

**Baker
McKenzie.**

**DOING
BUSINESS IN
KAZAKHSTAN
2023**



Doing Business in Kazakhstan 2023

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Preface

Baker McKenzie has provided sophisticated legal services to the world's leading enterprises for more than 60 years.

With a network of more than 7,000 locally qualified, internationally experienced lawyers in 74 offices across 45 countries, we have the knowledge and resources to deliver the broad scope of quality services required to respond effectively to both international and local needs consistently, with confidence and with sensitivity to cultural, social and legal differences.

Active in the former Soviet Union and the Commonwealth of Independent States (CIS) for over 40 years, we now have one of the largest legal practices in Kazakhstan, offering expertise (in close cooperation with our offices worldwide) on all aspects of investment, including corporate law, banking and finance, securities and capital markets, venture capital, competition law, tax and customs, real estate and construction, labor and employment, intellectual property, and dispute resolution.

The hub of our Central Asian practice is in Almaty.

Since gaining independence in 1991, Kazakhstan has adopted new legislation at a rapid pace. It remains a country in transition and its legal system is still in development. "Doing Business in Kazakhstan" has been prepared as a general guide for organizations operating in or considering investment in Kazakhstan. It is intended to present an overview of the key aspects of the Kazakhstani legal system and the regulation of business activities in this country.

The information contained in this guide is current as of the date below. We would be pleased to provide you with updates on the material contained in this guide, or to provide you with further information regarding a specific industry or area of Kazakhstani law in which you may have a particular interest.

Baker McKenzie Kazakhstan B.V., 1 January 2023

1 Kazakhstan — an overview

1.1 Geography

The Republic of Kazakhstan is located in Central Asia and covers an area of 2,724,900 square kilometers (1,049,150 square miles), roughly the size of Western Europe. Kazakhstan is the second-largest republic of the former Soviet Union, after Russia, and the ninth-largest country in the world. It is bordered by Russia to the north, the Caspian Sea to the west, Turkmenistan, Uzbekistan and Kyrgyzstan to the south, and China to the east. Kazakhstan's terrain is primarily steppe, with deserts in the south and center, and mountainous regions in the southeast. The climate is continental, with temperatures ranging from -45 degrees Celsius in winter to 30 degrees Celsius in summer.

1.2 Population

The population of Kazakhstan is about 19.8 million, with approximately 2.2 million living in Almaty, the largest city, and a further 1.36 million in Astana, the second-largest city. This makes Kazakhstan one of the most sparsely populated countries in the world, with a population density of approximately seven people per square kilometer. Approximately 69% of the population is Kazakh and approximately 19% is Russian. Numerous other ethnic groups make up the remainder.

1.3 History

Kazakhstan was originally settled by nomadic tribes who united in the late 15th and early 16th centuries in a political confederation known as the Kazakh Khanate. As a result of many ethno-political and economic factors, three ethno-territorial associations were formed in the territory of Kazakhstan: the Senior, Middle and Junior zhuz. The division into zhuz was the result of a complex process (the formation of the Kazakh ethnic national group), and it left a characteristic stamp on local cultural and political affiliations. The Kazakh Khanate was absorbed into the Russian Empire in the 18th and 19th centuries, and it adopted

other forms of governance that reported to Russia. After the October Revolution, the Bolsheviks took control of the territory. On 5 December 1936, Kazakhstan was made a constituent republic of the Soviet Union named the Kazakh Soviet Socialist Republic.

On 25 October 1990, Kazakhstan declared itself an independent sovereign state. On 16 December 1991, Kazakhstan proclaimed its independence.

1.4 Government and political system

The president of Kazakhstan is Kassym-Jomart Tokayev. He initially took office as the president of Kazakhstan on 20 March 2019, succeeding Nursultan Nazarbayev who resigned on 19 March 2019 after 29 years in office. On 9 April 2019, President Tokayev announced early elections in June 2019. President Tokayev was elected president of Kazakhstan on 9 June with 71% of the popular vote, taking office on 12 June 2019. After three years of a presidency that began in the shadow of his predecessor and then marred by the bloodiest political violence in the history of independent Kazakhstan, Tokayev called for early presidential elections in November 2022. The president's call came against the background of serious economic problems, as well as a political crisis between neighboring Russia and Ukraine. As a result, Tokayev won 81.3% of the vote.

According to the Constitution of Kazakhstan ("**Constitution**"),¹ if powers are terminated early, the speaker of the Senate of Kazakhstan ("**Senate**") (at that time, Maulen Ashimbayev) becomes the president until the next election.

The president is the head of state and commander-in-chief of the armed forces. The president has primary responsibility for domestic and foreign policy and represents Kazakhstan in international

¹ The Constitution of the Republic of Kazakhstan dated 30 August 1995, as amended.

relations. Under the Constitution, the president is elected for a term of seven years and may not be reelected for a second term.

The president exercises broad powers under the Constitution. In addition, the president has the authority to issue decrees, initiate constitutional amendments, dissolve the Parliament of Kazakhstan (“**Parliament**”), veto legislation, appoint and dissolve the government, and appoint local heads of government. Under certain circumstances, the president may issue decrees that have the force of law.

The legislative branch consists of a bicameral parliament. The two parliamentary chambers are the Senate (upper chamber) and the Mazhilis (lower chamber). Two senators are elected from each of the individual oblasts (regions),² from cities with republic status³ and from the capital. The president appoints 15 senators. In accordance with the Constitution, members of the Senate are elected for six-year terms and members of the Mazhilis are elected for five-year terms. The Mazhilis consists of 107 members, 98 of whom are elected based on political party lists. The Assembly of People of Kazakhstan elects nine members.

The government is appointed by the president and is accountable to them. The prime minister heads the government. At the cabinet level, the government comprises the Chancellery of the Prime Minister and 19 ministries.

