April 1891);
- Singapore Treaty on the Law of Trademarks of 27 March 2006;
- Trademark Law Treaty of 27 October 1994;
- 6 September 1952 Universal Copyright Convention as revised in Paris on 24 July 1971;
- Nice Agreement concerning the International Classification of Goods and Services for Registration of Marks (15 June 1957);
- Stockholm Convention Establishing the World Intellectual Property Organization (14 July 1967);
- Locarno Agreement Establishing an International Classification for Industrial Designs (8 October 1968);
- Washington Patent Cooperation Treaty (19 June 1970);
- Strasbourg Agreement Concerning the International Patent Classification (24 March 1971);
- Berne Convention for the Protection of Literary and Artistic Work (24 July 1971);
- Geneva Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of their Phonograms (18-29 October 1971);



- Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure (28 April 1977); and
- Eurasian Patent Convention (Moscow, 9 September 1994).

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

- Law of the Republic of Kazakhstan *On Copyright and Related Rights* of 10 June 1996;
- *Patent Law of the Republic of Kazakhstan* of 16 July 1999;
- Law of the Republic of Kazakhstan *On Trademarks, Service Marks and Appellations of Origin of Goods* of 26 July 1999;
- Law of the Republic of Kazakhstan *On Legal Protection of Semiconductor Topographies* of 29 June 2001; and
- Law of the Republic of Kazakhstan *On Protection of Selection Achievements* of 13 July 1999.

Rights to intellectual property arise from the fact of its creation or as a result of the provision of legal protection by the competent government authority.

### **Copyrights and Related Rights**

The Law *On Copyrights and Related Rights* protects works of science, literature and art (copyright), as well as productions, performances, phonograms, and TV and radio broadcasting or cablecast organizations (related rights). Copyright protection is granted to an author without registration requirement. An author may assign the rights to use a copyrighted work. A copyright is protected for the lifetime of the author plus seventy years.

Computer programs and databases are protected under the Law *On Copyright and Related Rights*. The production of computer programs unlawfully altering existing programs and providing unauthorised access to protected computer information entails criminal and civil liability.

### **Inventions, Utility Models, Industrial Designs and Selection Achievements**

Patent protection is granted to an invention if it is new, involves an inventive step and is industrially applicable. A patent certifies the priority, authorship and exclusive right to an industrial property. A patent for an invention is granted for twenty years from the date of application.

Patent protection is granted to a utility model if it is new and industrially applicable. A patent for a utility model is valued for a term of five years from the date of application which may be extended for an additional term at the request of the patent holder but for maximum three years.

An industrial design is granted legal protection if it is new, original and industrially applicable. A patent for an industrial design is granted for a term of 15 years from the date of application which may be extended for an additional term at the request of the patent holder but for maximum 5 years.

A selection achievement is granted legal protection if it is new, distinct, uniform and stable.

Patents may be assigned or licensed by authors to individuals and/or legal entities. To be valid, the assignment or license agreement must be registered. Infringement of the rights of patent holders entails civil and criminal liability. It should be noted that, in the

past, the infringement of any copyrights and related rights entailed also administrative liability. However, due to criminalization of this offence, starting from 2015, the liability for such offence is regulated only by the Criminal Code.

### **Trademarks, Service Marks and Appellations of Origin of Goods**

The right to a trademark or service mark is based on its registration, and may also be protected without registration in accordance with applicable international treaties which the Republic of Kazakhstan is a party to.

Trademark and service mark registration is granted for a term of ten years, renewable every ten years. Assignments or license agreements granting the right to use trademarks must be registered.

Designation of origin is registered for an indefinite period of time subject to the condition that the specific qualities of a product manufactured in a respective geographic area are maintained. The right to use the names of protected designation of origin is valid for 10 years from the date of submitting an application to expert organization and each time is extended for 10 years at the owner's request made during the last year of its validity subject to the condition that the specific qualities of the product with respect to which the designation of origin has been registered are maintained.

Legal protection is provided to appellations of origin of goods upon their registration with the NIIP. The registered owner of an appellation of origin of goods may not grant licenses to use the appellation of origin of goods.

Infringement of the rights of registered owners of trademarks and appellations of origin rights entails civil, criminal and administrative liability.

### **Protection of Integrated Circuit Topographies**

Legal protection applies only to original topographies (layout designs). Topography is original if it is the result of the author's creative work and is deemed original until proved otherwise.

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

The author of a topology or another rightholder may register a topology by filing an application for registration within two years after the date of the first use of the topology, if such use took place.

The exclusive right to a topography/topology may be assigned, in full or in part, to another person under a license agreement.

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

### **Intellectual Property in the EEU**

On 19 July 2016, in Grodno, Belarus, the Heads of the Eurasian Economic Union (EEU) Member States signed the *Agreement on the Coordination of Actions for the Protection of Intellectual Property Rights in the Member States of the Eurasian Economic Union*.

On 11 December 2017, the EEU Member States signed the *Agreement on Collective Management of Copyrights and Related Rights*.

Besides, subject to the Treaty on the Eurasian Economic Union, Kazakhstan intends to sign a treaty on trademarks, service marks and designation of origin in the Member States of the Eurasian Economic Union

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## **SUBSOIL USE AND PETROLEUM OPERATIONS**

According to advanced countries research data, Kazakhstan is the 6<sup>th</sup> world's largest holder of mineral resources, while its proved mineral reserves are estimated at approximately 10 trillion US dollars.

Presently, according to various sources of information, the proven reserves of Kazakhstan oil reach approximately 4.8 bln tons, i.e. 3% of the global oil reserves, due to which Kazakhstan ranks among the top 15 oil producers worldwide. The prospective oil reserves just of the Caspian Sea fields of the Kazakhstan sector exceed 124.3 bln barrels (equivalent to 17 bln tons).

In Kazakhstan there are operating about 204 hydrocarbons subsoil use contracts, including: 63 hydrocarbons exploration contracts; 55 hydrocarbons production contracts, 71 hydrocarbons exploration and production contracts, and 15 hydrocarbons production sharing agreements.

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

Since 29 June 2018, petroleum operations in Kazakhstan are governed by Code of the Republic of Kazakhstan *On Subsoil and Subsoil Use* No. 125-VI of 27 December 2017. This Code replaced former Law of the Republic of Kazakhstan *On Subsoil and Subsoil Use* No. 291-IV of 24 June 2010 which ceased, primarily, to be in force after 29 June 2018.

The Law of the Republic of Kazakhstan *On Gas and Gas Supply* No. 532-IV of 09 January 2012 defines the legal, economic and organizational framework for regulation of relations in the gas and gas supply field in the Republic of Kazakhstan and which is aimed at creating conditions for satisfaction of Kazakhstan domestic demand for gas and at raising efficiency, reliability and safety of gas supply system.

### **Subsoil Use Right**

Subsoil use rights are described as an opportunity protected by the Code to make use of a specific subsoil plot for business purposes over a specific period, in return for a fee.

A fee-based subsoil use entitlement may be either permanent or temporary, and either alienable or non-alienable. A subsoil use right may be held by either Kazakhstan or foreign individuals/corporations, either on an individual or on a joint basis, unless otherwise explicitly provided by Kazakhstan law.

The Republic of Kazakhstan grants a subsoil use right to perform any of the following operations:

- 1) geological study of subsurface;
- 2) exploration for mineral deposits;
- 3) production of mineral resources;
- 4) use of a certain block of subsoil; and
- 5) prospecting.

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

- granting of (or vesting with) a subsoil use right directly by the State;
- transfer of a subsoil use right, either in part or in whole (vesting with a subsoil use right by another subsoil user under a civil transaction); and

- transfer of a subsoil use right by universal succession when a legal entity is reorganised (except for restructuring or inheritance).

### **Granting of a Subsoil Use Right**

A subsoil use right may be granted under a subsoil use license (the license mode of subsoil use) or under a subsoil use contract (the contract mode of subsoil use).

#### *The license mode of subsoil use*

A subsoil use license is a document issued by an appropriate government authority which entitles its holder to use a certain block of subsoil for the purpose of certain subsoil use operations within such block of subsoil.

Depending on the required subsoil use operations, the authority issues one of the following licenses:

- 1) the license for geological study of subsurface;
- 2) the license for exploration for solid minerals;
- 3) the license for production of solid minerals;
- 4) the license for production of commonly occurring minerals;
- 5) the license for use of a certain block of subsurface; and
- 6) the license for prospecting.

Hence, currently, a right to use a certain block of subsurface for the exploration/production of solid minerals or for the production of commonly occurring minerals may be exercised in the license mode.

A subsoil use license shall be renewed when:

- 1) the address or other details of the license holder change;
- 2) the subsoil use right and/or an interest therein is transferred;
- 3) the license term is extended; or
- 4) the boundaries of the licensed block change.

A subsoil use license shall terminate when:

- 1) the initial term of the license expires, unless otherwise provided by the Code;
- 2) the sole holder of the license dies (or is legally declared dead), provided that the subsoil use right arising from the license is recognised as an escheat property under Kazakhstan civil law;
- 3) the license is revoked or invalidated; or
- 4) the subsoil user abandons the licensed block of subsurface.

A subsoil use license may be invalidated through a judicial procedure when:

- 1) the licensor ascertains the fact that it had been provided with deliberately misleading information which affected their decision to issue the license;
- 2) the license issuance procedure was diverged from by a licensor's officer who had entered into a bad faith collusion with the applicant thus affecting the licensor's decision to issue the license in its reasonable discretion;
- 3) the license was issued to an individual who had been declared legally incapable and remained legally incapable on the date of the license issuance;  
or

- 4) the license issuance is not provided for or prohibited by Kazakhstan subsoil use legislation.

#### The contract mode of subsoil use

The right to explore/produce or to produce hydrocarbons and the right to produce uranium is granted by the government under a subsoil use contract the substance of which and the matters of execution, performance and termination of which are regulated by Kazakhstan subsoil use legislation.

Subject to a subsoil use contract, the Republic of Kazakhstan represented by a competent authority commits to grant a subsoil use right to the other party (i.e. a subsoil user), and the subsoil user commits to exercise the granted subsoil use right at its own risk and expense in compliance with the contract terms and the provisions of Kazakhstan subsoil use legislation. With limited exceptions, one and the same person may enter into an unlimited number of subsoil use contracts.

A subsoil use contract shall be drafted in accordance with a model contract adopted by the competent authority, and any deviation from such model contract is permitted only to the extent and in the manner prescribed by Kazakhstan subsoil use legislation.

In Kazakhstan all subsoil use contracts shall be governed by Kazakhstan law.

The term of a hydrocarbons exploration and production contract is composed of the exploration term, preparation term (if applicable) and production term, successively. The term of a hydrocarbons production contract is composed of the preparation term and production term, successively. The term of a uranium production contract is composed of the pilot production term and production term, successively.

Any and all amendments or modifications to a subsoil use contract shall be executed by the parties in the form of an addendum to such contract in the following instances:

- 1) changes in the address and other details of the subsoil user;
- 2) changes in the address and other details of the competent authority;
- 3) transfer of the subsoil use right and/or an interest therein;
- 4) determination of the site(s) of production and preparation term(s);
- 5) determination of the production site(s) and term(s) or just production term(s);
- 6) extension of the exploration or production term(s);
- 7) increase or reduction of the allocated block(s) of subsurface;
- 8) allocation of block(s) of subsurface; or
- 9) changes in the economic interests of the Republic of Kazakhstan posing risks to the national security (applicable only to the strategic blocks of subsurface).

The term of a subsoil use contract expires when:

- 1) the initial term of the contract expires under a number of circumstances, including, but not limited to, the following:
- 2) no addendum to the contract that would determine the preparation or production term has been executed before the expiration date of the exploration term;
- 3) no addendum to the contract that would determine the production term has been executed before the expiration date of the preparation term;

- 4) the sole holder of the subsoil use right under the contract has died (or has been declared dead), provided that such subsoil use right is recognised as an escheat property under Kazakhstan civil law;
- 5) the subsoil user (if a legal entity) is being liquidated;
- 6) the contract is prematurely terminated or invalidated;
- 7) the contract is terminated by mutual consent of the parties;
- 8) the Kazakhstan Government resolves to prohibit the use of the block in pursuance of Kazakhstan subsoil use legislation; or
- 9) the subsoil user abandons/returns the block(s) in relation to which the contract was signed.

A subsoil use contract may be invalidated when:

- 1) the results of an auction for the right of subsoil use are nullified;
- 2) the subsoil use contract does not contain the imperative clauses required by the Code;
- 3) the competent authority ascertains the fact that it had been provided with deliberately misleading information which affected their decision to sign the subsoil use contract with the person;
- 4) otherwise provided by Kazakhstan law.

The invalidation of a subsoil use contract entails the invalidation of all subsequent transactions with the subsoil use right provided under such contract.

### **Transfer of a Subsoil Use Right**

A subsoil use right (or an interest therein) is transferred when such subsoil use right (or an interest therein) is alienated to a third party as a result of a civil transaction or otherwise in compliance with Kazakhstan law.

It is prohibited to transfer a subsoil use right (or an interest therein):

- 1) provided under a license for the exploration for solid mineral deposits (only within the first year of such license);
- 2) provided under a license for the geological study of subsurface; or
- 3) provided under a license for prospecting.

A subsoil use right (or an interest therein) is transferred through the re-issuance of the relevant subsoil use license or the appropriate amendment of the relevant subsoil use contract for which purpose the transferee shall apply to the competent authority which issued the license or signed the contract.

### **Granting of a Subsoil Use Right for Exploration and Production of Hydrocarbons**

In general (with some below exceptions), a subsoil use right for exploration and production of hydrocarbons is granted by the government through an auction.

The party seeking a subsoil use right for the exploration or production of hydrocarbons shall apply to the competent authority for the arrangement of an auction. Such application shall be processed within twenty business days from the date of its filing with the competent authority. Having considered the application within twenty business days from the date of its filing, the competent authority shall publish the relevant auction announcement or reject the application on the grounds provided for by Kazakhstan subsoil use legislation.

An auction for a hydrocarbons-related subsoil use right shall be arranged by the competent authority and conducted by a special commission in charge of the conduction of the auction for such subsoil use right. An announcement of the auction and its terms and conditions shall be posted on the official website of the competent authority and shall be published in printed periodicals, both in Kazakh and Russian, circulated throughout Kazakhstan. The time limit for submission of bids is two months from the date of the auction announcement publication.

An auction bidder for a hydrocarbons-related subsoil use right shall apply to the competent authority for the participation in such auction. The application shall be processed by the competent authority within ten business days from the date of its filing with the competent authority. Having considered the application, the competent authority decides whether to admit the applicant to the auction or to reject the application on the grounds provided by Kazakhstan subsoil use legislation. The competent authority shall, at least ten business days prior to the date of the auction, notify the applicants admitted to the auction of the date and time of the auction.

The auction may be attended only by the applicants admitted to the auction and registered as the auction bidders. The auction shall be conducted in an open form when the auction bidders proclaim their bids as the amount of a subscription bonus starting with the subscription bonus amount specified in the auction notice and increasing it by a bid increment ranging between five and fifty percent of the starting subscription bonus amount.

The auction shall be won by the bidder who suggests the highest subscription bonus.

When, within the stated 2-month limit for submission of applications, no application has been submitted and/or no applicant has been admitted to the auction (except for the person who initiated such auction), the commission for conduction of such auction shall, within three business days after the expiration of the stated time limit for submission of applications or after the completion of the applications processing, adopt a decision on the cancellation of such auction, in which case the competent authority awards the contract to the initiator of the auction after they pay the starting subscription bonus.

The competent authority shall, within twenty business days after the receipt of the signed counterpart of the contract and the confirmation of the subscription bonus payment from the auction winner, sign the contract for exploration/production or for production of hydrocarbons on their part and deliver the signed counterpart of the contract to the auction winner. When the auction winner fails to pay the subscription bonus and/or to deliver the signed counterpart of the contract to the competent authority, such person shall be deprived of the right to sign the contract and the relevant block shall be put up for auction again.

An auction for a subsoil use right is declared void and is not subject to adjournment if on the date of the auction less than two bidders check in. If the initiator of the auction is the only bidder who checks in, the auctioned subsoil use contract will be awarded to such person.

The only exception from the above procedure for auctioning a hydrocarbons-related subsoil use right is the granting of such right to a national company dealing with hydrocarbons through direct negotiations with regard to certain subsoil blocks located in the territories determined by the national mineral wealth management programme, in which case the national company seeking the subsoil use right shall apply for such direct negotiations.

It is worth noting that such hydrocarbons exploration/production contract or hydrocarbons production contract awarded to a national company dealing with

hydrocarbons through direct negotiations may be signed with such national company alone or with the national company and its strategic partner together, where the term 'strategic partner' means a legal entity (or a consortium of legal entities) that meets the qualification requirements adopted by the national company and approved by the competent authority and that commits to invest into the subsoil use project.

A subsoil use right (or an interest therein) granted to a national company dealing with hydrocarbons through direct negotiations may not be transferred for at least two years from the date of the relevant contract registration, unless such right is transferred to a legal entity fifty or more percent of voting shares/interests in which are, either directly or indirectly, held by such national company. Please note that such legal entity also may not transfer the acquired subsoil use right (or an interest therein) within two years from the date of the contract registration.

### **Granting of a Subsoil Use Right for Production of Uranium**

A subsoil use right for production of uranium may be granted to a national company dealing with uranium in compliance with Kazakhstan law which is incorporated by the resolution of the Kazakhstan Government in the form of a joint stock company a controlling interest in which is held by the Kazakhstan Government or by a national management holding.

Such national company intending to produce uranium is allocated a block of subsurface through direct negotiations and, depending on the results of such negotiations, the competent authority decides whether to sign a contract with the national company or not.

A subsoil use right (or an interest therein) granted to the national company producing uranium through direct negotiations may be transferred only to a legal entity fifty or more percent of voting shares/interests in which are, either directly or indirectly, held by such national company. Subsequently, the legal entity may transfer the acquired subsoil use right (or an interest therein) only to such legal entity over fifty percent of voting shares/interests in which are, either directly or indirectly, held by the national company producing uranium.

When the competent authority decides to sign a contract for production of uranium with the relevant national company, such national company shall, within twelve calendar months from the effective date of such decision:

- 1) pay a subscription bonus determined in the course of direct negotiations;
- 2) arrange for the development of a project for pilot production of uranium and for its legal review in compliance with the Code; and
- 3) deliver to the competent authority documentary evidence of the subscription bonus payment and a signed counterpart of the uranium production contract based on the model uranium production contract adopted by the competent authority.

The competent authority shall, within twenty business days after the receipt of the signed counterpart of the uranium production contract and documentary evidence of the subscription bonus payment, sign the contract on their behalf and deliver the signed counterpart(s) to the national company.

### **Granting of a Subsoil Use Right for Solid Minerals Exploration**

A subsoil use right for solid minerals exploration is granted by the Government subject to a license. A holder of a solid minerals exploration license enjoys an exclusive right to use the relevant block of subsurface for the exploration of solid minerals therein,



including solid minerals prospecting and evaluation of solid minerals resources and reserves for their future production. A solid minerals exploration license applies only to the territories determined by the national mineral wealth management programme.

A person seeking a solid minerals exploration license shall apply to the competent authority in the statutory form. The territory specified in the application for a solid minerals exploration license may not cover more than two hundred blocks. The competent authority shall process the application within ten business days from the date of its filing and shall decide whether to issue or to deny the license. The above application filing and processing procedures are regulated by the competent authority.

### **Granting of a Subsoil Use Right for Solid Minerals Production**

A subsoil use right for solid minerals production is granted by the Government subject to a license. A holder of a solid minerals production license enjoys an exclusive right to use the relevant block of subsurface for the following operations:

- 1) production (extraction) of solid minerals;
- 2) use of a block of subsurface for the performance of mining operations and for the deployment of mining and/or processing facilities and technogenic mineral formations; and
- 3) in-mine (operational) exploration.

Solid minerals production implies a range of works aimed at, and directly connected with, the extraction of solid minerals from deposits and/or recovery of solid minerals from the earth's crust, including in-situ gasification and smelting, chemical and bacterial leaching, dredging and hydraulicking of placer deposits through evaporation, sedimentation and condensation, as well as the gathering, temporary storage, fragmenting and sorting of extracted minerals at the production site.

A solid minerals production license applies only to the territories determined by the national mineral wealth management programme.

A person seeking a solid minerals production license shall apply to the competent authority (licensor) in the statutory form. The competent authority shall process the application within ten business days from the date of its filing and, if Kazakhstan subsoil use legislation does not provide for any ground to deny the license, the competent authority shall forward the documents supporting the application, in particular, solid mineral resource and solid mineral reserve estimates and detailed information about the requested block of subsurface, to the authority responsible for the study of subsurface. The latter shall copy the data from the solid mineral resource and solid mineral reserve estimates to the unified cadastre of the national mineral wealth and shall, within ten business days, review the application and supporting documentation for any grounds to deny the license under Kazakhstan subsoil use legislation. Upon the approval of the requested block boundaries by the authority responsible for the study of subsurface, the licensor shall, within three business days, notify the applicant in writing of the need to discuss a plan of mining operations and to review an abandonment plan. The approved plan of mining operations and abandonment plan together with the expert's favourable opinions shall be submitted by the applicant to the licensor within one year after receipt of the notice mentioned in the previous sentence.

The licensor shall issue a solid minerals production license within five business days after the submission of the state expert's favourable opinions. Subject to the issued solid minerals production license, local (oblast, republican status city or capital city) executive authorities shall grant to the subsoil user the right to use the land allotment in compliance with the Kazakhstan Land Code.

### **Granting of a Subsoil Use Right for Geological Study of Subsurface**

A subsoil use right for geological study of subsurface is granted by the Government subject to a license. A holder of a geological study license may, within three years, use the relevant block of subsurface for geological and/or geophysical surveys and for prospecting and evaluation of groundwater. Such geological study license does not provide its holder with an exclusive right to the studied block, unless the Kazakhstan Government resolves otherwise. A geological study license may cover the entire territory of the Republic of Kazakhstan.

A person seeking a geological study license shall apply to the competent authority responsible for the study of subsurface (licensor) in the statutory form. The latter shall process the application within ten business days from the date of its filing and shall either issue or deny the license.

### **Granting of a Subsoil Use Right for Commonly Occurring Minerals Production**

A commonly occurring minerals production license is issued only for the production of commonly occurring minerals for commercial use. A holder of such commonly occurring minerals production license enjoys an exclusive right to use the relevant block of subsurface for the performance of the following operations:

- 1) production of commonly occurring minerals;
- 2) use of a block of subsurface for the performance of mining operations and for the deployment of mining and/or processing facilities and technogenic mineral formations; and
- 3) in-mine (operational) exploration.

Commonly occurring minerals production implies a range of works aimed at, and directly connected with, the extraction and/or recovery of commonly occurring minerals from deposits.

A person seeking a commonly occurring minerals production license shall apply to the local (oblast) executive authorities in writing.

The term of a commonly occurring minerals production license may not exceed ten consecutive years.

Land owners and users may, free of charge, extract commonly occurring minerals within the boundaries of their land allotments for their own household or other needs not connected with any business activity. In such case, subsoil use does not require any permit, reporting or other documentation usually required from the holders of subsoil use licenses or contracts, and commonly occurring minerals shall be extracted without any explosives, chemicals or toxic agents.

The commonly occurring minerals deposited within the boundaries of a land allotment and used by the owner/user of such land allotment for their own household or other needs not connected with any business activity may not be disposed to any third party.

**Subsoil-related Pre-emptive Right of the State** The Republic of Kazakhstan has a pre-emptive right to purchase hydrocarbons at below subsoil users' transaction prices prevailing on the date of the relevant transaction, less the hydrocarbons transportation and selling costs. In the absence of information about the subsoil users' transaction prices, the State applies the prices below world market prices prevailing on the date when the State purchases hydrocarbons, less the hydrocarbons transportation and selling costs.

The maximum limit of purchased hydrocarbons and payment terms shall be determined by the relevant subsoil use contract.

The procedure for the exercise of the pre-emptive right of the Republic of Kazakhstan to purchase hydrocarbons is regulated by the Kazakhstan Government.

Pursuant to Law of the Republic of Kazakhstan *On Gas and Gas Supply* No. 532-IV of 9 January 2012, in order to ensure energy security and to satisfy the domestic demand for commercial gas, the Republic of Kazakhstan has the pre-emptive right to purchase crude gas disposed by subsoil users in accordance with Kazakhstan subsoil use law and subsoil use contracts, as well as commercial gas extracted and processed by subsoil users from the crude gas produced by them and owned by them in accordance with Kazakhstan subsoil use law and subsoil use contracts. Such pre-emptive right shall be exercised by the State via its national operator.

The ceiling prices of crude and commercial gas purchased by the national operator under the State's pre-emptive right shall be determined by the subsoil user in accordance with the rules adopted by the competent authority.

### **Priority Subsoil Use Right of the State**

All newly signed and earlier signed subsoil use contracts provide the State with a priority over other persons and organisations, including those who enjoy pre-emptive rights by Kazakhstan law or by contract, to acquire a disposed subsoil use right (or an interest therein) in relation to a strategic block of subsurface, as well as shares and other securities associated with such subsoil use right in relation to the strategic block of subsurface which are traded on a regulated market.

The term 'strategic block of subsurface' means a block of subsurface which:

- 1) contains over fifty million tons of original oil in place or over fifteen billion cubic metres of natural gas in place; or
- 2) is located within the Kazakhstan sector of the Caspian Sea; or
- 3) contains uranium deposit.

The list of strategic blocks of subsurface is subject to the Kazakhstan Government approval.

The priority right shall be exercised upon a decision of the competent authority via a national management holding or a national company in compliance with Kazakhstan law. When the competent authority decides that the State should exercise its priority right, the competent authority shall appoint a national management holding or a national company as the purchaser of a disposed subsoil use right (or an interest therein) and/or any assets associated with such right for the benefit of the State.

The price (and its payment terms) of a subsoil use right (or an interest therein) and/or any assets associated with such right purchased by a national management holding or a national company under the State's priority right shall be no worse than the price and its payment terms set out in the relevant application or notice of the proposed disposal of the subsoil use right (or an interest therein) and/or assets sent by an authorised person to the competent authority.

When a subsoil use right (or an interest therein) and/or any assets associated with such right are disposed on a gratuitous basis or contributed to the authorised capital of a legal entity, they shall be purchased (under the priority right) at a market price determined in compliance with the Kazakhstan standards of professional appraisal practice. When the applicant does not agree with such purchase price of the subsoil

use right purchased under the priority right, the applicant may challenge the appraisal results in a judicial procedure.

### **Permission to assign a subsoil use right and assets associated therewith**

A subsoil use right (or an interest therein) granted under a subsoil use contract, solid minerals exploration license, solid minerals production license or subsoil use license, as well as assets associated with such right, may be assigned only subject to the permission issued by the competent authority in accordance with the requirements of Kazakhstan subsoil use legislation. Any transaction for assignment of a subsoil use right or assets associated with such right consummated without, or upon expiration of, such permission of the competent authority shall be recognised null and void.

Any person willing to purchase a subsoil use right (or an interest therein) granted under a subsoil use contract, solid minerals exploration license, solid minerals production license or subsoil use license, as well as assets associated with such right, shall apply to the competent authority in writing for such permission.

The competent authority shall process the application within one month (or, if the application relates to large deposits or strategic blocks, within three months) from the date of the application and supporting documentation filing. Within five business days from the date of the application and supporting documentation filing, the competent authority shall present them for consideration of the subsoil expertise commission.

The subsoil expertise commission is an advisory/consultative body of the competent authority called to elaborate recommendations with regard to the considered applications for the permission to assign a subsoil use right and/or assets associated therewith and any other matters provided for by the Code.

The subsoil expertise commission composition and regulations are adopted by the competent authority.

The subsoil expertise commission shall consider an application and supporting documentation within fifteen business days (or, if the application relates to large deposits or strategic blocks, within forty five business days).

When such application for the permission to assign a subsoil use right and/or assets associated therewith relates to a block containing a large deposit of solid minerals and/or strategic block of subsurface, or when the proposed assignment of a subsoil use right and/or assets associated therewith affects the national security of the Republic of Kazakhstan, the competent authority shall, within five business days from the date of the application and supporting documentation filing, forward them to national security authorities for review of such assignment of the subsoil use right (or an interest therein) and/or assets associated therewith for its compliance with national security regulations.

When an assignment of a subsoil use right (or an interest therein) and/or assets associated therewith affect the national security, national security authorities shall notify the competent authority accordingly within ten business days from the date of receipt of the application, in which case the competent authority shall suspend the application processing until the receipt of the opinion of such national security authorities on the compliance of such assignment of the subsoil use right (or an interest therein) and/or assets associated therewith with national security regulations.

Having considered an application, the competent authority shall decide whether to issue or to deny the permission on the grounds provided for by Kazakhstan subsoil use legislation.

A denial to issue the permission may be appealed in court.

Such permission to assign a subsoil use right (or an interest therein) and/or assets associated therewith is valid for one year. If such subsoil use right (or an interest therein) and/or assets associated therewith are not assigned within the specified term, the applicant shall re-apply to the competent authority for another permission.

### **Notice of a Change in the Ownership Structure of a Subsoil User**

The holder of a subsoil use right (or an interest therein) granted under a subsoil contract, solid minerals exploration license or solid minerals production license must, within thirty calendar days, notify the competent authority which granted such right of any change in the list of individuals and/or corporations who, either directly or indirectly, control the operations of such subsoil user.

### **Domestic Preference and Local Content**

All subsoil users and their contractors are subject to the mandatory local content requirement, i.e. they must procure works and services from Kazakhstan businesses, provided, however, that they meet the relevant project requirements and Kazakhstan technical regulations.

Those subsoil users who signed their subsoil use contracts with the competent authority before 1 January 2015 and contractors thereof engaged in subsoil use operations in the Republic of Kazakhstan must procure goods from Kazakhstan manufacturers, provided that they meet the relevant project requirements and Kazakhstan technical regulations.

Supervising authorities, in carrying out audits of subsoil use operations, focus on the compliance of subsoil users with the Kazakhstan (local) content requirements.

### **Gas Flaring Ban**

Law of the Republic of Kazakhstan *On Subsoil and Subsoil Use* No. 291-IV of 24 June 2010 prohibits flaring associated gas and/or natural gas in carrying out petroleum operations, subject to the following exceptions:

- 1) in the event of a risk or occurrence of emergency situations, threat to life of personnel or health of the public and the environment;
- 2) in the event of well testing and/or production testing; and
- 3) in the event that flaring of gas is technologically inevitable (commissioning and startup of processing facilities, operation of processing facilities and maintenance and repairs of processing facilities).

The second and third exceptions require consent of the oil and gas competent authority approved by the exploration and mining competent authorities, environmental and industrial safety authorities, provided that the subsoil user is in compliance with the project documentation limits and rates calculated by using the methodology approved by the Government of the Republic of Kazakhstan.

### **Oil and Gas Exports**

Kazakhstan relies on the domestic and Russian transport infrastructure in its oil and gas exports. Currently, there are four operating export oil pipelines: the Atyrau-Samara pipeline connecting Kazakhstan with the Russian export network; the Tengiz-Novorossiisk pipeline connecting the Tengiz field with the Russian port on the Black Sea; 2 pipelines for exports of oil to the north of China and Atasu – Alashankou and Kenkiyak – Kumkol.

There are plans to considerably increase exports of oil through the Kazakhstan Caspian Transport System (KCTS) which is to include the Eskene – Kuryk pipeline and the Trans Caspian System. The KCTS is intended for export of oil across the Caspian Sea

to international markets through the Baku - Tbilisi – Ceyhan and other oil transport routes. It is also planned to increase oil exports by extension of the available oil pipelines: Kenkiyak – Atyrau, Kenkiyak – Kumkol, Kumkol – Atasu and Atasu – Alashankou.

A considerable volume of exports flows through the Aktau Sea Port and the primary sea routes are:

- Aktau – Baku (and from there by railway to Batumi),
- Aktau – Makhachkala (and from there through pipeline to Novorossiysk), and
- Aktau – Neka (SWAP transactions in the Persian Gulf).

## PRINCIPLES OF ECOLOGICAL REGULATION

Any relations in the field of environment protection, conservation and recovery, as well as mineral resources management in the course of economic and other activities connected with the use of natural resources and protection of environment in the Republic of Kazakhstan, are regulated by the environmental (nature conservation) and sanitary\epidemiological laws of the Republic of Kazakhstan.

Land, mineral resources, surface and underground waters, atmospheric air, forests and other vegetation, fauna, genetic resources, natural ecological systems, climate and global ozone layer must be adequately protected from destruction, degradation, damage, pollution and any other adverse effects. Specially protected nature conservation areas and nature reserve funds are the areas of special concern.

We have to understand the difference between the state regulation of environment protection and the state regulation of mineral resources management.

### **The state regulation of environment protection covers the following:**

- 1) licensing of environment-related activities;
- 2) ecological regulation;
- 3) technical regulation in the field of environment protection;
- 4) government environmental impact assessment;
- 5) issuance of environmental permits;
- 6) government environmental monitoring;
- 7) economic regulation of environment protection; encouragement of the development and promotion of environmentally friendly technologies; and financing of nature protection measures;
- 8) rationing of greenhouse gas emissions;
- 9) inventory of greenhouse gas;
- 10) introduction of market mechanisms for emission reduction and greenhouse gas absorption;
- 11) monitoring of actual emissions and greenhouse gas absorption;
- 12) state ecological monitoring;
- 13) state statistical accounting of subsoil users, emission/pollution sources and contaminated areas; and
- 14) ecological education and awareness.

### **The state regulation of mineral resources management covers the following:**

- 1) state planning in relation to the mineral resources management;
- 2) government control over natural resources management;
- 3) issuance of licenses/permits and execution of agreements/contracts for subsoil use;
- 4) arrangement for the restoration and reclamation of natural resources, and introduction of resource saving technologies;
- 5) monitoring and inventory of natural resources;
- 6) rationing and allocation of natural resources;

7) administration of government agencies engaged in natural resources management; and

8) arrangement for conservation of natural resources.

The concept “**natural resources management**” implies the use of natural resources and/or the environmental impact of human life and activities, including the economic and other activities conducted by corporations and individuals. The natural resources management is subdivided into general and ad-hoc industry natural resources management.

**The general natural resources management** is an ongoing charge-free process meant to satisfy the vital needs of community without allocation of any natural resources.

**The ad-hoc industry natural resources management** is the chargeable use of natural resources by corporations and/or individuals, and/or their environmental emissions regulated by Kazakhstan law. All corporations and individuals engaged in the ad-hoc industry natural resources management must maintain industrial environmental monitoring.

The concept “**natural resources management**” covers the following:

- 1) land use;
- 2) water use;
- 3) forest use;
- 4) subsoil use;
- 5) wildlife use;
- 6) vegetation use;
- 7) environmental emissions; and
- 8) other uses of natural resources determined by Kazakhstan law.

Environmental Code of the Republic of Kazakhstan No. 212 of 9 January 2007 clearly distributes environment protection and natural resources management functions across multiple governmental agencies. Currently, the Kazakhstan Ministry of Energy is responsible for the protection of environment. One of the Ministry’s committees is responsible for the environmental regulation, monitoring and supervision of the oil and gas industry. The Kazakhstan Government also has other special agencies responsible for environment protection and natural resources management.

The economic and other activities subject to the environmental impact assessment are subdivided into the following four categories depending on the significance and coverage of such assessment:

**the first category** covers all hazard Class 1 and Class 2 activities (sanitary classification of industrial facilities), as well as the exploration and production of mineral resources, excluding commonly occurring mineral resources;

**the second category** covers all hazard Class 3 activities (sanitary classification of industrial facilities), as well as the production of commonly occurring mineral resources, any uses of forest and special uses of water;

**the third category** covers all hazard Class 4 activities (sanitary classification of industrial facilities); and



**the fourth category** covers all hazard Class 5 activities (sanitary classification of industrial facilities), as well as any uses of wildlife, excluding amateur/sport fishing and hunting.

All activities not covered by the sanitary classification of industrial facilities fall under the fourth category.

Any activity conducted by a corporation or individual in the field of environmental design, rationing and audit falling under the first category requires a license for the performance/provision of environmental works/services.

All environmental works and services are licensed by the competent environmental authorities in compliance with the Kazakhstan law on licenses and notices.

In order to establish the maximum acceptable concentrations, the competent authorities responsible for sanitary and epidemiological well-being of the population maintain record-keeping of potentially hazardous chemical substances and classify such hazardous substances by their hazard level. Kazakhstan permits to apply only those chemical substances which have been registered with such competent authorities.

The maximum permissible emissions (except for greenhouse gas emissions), pollutants discharge, industrial and consumption waste disposal are emission amounts calculated for each stationary source of emissions and a whole enterprise in order to ensure their compliance with environmental quality standards. The maximum permissible emissions, pollutants discharge, industrial and consumption waste disposal are necessary for the issuance of emission permits for certain projects relying on target values and technology-based emission limit values set for stationary and mobile sources of emissions, technological processes and equipment. The maximum permissible emissions, pollutants discharge, industrial and consumption waste disposal applicable to the first, second and third category facilities are valid for ten calendar years, and those applicable to the fourth category facilities – for an unlimited term.