The courts exercise judicial power in Kazakhstan. The highest appeal court for both criminal and civil (including commercial) cases is the Supreme Court of Kazakhstan (“**Supreme Court**”).⁴

² There are 17 oblasts: Abai, Akmola, Aktobe, Almaty, Atyrau, East Kazakhstan, Jambyl, Jetisu, Karaganda, Kostanay, Kyzylorda, Mangystau, North Kazakhstan, Pavlodar, Turkestan, Ulytau and West Kazakhstan.

³ Currently, Almaty, Astana and Shymkent are the only cities with republic status.

⁴ For a more detailed description of the court system, see Section 20.

A separate Constitutional Council with seven members is the guardian of the Constitution. Its responsibilities include reviewing issues concerning the election of the president and members of the Parliament; national referendums; issues involving the president (including relieving the president of their duties on the grounds of treason or for medical reasons); determining whether laws proposed for adoption by the Parliament or through international treaties comply with the Constitution; providing official interpretations of the Constitution; and reviewing appeals from the president and courts of law on constitutional issues.

The political party system is in the initial stages of development. The principal party is Amanat, with other main political parties including the Ak Zhol Democratic Party, the People's Party of Kazakhstan, the Nationwide Social Democratic Party, the Auyl People's Patriotic Democratic Party and Baytaq. Amanat has won all parliamentary elections held since 1991.

The last parliamentary election was held in January 2021. As a result of this election, Amanat (formerly known as Nur Otan) received 71.1% of the votes and 76 seats; the Ak Zhol Democratic Party received 10.95% of the votes and 12 seats; and the People's Party of Kazakhstan received 9.1% of the votes and seven seats.

At the president's initiative, in December 1997, the capital of Kazakhstan was moved from Almaty in the southeast of the country to Akmola in the north. In May 1998, the name Akmola was officially changed to Astana (meaning "capital" in Kazakh). Immediately after the inauguration in March 2019, President Tokayev proposed renaming the capital city of Kazakhstan after his predecessor and, on the same day, the Parliament approved the renaming of Astana to [Nur-Sultan](#). However, in September 2022, it was decided to return the former name to the capital.

The Parliament and the government are located in [Astana](#), but most foreign businesses and some embassies remain in Almaty. The city of

Almaty remains the scientific, cultural, financial and industrial center of the country.

1.5 Economy

Kazakhstan is rich in natural resources, most notably oil and natural gas, but also coal and minerals, including iron ore, chromium, uranium, copper, nickel, cobalt, gold and many others.⁵ In addition, Kazakhstan has considerable agricultural potential for both grain and livestock production. The development of these natural resources has been hindered by the fact that Kazakhstan is considered a landlocked country, giving rise to infrastructure and transport cost issues, especially for bulk commodities. Potential export routes are also vulnerable to political and economic instability in neighboring countries. Nevertheless, the abundance of natural resources has attracted considerable interest among international investors, particularly in the oil and gas sectors.

Reforms introduced since 1992 have largely removed price controls and reduced subsidies; reduced the role of the public sector in the economy; encouraged growth in the industrial and service sectors; liberalized foreign trade; reduced tariffs and promoted export growth; eased capital transfer and exchange controls; encouraged foreign investment; strengthened the independence of the National Bank of Kazakhstan (“**National Bank**”); encouraged moves toward the full convertibility of the Kazakhstani tenge (currency code: KZT), the currency of Kazakhstan; and introduced a reformed tax and customs system.

Kazakhstan’s economic transition from a command economy within the Soviet Union to a nascent market economy has not been smooth. The inefficiencies of the former system, together with Kazakhstan’s antiquated industrial base, led to a significant decline in real gross

⁵ Including bauxite, molybdenum, lead, beryllium, tantalum, silver, phosphorous, zinc, manganese, barite, cadmium, arsenic, industrial diamonds and semiprecious gemstones.

domestic product (GDP) during the early transition period. This situation has since improved with real GDP rising steadily since the end of 1999, showing growth of 3.3% for 2008. Real GDP grew by 7% in 2010 after a sharp slowdown to 1.2% in 2009. In 2019, GDP grew by 4.5%; in 2020, it dropped by 2.69%; in 2021, it grew by 3.6%; and in 2022, it grew by 3.1%. According to the government, GDP is expected to grow at least by 4% in 2023. Since the free float in 1999 and after an initial decline, the tenge has been relatively stable, and it slowly appreciated against the US dollar (currency code: USD) due to an influx of money from a boom in the market for raw materials. The first major (20%) devaluation occurred in February 2009. The second major devaluation came in February 2014 when the National Bank implemented another 20% devaluation, away from the previous rate of KZT 155 per USD 1 to the new weighted average of KZT 185 per USD 1. In 2015, Kazakhstan devalued the tenge by abandoning the peg to the dollar and allowing the market to set the price. This caused a dramatic devaluation of the tenge on 20 August 2015: The currency fell by almost 30% in one day from KZT 198 to KZT 257 to USD 1. In January 2022, it was KZT 431.80 to USD 1.

The government initiated privatization in September 1991. In 1994, Kazakhstan launched an ambitious program to privatize the state's major industrial enterprises, particularly in the key mining, metallurgical and power sectors. After 1997, the speed and scale of privatization decreased, partly due to government policy and partly due to external economic factors such as the Asian and Russian financial crises and a fall in the commodities market. Nevertheless, by the end of October 2000, the government reported that over 80% of businesses in the country were privately owned. Please refer to Section 4 for more detail.

Today, the level of foreign direct investment is among the highest in the former Soviet Union. The government prepared a series of initial public offerings (IPOs) for several state-run companies to improve liquidity in the local stock market and increase local participation. Only citizens of Kazakhstan may participate in this IPO program.