The maximum permissible emissions from mobile pollutants are not determined. The maximum air concentrations of major pollutants from exhaust gas are determined by the Kazakhstan technical regulations.

Import of radioactive products or semi-products, raw materials and components the radioactive content of which exceeds the elimination threshold determined by the applicable radiological safety regulations is subject to Kazakhstan export control legislation and government accounting of nuclear materials and ionizing radiation sources in compliance with the Kazakhstan nuclear energy legislation.

Environmental impact assessment is the procedure for assessment of the potential effects of economic and other activities on the environment and human health, the development of measures for prevention of adverse effects (such as destruction, degradation, damage or depletion of natural ecological systems and mineral resources) and promotion of environmental health in accordance with the requirements of the Kazakhstan environmental law.

Environmental impact assessment is mandatory for all types of economic and other activities having direct or indirect impact on the environment and human health. It is prohibited to develop or implement any economic or other projects having impact on the environment without the assessment of such impact. The results of impact assessment form an integral part of any pre-planning, planning, pre-project and project documentation. Project customers, sponsors and developers must consider the results of such environmental impact assessment and ensure the selection of such solutions which have the lowest adverse effect on the environment and human health.

There are two types of environmental expert review in Kazakhstan – state and public. The following documents and projects are subject to the mandatory state environmental expert review:

- 1) pre-project and project documentation, if projected activities have impact on the environment, and all materials supporting the environmental impact assessment;
- 2) draft permissible emissions;
- 3) draft regulatory legal acts of the Republic of Kazakhstan, and regulatory technical and instructional guidance documents the implementation of which might have adverse environmental effects;
- 4) draft scientific and feasibility studies on the setup and extension of specially protected natural areas, the abolition and reduction of state natural sanctuaries and conservation areas of national status;
- 5) biological studies on the production and use of flora and fauna resources;
- 6) draft master plans for the development of urban areas, free economic areas and specially treated economic areas;
- 7) terrain studies justifying the qualification of certain areas as ecological disaster zones or environmental emergencies; and
- 8) economic projects which might have an adverse effect on the environment of neighbouring states, or the implementation of which requires the use of natural facilities shared with neighbouring states or affects the interests of neighbouring states, including the Baikonur Cosmodrome, determined by international treaties of the Republic of Kazakhstan.

Public environmental expert review is performed, on a voluntary basis, by expert committees set up by public associations and implies the review of any economic and other activities for compliance with the public interests safeguarding public health and sound environment. Public environmental expert review can be initiated by any public association or individual whose interests are affected by the subject of such public environmental expert review.

The subjects of environmental expert review and the procedure for assessment of their compliance with Kazakhstan environmental law are determined by Kazakhstan technical regulations.

Kazakhstan subsoil users must obtain the following environmental permits:

- 1) emission permits; and
- 2) integrated environmental permits.

Any emissions from any stationary sources are subject to environmental permits. Greenhouse gas emissions are not subject to environmental permits, save for those emissions which are determined by the Kazakhstan Tax Code as pollutants.

There is also ecological audit which can be mandatory or voluntary. Corporations and individuals are subject to **a mandatory ecological audit** on the following grounds:

- 1) duly documented substantial harm to the environment inflicted by economic and other activities of corporations or individuals;
- 2) reorganisation of a corporate subsoil user conducting environmentally degrading economic and other activities through a merger, split-up or spin-off; or

- 3) bankruptcy of a corporate subsoil user conducting environmentally degrading economic and other activities.

**A voluntary ecological audit** can be initiated by the audit subject or participant considering certain objectives, timing and scope of such audit determined by an ecological audit agreement between the initiator and ecological auditor or ecological audit firm.

Based on the findings of an audit of ecological management system, an individual or legal entity may receive a certificate of their ecological management system compliance with international standards subject to Kazakhstan technical regulations.

The state regulation of greenhouse gas emissions and absorption implies the following:

- 1) greenhouse gas allowance allocation among subsoil users;
- 2) introduction of market mechanisms for emissions reduction and greenhouse gas absorption; and
- 3) administration of subsoil users.

The economic regulation of environment protection and subsoil use includes the following mechanisms:

- 1) planning and financing of environment protection measures;
- 2) emission charges;
- 3) charges for the use of certain mineral resources;
- 4) economic encouragement of environment protection;
- 5) market mechanisms for emissions management;
- 6) market mechanisms for emissions reduction and greenhouse gas absorption;
- 7) environmental insurance; and
- 8) assessment of the economic dimensions of environmental impacts.

It is worth noting that emission charges payable by subsoil users at the rates determined by their environmental permits are levied in compliance with the Kazakhstan tax law. The methodology for calculating emission charges is approved by the competent authorities responsible for environment protection. The discharge of emission tax liabilities does not relieve a subsoil user from the liability to compensate damages on the environment.

The economic assessment of air, water and soil pollution damages above the specified standards, illegal use of natural resources, industrial and consumption waste (including radioactive waste) disposal above the specified standards is performed by direct and indirect methods in compliance with the rules approved by the Kazakhstan Government.

The **direct method** of economic assessment of damages consists in determining the actual expenditures for environmental reclamation and degraded natural resources and living organisms' recovery through the best engineering, technical, organisational and technological practices.

The **indirect method** of economic assessment of damages is applied when the direct method is inapplicable and, depending on the types of environmental impact, it consists in the accumulation of damages by element.

## **Government Control**

The government control over environmental protection and mineral resources management comprises the following:

- 1) ecological control;
- 2) control over the use and protection of land;
- 3) control over the use and protection of water resources;
- 4) control over the study and use of subsoil;
- 5) control over Kazakhstan forest regulations;
- 6) control over wildlife management; and
- 7) control over specially protected natural areas.

The government ecological control implies the following:

- 1) statistical analysis of emissions and natural resources accounting data and subsoil users' environmental activity data;
- 2) arrangement and performance of environmental audits and compliance assessments; and
- 3) application of legal instruments for enforcement of Kazakhstan environmental law.

The government ecological control is exercised by the following officers:

- 1) Chief State Ecological Inspector of the Republic of Kazakhstan;
- 2) Deputy Chief State Ecological Inspector of the Republic of Kazakhstan;
- 3) Senior State Ecological Inspectors of the Republic of Kazakhstan;
- 4) State Ecological Inspectors of the Republic of Kazakhstan;
- 5) Chief State Ecological Inspectors of oblasts, republican status cities and the capital city;
- 6) Senior State Ecological Inspectors of oblasts, republican status cities and the capital city; and
- 7) State Ecological Inspectors of oblasts, republican status cities and the capital city.

Environmental inspection represents a set of measures through which the officers exercising the government ecological control collect and analyse environmental compliance data. Environmental inspections may be performed only by the officers authorized to exercise the government ecological control. Environmental inspection must not suspend the activities of the inspected subsoil user, unless otherwise provided by Kazakhstan law.

The government control over environment protection is exercised in the form of inspection and other forms. Inspection must be performed in compliance with the Entrepreneurial Code of the Republic of Kazakhstan. Other forms of the government control must be exercised in compliance with the Environmental Code.

Any subsoil user-related confidential information may not be disclosed to any third party without a prior written consent of such subsoil user. Confidentiality is determined by Kazakhstan legislative acts and international treaties. A state ecological inspector may not disclose any information classified as a state, trade or any other legally protected secret or any confidential information obtained in the course of an environmental inspection, unless otherwise provided by Kazakhstan legislative acts.

## **State Cadastre**

A state cadastre of mineral resources represents a corpus of systematized data on quantitative and qualitative parameters of mineral resources organised in the manner prescribed by the Environmental Code and other legislative acts of the Republic of Kazakhstan. The subjects of the Unified System of Cadastres include land, water, forest, soil, subsoil, vegetation and wildlife in their interaction.

Besides, there is a state cadastre of industrial and consumption waste. Any waste and waste disposal facilities are subject to registration with the State Cadastre of Waste.

There is also a subsoil user and pollutant source accounting database arranged in the form of a state register of emitting subsoil users and pollutant sources in the Republic of Kazakhstan.

## **Liability for Environmental Offences**

Offenders of Kazakhstan environmental law are subject to serious property, administrative and criminal liability.

Any damage inflicted upon the environment, public health, private or corporate property, and the government as a result of:

- 1) natural resources destruction or injury;
- 2) unlawful or irrational use of mineral resources;
- 3) unauthorized pollution of the environment, including accidental unauthorized peak emissions and unit discharges, and industrial and consumption waste disposal; or
- 4) environmental pollution in excess of industry norms,

must be compensated to a full extent by the offender, either of his own free will or through judicial proceedings, in compliance with Kazakhstan law and depending on the degree of the victim's disablement, the cost of his/her treatment and rehabilitation, the cost of medical attendance, and any other costs and losses.

Environmental damages caused by violation of Kazakhstan environmental law must be compensated by the offender, either of his own free will or through judicial proceedings, subject to the economic assessment of damages performed in the manner prescribed by the Environmental Code.

Any corporation or individual whose activity presents higher environmental risks must compensate any damages caused by the source of increased danger, unless they prove that the damages were caused by force majeure or malicious intent of the affected person.

Moral damages caused by violation of Kazakhstan environmental law must be compensated in the manner prescribed by Kazakhstan civil law.

Waste disposal and pollution discharge in excess of industry norms in the facilities equipped and intended for disposal of waste and discharge of sewage waters and preventing the contamination of surface, subsurface and underground waters are not deemed as environmental damages. Ingress of chemicals or sewer overflows in production sites restricted with protective structures preventing their entry into the soil, subsurface or underground waters are also not deemed as environmental damages.

## **Requirements to the performance of extended manufacturer/importer responsibility**

Those individuals and entities which manufacture in and/or import to Kazakhstan the goods/products falling under the extended manufacturer/importer responsibility must

ensure the collection, transportation, processing, decontamination, use and/or utilisation of waste generated as a result of the loss of such goods'/products' consumption characteristics falling under the extended manufacturer/importer responsibility, as well as the packaging thereof, by any of the following methods:

- 1) a manufacturer/importer has its own system for collection, processing and utilisation of waste subject to the regulations determined by the appropriate environmental authority. The requirement to have an in-house system for collection, processing and utilisation of waste does not apply to manufacturers and importers of motor vehicles;
- 2) a manufacturer/importer signs a contract with an operator of extended manufacturer/importer responsibility for collection, transportation, processing, decontamination, use and/or utilisation of waste generated as a result of the loss of such goods'/products' consumption characteristics falling under the extended manufacturer/importer responsibility, as well as the packaging thereof, and remits to the bank account of such operator of extended manufacturer/importer responsibility a certain fee for the collection, transportation, processing, decontamination, use and/or utilisation of waste calculated in accordance with the methodology applicable to such collection, transportation, processing, decontamination, use and/or utilisation of waste services.

The extended manufacturer/importer responsibility does not apply to the following manufacturers/importers:

- 1) manufacturers of oils and polymer/glass/paper/cardboard packaging who use in the process at least thirty percent of waste oils and polymer/glass/paper/cardboard wastes, respectively, processed and utilized in Kazakhstan;
- 2) manufacturers/importers of goods/products sold outside Kazakhstan;
- 3) manufacturers/importers of polymer, glass, paper and/or cardboard or mixed material packaging intended and/or used for packaging of goods/products sold outside Kazakhstan; and
- 4) individuals who import to Kazakhstan the goods/products which do not fall under the extended manufacturer/importer responsibility, provided that the volume of such imported goods/products does not exceed quota on duty-free import of goods/products for personal use, save for importers of motor vehicles.

## LAND AND OTHER IMMOVABLE PROPERTY

### Land plots

The primary legislative act governing relations arising in connection with land plots is Land Code of the Republic of Kazakhstan No. 442-II dated 20 June 2003 (the “**Land Code**”).

Land in the Republic of Kazakhstan may be held in State and private ownership. All land not in private property is the property of the State whose rights are represented by government authorities within the scope of their respective powers.

The land use right may be permanent or temporary, alienable and inalienable, and acquired on a free or paid basis.

Land users are divided into the following categories (persons):

- 1) State (public) and non-State (private);
- 2) national and foreign;
- 3) private individuals and legal entities;
- 4) permanent and temporary; and
- 5) primary and secondary.

The private property right to land and the land use right arise from:

- 1) granting of the right to own/use land by the State;
- 2) transfer of the right to own/use land (under civil transactions); and
- 3) transfer of the right to own/use land by universal succession (inheritance/succession, reorganization of legal entity).

Citizens of the Republic of Kazakhstan may have in private ownership land plots designated for running farms/farm households, private subsidiary holdings, forestry, gardening, private housing construction and summer cottage (*dacha*) construction, as well as land plots allocated/offered for development, or built-in lands, of industrial and civil, including residential, buildings (constructions/structures) and related complexes, including lands designated for maintenance of buildings (constructions/structures) in accordance with their designation.

Transfer of title from state ownership to private ownership is made on a paid basis by way of lump sum sale or instalment sale, or on a gratuitous basis as determined by the local executive authority.

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

Foreign nationals, stateless persons and foreign (privately owned) legal entities may have in private ownership land plots designated/offered for development of (or built-up land plots) industrial and civil facilities, including residential buildings (constructions/structures) and related complexes, including land plots designated for maintenance of buildings (constructions/structures) in accordance with their designation.

The right of permanent land use is granted to the following State-owned land users:

- 1) legal entities owning buildings (structures and constructions) and premises in condominiums on the basis of the right of operating control or operational management;
- 2) legal entities engaged in agricultural and forestry production, as well as research, testing and education;
- 3) legal entities using lands of specially protected natural sites; and
- 4) any other land users as provided by Kazakhstan legislation.

Permanent land use rights may not be granted to foreign land users.

Land plots may be granted to citizens or legal entities of the Republic of Kazakhstan under the right of temporary land use (lease) on a paid basis for a period of up to 49 years (and for a period of up to 25 years to foreign nationals, stateless persons and foreign corporations, as well as legal entities in the authorized capital of which the share of foreign nationals, stateless persons or foreign corporations exceeds fifty percent, for the purpose of agricultural production) and on a free basis for a period of up to 5 years.

By Decree No. 248 of 6 May 2016 the Kazakhstan President imposed moratorium on agricultural land lease to foreign nationals, stateless persons, foreign entities or legal entities in the authorised capital of which at least fifty percent interest belongs to foreign nationals, stateless persons or foreign entities until 31 December 2021.

Transfer and assignment of the land use right may be made only by persons who have bought the right of temporary land use/lease on a paid basis, unless otherwise provided by Kazakhstan law.

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

The right of long-term use of a land plot in the form of lease is permitted for the term of the relevant lease agreement. No pledge of the right of short-term use of a land plot on a paid or free basis is permitted.

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

- 1) disposal of the land plot;
- 2) waiver by the owner/land user of its ownership right or land use right; and
- 3) loss of the right to own/use land in other events provided for by Kazakhstan law.

No seizure of a land plot or land use right from the owner/land user without their consent is permitted other than in the event of:

- 1) foreclosure on a land plot or land use right in discharge of the owner's or land user's liabilities;
- 2) compulsory acquisition of a land plot for state needs;
- 3) compulsory seizure of a land plot which is not used by an owner or land user in accordance with its designated purpose or used in violation of Kazakhstan legislation, as provided for by Kazakhstan law;
- 4) compulsory requisition of a land plot affected by radioactive pollution, provided that its owner or user is provided with a land plot of equal value; and



5) confiscation.

Besides, the right to use land may be terminated on the following grounds:

- 1) expiration of the term for which the land plot was granted;
- 2) early termination of the agreement for lease of the land plot or the agreement for temporary land use on a free basis, save for when the land plot is held in pledge; and
- 3) termination of the labour relations in relation to which the land user was granted a service allotment.

### **Residential Property**

Citizens or legal entities may privately own any residential property regardless of its location in the Republic of Kazakhstan, unless otherwise provided for by legislation. There are no restrictions as to the number and size of residential property owned by one citizen or legal entity.

The right to own residential property, either in part or in whole, arises from the following grounds:

- 1) construction of a house (or part thereof);
- 2) consummation of transactions for sale and purchase, exchange, gift or disposal subject to life-time support and other civil transactions not contradicting the legislation;
- 3) acquisition of residential property through inheritance or universal succession;
- 4) acquisition of ownership by the lessee of housing or residential property/apartment occupied by such lessee in state-owned residential properties through its privatization (purchase or gratuitous transfer). The privatized residential property will pass to the joint and common ownership of the lessee and all family members permanently residing with him/her, including those who are temporarily away, unless otherwise provided for by an agreement between them;
- 5) payment of a member of a housing (housing construction) cooperative of the entire amount of a share contribution for the residential property. The right to own such residential property will also pass to his/her family members entitled to a portion of the accumulated shares;
- 6) transfer of the residential property to ownership under a contractual obligation, including an agreement for the citizen's contribution to the construction of the building in the form of his/her labour or funds;
- 7) transfer of the residential property by privately-owned legal entities to the ownership of their employees or other persons by sale or gratuitous transfer;
- 8) transfer of the residential property 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) transfer of the residential property as compensation for lost privately owned residential property as a result of its demolition or requisition or when such residential property becomes uninhabitable as a result of a natural calamity or emergency of natural or anthropogenic nature occurring in Kazakhstan. In the event of demolition of a residential building in connection with taking (purchase) of land plots for state needs, the owner, prior to the demolition, is

provided ownership of a suitable residential property or is paid compensation at the fair market value of such property. If the value of the provided property is greater than the value of the demolished property, the difference is not taken from the owner. If the value of the demolished property is greater than the value of the provided property, the difference is paid to the owner; and

10) other grounds not prohibited by Kazakhstan law.

The owner of a residential property or unfinished residential building may freely, at their own discretion but considering the specifics of Kazakhstan law, sell on their own terms, transfer by gift, exchange or will to other persons, pledge, or otherwise dispose of the same in the manner not prohibited by legislative acts.

Use of a residential property by the owner for nonresidential purposes does not require a permit from government authorities, but obligates the owner to comply with construction, sanitary, fire protection and other mandatory rules and regulations.

A landlord or a person authorised by the landlord to lease an accommodation must arrange for the registration of their tenants in the manner prescribed by Kazakhstan law.

The right to own a residential property terminates in the event of disposal of such property by the owner to another person, the owner's death or in the event of demolition (loss) of the property, and in other events set out by the Civil Code of the Republic of Kazakhstan.

Compulsory termination of the right to own a residential property is permitted in the following events:

- 1) foreclosure on the residential property together with the land plot in discharge of the owner's liability;
- 2) requisition;
- 3) confiscation;
- 4) compulsory disposal of the land plot under the property for State needs; and
- 5) demolition of an unsafe building if there is a threat of its collapse (failure).