Raw mineral extraction is by far the biggest sector of Kazakhstan's economy, making it overly dependent on world market prices for mineral resources. For the purposes of developing the non-raw material sectors of the economy, Kazakhstan has established a number of investment support institutions, including the Development Bank of Kazakhstan and the Investment Fund.

The major exports are natural resources, including hydrocarbons and ferrous metals. The major imports include machinery, equipment and vehicles.

1.6 Foreign relations

Since gaining independence in 1991, Kazakhstan has established diplomatic relations with 186 countries. It is a member of the CIS, the United Nations, the International Monetary Fund, the World Bank, the European Bank for Reconstruction and Development, the Asian Development Bank, the International Finance Corporation, the Islamic Development Bank and several other international organizations. In January 1995, Kazakhstan signed the Partnership and Cooperation Agreement with the EU, with a view to establishing closer economic and political ties (a new agreement was signed at the end of 2015 to replace the 1995 agreement, which took full effect on 1 March 2020). The EU and the US have recognized Kazakhstan as a country with a market economy. Kazakhstan has acceded to many major international conventions and it became a member of the World Trade Organization (WTO) in December 2015.

Kazakhstan is also a member of the Organization for Security and Cooperation in Europe and was the chair in 2010.

Together with Russia, China, Kyrgyzstan, Tajikistan, Uzbekistan, India, Iran and Pakistan, Kazakhstan is a member of the Shanghai Cooperation Organization. Originally formed to deal with matters of border control, this organization now deals with promoting cooperation, combating terrorism and drug and weapon smuggling, and other issues.

2 Foreign investment in Kazakhstan

2.1 Investment bodies

The principal state body overseeing investments in Kazakhstan is the Committee on Investments within the Ministry of Foreign Affairs. Among other things, the Committee on Investments is charged with negotiating and concluding investment contracts with investors pursuant to the Entrepreneurship Code (see Section 2.3 below).

The Ministry of Energy is responsible for executing subsoil use contracts involving oil and gas and uranium (contracts for other solid minerals have been abolished).

In June 2014, the government created the position of investment ombudsman, i.e., a government official whose purpose is to review and try to resolve investment issues and disputes between investors and the state. The ombudsman is not intended to have any binding powers and can only recommend a solution. The Committee on Investments is supposed to provide administrative assistance to the investment ombudsman. The functions of the investment ombudsman are currently assigned to the prime minister.

2.2 Investment protections

In October 2015, the Entrepreneurship Code (as amended), which superseded the Law on Investments, was adopted in Kazakhstan. The code retained most of the earlier investment guarantees, such as the stability of contracts (with certain exceptions), free use of income, the transparency of state investment policy, the stability of tax and foreign labor law in relation to priority investment contracts (see Section 2.3 below), reimbursement of losses in the event of nationalization and requisition, and certain others.

2.3 State support for direct investment

With the intention of promoting the industrialization and diversification of Kazakhstan's economy, the Entrepreneurship Code creates a system of benefits that support direct investments in certain areas. These areas include the production of certain types of equipment, pharmaceuticals, food, metallurgy, agriculture and construction. The government approves the full list of eligible areas.⁶

To receive the benefits, the investor (which in most cases should be a Kazakhstani company) must sign an investment contract with the government. In most cases, the Investment Committee should register such contract for it to be valid.

For the purposes of determining eligible investment preferences, investment projects and agreements are divided into the categories below.

2.3.1 Ordinary investment project

A local entity should implement an ordinary investment project. It should be aimed at creating new and extending and modernizing existing production facilities in the eligible areas.

The following investment preferences are available for ordinary investment projects:

- An exemption from customs duties (for a period of up to five years)
- An exemption from import value-added tax (VAT) for certain specified products (for up to five years)
- State in-kind grants, i.e., assets (land plots, buildings, facilities, machines and equipment, computers, measuring

⁶ Resolution of the Government of the Republic of Kazakhstan "On Certain Matters Pertaining to the Implementation of State Support of Investments" dated 14 January 2016, as amended.

and controlling instruments and devices, vehicles (save for automobiles), and production and household tools), which are granted for gratuitous use for the duration of the contract. If the investor complies with its commitments, these assets become its property (the value of these grants cannot exceed 30% of the total planned investment into the fixed assets of the local entity).

2.3.2 Priority investment project

A local entity should implement a priority investment project in more limited eligible areas (compared to an ordinary investment project) and anticipate (i) with certain limited exceptions, investments for the creation of new production facilities in the amount of no less than KZT 6.9 billion (approximately USD 14,914,000) or (ii) investments for the extension and/or modernization of existing production facilities in the amount of no less than KZT 17.25 billion (approximately USD 37,285,000).

The following investment preferences are available for priority investment projects (in addition to those available for ordinary investment projects):

- Tax preferences in the form of corporate income tax and land tax exemptions (for up to 10 years), as well as a property tax exemption (for up to eight years)
- Refund of the difference between input VAT and output VAT in connection with the construction of buildings and warehouses
- Stability of tax laws
- Stability of work permit laws

2.3.3 Special investment project

A special investment project must meet one of the following criteria: (i) it is implemented by a Kazakhstani legal entity that has been registered as a participant of a special economic zone (SEZ); (ii) it is implemented by a Kazakhstani legal entity that is an owner of a free warehouse; or (iii) it is implemented by a Kazakhstani legal entity that has entered into an agreement on the industrial assembly of motor vehicles with the government.

Special investment projects are exempt from import customs duties (for up to 15 years) and VAT (with no limitation on the duration) on imported materials required for investment projects.

2.3.4 Investment agreement

For activities in areas specified by the government, with anticipated investments being no less than KZT 25,875,000,000 (approximately USD 56 million), it is possible to enter into an investment agreement for up to 25 years.

The following preferences are available for this agreement:

- Tax preferences in the form of corporate income tax and land tax exemptions (for up to 10 years), as well as a property tax exemption (for up to eight years)
- If the amount of investments under the agreement exceeds KZT 51.75 billion (approximately USD 112 million), after 10 years following the execution of the contract, it would be possible to provide a decrease of tax liabilities in relation to corporate income tax, land tax and property tax by an amount not exceeding 20% of the actual investments made
- Stability of tax laws for certain types of taxes

2.3.5 Agreement on investment commitments

Companies that meet certain criteria (such as being export-oriented and being a major taxpayer that is subject to horizontal monitoring by the tax authorities) and anticipate investments of no less than KZT 258.75 billion (approximately USD 559.3 million) may enter into an agreement on investment commitments with the government.

Such agreement would grant the benefit of tax stability for 10 years (with the exception of VAT and certain other taxes).

2.3.6 Other benefits

Contract holders may seek assistance on a one-stop-shop basis from the Committee on Investments with respect to liaising with various state agencies. This is available for all investment projects.

In addition, the current Tax Code gives local companies an automatic right to accelerated straight-line tax depreciation of fixed assets (either before they are put into operation or within three years afterward) when certain conditions are met. The taxpayer is not required to make any specific new investments (other than to acquire the assets) or to enter into an investment contract to obtain this right.

Finally, the government has also introduced a number of financial support measures for entities that carry out activities in certain sectors (these largely correspond to the priority types of activity discussed above). The financial support measures include subsidizing interest rates on loans and issuing state guarantees for bank loans.

2.4 Bilateral investment treaties

Kazakhstan has concluded bilateral treaties on the encouragement and mutual protection of investments with 49 countries. Kazakhstan is also party to a number of multilateral treaties concerning foreign investments (for example, the Energy Charter).

Investment treaties provide a number of guarantees to nationals of member countries, including most-favored-nation treatment, protection against discrimination, requisition and nationalization, and the right to resolve investment disputes by international arbitration in the absence of an arbitration agreement with the state.

Bilateral treaties on the promotion and mutual protection of investments exist with the following countries.

Table 1: Bilateral investment treaties

No.	Country	Signing date	Effective date
1.	Afghanistan	27 September 2012	Not effective yet
2.	Armenia	6 November 2006	1 August 2010
3.	Austria	12 January 2010	21 December 2012
4.	Azerbaijan	16 September 1996	30 April 1998
5.	Belgium-Luxembourg Economic Union	16 April 1998	6 February 2001
6.	Bulgaria	15 September 1999	20 August 2001
7.	China	10 August 1992	18 August 1994
8.	Czech Republic	8 October 1996	2 April 1998

No.	Country	Signing date	Effective date
9.	Egypt	14 February 1993	28 March 1997
10.	Estonia	20 April 2011	26 August 2014
11.	Finland	9 January 2007	1 May 2008
12.	France	3 February 1998	21 August 2000
13.	Georgia	17 September 1996	24 April 1998
14.	Germany	22 September 1992	10 May 1995
15.	Greece	26 June 2002	Not effective yet
16.	Hungary	7 December 1994	3 March 1996
17.	India	9 December 1996	26 July 2001
18.	Iran	16 January 1996	3 April 1999
19.	Israel	27 December 1995	19 February 1997
20.	Japan	23 October 2014	25 October 2015
21.	Jordan	29 November 2006	1 July 2008
22.	Kuwait	31 August 1997	1 May 2000

No.	Country	Signing date	Effective date
23.	Kyrgyzstan	8 April 1997	1 June 2005
24.	Latvia	8 October 2004	21 April 2006
25.	Lithuania	15 September 1994	25 May 1995
26.	Malaysia	27 May 1996	3 August 1997
27.	Mongolia	2 December 1994	13 May 1995
28.	Netherlands	27 November 2002	1 August 2007
29.	North Macedonia	2 July 2012	21 May 2016
30.	Pakistan	8 December 2003	7 December 2009
31.	Poland	21 September 1994	25 May 1995
32.	Qatar	4 March 2008	Not effective yet
33.	Republic of Korea	20 March 1996	26 December 1996
34.	Romania	2 March 2010	17 July 2013
35.	Russia	6 July 1998	11 February 2000

No.	Country	Signing date	Effective date
36.	Serbia	7 October 2010	7 December 2015
37.	Singapore	21 November 2018	Not effective yet
38.	Slovakia	21 November 2007	29 June 2016
39.	Spain	23 March 1994	22 June 1995
40.	Sweden	25 October 2004	1 August 2006
41.	Switzerland	12 May 1994	13 May 1998
42.	Tajikistan	16 December 1999	20 November 2001
43.	Türkiye	1 May 1992	10 August 1995
44.	Ukraine	17 September 1994	4 August 1995
45.	United Arab Emirates	24 March 2018	Not effective yet
46.	UK	23 November 1995	9 January 1997
47.	US	19 May 1992	12 January 1994

No.	Country	Signing date	Effective date
48.	Uzbekistan	2 June 1997	8 September 1997
49.	Vietnam	15 September 2009	7 April 2014

2.5 Foreign investment restrictions

Certain industries are subject to foreign ownership restrictions whereby a foreign shareholder may not own more than a certain specified percentage of a company. For example, foreign companies may not own more than 20% of the shares in local mass media companies.

3 The WTO and Eurasian Economic Union

3.1 The WTO

Kazakhstan became the 162nd member of the WTO on 30 November 2015.⁷

Kazakhstan's commitments and obligations are established in the Protocol of Accession of the Republic of Kazakhstan to the World Trade Organization dated 27 July 2015 and the Working Party Report on the Accession of the Republic of Kazakhstan to the World Trade Organization dated 23 June 2015.