### **State Registration of Rights to Immovable Property**

In Kazakhstan, rights to immovable property are subject to mandatory state registration in accordance with the Civil Code of the Republic of Kazakhstan and provisions of Law of the Republic of Kazakhstan *On State Registration of Rights to Immovable Property* No. 310-III of 26 July 2007 (the “**State Registration Law**”).

State registration with the legal cadastre is required in the event of creation, change and termination of rights (encumbrance of rights) to movable property and in the event of legal claims.

State registration with the legal cadastre is mandatory with respect to the following rights to immovable property:

- 1) the right of ownership;
- 2) the right of operating control;
- 3) the right of operational management;
- 4) the land use right for a period of at least one year; and
- 5) easement in favour of the dominant land plot or another property for a period of at least one year.

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

The following encumbrances on the rights to immovable property require registration with the legal cadastre:

- 1) the right of use for a period of at least 1 year, including lease, free use, easement, annuity and life-term support;
- 2) the right of trust management, including custody, guardianship, inheritance/succession, bankruptcy, etc;
- 3) pledge;
- 4) attachment;
- 5) restrictions (prohibitions) to use and dispose of the immovable property or to perform certain work imposed by government authorities within the limits of their powers; and
- 6) other encumbrances on rights to immovable property set out by the laws of the Republic of Kazakhstan other than overriding interests.

State registration with the legal cadastre is mandatory with respect to:

- 1) changes in identification data of the property required to maintain the legal cadastre with certain exceptions;
- 2) changes in the information on the holder of the right in the registration sheet of the legal cadastre;
- 3) change of the type of the right other than in the event of change of the right in pursuance of a legislative act;
- 4) change of the terms and conditions of the agreement if they pertain to the data in the registration sheet, affect the scope of rights determined for the property or if they must be registered upon agreement of the parties; and
- 5) other changes, if so required by legislative acts or an agreement between the parties.

Pre-emptive interests mean rights (encumbrances on rights) to immovable property that, pursuant to legislative acts, are exempt from mandatory state registration in the legal cadastre and are deemed valid without state registration.

Overriding interests that do not require mandatory state registration with the legal cadastre are as follows:

- 1) encumbrances operating as general rules and restrictions set out in legislative acts of the Republic of Kazakhstan;
- 2) rights (encumbrances on rights) arising by virtue of regulatory legal acts, including the right to enter land plots and passages through such land plots which are not restricted to public access (public rights of way) and public easements;
- 3) land use rights for a period of up to 1 year;
- 4) the right to use property of others for a period of up to 1 year, including the right to lease, free use and easement for up to 1 year;
- 5) the right of way for the public and transport to electric transmission lines, telephone and telegraph lines and poles, pipelines, geodesic points and other communication lines for public needs;

6) effective possession of the immovable property by persons who are not the right holders until acknowledgment of the effective possessor's right of ownership to the property in due order by acquisitive prescription; and

7) the right to use residential buildings of the state residential property or the right to use residential buildings leased by local executive authorities from privately owned property.

State registration of the rights to immovable property and related transactions is performed by Public Corporation "Government for Citizens". 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 are subject to mandatory state registration with the legal cadastre in accordance with the State Registration Law are created as of the time of their state registration, unless otherwise provided for by this Law and other legislative acts.

If registration is not denied, the date of the application filing is deemed as the date of state registration.

If the legal cadastre information system receives an electronic copy of a title document, then the state registration date of the title to real estate shall be deemed the date when such title is confirmed by the registration authority by delivering a notice of the performed registration.

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

The State Registration Law also provides for electronic registration of titles to real estate upon notarial certification of transactions with such real estate.

In particular, when certain rights/encumbrances arise, change or terminate under a duly notarised deal, they must be electronically registered.

A person must file an application for state registration within 6 months after the occurrence of the legal fact serving as a ground for creation of the right (encumbrance on the right), including notarization of an agreement, entry into force of a court judgment and issue of other title documents, unless otherwise provided for by the State Registration Law. A failure of individuals and/or legal entities to comply with such 6-month period entails liability under the laws of the Republic of Kazakhstan.

State registration of rights to immovable property (or encumbrance of such rights) must be finalized within 3 business days after filing the application with the registration authority, unless otherwise provided by law. The electronic registration of titles to real estate shall be performed within one business day following the date when the legal cadastre information system receives the confirmation of the payment for state registration of titles to real estate or the exemption thereof. Registration of encumbrances imposed by government authorities or other authorized persons, as well as registration of legal claims, must be made immediately upon filing the application with the registration authority.

## CONSTRUCTION

Today, the construction sector in Kazakhstan is receiving considerable attention from the government.

The government supervises architecture, urban planning and construction in the Republic of Kazakhstan in accordance with the laws pertaining to architecture, urban planning and construction activities as well as in accordance with the system of government rules and standards pertaining to architecture, urban planning and construction.

Technical regulation in the field of architecture, urban planning and construction applies to buildings, structures, processes related to their design, construction, reconstruction, technical upgrading, extension, capital overhauls and operation, as well as building materials and structures.

Designing, construction, reconstruction, technical upgrading, extension, overhaul and operation of industrial facilities in special economic zones and of international specialized exhibition facilities in the Republic of Kazakhstan may be applied construction standards, regulations and standards of foreign states and international/regional organisations. Construction of industrial facilities in special economic zones and of international specialized exhibition facilities in the Republic of Kazakhstan may be based on any construction materials and structures which meet construction standards, regulations and standards of foreign states and international/regional organisations.

State standards (regulatory documents) in the field of architecture, urban planning and construction constitute a part of Kazakhstan legislation.

Certain activities in the field of architecture, urban planning and construction are licensable in accordance with the Kazakhstan law on licenses and notices.

For the purpose of project and design activities and construction and assembly operations in the field of architecture, urban planning and construction, individuals and legal entities are divided into the following three categories:

**1<sup>st</sup> category** – designing, construction and installation operations at sites of all levels of responsibility under existing licenses;

**2<sup>nd</sup> category** – designing, construction and installation operations at sites of the second and third levels of responsibility, as well as work at sites of the first level of responsibility under existing licenses as subcontractors; and

**3<sup>rd</sup> category** – designing, construction and installation operations at sites of the second low-tech and third levels of responsibility under existing licenses as subcontractors.

Individuals and legal entities are classified under a particular category by the licensor who issues licenses in accordance with the qualification requirements to project and design activities and construction and assembly operations in the field of architecture, urban planning and construction, and their relevant categories are specified in the special terms and conditions of a license.

Licenses for architecture, urban planning and construction operations are issued by local executive authorities exercising state control over architecture and construction activities on the level of an oblast, republican status city or capital city.

Licensees are individuals and legal entities holding licenses to carry out licensable activities in the field of architecture, urban planning and construction. Licensees holding licenses for construction and assembly operations may, by virtue of these licenses,

carry out respective repair and construction operations, reconstruction of buildings (other than restoration of historic and cultural monuments), and construction and reinforcement of structures.

Construction (reconstruction, restoration, technical upgrading, modernisation and overhaul) of facilities and complexes, as well as utility engineering and laying, landscaping and site finishing are performed in accordance with project (project estimate) documentation prepared in compliance with duly approved detailed plans and development projects based on the master plan of a settlement (or an equivalent development and housing chart of settlement with population under five thousand).

A customer/owner may, upon consultation with local authorities of a republican status city/capital city/region/oblast status city, implement any of the following projects without project (project estimate) documentation using sketch plans or reference designs:

- 1) individual housing construction projects, save for construction of individual residential houses with two or more storeys in earthquake-prone regions or in special geological/hydrogeological/geotechnical environments that require tailor-made solutions and implementation techniques;
- 2) construction of temporary buildings in residential yards or plots of gardeners' partnerships, and construction of residential and/or utility buildings intended for seasonal works or free-range animal husbandry;
- 3) reconstruction (reconfiguration, refurbishment) of residential and nonresidential premises in residential buildings which do not require additional land allotments or modification of load-bearing structures, engineering and utility systems, which do not deteriorate any architectural, esthetical, fire-proof, blast resistant and sanitary properties, and which do not have any negative impact on environment through their lifecycle; and
- 4) modification of other technically simple buildings intended for personal use.

The main contracting parties in the course of construction (including design, research, expertise, development and manufacturing of construction materials and structures by order) are the customer/investor or their authorized representative and the contractor/general contractor.

Any national of the Republic of Kazakhstan or a foreigner or a stateless person or a Kazakhstan or foreign entity may act as a customer under a construction contract.

Any individual or legal entity (including a joint venture) holding the appropriate license for architecture, urban planning and/or construction activity in the Republic of Kazakhstan may act as a contractor under a construction contract.

The contracting parties must observe all the procedures and requirements established by Kazakhstan law at all stages of a construction project.

When a customer intends to construct a facility, such customer must, subject to Kazakhstan land law, apply to local (city/district) executive authorities for a right to use the relevant land plot for development. Construction and erection operations are permitted only on those land plots which have been put to use or private ownership in compliance with Kazakhstan law.

After a customer obtains the needed right over the land plot, they issue an assignment for design of the proposed facility setting out the desired technical specifications thereof and other input data.

Further, the local executive authorities issue to the customer an architectural planning assignment based on the document certifying the relevant right to the land plot, the

approved design assignment, the specifications for engineering and utilities connections and other input data.

The relevant design and estimate documentation prepared in accordance with the design assignment, architectural planning assignment and other input data must undergo approval process, comprehensive extradepartmental expertise and final adoption in compliance with the applicable statutory regulations following which the construction and erection operations can be launched.

The customer shall notify the authorities exercising state control over architecture and construction activities of such works in the manner prescribed by the Law of the Republic of Kazakhstan *On Licenses and Notices*.

Any construction process is subject to architecture and construction control as provided by applicable Kazakhstan laws.

All subjects of architecture, urban planning and construction activities shall be liable for violation of any applicable regulations/requirements/standards/rules/restrictions under Kazakhstan law.

Completed construction operations must be accepted and commissioned subject to (i) a commissioning certificate to be signed by the customer, contractor (general contractor), and technical and design supervisors, (ii) a declaration of conformity, (iii) statement of compliance with project design, and (iv) statement of quality of construction and installation works. In certain cases, an owner/customer/investor/developer is permitted to accept and commission a finished construction project at their sole discretion, provided that the project is not technically challenging.

A deed of commissioning of a completed facility which is approved in accordance with the established procedure constitutes grounds for registration of the facility with the government authority responsible for registration of rights to immovable property.

## **AUDIT OF BUSINESS ENTITIES (GENERAL PROCEDURE)**

In Kazakhstan, audit is one of the tools of government control and supervision over business entities. The audit procedure is regulated by the Kazakhstan Entrepreneurial Code (the “**Entrepreneurial Code**”).

An audit implies any of the following actions on the part of an auditor:

- 1) visiting an audited person/facility by a government officer;
- 2) requesting any information related to the subject of an audit, save for any information requests made in the course of preventive monitoring and oversight procedures; or
- 3) calling a subject of monitoring and oversight to provide information on their compliance with Kazakhstan legislation.

There are two types of audit:

- 1) an audit performed in accordance with a special procedure based on the level of risk and assigned by the control and supervision authorities subject to risk assessment; and
- 2) an unscheduled audit assigned on the basis of certain facts and events triggering such unscheduled audit.

Government monitoring and oversight is a complicated and ramified system that breaks up all audited subjects into certain categories. When SZP renders comprehensive legal support through a public audit procedure, such support includes, among other services, the categorization of a client within the system.

Kazakhstan law prohibits applying the aforementioned special auditing procedure and preventive monitoring and oversight, including visitation of the subject of such monitoring and oversight, to small businesses, including microbusinesses, within three years after their incorporation/state registration (except for reorganised entities and their legal successors).

For avoidance of abuse and overreaction on the part of government authorities, Kazakhstan law provides an exhaustive list of reasons for an audit.

The monitoring and oversight authority must notify an audited entity (either the CEO of the entity or their nominee) in writing at least thirty calendar days before the commencement of a special audit procedure specifying the commencement date and the subject matter of such audit.

An audit shall be performed subject to a notice containing the following information:

- 1) reference number and date of the notice;
- 2) name of the government agency;
- 3) surname, first name and middle name (if specified in ID) and position of the person(s) authorised to perform the audit;
- 4) information about the specialists, counsels and experts engaged in the audit; and
- 5) name of the subject of monitoring and oversight or the surname, first name and middle name (if specified in ID) of the audited individual, their address, identification number, and the list of facilities subject to monitoring and



oversight. When authorities audit a branch and/or representative office of a legal entity, the notice must specify its name and address;

- 6) subject matter of the audit;
- 7) timing of the audit;
- 8) legal reasons for the audit, including the regulatory legal acts the compliance with which has to be audited;
- 9) audited period;
- 10) rights and obligations of the subject of monitoring and oversight provided by Article 155 of the Entrepreneurial Code;
- 11) signature of the person authorized to sign such notice and seal of the government authority; and
- 12) signature of a recipient acknowledging the receipt or refusing to accept the notice of audit/monitoring and oversight.

All notices of audit, except for unscheduled audits for security and safety compliance performed by the state labour inspectorate in case of threat to human life and health and cross-audits performed by state revenue authorities in pursuance of the Kazakhstan Code *On Taxes and Other Obligatory Payments to the Budget (Tax Code)*, must be registered with the competent authorities responsible for legal statistics and special records.

When visiting a subject of monitoring and oversight for the purpose of an audit or preventive monitoring and oversight, the responsible officers of the monitoring and oversight authority must present the following documents to the subject:

- notice of audit or preventive monitoring and oversight implying visitation of the subject of monitoring and oversight bearing a note of registration with the competent authorities responsible for legal statistics and special records;
- service certificate;
- permit of competent authorities to visit sensitive facilities, if necessary; and
- medical admission required for certain facilities and issued in the manner prescribed by healthcare authorities.

An audit or preventive monitoring and oversight implying visitation of the subject of such monitoring and oversight is deemed to be commenced on the date of delivery of the respective notice to the subject of monitoring and oversight after the subject reviews the checklist setting out the issues subject to the audit or preventive monitoring and oversight implying visitation of the subject.

The duration of an audit depends on the type of audit and audited subject and varies between 5 and 15 business days (with possible extension)

The officers of the monitoring and oversight authorities performing an audit may not:

- 1) check the compliance with those requirements which are not specified in the checklists of the control and supervision authorities and which do not fall within the competence of the government authorities on behalf of which such officers are acting;
- 2) request documents, information, sample products or samples of environment and production facilities inspections which are not subject to inspection or covered by the scope of inspection; and

- 3) take samples of products or samples of environment and production facilities inspections for examination, testing or measurement purposes without sampling protocols duly executed in a statutory form and/or in quantities exceeding the thresholds determined by national standards, regulations on sampling and methodology of research, testing and measurement, technical regulations or other previously effective regulatory technical instruments, regulations and methodology of research, testing and measurement.

It is prohibited to withdraw or seize any primary accounting or other documents.

Based on audit findings, an officer of the monitoring and oversight authorities must issue a report on audit findings and an order to rectify all detected violations, if any.

When the chief executive officer of an audited entity or individual, or their authorized representatives, have remarks and/or objections to audit findings, they must express and deliver such remarks and/or objections in a written form which is attached to the report on audit findings with the respective note on it.

Each of the report on audit findings and the respective order must be executed in three counterparts.

An audit is deemed to be completed on the date when the respective report on audit findings is delivered to the subject of monitoring and oversight which cannot be later than the audit completion date specified in the notice of audit.

When the auditing or monitoring authorities infringe the rights and legitimate interests of an audited person the latter may appeal against the actions/omissions of such monitoring and oversight authorities and/or officers thereof in the superior government authorities or a court as provided by Kazakhstan law.

## LITIGATION AND ARBITRATION

### ***Courts of the Republic of Kazakhstan***

The fundamental legal act regulating the principles of civil procedure in the Republic of Kazakhstan is the Code of Civil Procedure of 31 October 2015 which entered into force on 1 January 2016.

Currently, the judicial system of Kazakhstan consists of district courts and courts assigned equal status; oblast courts and courts assigned equal status; and the Supreme Court of the Republic of Kazakhstan.

The Code of Civil Procedure provides for a three-tiered judicial system comprising courts of first jurisdiction, courts of appeal and courts of cassation.

District courts are divided into specialized courts, interdistrict economic courts, interdistrict courts and administrative courts assigned equal status, military courts and interdistrict juvenile courts.

The city courts of Nur-Sultan, Almaty and Chymkent, and the Military Court of the Armed Forces of the Republic of Kazakhstan are assigned an equal status with oblast courts.

Judicial power is exercised through civil, criminal and other forms of proceedings established by law. In the events required by law, criminal proceedings are held before a jury.

As a general rule, matters falling under the jurisdiction of first instance courts are considered by district (city) courts and courts assigned equal status.

However, this rule has a number of exceptions, e.g. the Nur-Sultan City Court, being a first instance court, considers and settles investment dispute cases, except for the cases subject to the jurisdiction of the Supreme Court of the Republic of Kazakhstan, as well as disputes between investors and government authorities over investors' activities involving (i) a foreign entity (or a branch/representative office thereof) running business in Kazakhstan, or (ii) a foreign-invested entity incorporated in accordance with the laws of the Republic of Kazakhstan fifty or more percent of voting shares/interests/stakes in which are held by a foreign investor, or (iii) an investor holding an investment contract with the Kazakhstan Government.

The Supreme Court of the Republic of Kazakhstan considers and settles, in accordance with the rules of procedure of the court of first instance, the following civil cases:

- 1) recourse against decisions and actions/omissions of the Central Election Commission of the Republic of Kazakhstan and recourse against decisions and actions/omissions of the Central Referendum Commission; and
- 2) investment disputes one of the parties where to is a major investor.

The term 'investment dispute' means a dispute arising from contractual relations between investors, including major investors, on one side, and government authorities, on the other side, in connection with the investors' investment activities.

Any individual or legal entity investing in the Republic of Kazakhstan amounts exceeding two million-fold monthly calculation index is deemed a major investor.

Therefore, Kazakhstan has a special jurisdiction for investment disputes which are referred to district courts of Nur-Sultan, the Nur-Sultan City Court and the Supreme Court of the Republic of Kazakhstan.

Specialized interdistrict economic courts consider civil matters in property and non-property disputes between unincorporated individual entrepreneurs and legal entities, as well as corporate disputes.