⁷ The WTO is an international organization that establishes international trade rules between countries. The WTO has issued a set of international agreements that most countries of the world have negotiated and signed. The main aim of the WTO is to ensure that national and foreign manufacturers have equal access to local markets of goods and services.

The WTO accession documents have introduced a number of important changes, including the following:

- (i) Kazakhstan undertook to gradually decrease its customs duties so that the average duty for imported products will be 6.5%.
- (ii) Kazakhstan made market access commitments in a number of areas, including financial services, construction, medical services, management consulting, telecommunications and transportation.⁸
- (iii) Kazakhstani law has been amended to remove preferences for local manufacturers and service providers in certain areas (e.g., state procurement) and softened these preferences in other areas (e.g., procurement by oil and gas and mining companies).
- (iv) With specific limited exceptions, Kazakhstan undertook to grant most-favored-nation treatment to companies that were established in other WTO member countries and that intend to operate (or already operate) in Kazakhstan.
- (v) Foreign banks and insurance companies are allowed to set up, subject to compliance with certain requirements, branches in Kazakhstan (previously, banks and insurance companies could only operate in Kazakhstan in the form of a Kazakhstani joint-stock company (JSC)).
- (vi) Companies that are established in WTO member countries may send personnel to their Kazakhstani branches and subsidiaries using an intra-corporate transfer procedure, which provides for more relaxed labor ratio requirements than those that would otherwise apply.

⁸ In some of these areas (e.g., construction), the commitments would only be in effect if a Kazakhstani legal entity is set to perform the relevant activities.

3.2 The Eurasian Economic Union

In 2008, Belarus, Kazakhstan and Russia formed a customs union with the primary aim of eliminating interstate customs borders and customs clearances.

With effect from 1 January 2015, the customs union was transformed into the Eurasian Economic Union (EEU). The EEU aims to promote cooperation among member countries in a number of areas, including the harmonization of macroeconomic policies, payment of indirect taxes in mutual trade, customs matters, nontariff regulations (such as import licenses and certificates of compliance), financial matters, intellectual property, procurement, energy, labor migration and transportation. In addition to Kazakhstan, the current members of the EEU are Armenia, Belarus, Kyrgyzstan and Russia.

The EEU regulations provide for the following, among other things:

- (i) Customs duties and customs clearance do not apply within the EEU (however, there is no exemption from import VAT) and there is a common customs tariff with respect to third countries.⁹
- (ii) A number of product permits (e.g., an import license or a certificate of compliance) issued in one EEU country should be automatically recognized in the other EEU countries.
- (iii) Companies incorporated in one EEU country should enjoy, with limited exceptions, both national treatment and most-favored-nation treatment in the other EEU countries.

⁹ The common customs tariff of the EEU established higher average final rates than the rates pursuant to Kazakhstan's WTO accession commitments. To reach a balance in trading such products within the EEU, Kazakhstan made a commitment to the EEU whereby all products imported to Kazakhstan at lower import customs duty rates should stay within Kazakhstan and they cannot be exported to other EEU countries.

- (iv) In certain areas (e.g., construction), there will be a single market within the EEU, meaning (among other things) that operational licenses issued to companies in one EEU country will be automatically recognized in the other EEU countries.
- (v) Citizens of one EEU country do not need work permits to work in the other EEU countries and they are not subject to other local labor restrictions (such as mandatory ratios of foreign personnel to local personnel).

The EEU has four supranational bodies:

- (i) The Supreme Eurasian Economic Council consists of heads of members states. It is responsible for defining the strategy of the EEU, the approval of its budgets and certain other matters.
- (ii) The Eurasian Intergovernmental Council consists of heads of governments of members states. It is responsible for implementing and controlling the performance of the EEU Treaty and certain other matters.
- (iii) The Eurasian Economic Commission consists of representatives of each member state (one per member). It is a standing body implementing the EEU regulations on a daily basis.
- (iv) The Court of the Eurasian Economic Union consists of two judges from each country. It hears disputes among member states relating to EEU regulations and claims by private companies against decisions of the Eurasian Economic Commission.

The EEU has free trade agreements with Iran, Vietnam and Serbia. These agreements provide for, among other things, customs duty exemptions in relation to certain types of products.

4 Privatization

4.1 General

The Law on State Property¹⁰ primarily regulates the privatization of state-owned assets.

Although the law allows (with certain exceptions) the privatization of any types of assets. Typically, only shares in Kazakhstani companies are privatized.

The Committee for State Property and Privatization of the Ministry of Finance privatizes assets owned by the state (as a whole). Regional executive authorities privatize assets owned by various regions of Kazakhstan.

Technically, only the sale of assets owned directly by the state (or its regions) is considered privatization. A sale of shares by quasi-state entities (i.e., private corporations in which there is a substantial state shareholding) is not considered privatization and is governed by the rules adopted by such entities.

4.2 Privatization procedure

The most typical forms of privatization are as follows:

- (i) Electronic trades in the form of either an auction (where all bids are publicly available) or a tender (where bids are confidential), with the winner being determined solely based on the best offered price
- (ii) “Two-stage procedure” (to be approved by the government) with the involvement of an independent sales consultant, negotiations with potential investors and the selection of the

¹⁰ The Law on State Property dated 1 March 2011, as amended.

winner from shortlisted participants based on the best offered terms

- (iii) Direct sale in relation to (a) assets that had previously been leased or transferred into the seller's trust management, and (b) assets that the government decides to sell to a strategic investor

The rules applicable to sales by quasi-state entities (e.g., National Welfare Fund Samruk-Kazyna (“**Samruk-Kazyna**”)) are more flexible in terms of the possible sale forms and determination of the initial price. However, the usual sale forms and basic requirements are similar to those that apply in privatization.

5 Establishing a legal presence

To create a legal presence in Kazakhstan, foreign investors may do one of the following:

- Establish a branch or representative office.
- Establish a Kazakhstani legal entity that is either entirely foreign-owned or co-owned as a joint venture with a Kazakhstani partner.

5.1 Representative offices and branches of foreign legal entities

5.1.1 Legal form

Representative offices and branches of foreign legal entities may be established to represent the interests of foreign legal entities in Kazakhstan.

A representative office is a division of a foreign legal entity and is not entitled to conduct business activities that generate income in Kazakhstan. It can only carry out marketing and advertising activities, as well as other preparatory and auxiliary activities.

A branch is a division of a foreign legal entity that may fulfill all or part of the functions of its parent company, including activities generating income. Both representative offices and branches act based on “regulations” (similar to a charter or bylaws), and an individual authorized by the parent company under a power of attorney manages them.

Each corporate form has a number of advantages and disadvantages. For example, unlike a Kazakhstani legal entity, the legal form of a branch or representative office does not provide the benefit of limited liability for the parent company for obligations incurred by the branch or the representative office. In addition, a Kazakhstani entity typically provides dividend withholding tax benefits that are not available for branches. However, unlike Kazakhstani legal entities, representative offices and branches of foreign companies have certain advantages, for example, in relation to payments in foreign currencies, labor ratios, etc.

5.1.2 Management and capitalization

A sole head manages a branch or representative office. This is an individual acting based on a power of attorney issued by the parent company. There are no other corporate bodies in a branch or representative office.

No capitalization requirements apply to a branch or representative office.

5.1.3 Registration and post-registration formalities

Representative offices and branches must be registered with the relevant regional subdivisions of the state-owned corporation Government for Citizens NJSC. The general fee for the state registration of a representative office or branch is KZT 18,382 (approximately USD 40).

To register a branch or representative office, the parent company must submit the following documents to the registration authority:

- Application to establish the branch or representative office (according to a standard form)
- Apostilled (or legalized)¹¹ extract from the trade register or an equivalent document certifying that the parent company is a validly existing legal entity under the legislation of its home country
- Notarized and apostilled copy of parent company's articles of association or an equivalent document
- Notarized and apostilled copy of the document confirming the parent company's tax registration number in the country of incorporation (or an equivalent document)
- Document confirming payment of the state registration fee

In addition, the parent company will need to issue a corporate resolution to establish the branch/representative office, as well as its regulations (bylaws) and a power of attorney to its head. These documents must be notarized and apostilled.

Any document written in a foreign language must be accompanied by a notarized translation in Kazakh and Russian.

¹¹ Apostilles can only be appended to documents originating from those countries that are party to the Convention Abolishing the Requirement of Legalization for Foreign Public Documents dated 5 October 1961. If the documents originate from countries that are not party to this convention, such documents should be legalized with the embassy or consulate of Kazakhstan in the relevant country and by the relevant department of the Ministry of Foreign Affairs in Kazakhstan.

The registration body is required to complete the registration of the representative office or branch and to issue it a registration certificate one business day after it submits all the required documents.

Once a newly established representative office or branch is registered, it must comply with certain post-registration formalities, including the following:

- Registering for VAT (if necessary)¹²
- Opening bank accounts (this may take one to two months due to the stringent know-your-customer (KYC) procedures implemented by local banks)

Branches and representative offices are no longer required to have a corporate seal. In practice, however, the seal is usually obtained anyway.

The overall process (including post-registration procedures) takes approximately two to three months from the date the documents are submitted to the registration body.

5.2 Forming a Kazakhstani legal entity

In general, Kazakhstani law recognizes the following types of legal entities:

- General partnerships
- Limited partnerships
- Limited liability partnerships (LLPs)
- Additional liability partnerships

¹² Registration for VAT purposes is only necessary if a company's turnover over a calendar year exceeds KZT 69 million (approximately USD 149,000). It is, however, generally possible to register on a voluntary basis.

- JSCs

However, only LLPs and JSCs are common.

The principal laws regulating legal entities are the Civil Code,¹³ the Law on Limited and Additional Liability Partnerships¹⁴ and the Law on Joint-Stock Companies.¹⁵

The founding documents of a Kazakhstani legal entity are the foundation agreement (where there is more than one founder) and the charter. In the foundation agreement, the parties (founders) undertake to create a legal entity, set out the scope of their joint activities and the objects of the legal entity and define the terms and conditions for the transfer of their property, if any, to the legal entity (the agreement should also contain certain other information). A legal entity's charter, among other things, must specify its name and address, the procedure for the formation and the competence of its managing bodies, reorganization provisions and the procedure for its termination.

5.3 LLPs

5.3.1 Legal form and number of participants

The LLP is the most frequently used business vehicle in Kazakhstan. One or more individuals or companies may establish it. Despite its name, an LLP is a legal entity that is separate from its founders and has its own liability.

The legal form of an LLP is generally available for any type of business. However, in certain specific areas (e.g., banking and

¹³ The Civil Code of the Republic of Kazakhstan (General Part) dated 27 December 1994 and the Civil Code of the Republic of Kazakhstan (Special Part) dated 1 July 1999, as amended.

¹⁴ The Law on Limited and Additional Liability Partnerships dated 22 April 1998, as amended.

¹⁵ The Law on Joint-Stock Companies dated 13 May 2003, as amended.

insurance), an LLP cannot be used and a JSC should be used instead.

An LLP's charter capital is divided into participation interests as set out in the charter and foundation agreement. Participation interests are not securities and are not subject to securities market regulations. Generally, the participants in an LLP are not themselves directly liable for the LLP's obligations and liabilities. They only bear the risk of losses associated with the LLP's activity to the extent of their contributions.