Corporate disputes are disputes between a business organization, association (union) of business organizations, association (union) of business organizations and/or sole proprietors, a non-profit organization having the status of a self-regulating organization in accordance with the laws of the Republic of Kazakhstan, and/or its shareholders/participants/members, including the former shareholders/participants/members (“corporate disputes”), related to:

- 1) setup, reorganization and liquidation of a legal entity;
- 2) ownership of shares in joint stock companies, participation interests in the charter capital of business partnerships, coop shares, including encumbrances and rights pertaining thereto, other than disputes arising in connection with the division of inherited property or division of community property of spouses which includes shares in joint stock companies, participation interests in the charter capital of business partnerships and/or coop shares;
- 3) claims for damages caused to a legal entity by certain actions/omissions of officers, founders, shareholders, members and other parties;
- 4) invalidation of transactions and/or enforcement of implications of such invalidated transactions;
- 5) 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, as well as disputes related to their responsibilities and liabilities, and disputes arising from civil law relations between such persons and the legal entity in connection with the exercise, cessation and/or suspension of their powers and authorities;
- 6) issue of securities;
- 7) maintenance of registers of securities holders reflecting the rights pertaining to shares and other securities, as well as disputes related to placement and/or circulation of securities;
- 8) deregistration of shares issue;
- 9) convocation and conduction of a general meeting of shareholders of a legal entity and resolutions adopted thereby; and
- 10) recourse against decisions and/or actions/omissions of governing bodies of a legal entity.

Specialized interdistrict economic courts also consider the cases connected with the restructuring of financial organisations and non-financial organisations belonging within a bank conglomerate as a parent company, when provided by Kazakhstan laws, and the cases connected with the bankruptcy of individual entrepreneurs/legal entities and the rehabilitation of legal entities.

Specialized district and administrative courts assigned equal status resolve matters connected with the challenging of resolutions adopted by the government agencies (officials) authorized to resolve administrative violation matters.

Military courts resolve civil matters arising when military personnel of the Armed Forces, other forces and military formations and citizens called for military training challenge actions/omissions of officials and military administration authorities. Military courts may

resolve other civil matters if one of the parties to the dispute is a military officer, military administration authority or military unit.

Specialized interdistrict juvenile courts resolve civil matters relating to disputes on: determination of the place of residence of minors; determination of the manner of communication between minors and their parents and removal of a child from the custody of other persons; determination of the place of residence of a child leaving Kazakhstan for permanent residence with one of the parents; termination (restriction) or restoration of parental rights; child adoption and cancellation thereof; assignment of minors to special education organizations or special treatment organizations; to disputes arising out of custody and care (guardianship) over minors; paternity examination of a minor and recovery of alimony from him; applications on restriction or deprivation of minors from fourteen to eighteen years old of the right to dispose of their income; recognition of underage children *sui juris* (emancipation); paternity test and recovery of child support in proportionate or fixed amount; protection of labour and housing rights of underage children; and compensation of damages jointly caused by underage children and full-aged people, including those which involved fully or partially disabled adults.

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

Matters in courts of appeal and cassation are, usually, resolved by a panel of the judges of the court (at least three) and, in certain cases, by a single judge.

Judgments of a court of first instance may be appealed with appellate and cassation courts.

Judgments of a court of first instance become effective upon expiration of the term set out for filing an appeal or protest against such judgments, unless they have been appealed or protested against.

Generally, appeals and protests may be filed/submitted within one month after the final court judgment.

When a complaint or protest is brought on appeal, the decision (if not cancelled) shall come into force on the date of the ruling issued by the court of appeal.

Valid acts issued by local and other courts, subject to appellation proceedings, may be appealed in courts of cassation.

A cassation complaint or protest against judicial acts issued by local courts may be filed within six months from their effective date.

Please note that not all judicial acts may be appealed in courts of cassation.

For example, judicial acts issued in relation to cases connected with property interests of citizens (if the claimed amount is below 2,000 MCIs) and entities (if the claimed amount is below 30,000 MCIs) and some other cases are not subject to cassation appeal.

The ruling of the court of cassation shall come into force upon its reading.

In exceptional cases, a judgment of a judicial panel of the Supreme Court of the Republic of Kazakhstan may be reviewed on the grounds that such judgment may result in severe irreversible consequences to life or health or to the economy and security of the Republic of Kazakhstan, if the issued judgment infringes the rights and legitimate interests of general public or other public interests, or if the issued judgment violates the consistency of interpretation and application of legal provisions by courts.

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

Claims filed with courts of first instance are subject to state duty in the amount of:

- 1) for property disputes: 1% of the claimed amount from private individuals and 3% of the claimed amount from legal entities;
- 2) for non-property disputes – 50% of the monthly calculation index established by the republican budget law for the current year.

Any cassation appeals filed with courts of cassation are also subject to state duty at the rate of 50% of the state duty applicable to non-property claims and, in relation to property claims, at the rate of 50% of the state duty assessed on the basis of the disputed amount. Appeals of judicial acts are exempt from state duty.

At any stage of civil proceedings, as well as at the stage of judicial act enforcement, parties are afforded the opportunity to sign an amicable agreement or any other agreement provided by the Code for the purpose of settlement.

The Supreme Court of the Republic of Kazakhstan has implemented an electronic court room project ensuring mobile, transparent and accessible judicial service.

The electronic court room is a 'single window' access to all electronic services provided by Kazakhstan courts through which mooters can file with Kazakhstan courts any claims, responses thereto, complaints of appeal of cassation, petitions for review and any other procedural documents in digital form.

To make such filing procedure legal the Kazakhstan civil procedure legislation was introduced certain amendments allowing for electronic filing of claims and other procedural documents.

In the event of a failure to voluntarily enforce a court judgment, the procedure of compulsory enforcement by authorized government bodies (local divisions of the Committee for Enforcement of Judicial Acts of the Ministry of Justice of the Republic of Kazakhstan, Departments for Enforcement of Judicial Acts for Oblasts and the cities of Nur-Sultan and Almaty, and private bailiffs acting within certain areas) will apply.

Private bailiffs undertake to enforce any of the executive documents provided by the Law, except the following:

- 1) recoveries from the government;
- 2) recoveries from a legal entity fifty or more percent of voting shares/ interests/stakes in which are held by the government or its affiliates;
- 3) recoveries from natural monopolies and companies dominating a commodity or service market;
- 4) recoveries in favour of the state, if the recovered amounts exceed thousands of MCIs;
- 5) forfeiture on property or assignment of property in favour of the state; and
- 6) eviction, quartering, demolition, land seizure and other proceedings conducted on behalf of the state.

Executive documents issued with regard to the aforementioned cases are enforced by public bailiffs.

When enforcement of a judgement is performed by a private bailiff, his services are paid from the funds recovered from the debtor and his fee rate ranges between 3% and 25% of the recovered amount or property value depending on the category of a case and the recovered amount. The legislation provides for administrative and criminal liability for a gross failure to enforce court judgments.

The primary legal acts governing procedural activities of courts and enforcement procedures in the Republic of Kazakhstan are as follows:

- Code of Civil Procedure of the Republic of Kazakhstan No. 377-V of 31 October 2015;
- Code of Criminal Procedure of the Republic of Kazakhstan No. 231-V of 4 July 2014;
- Law of the Republic of Kazakhstan *On Enforcement Procedure and Status of the Court Enforcement Officials* No. 261-IV 3 of 2 April 2010;
- Penal Code of the Republic of Kazakhstan No. 234-V of 5 July 2014; and
- Code of Administrative Offences of the Republic of Kazakhstan No. 235-V of 5 July 2014.

## **Arbitration**

The legislation of the Republic of Kazakhstan also provides parties involved in civil relations with an alternative option to resolve disputes in arbitration.

Kazakhstan arbitration courts can be permanent or ad hoc, i.e. arbitrations set up for resolution of certain disputes.

Arbitrators and arbitration panels called to resolve disputes referred thereto must be independent in their decision-making and rule out any interference in their work by government authorities and other organisations, unless otherwise provided by law.

Any dispute may be referred to arbitration, provided that parties thereto have an arbitration agreement.

An arbitration agreement may regulate any disputes which have already arisen or might arise between the parties in connection with particular civil relations.

When a dispute has already been referred to court, the parties thereto may sign an arbitration agreement prior to the relevant court judgment, in which case the court issues ruling to dismiss the application without prejudice.

Matters relating to internal procedures of arbitrations are governed by their established rules.

Pursuant to Law of the Republic of Kazakhstan *On Arbitration* No. 488-V of 08 April 2016, disputes affecting the interests of underaged persons or persons duly recognised as fully or partially incapacitated, disputes connected with rehabilitation or bankruptcy, disputes between natural monopolies or their customers, and disputes between government and quasi-government agencies/entities are not subject to arbitration.

Arbitration court may not consider disputes arising from personal non-property relations which are not connected with any property.

Besides, arbitration court may not consider disputes between natural persons and/or legal entities of the Republic of Kazakhstan, on one side, and legal entities in which at least fifty percent of voting shares/interests are directly or indirectly held by the government, on the other side, without a prior written consent of the relevant sector

authority (when a dispute relates to state property) or local executive authority (when a dispute relates to municipal property).

When government authorities, government enterprises or legal entities in which at least fifty percent of voting shares/interests are directly or indirectly held by the government decide to enter into an arbitration agreement, they have to apply to the relevant sector authority (when a dispute relates to state property) or local executive authority (when a dispute relates to municipal property) for their consent to such agreement execution and to support their application by the arbitration cost forecast. The relevant sector authority or local executive authority must, within fifteen calendar days, consider the application and notify the applicant in writing of their consent or substantiated refusal to issue such consent. When considering such application, the relevant sector authority or local executive authority must have due regard to economic security and public interests.

In general, awards of arbitrations are subject to voluntary enforcement by the parties to the dispute. In the event of a failure to enforce the award on a voluntary basis, the award is subject to enforcement on a compulsory basis in accordance with the procedure established for enforcement of judgments of courts of general jurisdiction of the Republic of Kazakhstan.

Kazakhstan is a member of the *New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958*, the *European Convention on International Commercial Arbitration 1961* and *Washington Convention on the Settlement of Investment Disputes between States and Nationals of Other States* (the ICSID Convention). Pursuant to these international treaties whose provisions have been incorporated into the national legislation of Kazakhstan, recognition and enforcement of foreign arbitral awards are governed by reciprocal national treatment.

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

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

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

*The Arbitration Court will comprise \_\_\_\_\_ arbitrators (single arbitrator). The place of the arbitration proceedings will be \_\_\_\_\_. The language of the arbitration proceedings is \_\_\_\_\_.*

*This contract is governed by the substantive law of \_\_\_\_\_ (identify the State)."*

### **Astana International Financial Centre Court**

Recently, in pursuance of Constitutional Law *On Astana International Financial Centre* No. 438-V of 7 December 2015, Kazakhstan launched the Astana International Financial Centre (the "AIFC") which is a territory within the city of Astana, with limited borders and a special legal regime determined by the President of the Republic of Kazakhstan.

The AIFC Court is one of the AIFC's bodies which is separate and independent from the Republic of Kazakhstan judicial system.



The AIFC Court consists of two tiers: a Court of First Instance, which includes a specialist division known as the Small Claims Court; and a Court of Appeal.

The Chairman and judges of the AIFC Court are appointed and dismissed by the President of the Republic of Kazakhstan in consultation with the Governor of the AIFC.

Currently, the AIFC Court is staffed mainly by former UK judges having extensive experience in dispute resolution.

The AIFC Court does not have jurisdiction in respect of criminal and administrative proceedings and has exclusive jurisdiction in relation to:

- 1) hearing and adjudicating on any disputes between AIFC participants, AIFC Bodies and/or their foreign employees;
- 2) hearing and adjudicating on any disputes relating to operations carried out in the AIFC and regulated by the law of the AIFC; and
- 3) hearing and adjudicating on any disputes transferred to the AIFC Court by agreement of the parties.

The AIFC Court rules provide for a small claims procedure which envisages expedited and simplified process for the review of claims the value of which does not exceed US\$150,000.

The AIFC Court operations are regulated by the Resolution of the AIFC Management Council *On the Court of the Astana International Financial Centre* based on the principles, legislation and precedents of the law of England and Wales and the standards of leading global financial centres.

Besides, in adjudicating disputes, the AIFC Court is bound by the acting law of the AIFC and may also take into account final judgements of the AIFC Court in related matters and final judgements of the courts of other common law jurisdictions.

Decisions of AIFC Court of Appeal are final and not subject to appeal, and are binding on all natural and legal persons.

Any lawyer all over the world may represent parties to a dispute tried in the AIFC Court.

Decisions of the AIFC Court are to be enforced in the Republic of Kazakhstan in the same way, and on the same terms, as decisions of the courts of the Republic of Kazakhstan. To enforce a decision of the AIFC Court, a translation of the decision into the Kazakh or Russian language, in accordance with the procedure determined by AIFC Acts, is required.

The official language of the AIFC is English to be used in all AIFC-regulated areas of public relations throughout the entire territory of the AIFC.

Accordingly, all legal proceedings in the AIFC are conducted in English and, if requested by parties, are translated into Kazakh or Russian.

## CRIMINAL LAW

### *General Provisions*

As in other countries with continental legal system, criminal law of Kazakhstan is based on 2 major statutes - the Criminal Code and the Code of Criminal Procedure. *De jure*, criminal law principles of Kazakhstan are up-to-date and humane: the majority of elements of crime correspond to international practice; the presumption of innocence is a fundamental principle of criminal proceedings; there have been implemented a mechanism for protection of human rights; legal entities are not subject to criminal liability; there is an indefinite moratorium on capital punishment until its total abolition.

On 1 January 2015, Kazakhstan put into effect the Kazakhstan Criminal Code of 3 July 2014 which superseded the previous Criminal Code of the Republic of Kazakhstan of 1997.

For the sake of criminal law humanisation, the new Criminal Code introduced the concept of minor criminal offence meaning a conduct (culpable action or omission) that does not seriously jeopardize public safety and does not cause any serious injury or threat to a person, entity, community or state which is punished in the form of a penalty, correctional or public works, or arrest.

Depending on the level of public danger and punishability, crimes are divided into two categories: misdemeanours and felonies.

When a person is found guilty of a misdemeanour, he/she may be subject to the following primary punishments:

- 1) fine;
- 2) correctional works;
- 3) public works;
- 4) arrest; and
- 5) expulsion from the Republic of Kazakhstan (if the offender is a citizen of a foreign state or destitute of nationality).

When a person is found guilty of a crime, he/she may experience the following additional punishments:

- 1) fine;
- 2) correctional works;
- 3) community service;
- 4) custodial restraint;
- 5) imprisonment; and
- 6) capital punishment.

When a person is found guilty of a felony, he/she may also be applied any of the following additional punishments further to primary sanctions (provided that such additional punishments are not heavier than the primary ones):

- 1) confiscation of property;
- 2) deprivation of special, military or honorary title, class rank, diplomatic rank, qualification class and state awards;

- 3) deprivation of the right to occupy a certain position or to engage in certain activities;
- 4) deprivation of the Kazakhstan citizenship; and
- 5) expulsion from the Republic of Kazakhstan (if the criminal is a citizen of a foreign state or destitute of nationality).

The definition of 'arrest' excluded in 2011 was re-introduced by the new Criminal Code. Arrest implies a close custody of a perpetrator ensuring his/her isolation from the community for the entire period of his/her imposed penalty. The term of arrest may range from ten to fifty days, and the term of detention is included into the term of arrest. Minor children, pregnant women, women having babies, women over the age of 58, men over the age of 63, and first- and second-degree disabled employees may not be arrested.

The new Criminal Code changed the definition of 'confiscation'. It is now defined that the state may confiscate not only the assets owned by a perpetrator but also the assets acquired by criminal means or at the expense of criminal proceeds, as well as the assets serving as an instrument or means of crime.

It is worth noting that confiscation may be applied to the following funds and other assets:

- 1) any funds or other assets that are acquired as a result of criminal activity, as well as any proceeds from such funds/assets, save for the assets and proceeds therefrom which must be returned to their lawful owner;
- 2) any funds or other assets resulting from either partial or entire transformation or conversion of the assets acquired as a result of criminal activity and proceeds therefrom;
- 3) any funds or other assets that are used or intended for financial or other support of extremist or terrorist activities or criminal groups;
- 4) any funds or other assets that serve as an instrument or means of a crime; and
- 5) the funds and other assets described in subparagraphs 1), 2), 3) and 4) above that are transferred by a convicted person to the ownership of third parties.

The new Criminal Code increased the term of deprivation of the right to occupy a certain position or to engage in certain activities which now ranges from one to ten years, and in explicitly provided cases – for life.

The new Criminal Code introduced the concept of the exemption from criminal liability subject to the fulfilment of the terms and conditions of a procedural agreement and bail. Bail means funds deposited by a bailman in the amount equivalent to twofold (for individuals) and tenfold (for entities) maximum penalty rate established for the committed criminal violation.

A period of bail is determined as follows:

- 1) misdemeanour – from six to twelve months;
- 2) minor offence – from one to two years; and
- 3) medium-gravity crime – from two to five years.

Upon expiration of the bail term, the bail is returned to the bailman, provided that the person exempt from criminal liability does not commit another criminal violation during the bail period, otherwise the court will reverse its ruling on the exemption of such

offender from criminal liability and will apply another punishment based on cumulative offences. The bail is appropriated in favour of the state.

Criminal procedure in Kazakhstan is governed by the Code of Criminal Procedure of 4 July 2014.

The Code of Criminal Procedure entitles a person to engage an attorney (defender) starting from the moment of their detention and arrest, recognition as suspect, arraignment, assignment of a witness status entitled to defence, or recognition as victim. A witness may testify in the presence of their attorney.

When there is any other evidence sufficient to suspect a person of a criminal violation, such person may be arrested only if he/she tried to escape, or if he/she could not be identified, or if court was filed an application for approbation of restraint in the form of custody.

The new Criminal Code introduced new term 'surrender' meaning a procedural compulsory measure for a term of maximum three hours needed to find out whether the surrendered person is involved in a certain criminal violation. When a person is arrested on suspicion of a criminal violation, an officer of prosecution authorities shall orally notify the person of his/her arrest on suspicion of the criminal violation and shall explain his/her right to invite a counsel for his/her defence, the right to remain silent, and that any disclosed information may be used against him/her in court.

When an arrested person does not speak Kazakh and/or Russian or cannot adequately apprehend the explanation of his/her rights due to his/her alcoholic, narcotic or other intoxication, or due to his/her psychosomatic disease, then his/her rights are explained in the presence of an interpreter, if necessary, and/or attorney prior to the commencement of interrogation of the suspect, the fact of which is recorded by the respective officer in the transcript of interrogation.

Within 3 hours after the actual detention, an officer of investigation authorities, investigator or interrogator must prepare a transcript of interrogation.