There are no limits on the maximum number of participants in an LLP. Likewise, a single participant can establish an LLP. However, an LLP may not have as its sole participant another partnership consisting of one person or entity. Other participants in an LLP, with certain limited exceptions, have a preemptive right (right of first refusal) to purchase a participation interest before a participant sells the interest to a third party, at the price offered by the third party.

Anyone intending to acquire a participation interest of at least 50% in an LLP must notify all of the LLP's participants and offer to purchase their interests at a price that is not lower than the price agreed with the potential seller. The other participants may elect to have their interests thus repurchased within a period not exceeding 30 calendar days.

5.3.2 Charter capital

The charter capital consists of contributions of the founding participants.

The initial charter capital may not be less than 100 times the monthly calculation index (MCI)¹⁶ on the date when the founding documents are submitted for state registration. Currently, this minimum amount is

¹⁶ The MCI is an index used to calculate pensions, benefits and other social payments, fines and penalties, tax payments and other payments in accordance with current legislation. The MCI is KZT 3,450, effective 1 January 2023.

equivalent to approximately USD 750 (for small businesses, there is no minimum capital amount).

All participants must pay their contributions to the charter capital in full within the period established by a resolution of the general meeting at which the establishment of the LLP was approved. This period may not exceed one year from the date of registration.

5.3.3 Management structure

The general meeting of participants is the supreme body of an LLP. The LLP must hold a general meeting annually, within three months of the end of each financial year.

The general meeting has exclusive competence with regard to, among other things, the following:

- Amending the LLP's charter, location and name
- Increasing and decreasing the LLP's charter capital
- Establishing the executive body, supervisory council or audit commission and terminating their powers early
- Adopting a resolution on transferring the LLP or its assets into a trust management
- Approving the financial reports and the distribution of profits
- Determining an audit organization to conduct an audit of the LLP's annual financial statements (if such audit is mandatory)
- Participating in other legal entities
- Reorganizing or liquidating the LLP, appointing a liquidation commission and approving the liquidation balance sheet
- Approving the LLP's internal regulations
- Pledging all of the LLP's assets

- Approving transactions whereby the LLP disposes of assets with a balance sheet value of at least 51% of the total balance sheet value of the LLP's assets
- Deciding on the forced buyouts of a participant's share
- Making additional contributions to the LLP's assets
- Approving the procedure and terms of providing information pertaining to the LLP's activity to participants of the LLP and acquirers of participatory interests in the LLP

If there is only one participant, it should exercise the functions of the general meeting by adopting written resolutions.

An LLP's charter can state that other areas fall within the exclusive competence of the general meeting. Regardless of how the competence of the general meeting is defined in the charter, it may consider any matter relating to the LLP. Additionally, it may cancel any decision of lower corporate bodies on matters relating to the LLP's internal matters.

An LLP must have an executive body (collective or individual), responsible for managing its day-to-day business.

An LLP may also have a supervisory council to supervise and control the executive body's activities.

5.3.4 Registration procedure

To establish an LLP, the following documents must be submitted to the relevant subdivisions of the state-owned corporation Government for Citizens NJSC via a public service center or via the e-government portal:¹⁷

¹⁷ The e-government portal may only be used where the founder (whether a company or an individual) has a Kazakhstani business (individual) identification number.

- Application (according to a standard form)
- If one of the founders of the LLP is a foreign legal entity, an apostilled (or legalized) extract from the trade register or any other document certifying that the founder is a validly existing legal entity under the legislation of its home country
- If one of the founders is an individual, a notarized (and, if notarized outside of Kazakhstan, apostilled) copy of their passport
- Document confirming the payment of the state registration fee

An LLP must also have a charter, but it does not need to be submitted for registration purposes.

The fee for the state registration of an LLP that is a large-sized business is KZT 18,382 (approximately USD 40 as of the date of this publication). There is no fee for the state registration of a small- or medium-sized LLP.

Any documents supplied in a foreign language must be accompanied by a notarized translation in Kazakh and Russian.

The appropriate registration body is required to complete the state registration of the LLP and issue a certificate of state registration to the LLP one business day after all documents are submitted. When an application for the state registration of an LLP that is a medium-sized business is submitted via the e-government portal, the state registration should be completed within one hour of the application being submitted.

Once a newly established LLP is registered, it must comply with certain post-registration formalities, including the following:

- Registering for VAT (if necessary)

- Registering any charter capital contribution by a foreign founder with the National Bank (if such contribution exceeds USD 500,000)
- Opening bank accounts (this may take one to two months due to the stringent KYC procedures implemented by local banks)

Additionally, even though there is generally no requirement to have a corporate seal, in practice, it is usually obtained anyway.

The overall process (including post-registration procedures) takes approximately three weeks from the date the documents are submitted to the registration body.

5.4 JSCs

5.4.1 Legal form and number of participants

A JSC is a legal entity that issues shares to raise capital for its activities. Generally, the shareholders of a JSC are not liable for the JSC's obligations. They only bear the risk of losses to the cost of their shares.

A JSC may have an unlimited number of shareholders. Shares in a JSC are freely transferable.

Since the shares in a JSC are regarded as "securities" for the purposes of Kazakhstani securities legislation, a JSC is subject to various additional securities legislation requirements that do not apply to an LLP. These apply at the initial registration of the JSC and on an ongoing basis.

5.4.2 Formation of a JSC

The founders of a JSC may generally include individuals and legal entities (both Kazakhstani and foreign). The law permits an individual or a legal entity to be the sole founder of a JSC.

The founding documents of a JSC are its charter and the foundation agreement (if there are at least two founders). The foundation agreement terminates after the state registration of the share issue.

5.4.3 Charter capital

The minimum charter capital requirement for a JSC is 50,000 times the MCI (approximately USD 373,000 as of the date of this publication). The minimum charter capital must be paid in full within 30 days of the state registration of the JSC.