A person may be detained on suspicion of a crime for maximum forty eight hours, and if a suspect is underage – for maximum twenty four hours, with the following exceptions when a person may be detained for maximum seventy two hours:

- 1) detention on suspicion of a felony;
- 2) detention on suspicion of a terrorist or extremist crime;
- 3) detention on suspicion of a crime committed in the course of mass riots;
- 4) detention on suspicion of a gang crime;
- 5) detention on suspicion of a crime associated with illicit traffic in narcotic drugs, psychotropic substances, precursors and similar substances; or a crime against the sexual inviolability of minors; or a premeditated crime causing death; and
- 6) when a person cannot be brought before an investigating judge due to their remoteness or the lack of appropriate means of communications, or when a state of emergency is ordered or an extraordinary situation occurs.

The person making the detention may, subject to the rules set out by the Code of Criminal Procedure of the Republic of Kazakhstan, immediately conduct personal search of the detained person in the event when there are grounds to believe that he/she is carrying a gun or items which can be used as guns, or any items the circulation of which is prohibited or which can be used as evidence, or he/she is trying

to dispose of the evidence revealing the criminal violation committed by him, or in other events where necessary.

If within forty eight hours – in regard to minors, within twenty four hours – from the actual detention of a person the chief executive officer of the detention facility does not receive the court approbation of the suspect custody, such chief executive officer of the detention facility shall immediately release the detainee. When the chief executive officer fails to fulfil that obligation such officer shall be held liable. The information derived from investigative procedures conducted with the participation of a detainee during or after illegal detention shall be deemed inadmissible.

The detainee has the right to make a telephone call. Apart from that, the Code of Criminal Procedure provides for other options. The officer performing prejudicial inquiry shall immediately notify any adult member of the suspect's family or, if there is no such family member, any other relative or friend, of his/her detention and the place of his/her custody.

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.

Measures of restraint are as follows:

- 1) commitment not to leave and commitment of proper conduct;
- 2) personal guarantee;
- 3) placement of a military servant under the supervision of the military unit command;
- 4) placement of a minor in the care of authorized persons or organizations;
- 5) bail;
- 6) house arrest; and
- 7) custody.

When necessary, a person under restraint may be equipped with electronic location tracking devices, save for military servants who are given into the hands of the relevant military commanders and are kept in custody.

Restraining order as a measure of procedural compulsion is a novel introduced by the new Code of Criminal Procedure which implies the restriction of the suspect's activities seeking to find, harass, visit, make telephone calls or otherwise communicate with the victim or other participants of the case for their protection. Restraining order is subject to approval by investigating judge, or may be issued by court.

Another novel introduced by the Code of Criminal Procedure is the fund for compensation of crime victims ensuring that victims are compensated as and where stipulated by Kazakhstan law.

The following persons are obliged to reimburse the fund for compensation of damages to victims:

- 1) perpetrator;
- 2) legal representatives of a juvenile perpetrator; and
- 3) legal entity financially liable under Kazakhstan law for damages caused by a wrong-doing of an individual.

Pretrial investigation commences upon the registration of a crime incident report/notice with the National Register of Pretrial Investigations or immediately after the first urgent investigative action. The relevant prosecuting attorney shall be notified of the commencement of such pretrial investigation.

The appropriate criminal prosecution authority shall accept and register any report on a crime, either imminent or committed or in progress, and issue a confirmation of report acceptance to the reporter.

The following crime incident reports, applications or notices shall not be registered when:

- 1) they do not contain information about any violation of the current legislation, damage, essential damage or illicit income proved by inspection, audit, revision or other acts and constituting mandatory elements of crime; and
- 2) they relate to an offence implying non-performance or improper performance of a civil transaction executed in writing and not adjudicated void, bogus or fraudulent.

Prejudicial inquiry may be initiated on the grounds of sufficient evidence of a criminal violation, if there are no circumstances excluding criminal proceedings, in particular:

- 1) report from an individual or notice from a public officer or executive officer of an entity regarding a criminal violation or missing person;
- 2) surrender/acknowledgment of guilt;
- 3) announcement in mass media; and
- 4) report of an officer of prosecution authorities on an imminent or committed criminal violation.

When there is enough evidence to prove suspicions of someone's crime, the prosecutor and investigator shall issue, within reasonable time, a well-founded opinion on classification of such crime, a copy of which shall be delivered to the respective prosecutor within twenty four hours after its issuance.

The crime classification opinion shall be pronounced in the presence of a defence attorney, if attorney's presence is required by law or suspect, within twenty four hours after the issuance of such opinion. The officer performing preliminary investigation shall explain the matter of suspicions to the suspect. The suspect shall be delivered a copy of the crime classification opinion.

Witnesses, victims and suspects shall be summoned for interrogation by the person performing preliminary investigation by a subpoena served in compliance with the statutory procedure or by any other means of communication.

Interrogation is conducted in the day-time, except urgent cases. Interrogation cannot continuously last for more than four hours. Interrogation can be restarted only after a break of at least one hour for rest and food, and general duration of interrogation during the day shall not exceed eight hours.

The novel of the current Code of Criminal Procedure is that it allows remote interrogation. The interrogation of a suspect or witness may be assisted by video communication facilities.

The use of highly technological devices in the course of remote interrogation ensures high quality image and sound, as well as information security. When a person seeks protection, his/her image and voice can be modified in the course of a video conference.

When the pre-trial investigator finds that all facts of a certain case which need to be proven are established, such officer shall notify about the completion of pre-trial investigation, in writing, the suspect and his/her defence attorney or legal representative, as well as the victim and his/her representative, civil plaintiff, civil defendant and their respective representatives.

Concurrently such persons are notified of their rights to study the case documents and records and to file motions/petitions for additional investigation or other proceedings. The time required by a suspect or his/her defence attorney to study the case materials shall not be limited. However, when the suspect and his/her defence attorney intentionally delay the process, the investigator may fix a time schedule for review subject to approval by the prosecutor.

After all parties of the proceedings review the case materials and all their petitions are considered, the investigator shall issue an indictment and deliver it together with the case materials to the relevant prosecutor. The prosecutor shall, in his/her turn, review the indictment and case materials.

The prosecutor shall ensure that the indictment is handed to the defendant and the acknowledgement of its receipt shall be entered upon the record.

A copy of the indictment shall be delivered to the defence attorney of the defendant, victim and his/her legal representative by hand or through other available means of communication.

Upon the completion of all actions required by the Code of Criminal Procedure, the prosecutor shall resolve to commit the defendant to court and shall refer the criminal case to the relevant jurisdiction court.

The Code of Criminal Procedure regulates the proceedings on cases under procedural agreements.

Criminal investigation of cases under procedural agreements shall be performed in the following forms:

- 1) deal of confession – applies to crimes of insignificant or moderate gravity or grave crimes, provided that the suspect/defendant accepts suspicions/accusations; or
- 2) deal of cooperation – applies to all categories of crimes, when the suspect/defendant assists with the investigation and is clear of gang crimes, or extremely grave crimes committed by other persons, or extremist and terrorist crimes.

A procedural agreement shall not be executed with a person who committed a criminal violation in the state of insanity or who developed a mental disease after he/she committed a crime.

The execution of a procedural agreement shall not serve as the ground for exemption of a person from civil and legal liability to the persons recognized as victims and the civil plaintiff.

The suspect/defendant may decline a procedural agreement before the moment when court retires to the decision room.

A procedural agreement in the form of a deal of cooperation may be executed between the prosecutor and suspect/defendant/perpetrator/convict with the involvement of his/her defence attorney.

After the procedural agreement in the form of a deal of cooperation is executed, the prosecutor who signed such procedural agreement shall immediately arrange for clearance of the crime being the subject of the procedural agreement and for exposure of guilty persons. The same prosecutor shall reckon the need either to cancel or to change the restraint measure applied to the suspect/defendant.

The court allows conciliation proceedings when:

- 1) the procedural agreement in the form of a deal of cooperation is signed in the course of prejudicial inquiry; or
- 2) the procedural agreement in the form of a deal of cooperation is signed in the course of court proceedings.

### *Special Considerations Relating to Foreign Nationals*

Criminal proceedings with respect to foreign nationals and stateless persons are conducted in accordance with the Kazakhstan rules of criminal procedure.

Those foreigners and stateless persons who committed a crime outside Kazakhstan and are staying in Kazakhstan may be extradited to a foreign state for bringing them to criminal liability or for exercising their punishment in accordance with an international treaty ratified by the Republic of Kazakhstan.

When a foreigner is detained, the police or other authorities shall notify immediately or, if not possible, within twenty four hours, the respective embassy, consulate or another representation of the detainee's home state through the Kazakhstan Ministry of Foreign Affairs.

If the convicted offender is a national of a foreign state, the respective institution of the Kazakhstan penal enforcement system shall explain to such convict his/her right to appeal for his/her extradition to such state for further service of sentence

Convicted foreigners and stateless persons enjoy in the Republic of Kazakhstan the freedoms and rights and incur the obligations which are provided by the Constitution and laws of the Republic of Kazakhstan and international treaties.

Convicted foreign nationals and stateless persons have the right to maintain contact with diplomatic missions and consulates of their home states accredited in the Republic of Kazakhstan; and nationals of states that do not have diplomatic missions and consulates accredited in the Republic of Kazakhstan may maintain contact with diplomatic missions of the states that have assumed the functions of protecting their interests or with international organizations conducting their defence.

### *Exemption from Liability*

There are several grounds on which a person who committed crime can be exempt from criminal liability. The Criminal Law of Kazakhstan follows the best practice in regard to this issue by keeping the common approach to such matters as insanity, underage and absence of prior criminal records. Generally, it is intended to reach the reconciliation of the perpetrator and the injured party in cases of crimes of small and medium gravity by conducting mediation and following compensatory remedies. Transferring/obtaining property and providing/procuring monetized services as compliment or remuneration for earlier undertaken legitimate actions, in the absence of preliminary arrangements, provided that the value of such property or services does not exceed two monthly calculation indices, are not deemed as offence due to their low significance and are applied disciplinary or administrative measures.

The person who, at the moment of a socially dangerous act (as defined by the Criminal Code) was insane, i.e. could not realize the real nature and social danger of such act or



omission or could not control such act due to a chronic mental disease, temporary mental derangement, dementia or any other disorder of the mental faculties, is not subject to criminal liability.

The person who committed a minor criminal offence or committed an offence for the first time may be exempt from criminal liability taking into account his/her personality, voluntary surrender, assistance with the investigation/clearance of the criminal offence or reparation for the damage caused by such criminal offence. Such exemption does not apply to the persons who committed terrorist/extremist crimes, crimes committed by a criminal group, child molestation, and grave or extremely grave crime against a person.

The person who exceeded the limits of necessary defence because of fear, fright or confusion caused by a socially dangerous infringement may be exempt from criminal liability with due consideration of the circumstances.

A person may be exempt from criminal liability if he/she fulfils all the terms and conditions of a procedural agreement.

The person who committed a misdemeanour or a crime of insignificant or moderate gravity that did not involve death, may be exempt from criminal liability, provided that he/she has reconciled with the victim/plaintiff (including the mediation procedure) and made up for the damages.

The person who committed a minor criminal offence for the first time or a crime of insignificant or moderate gravity that did not involve death or grievous bodily harm, which is applied, among other primary punishments, a penalty by the respective article (or a part thereof) of the Special Part of the Criminal Code, may be exempt from criminal liability subject to bail surety.

The person who committed a criminal offence shall be exempt from criminal liability through judicial proceedings, if the court recognizes that, by the date of trial, the committed offence stopped to be socially dangerous due to the change of conditions.

A person shall be exempt from criminal liability if the following statutes of limitations have expired:

- 1) one year after a misdemeanour;
- 2) two years after a crime of insignificant gravity;
- 3) five years after a crime of moderate gravity;
- 4) fifteen years after a grave crime; and
- 5) twenty years after an especially grave crime.

The aforementioned statutes of limitations shall be determined from the date of a crime commitment until the effective date of the respective verdict.

### *Economic Crimes*

The biggest amendment to this sector is the decriminalization of false entrepreneurship. Prior to 2017, it was illegal to conduct false business activity, and sanctions varied from fines to imprisonment. However, the major issue was that the wording of the crime constituted the same criminal behaviour foreseen in other articles of the Criminal Code, such as tax evasion, illegal loan obtainment and production of false accounting documents. Due to such interference of *corpus delicti* of false entrepreneurship with other crimes, it was decided to eliminate such article from the Criminal Code for purposes of easing the work of law enforcement bodies and cohesion of the criminal Law.

Moreover, violation of standards, rules and regulations approved by the State in such domains as licensing, immigration, tax, customs, labour relations and environment that have resulted in heavy or very heavy damages, normally entails criminal liability of the chief executive officer of a legal entity or structural subdivision who made the erroneous decision. In making operational decisions, special attention should be given to the analysis of the requirement to obtain licenses and other mandatory permits and consents. Some of the most common mistakes include: excessive reliance on poorly qualified agents offering their services on obtaining licenses/permits; commencement of operations prior to obtaining or after expiration of the term of licenses/permits; incomplete list of activities in licenses/permits.

Consequences of illegal business activities may include: imprisonment of the responsible manager with or without confiscation of property in accordance with criminal procedure; confiscation of company's assets and income in accordance with administrative procedure; invalidation/voidance or annulment of transactions and restitution in accordance with civil procedure.

Repeated (twice or more) instances of hiring foreign labour in violation of the established procedure are subject to significant fines, or correctional works of the same extent, or public works for up to three hundred (300) hours, or arrest for ninety (90) days.

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

Many entrepreneurs in Kazakhstan become subjects of corruption crimes. It should be noted that bribing a person authorized to perform state duties, either directly or through a mediator, entails criminal liability. Bribers who have not voluntarily informed law enforcement authorities of the fact that they had been subject to extortion may also be held liable.

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

## PROCUREMENT

For avoidance of unreasonable public expenditure, for provision of vendors with equal access to public purchasing opportunities and for maintenance of fair competition among potential vendors, Kazakhstan applies legislative control to procurement procedures in certain sectors of the national economy.

The most properly regulated sectors in terms of procurement include the following:

- 1) Public procurement implying the procurement, on a paid basis, of goods, works and services by government authorities, agencies and enterprises and by the legal entities in which at least fifty percent of voting shares (interests in the authorized capital) are held by the government, and corporate affiliates thereof, except for:
  - national management holdings, national holdings, national management companies, national companies and corporate affiliates thereof;
  - the Kazakhstan National Bank and its departments and structural subdivisions, the legal entities in which at least fifty percent of voting shares (interests in the authorized capital) are held or managed by the Kazakhstan National Bank, and corporate affiliates thereof;
  - government enterprises as property complexes in which at least fifty percent of shares (interests in authorised capital) are held by the government, as well as their affiliates transferred under trust management of an individual or a non-government entity with a buy-out option;
- 2) Procurement of goods, works and services by subsoil users and their contractors in the course of subsoil use operations; and
- 3) Procurement of goods, works and services by JSC Samruk-Kazyna National Welfare Fund (the “**Fund**”) and the legal entities in which at least fifty percent of voting shares (interests) are directly or indirectly held by the Fund on the right of ownership or trust management.

### Public Procurement

With regard to the aforementioned sectors public procurement is most properly described and regulated by Kazakhstan Law *On Public Procurement* No. 434-V of 4 December 2015 (the “**Law**”).

The Law regulates any matters arising from the procurement of goods, works and services required for proper operation and for performance of public functions or statutory activities by a customer, save for:

- 1) services procured from individuals under employment contracts;
- 2) services procured from individuals who are not engaged in entrepreneurial activities under fee-based service contracts;
- 3) services that require travel expenses;
- 4) government assignments, as well as the goods/works/services procured for the performance of such assignments in compliance with the Kazakhstan budget legislation;
- 5) any contributions, including the contributions to authorized capital of legal entities;
- 6) goods/works/services procured by national management holdings, national holdings, national management companies, national companies and corporate

affiliates thereof, the Kazakhstan National Bank and its departments and structural subdivisions, the legal entities in which at least fifty percent of voting shares (interests in the authorized capital) are held or managed by the Kazakhstan National Bank, and corporate affiliates thereof;

- 7) goods/works/services designed for military or dual use/application as a part of defence order; and
- 8) goods/works/services procured by an organisation specialising in the improvement of credit portfolios of second-tier banks for the performance of the activities described by Article 5-1(2) of the Kazakhstan Law *On Banks and Banking Activities in the Republic of Kazakhstan*;
- 9) goods/works/services procured for implementation of investment projects financed by the international organisations which the Republic of Kazakhstan is a party to, and goods/works/services procured for implementation of investment projects financed, either entirely or partially, by foreign banks, in which case the procurement is regulated by the specified organisations/banks, provided that:
  - the Standard & Poor's or another similar rating agency's long-term credit rating of such foreign bank in foreign currency is minimum "A-";
  - minimum fifty percent of the financing is provided by foreign banks;
  - the investment project is implemented by government enterprises or legal entities fifty percent of shares/interests in which are held by the government or their affiliates; and
  - the investment project implementation does not require a government guarantee and does not create any encumbrance on the borrower's assets.

In Kazakhstan public procurement can be performed through a tender (either an open tender or a prequalification tender or a two-stage tender), request for quotation, single-source procurement, auction or commodity exchange.

A customer chooses a method of public procurement in compliance with the Law, save for the goods/works/services which must be procured by the method determined by competent authorities.

Public procurement is run through the appropriate public procurement website, unless otherwise provided by the Law.

On 1 January 2019, Kazakhstan put into force the Law *On Amendment of Certain Legislative Acts of the Republic of Kazakhstan Concerning Procurement in Government and Quasi-Government Sectors* subject to which, with effect from 1 January 2019, the access to the public procurement website will be granted to potential suppliers on a fee basis.

#### *Public procurement through a tender*

The public procurement through a tender involves potential suppliers selected as the result of competitive bidding procedure whose bids meet the relevant requirements to qualification and tender documentation.

Tender documentation is developed by the public procurement authority, in Kazakh and Russian, in the digital form determined by the public procurement regulations, subject to the provisions of the Kazakhstan legislation concerning state secrets. Tender documentation must contain, apart from qualification requirements, the following:

- 1) full name and address of the public procurement authority;

- 2) technical specification, including the national standards or, in the absence thereof, international standards applied to the procured goods/works/services, or, in the absence of such national or international standards, the required functional, technical, quality and operational properties of the procured goods/works/services, with due regard to the public procurement regulations. The technical specification must contain the requirements to the suppliers' documentation proving the conformance of their goods to the requirements of technical regulations, standards or other documents determined by Kazakhstan law; When procured works require project estimate documentation, technical specification is replaced with the relevant project estimate documentation;
- 3) quantity/scope of procured goods/works/services;
- 4) place of delivery/performance/provision of goods/works/services;
- 5) determined terms of delivery/performance/provision of goods/works/services and warranty of quality of the offered goods/works/services;
- 6) payment conditions and draft public procurement contract;
- 7) criteria, except for price, used to choose the winner of a tender, including the specific value of each criterion and the calculation of bid price;
- 8) requirements to the bid contents, including the estimates of transportation and insurance costs, customs duties, taxes (except for VAT) and fees, and other expenses required by the delivery/performance/provision of goods/works/services, save for the prices of procured goods/works/services;
- 9) currency or currencies in which a bid must be expressed and the exchange rate at which the bid price must be reduced to a common currency for the purpose of comparison and evaluation;
- 10) requirements to the language of a bid and public procurement contract in compliance with the Kazakhstan legislation concerning languages;
- 11) terms and conditions for submission, contents and security of a tender bid;
- 12) clause regarding the potential vendor's right to modify or withdraw their bid before the bidding deadline;
- 13) procedure, method and deadline for presentation of a bid and the validity period thereof;
- 14) procedure for the preliminary discussion of draft tender documentation;
- 15) date and time of bid opening;
- 16) detailed description of the procedure for opening, consideration, evaluation and comparison of bids;
- 17) information on representatives of the customer and public procurement authority authorized to represent the parties in the coming tender;
- 18) terms, conditions, types, scopes and methods of securing the performance of a public procurement contract; and
- 19) funds allocated for the procurement of goods/works/services through the tender.

Tender documentation may contain any other supplementary information ensuring better understanding by potential vendors of the tender terms and conditions.

To minimize corruption risks the Law introduced the notion of preliminary discussion of draft tender documentation by potential vendors.

Comments to draft tender documentation and requests for clarification of certain provisions thereof may be sent to the customer, public procurement authority and sponsor of the tender within five business days after the announcement of the relevant public procurement. In the absence of comments or clarification requests, the tender documentation may be approved.

In case of any comments or clarification requests, the customer and public procurement authority must, within five business days after expiration of the period allowed for preliminary discussion of tender documentation, adopt any of the following decisions:

- 1) to introduce the necessary amendments to the draft tender documentation;
- 2) to reject comments to the draft tender documentation providing the reasons for such rejection; or
- 3) to clarify provisions of the tender documentation.

Upon the adoption of the aforementioned decision, the tender documentation shall be deemed approved.

A bid is a form of potential vendor's agreement with the terms and conditions set out in tender documentation and their consent to the receipt of information about such potential vendor proving their conformance to qualification requirements and restrictions established by the Law.

A bid is submitted by a potential vendor to the public procurement authority in a digital form through the public procurement web-portal before the bidding deadline specified in the tender documentation.

Provisions of the Law also raise the responsibility of participants of public procurement through anti-dumping measures. For example, when public procurement is performed through a tender, bidders are allowed to specify dumping prices if they deposit, apart from the security for the performance of a public procurement contract, an amount equivalent to the reduced amount of the lowest admissible bid not recognized as dumping.

Bids are considered by the tender committee which is called to identify the potential vendors who meet the qualification requirements and requirements to tender documentation.

Based on the results of bids analysis with regard to their conformance to the qualification requirements and requirements to tender documentation, the tender committee executes a prequalification protocol to be signed by the chairman, secretary and all members of the tender committee on the date of decision-making on bids pre-qualification.

A bid is opened by the web-portal automatically upon the completion of analysis for conformance of the bid to the qualification requirements and requirements to tender documentation. The public procurement web-portal automatically compares bid prices and chooses the winner based strictly on lowest bid.

A protocol on tender results is automatically generated and posted on the public procurement web-portal with simultaneous notification of all members of the tender committee and bidders via email.

A protocol on tender results may be appealed by any bidder in the manner prescribed by the Law.

A public procurement tender may be declared void on one of the following grounds:

- 1) no bid has been submitted;

- 2) less than two bids have been submitted;
- 3) none of bidders has been accepted; or
- 4) only one bidder has been accepted.

When a public procurement tender is declared void, the customer must adopt one of the following decisions:

- 1) re-tendering exercise; or
- 2) amendment of tender documentation and re-tendering.

When a public procurement tender fails, the customer may procure goods/works/services from a single source subject to the following conditions:

- 1) no bid has been submitted, provided that the potential vendor invited to participate in public procurement from a single source is selected by the customer; and
- 2) less than two bids have been submitted, provided that the invitation to participate in public procurement from a single source is sent to the potential vendor who has submitted a bid. The value of the public procurement contract must not exceed the bid price of the potential vendor specified in the bid.

Therefore, with effect from 1 January 2019, customers are obliged to repeat those tenders which are recognised void.

Public procurement through prequalification tender applies only to those goods/works/services which are approved by the competent authority and is conducted in the following sequence:

- 1) in the first stage, the competent authority, in consultation with the Kazakhstan National Chamber of Entrepreneurs and other non-profit organisations, forms a register of qualified potential vendors; and
- 2) in the second stage, the customer announces a public procurement tender among potential vendors included into the register of qualified potential vendors.

#### Public procurement through a request for quotation

Public procurement through a request for quotation applies to homogeneous goods/works/services, provided that the annual output of such homogeneous goods/works/services in value terms does not exceed four thousand-fold monthly calculation index determined for the respective financial year by the republican budget law, where the decisive factor is price.

With effect from 1 January 2019, the customers procuring goods/works/services through a request for quotation (provided that the value of procured goods/works/services does not exceed 1,000 MCIs or 2,525,000 tenge) may specify in tender documentation brands of goods.

#### Public procurement from a single source

Public procurement from a single source applies to failed public purchases and direct agreements on public procurement.

When a public purchase fails, the customer may opt for public procurement from a single source subject to the following conditions:

- 1) a public procurement tender/auction is declared void on the grounds provided by the Law. This provision does not apply to those public procurement

tenders/auctions the results of which are invalidated in compliance with Kazakhstan laws; and

- 2) public procurement through a request for quotation is declared void on the grounds provided by the Law, or the measures undertaken by the public procurement authority do not entail the execution of a public procurement contract.

Public procurement from a single source by means of a direct agreement on public procurement applies to the procurements specified in Article 39.3 of the Law.

With effect from 1 January 2019, the list of 53 grounds for public procurement from a single source was reduced by 5.

#### Public procurement through an auction or commodity exchange

Public procurement through an auction is arranged on-line via the public procurement web-portal and is managed by a single operator of electronic public procurement transactions.

Goods are auctioned in a single lot.

An auction may be attended by potential vendors whose bids have been pre-qualified for the auction with respect to their conformance to qualification requirements and requirements to auction documentation.

Public procurement through a commodity exchange must be arranged in compliance with the Kazakhstan legislation concerning commodity exchanges within the range of approved exchange commodities and via two-way auction-based scheduling.

When the annual volume of public procurement of goods included into the list of exchange commodities does not exceed the minimum permissible lot specified in the list of exchange commodities, the customer may opt for another method of public procurement.

Agreements on public procurement must be drafted on the basis of model agreements approved by the competent authority. The competent authority may adopt model agreements for the procurement of certain goods/works/services.

The customer must deliver a draft public procurement contract certified with the respective electronic digital signature to the winner via the public procurement portal:

- 1) within five business days after expiration of the period allowed for appeal of tender/auction results; or
- 2) within five business days after determination of the winner through the procedure of the request for quotation.

If the award procedures, including the procedure for appeal of prequalification tender results, are completed prior to the adoption of the respective budget (development plan), a draft public procurement contract must be sent to the winner within five business days after the adoption of such budget (development plan).

A draft public procurement contract must be certified by the electronic digital signature of the winner of the respective tender/auction/request for quotation within three business days after the post of the relevant notice (with the draft public procurement contract attached) on the public procurement web-portal.



## **Procurement of goods, works and services by subsoil users and their contractors in the course of subsoil use operations**

Legal regulation of the procurement of goods/works/services by subsoil users and their contractors in the course of subsoil use operations is similar to the public procurement regulation procedure, although simpler. The procurement in this sector is regulated by Article 131 (hydrocarbons exploration and production), Article 179 (uranium production), Article 213 (solid minerals production) of Kazakhstan Code *On Subsoil and Subsoil Use* No. 125-VI of 27 December 2017 (the “**Code**”) and sector-relevant legislative acts, e.g. the *Regulations on Procurement of Goods/Works/Services by Subsoils Users and Their Contractors in the Course of Exploration and Production of Hydrocarbons and Uranium* approved by Order of the Kazakhstan Ministry of Energy No. 196 of 18 May 2018 and the *Regulations on Procurement of Goods/Works/Services by Subsoils Users and Their Contractors in the Course of Production of Solid Minerals* approved by Order of the Kazakhstan Minister of Investments and Development No. 355 of 21 May 2018.

The new Code continues to regulate the procedures for procurement of goods/works/services by subsoil users, as well as their reporting and local content obligations.

Subsoil users may procure required goods/works/services through the register of goods/works/services used in the course of subsoil use operations and manufacturers/performers/providers thereof or through other electronic procurement systems found in the Kazakhstan segment of the Internet and synchronized with such register.

## **Procurement of goods, works and services by JSC Samruk-Kazyna National Welfare Fund (the “Fund”) and the legal entities in which at least fifty percent of voting shares (interests) are directly or indirectly held by the Fund on the right of ownership or trust management**

The procurement in this sector is regulated by Article 19 of Kazakhstan Law *On the National Welfare Fund* No. 550-IV of 1 February 2012 and the respective Regulations approved by Resolution of the Board of Directors of the Fund No. 126 of 28 January 2016.

The Regulations were put into effect on 18 April 2016 in pursuance of the international obligations assumed by the Republic of Kazakhstan upon its accession to the World Trade Organisation and Eurasian Economic Union.

The new Regulations pursue, first of all, the objective to support domestic producers of goods and providers of services/works. Hence, the subsoil companies of Samruk-Kazyna Group were granted a “transition period” during which domestic vendors retain some of their preferences. The transition period applies to subsoil use contracts executed before 1 January 2015 and will expire on 1 January 2021.

The aforementioned preferences include billback allowance of **up to 20%**, exemption from whatsoever security and advance payment of **at least 30%**. Nevertheless, the Regulations do not exempt domestic vendors from penalties for non-performance of their contractual obligations.

Another important novelty is the preliminary discussion of draft tender documentation with potential vendors. From now on, the customer or tender sponsor must, at least five (5) business days before the tender documentation approval, post on their official website the draft tender documentation. Any comments and requests for clarification

may be delivered to the customer or tender sponsor within three business days after such tender documentation is posted on the website.

Besides, the national register of domestic manufacturers has been modified and, currently, it is registering all (both domestic and foreign) manufacturers and their goods.

Subject to the new Procurement Regulations approved by Resolution of the Fund's Board of Directors No. 126 of 28 January 2016, the Customer must give preference to disabled vendors of goods/works/services (disabled adults engaged in business activities) entered into the Holding's register of entrepreneurs with disabilities, entities falling within the Holding and manufacturers of procured goods entered into the Holding's register of manufacturers.

The Regulations set out the following compulsory criteria for evaluation and comparison of tender applications from potential vendors ensuring a provisional price reduction:

- 1) a potential vendor shall be a bona fide vendor on the Holding's list of bona fide vendors (1% provisional price reduction);
- 2) a potential vendor shall be a manufacturer of procured goods on the Holding's list of manufacturers (5% provisional price reduction);
- 3) a potential vendor shall have at least 5-year experience on a homogeneous market of procured goods/works/services (1.5% provisional price reduction for a 3-year experience and 0.5% for each subsequent year of experience, but in any case not more than 2.5%) confirmed by appropriate documents (either originals or notarised copies), including consignment bills and transfer and acceptance certificates issued in relation to procured goods/works/services); and
- 4) a potential vendor shall have certified management system(s) conforming to Kazakhstan national standards and meeting the objectives of performed procurement supported by a notarised copy of the management system certificate or by a copy authenticated by the issuer of the certificate (1% provisional price reduction).

Considering the current economic situation in Kazakhstan, the Regulations were amended with a view to introduce new provisions for regulation of relations between the Fund companies and vendors in the conditions of national currency exchange rate fluctuation. For example, prices for goods/works/services and relevant (long-term) procurement contract amounts can grow in the period of reducing tenge exchange rate starting from the date of contract award until the date of the relevant procurement contract signing. Such adjustment of a draft procurement contract is permissible within the amounts allocated for the procurement of such goods/works/services in a long-term procurement plan. Nevertheless, the vendor must justify to the customer such increase in the procurement contract value and provide a detailed calculation of production costs and/or factors triggering such increase in costs supported by documentary evidence.

Subject to the new Regulations, when the national currency exchange rates substantially plunge, potential vendors may resort to the following measures without a risk of security forfeiture:

- revoke their tender application and/or refuse to sign a long-term procurement contract within the period starting from the envelopes opening date until the date when such procurement contract has to be signed; and
- refuse to secure a procurement contract performance within the period starting from the date of the procurement contract signing until the date when such security is paid under the contract.

In pursuance of the Kazakhstan President's instruction to review approaches to procurement in the quasi-government sector, the Fund is gradually implementing systemic changes.

For example, the Government intends to digitize all quasi-government procurements and to impose administrative liability on quasi-government officers for violation of procurement regulations.

## **Our Team**

## **Aidyn BIKEBAYEV**

### **Managing Partner, Attorney-at-Law**

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**Specialization:** Antitrust (Competition) Law

### **Work Experience:**

Managing Partner of Sayat Zholshy & Partners, Aidyn Bikebayev headed the Firm on a permanent basis for eight years since its inception date when he exercised general management of the team and participated directly in clients' projects. In 2007, he was appointed Deputy Chairman of the Committee for Protection of Competition of the Ministry of Industry and Trade of the Republic of Kazakhstan (the Antimonopoly Agency of the Republic of Kazakhstan) and also acted as an advisor to the Prime Minister of the Republic of Kazakhstan. He re-joined Sayat Zholshy & Partners in October 2008.

In 2009-2012, the antitrust (competition) practice of the Firm, which is headed by Aidyn, was named the best practice in Kazakhstan. *Who is Who Legal: CIS* recommended Aidyn in 2010-2015 as a leading antitrust law expert in Kazakhstan. International legal guides, such as *The Legal 500: Europe, Middle East and Africa*, *IFLR1000*, *Asia Law Profiles* and *Chambers and Partners*, annually recommend Aidyn as one of the best antitrust (competition) lawyers in Kazakhstan.

Aidyn Bikebayev is the author of the only in Kazakhstan monograph on antitrust law titled "*Antitrust Law and Policy in the Republic of Kazakhstan*".

Aidyn is also a columnist for the leading Kazakhstan weekly periodical, *Business and Power*, and has published about 40 articles and actively commented on articles of other authors. Aidyn is a frequent speaker at various conferences, round tables and forums on the most acute problems of legal regulation of business in Kazakhstan.

### **Complementary Professional Activities:**

- Deputy Chairman of the Kazakhstan International Arbitration;
- Almaty City Bar;
- Union of Kazakhstan Attorneys;
- Member of the Management Board of the Kazakhstan Bar Association, an association of commercial lawyers;
- Vice Chairman of the Council for Protection of Competition.

### **Education:**

- Al-Farabi Kazakhstan National University, Law Department, graduated with honours in 1996.

### **Languages:**

- Kazakh
- Russian
- English

## **Vitaliy VODOLAZKIN**

### **Senior Partner, Attorney at Law**

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**Specialization:** Dispute Resolution. Rehabilitation and Bankruptcy

### **Work Experience:**

Vitaliy joined Sayat Zholshy & Partners in 2001 and became a partner in 2003. He has a wide experience in legal support of operations of major companies in the fields of agriculture, energy, phosphorous production and education.

He has been actively involved in almost all M&A projects of the Firm.

Vitaliy was in charge of a number of due diligence projects, including the one for a major Kazakhstan food holding company, processing industry assets in Georgia for further privatization and acquisition thereof, and a number of food and processing companies.

Vitaliy Vodolazkin has participated in numerous large litigations in courts of all levels in the Republic of Kazakhstan and represented clients engaged in the phosphorous industry, as well as subsoil users, in connection with unlawful additional assessment of taxes; represented a leading Kazakhstan bank in connection with its projects related to toxic assets; enforcement of outstanding liabilities from clients; protection of shareholders' interests, etc.

The firm's Litigation Team headed by Vitaliy was recognized as the best in Kazakhstan from 2009 to 2012. *Who is Who Legal: CIS* recommended Vitaliy Vodolazkin in 2010-2015 as a leading litigation and arbitration expert in Kazakhstan. International legal guides, such as *The Legal 500: Europe, Middle East and Africa*, *IFLR1000*, *Asia Law Profiles* and *Chambers and Partners*, annually recommend Vitaliy as one of the best arbitration and litigation lawyers in Kazakhstan.

In 2018, Vitaliy was recommended by *Chambers* as a lawyer having "wide-ranging experience" in dispute resolution and known as "a litigator who can handle any legal issue in court". Another source says: "He's smart, zealous, and quite impressive in getting results".

Relying on the confidential relationship between our Clients and Partners based on trust, Vitaliy Vodolazkin has been appointed to the Board of Directors of one of the leading food holding companies in Kazakhstan to improve the quality of its strategic decisions.

### **Membership in Associations:**

- Almaty Bar Association;
- Kazakhstan Association of Petroleum Lawyers;
- Union of Kazakhstan Attorneys; and
- Kazakhstan International Arbitration (arbitrator).

### **Education:**

- Kazakhstan State Law Academy, Department of Business Law, graduated with honours in 2001.

### **Languages:**

- Russian
- English
- German

## **Rustam OSPANOV**

### **Senior Partner, Attorney at Law**

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**Specialization:** Criminal Law. Tax Law

### **Work Experience:**

Rustam started his professional career as an in-house council of one of the second-tier banks in 1998.

He joined Sayat Zholshy & Partners as an associate and became a partner in 2001.

In 2009, the tax practice of the firm which is headed by Rustam was named the best practice in Kazakhstan. Rustam's team has been advising a large number of clients on tax-related matters and has been successful in protecting and representing the rights and interests of taxpayers in accordance with administrative procedure, as well as in courts.

He acted as a legal advisor for liquidation proceedings of a large Kazakhstan bank and a number of leading phosphorous and energy companies. He has a wide experience in structuring and consummating mergers and acquisitions in compliance with the requirements of the tax, corporate and antitrust legislation.

Rustam has been involved in numerous due diligence projects for large Kazakhstan companies in connection with potential legal risks related to the acquisition of their business operations. He also participated in drafting, consummation and actual fulfilment of transactions on purchase of major enterprises in the energy and gas transportation sectors, and in reorganization of separate legal entities and holdings of companies.

In 2010 *Who is Who Legal: CIS* recommended Rustam as a leading M&A expert in Kazakhstan.

He also represented clients in courts (including natural monopolies and dominant market participants and other market participants) in their relations with antitrust 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 Kazakhstan Attorneys; and
- Kazakhstan International Arbitration (arbitrator).

### **Education:**

- Kazakhstan State Law University, Department of Business Law, graduated with honours in 1998.

### **Languages:**

- Russian
- English

**Arman BERDALIN**  
**Senior Partner, Attorney at Law**  
**Head of the Nur-Sultan Office**

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**Specialization:** Corporate Law and Corporate Governance. Transaction Support. M&A. Lawmaking

**Work Experience:**

Arman Berdalin is a practicing lawyer who has over 17-year legal experience. Arman Berdalin has extensive experience in structuring and executing business sale and purchase transactions (over 100 purchased assets for billions of US dollars) and settlement of matters related to business relations between shareholders. His experience covers not only Kazakhstan businesses but also cross-border transactions involving transnational corporations. Arman regularly participates in projects for the establishment of joint ventures, in which regard he drafts shareholders' agreements, complex articles of association, regulations and many other documents.

As a head of the Nur-Sultan SZP office Arman maintains ongoing contact with quasi-government companies. In this sector, SZP contributed to such projects as out-reach to shareholders of second-tier banks (BTA, Alliance Bank and Temirbank), acquisition of shares in mining companies, and restructuring of national companies. Arman also managed the project for legal support of newly established Kazakhstan Integrated Centre for Coordination of Special Economic Zones.

Arman is also experienced in dealing with international development institutions. Over three years, Arman represented SZP in an IFC project (World Bank Group member) aimed to improve corporate governance in Kazakhstan. Moreover, Arman led an SZP project for provision of services to the European Bank for Reconstruction and Development in an effort to review and reform Kazakhstan joint stock companies legislation.

For a number of years, Arman has been annually recommended by various international rating agencies, including *Chambers*, *Legal500* and *Asia Law Profiles*, who highly evaluate Arman's achievements, for example:

*"Arman Berdalin wins praise for his sound corporate and M&A experience. He has made a mark in this field both as a lawyer and as a scholar. Interviewees are impressed with his determination, organizational skills and flair at presenting matters".*

For example, he successfully initiated, together with other leading Kazakhstan lawyers, a public association of Kazakhstan commercial lawyers – Kazakhstan Bar Association (KazBar). As one of the key contributors to such cooperation and as a member of the KazBar Management Board, Arman has been admitted to the Interdepartmental Law-drafting Commission of the Kazakhstan Government.

Arman regularly makes presentations at conferences both inside and outside Kazakhstan, and conducts seminars and workshops on the most pressing legal and practical issues (e.g. Samruk-Kazyna Corporate University, Kazakhstan Institute of Management, Economics and Strategic Research). Arman also gives open and in-house seminars for such major market players as Philip Morris Kazakhstan, KazMunayGas and other.

Arman has many publications in legal journals and has been involved as an expert for drafting a number of articles in analytical publications (including foreign).

**Membership in Associations:**

- Almaty Bar Association;
- Union of Kazakhstan Attorneys;
- Management Board of Kazakhstan Bar Association, an association of commercial lawyers;
- Interdepartmental Lawdrafting Committee of the Kazakhstan Government; and
- Kazakhstan International Arbitration (arbitrator).

**Education:**

- Kazakhstan State Law Academy, Department of Business Law, graduated with honours in 2000.

**Languages:**

- Russian
- English



## **Dmitry CHUMAKOV**

### **Partner**

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**Specialization:** Family Law. Labour Law. Licenses and Permits of Government Authorities. Lawmaking. Foreign Employment Permits. Technical Regulation and Certification. Infrastructure Projects. Public-Private Partnership

### **Work Experience:**

Before joining Sayat Zholshy & Partners as a Partner in September 2008, Dmitriy was in charge of legal departments (services) of the Ministry of Agriculture of the Republic of Kazakhstan and the largest domestic leasing company for ten years and then worked as a lawyer in the National Legal Service under the Ministry of Justice of the Republic of Kazakhstan.

He participated in negotiations for Kazakhstan's accession to the WTO, acted as an expert representing Kazakhstan in the Eurasian Economic Community (EurAsEC), provided legal support for various projects on allocation of large budgetary loans and subsidies and assisted in implementation of some of the largest investment projects (loans) of international financial institutions in Kazakhstan (IBRD, ADB).

Dmitry has extensive experience in providing legal support to major agricultural, engineering and research companies in connection with their reorganization. He was in charge of the legal work on setting up KazAgro National Holding. He participated in proceedings for liquidation of second-tier banks. He also supervised on a permanent basis matters relating to protection of public interests and interests of the business community in courts of all jurisdictions, including representation of clients in matters relating to administration of legal entities (corporate disputes), collection of debts, contesting transactions and disputes arising from labour regulations. For two years he acted successfully as a member of the board of directors of the largest non-bank lender in the agricultural sector.

Dmitry participated in lawmaking beginning with the drafting of concepts for regulatory legal acts and finishing with the legal support of the process of adoption of the act by a relevant state authority (the Parliament, the Government and Ministries). He co-drafted 29 laws and drafted more than 150 subordinate acts of the Government and Ministries.

### **Education:**

- Kazakhstan State Law University, Department of Business Law, graduated with honours in 1998.

### **Languages:**

- Russian
- English

**Amir BEGDESENOV**  
**Partner. Patent Attorney**

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**Specialization:** Antitrust Law. Intellectual Property Law

**Work Experience:**

Amir joined Sayat Zholshy & Partners in June 2010 as an Associate and was promoted to a Senior Associate in January 2011. In January 2014, Amir became a partner of Sayat Zholshy & Partners responsible for antitrust and intellectual property practice of the Firm.

Amir has considerable experience in antitrust law and is actively involved in numerous projects where he represents clients in antitrust authorities and courts, and where he provides general advice on antitrust legal issues. He regularly writes articles and makes presentations on antitrust issues at various conferences and forums.

**Representative Antitrust Projects**

- representation of a major soft drink producer in connection with the challenging of antitrust authorities' claims alleging that the Client executed an anti-competitive agreement. As a result, the Client managed to avoid penalties exceeding 51 million US dollars;
- representation of a major Kazakhstan mobile operator in connection with numerous antitrust investigations;
- legal support of a leading tobacco producer for antitrust compliance;
- representation of a subsidiary of the largest global dairy company in connection with the dismissed investigation on anticompetitive concerted practices, and advice regarding a coerced supply contract and risks arising from the refusal to sign such contract which could be qualified by antitrust authorities as abusive behaviour;
- presentation of a legal opinion to the Supreme Court of Singapore regarding the Kazakhstan antitrust legislation in connection with a dispute between international oil and gas service companies; and
- acquisition of economic concentration consents (Amir participated in over 15 such projects).

**Additional Information and Qualifications**

- Prior to joining Sayat Zholshy & Partners, Amir worked for 3 years at the Tax and Legal Department of a Big 4 firm in Almaty;
- Amir is also engaged in M&A transactions structuring and implementation. He is actively involved in all M&A projects of the Firm where targets were represented by such companies as a Kazakhstan pension fund, dealer network of the global leading producer of hoisting-and-conveying equipment, a major Kazakhstan integrated zinc plant producing a substantial amount of copper, precious metals and lead, a major Kazakhstan alcoholic beverage producer, and a number of major oil and gas companies;
- Winner of Kazakhstan national rounds and participant of international rounds of the Jessup Moot Court 2007 competition (held annually in Washington, DC); and
- Member of the Kazakhstan Association of Patent Attorneys.

**Education:**

- The Abylai Khan Kazakhstan University of International Relations and World Languages, specialization: International Law, Graduated Summa Cum Laude.

**Languages:**

- Russian
- Kazakh
- English
- Chinese

## **Yelena TYUREIKINA**

### **Partner**

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**Specialization:** Tax Law

### **Work Experience:**

Yelena has extensive legal experience spanning over 18 years, including 8 years in Sayat Zholshy & Partners, and specializes in tax and corporate laws.

Yelena joined Sayat Zholshy & Partners in January 2009 as a senior associate in the Tax and M&A team led by senior partner Rustam Ospanov.

On 1 January 2017, Yelena was admitted to the partnership of Sayat Zholshy & Partners.

Before joining Sayat Zholshy & Partners, Yelena had professional experience in public service and used to head the legal department of a company providing exploration services to subsoil users and the legal service of a holding company operating railway rolling stock.

*The Legal 500 EMEA 2018* noted Yelena for her “*profound knowledge of Kazakhstan tax legislation*”, “*commitment*” and “*readiness to help clients*”.

Yelena’s tax practice is broad-based and encompasses advice on various taxation issues, corporate tax planning, pre-assessment of transactions with regard to tax implications, consulting on transaction structuring in terms of tax optimisation (including foreign jurisdictions), legal support of clients in connection with tax audits and challenging of audit procedures and/or findings in higher-level tax authorities, and successful representation of clients in courts in connection with tax disputes.

### **Education:**

- Kazakhstan State Law University, Department of Business Law, 1998.

### **Languages:**

- Russian
- English

**Assel SANDYBAYEVA**  
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**Specialization:** Dispute Resolution. Rehabilitation and Bankruptcy

**Work Experience:**

Assel specializes in the civil process matters, represents and protects interests of clients in courts of all jurisdictions of the Republic of Kazakhstan in connection with economic, antitrust, tax and investment disputes; recovery of debts, penalties and damages; enforcement of obligations; appeal against actions/omissions of government authorities; protection of rights and legitimate interests of shareholders in their relations with joint stock companies and officers thereof; rehabilitation and bankruptcy proceedings; enforcement of judicial acts; etc.

Assel also participates in arbitration proceedings, as well as arbitration award enforcement and challenging proceedings. She addressed and highlighted the current problems of Kazakhstan arbitration regulation in various periodicals.

Assel performs due diligence of entities and real estates and provides legal support in connection with their sale and purchase.

Besides, Assel deals with antitrust issues. She used to represent clients in their relations with antitrust authorities, including appealing against their actions (orders) and representation in courts.

She provided legal advice, on a subscription basis, on activities of major companies in the Kazakhstan power, gas, agribusiness and construction sectors.

**Membership in Associations:**

- Almaty Bar Association;
- Union of Kazakhstan Attorneys; and
- Kazakhstan International Arbitration (arbitrator).

**Education:**

- Kazakhstan State Law Academy, Department of Business Law, graduated with honours in 2000; and
- Adilet Higher Law School, Caspian Public University, Master's Programme in Jurisprudence.

**Languages:**

- Kazakh
- Russian
- English

**Aidos Kussainov  
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**Specialization:** Labour Law. Licenses and Permits of Government Authorities. Foreign Employment Permits

**Work Experience:**

Aidos Kussainov started his professional career in 2001. Before joining Sayat Zholshy & Partners, he worked as a lawyer in a large tobacco company.

He joined Sayat Zholshy & Partners in 2001 and was promoted to Of Counsel in 2015.

Aidos supervises all projects on obtaining and extension of foreign work permits and certification of the permission lists. He advises clients on various matters arising from their relations with government authorities, including the issuance of licenses for different types of activities, permits and opinions. He has represented large oil and service companies during numerous audits conducted by government authorities.

**Education:**

Lodz University in Poland, Faculty of Law and Administration, Master of Administrative Law, 2001.

**Languages:**

- Kazakh
- Russian
- Polish

**Yersain Ospanov  
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**Specialization:** Corporate Law. Corporate Governance. M&A Transactions

**Work Experience:**

Yersain Ospanov is a skilled professional with over thirteen years of solid experience. Prior to joining Sayat Zholshy & Partners, Yersain held such positions as a managing director, management board member and board of directors' member in a number of government-related companies. Besides, Yersain used to perform the duties of a managing director in a Kazakhstan investment/consulting company and held the post of a deputy director general in a leading Kazakhstan IT-company.

Yersain has contributed to the establishment and reorganisation of major Kazakhstan joint stock companies, i.e. National Holding "Samruk" and National Welfare Fund "Samruk-Kazyna" (including his contribution in the form of relevant amendments to Kazakhstan laws), sale and purchase of entities in aviation, mineral resources and banking business. He also provided legal support and advice in the process of corporate governance best practices implementation.

Yersain's qualifications are complemented by his engagement in the development and implementation of the People's IPO programme which implied the review of Kazakhstan corporate governance framework and the drafting of relevant amendments to applicable laws and internal corporate documents of the companies mulling IPO. Moreover, Yersain participated, on the part of state-owned companies, in the corporate governance-related legal reform in Kazakhstan on commission from the European Bank for Reconstruction and Development.

**Education:**

L. N. Gumilyov Eurasian National University, diploma cum laude

Warwick Business School (University of Warwick) – MBA (graduation in 2019)

**Languages:**

- Kazakh
- Russian
- English

**Yerzhan Toktarov**  
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**Specialization:** Labour Law. Foreign Work Permits

**Experience:**

Yerzhan joined Sayat Zholshy & Partners in 2007 and was promoted to Senior Associate in 2011.

He provides legal support in connection with labour law issues, including provision of advice, representation of clients in actions filed by former employees and obtaining and renewal of foreign work permits. He is also involved in legal review of clients' draft contracts and preparation of legal opinions on legal matters in different fields of law. He appears before courts and arbitrations in civil matters. Yerzhan also performs legal due diligence of businesses.

In 2013, he worked as a member of the team drafting the Kazakhstan Law *On Licenses and Notices*.

**Membership in Associations:**

- Kazakhstan Bar Association (KazBar), an association of commercial lawyers.

**Education:**

- Almaty Legal Academy, Business Law, Bachelor of Law with distinction, 2008;
- Internship with the Almaty Bar Association, 2011.

**Languages:**

- Kazakh
- Russian
- English

**Gulmira Abenova**  
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**Specialization:** Licenses and Permits of Government Authorities. Technical Regulation and Certification. Foreign Projects. Public-Private Partnership (PPP)

**Experience:**

Gulmira started her professional career in 2008 when she joined Sayat Zholshy & Partners upon her university graduation. Within her key areas of practice Gulmira advised major manufacturing and trading companies, tobacco producers and mining enterprises with regard to their operations/products/processes compliance with the applicable Kazakhstan technical regulations.

Gulmira also supported numerous projects which involved comprehensive legal due diligence of targets for identification of minimal documentation requirements under Kazakhstan technical regulations (e.g. certificates of conformance, corporate standards, chemical product registrations, etc.) and clarification of applicable procedures, terms and conditions for obtainment thereof. On many occasions Gulmira assisted our clients in obtaining documents required for production and distribution of final products in the EurAsEC market in compliance with the applicable technical regulations. Gulmira was also engaged on a number of housing and utilities projects, for example, she provided legal support to a major Kazakhstan investment company with regard to the development, construction and operation of fee-based municipal parking facilities in Almaty, including the construction and operation of multilevel car-parks. Therefore, Gulmira represented the Client in their negotiations with local executive authorities.

Besides, Gulmira provided legal support to a Client in connection with the development of a municipal solid waste recycling system in Almaty. Under this Project Gulmira advised the Client on numerous issues arising from the implementation of an integrated solid waste management system in Almaty through a public-private partnership. Gulmira has practical experience in drafting and promoting housing and utilities regulatory acts on behalf of local executive and representative authorities.

Gulmira, together with other SZP lawyers, participated in the working group which, in 2013, drafted the Kazakhstan Law On Permits and Notices, a fundamental legislative act and general framework for licensing in Kazakhstan. Gulmira also has extensive experience in drafting and legal review of various civil law contracts, preparation of legal opinions on all sorts of topics, including clarification of labour, corporate, land, licensing, procurement, real estate and construction legislative provisions, and support of various transactions connected with the disposal of interests in LLPs and shares in JSCs. Gulmira represents clients in courts and defends clients' interests in civil litigation proceedings. Gulmira has substantial experience in settling family disputes and handling divorce cases. In this area of practice she advised many of our clients on the issues arising from prenuptial arrangements and division of property between spouses. She was also involved in the definition of strategies and behaviours in the course of divorce (division of property) proceedings and the resolution of disputes over parental rights and duties in a marital dissolution.

**Education:**

- Al-Farabi Kazakh National University, Bachelor in International Law, diploma magna cum laude

**Languages:**

- Kazakh
- Russian
- English
- Turkish



## **Olzhas DANIYAROV**

### **Senior Associate**

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**Specialization:** Corporate Law and Corporate Governance. M&A

### **Work Experience:**

Olzhas joined the SZP team specialising in M&A / Corporate Law & Corporate Governance as an associate in 2015. In December 2017, he was promoted to senior associate. Before joining Sayat Zholsky & Partners, Olzhas worked for a number of quasi-government organisations and for a major fixed assets management company. Whilst with SZP team led by partner Arman Berdalin, Olzhas has implemented a great number of large-scale projects, for example:

The project for review and reform of Kazakhstan corporate governance framework on the assignment from the European Bank for Reconstruction and Development which required the drafting and coordination of amendments to the Kazakhstan Law On Joint Stock Companies. In connection with the project of International Finance Corporation for improvement of corporate governance practices in Europe and Central Asia Olzhas, as a member of a working group, reviewed a corporate governance system in a foreign-invested joint venture (a Kazakhstan-Chinese company) and provided a number of reasoned recommendations. Olzhas also provided legal support to a client in connection with the establishment of a joint venture with a foreign investor for the management of the largest Kazakhstan overland transportation and logistics facility. Besides, Olzhas participated in a comprehensive legal due diligence and legal advice project for a major Chinese private energy company listed by Fortune Global 500 in connection with the acquisition of interests in the authorized capital of a major Kazakhstan oil and liquefied natural gas (LNG) transportation company and the largest Kazakhstan LNG retailer. Olzhas assisted with the development of a project for establishment of the Kazakhstan Integrated Centre for Coordination of Special Economic Zones.

Another unique project, on which Olzhas was engaged, implied the reorganisation of a Kazakhstan national company through its acquisition by a larger Kazakhstan national company. Olzhas also advised a client on the resolution of disputes between shareholders of a foreign-invested joint venture implementing a project for construction and operation of the largest Kazakhstan energy complex. Another legal advice project was implemented for the largest tobacco company worldwide in connection with a broad range of issues, including company restructuring and further investments in the development of the Client's subdivision in Kazakhstan.

### **Education:**

- Astana Private University (Master of Laws), 2014
- L.N. Gumilyov Eurasian National University, Civil & Business Law (Bachelor of Laws), diploma magna cum laude, 2013.

### **Languages:**

- Kazakh
- Russian
- English