5.4.4 Shares and other types of securities

A JSC may issue common and preferred shares. Preferred shares may not exceed 25% of the JSC's authorized charter capital.

A common share entitles the shareholder to participate in the general meeting of shareholders and to receive dividends and a portion of the JSC's property in the event of its liquidation. Holders of preferred shares have a priority right to receive dividends before common shareholders at a predetermined guaranteed rate and the right to a portion of the JSC's property remaining after liquidation. However, generally, holders of preferred shares cannot vote at general meetings of shareholders.

With certain limited exceptions, the founders of a JSC may issue a "golden share." The holder of a golden share does not participate in the formation of the charter capital or receive dividends. However, the holder of a golden share has the right to veto resolutions on issues that are specified in the JSC's charter.

A JSC may issue bonds, warrants, options and other types of derivative securities.

5.4.5 Management structure

The general meeting of shareholders is the supreme corporate body of a JSC. The JSC is required to hold a general meeting of

shareholders annually, within five months of the end of each financial year.

The general meeting has exclusive competence over the following, among other things:

- Amendments to the charter
- Establishment of the JSC's board of directors and early termination of its powers
- Increases in the number of authorized shares
- Approval of the JSC's annual financial reports and distribution of the JSC's net income
- Approval of a major transaction that involves disposing of assets, the value of which is 50% or more of the total balance sheet value of the JSC's assets
- Reorganization or liquidation of the JSC, appointment of a liquidation commission and approval of the liquidation balance sheet

If there is only one shareholder, it should exercise the functions of the general meeting by adopting written resolutions.

The board of directors manages the JSC's operations, except for those matters within the exclusive competence of the general meeting of shareholders.

The JSC's executive body manages the daily affairs of the JSC. It can be either a board or a single individual. The executive body implements the decisions of the general meeting of shareholders and the board of directors.

To monitor the financial and business activity of the executive body, the JSC may form an audit commission or elect an internal audit service, which is accountable to the board of directors.

5.4.6 Registration

A JSC must be registered with the Ministry of Justice. The fee for the state registration of a JSC is KZT 18,382 (approximately USD 40 as of the date of this publication).

To register a JSC, the following documents must be submitted to the registration authorities of the Ministry of Justice:

- Application (according to a standard form)
- Resolution of the founder(s) to establish the JSC
- Notarized charter of the JSC
- If one of the founders is a foreign legal entity, an apostilled (or legalized) extract from the trade register or any other document certifying that the founder is a validly existing legal entity under the legislation of its home country
- If one of the founders is an individual, a notarized (and, if notarized outside of Kazakhstan, apostilled) copy of their passport
- Document confirming the payment of the state registration fee

Depending on the type of entity to be established, additional documents may need to be submitted (e.g., the National Bank's consent is required to set up a bank).

Any documents supplied in a foreign language must be accompanied by a notarized translation in Kazakh and Russian.

Within five business days after the submission of all the required documents, the registration body must issue a certificate of the state registration of the JSC.

Once a newly established JSC is registered, it must comply with certain post-registration formalities, including the following:

- Registering for the payment of VAT (if necessary)
- Registering the share issue with the National Bank
- Registering any charter capital contribution with the National Bank (if such contribution exceeds USD 500,000)
- Opening bank accounts (this may take one to two months due to the stringent KYC procedures implemented by local banks)

Additionally, even though there is generally no requirement to have a corporate seal, in practice, it is usually obtained anyway.

The overall process (including post-registration procedures) takes approximately two to three months from the date the documents are submitted to the registration body.

5.5 Astana International Financial Center private company

The Astana International Financial Center (AIFC) has its own types of legal entities that do not exist elsewhere in Kazakhstan. The most common AIFC entity is a private company, which is roughly analogous to an LLP and provides the shareholders with the benefit of limited liability.

One of the main advantages of a private company is that its corporate law is more flexible for complicated joint venture arrangements than elsewhere in Kazakhstan.

In addition, a private company provides certain tax benefits that are not available for non-AIFC companies. Specifically, dividends distributed by a private company or a capital gain from the sale of its shares is exempt from Kazakhstani withholding tax without any conditions or exceptions. In contrast, such exemptions would only apply to non-AIFC companies if the participant (shareholder) has owned its interest (shares) for more than three years; such exemptions would not apply to oil and gas or mining companies.

A private company is not required to have any capital (although, in practice, it is typical to have a capital of USD 100).

The general meeting of shareholders (or a sole shareholder) is the supreme corporate body responsible for the most important matters (such as changing the capital or liquidation). The day-to-day management should be conducted by directors (a private company should have at least one director).

Applications to register private companies are submitted through a special web portal. In addition to responding to questions on the portal, it will be necessary to upload certain documents, including the company's articles of association (unless the shareholders wish to use the standard AIFC articles without any modification). It typically takes the AIFC up to two weeks to process the application and grant the registration.

5.6 Issue and registration of securities

5.6.1 Introduction

The Law on the Securities Market¹⁸ and the Law on Joint-Stock Companies principally regulate the securities market in Kazakhstan. The state authorizes the National Bank to regulate activities on the securities market.

¹⁸ The Law on the Securities Market dated 2 July 2003, as amended.

Under the legislation of Kazakhstan, the following constitute securities:

- Shares and bonds
- Derivatives (as defined in law)
- Securities of foreign issuers
- Mortgage certificates
- Warehouse certificates
- Other types of securities

5.6.2 Issue and placement of securities

Pursuant to the Law on the Securities Market, securities can only be placed after their issuance has been authorized (registered) by the National Bank. Shares can be placed either by subscription (with the price being determined by the company's board of directors) or by conducting an auction.

5.6.3 General disclosure requirements

The Law on Joint-Stock Companies imposes specific reporting and disclosure requirements on JSCs. Among other things, a JSC is required to publish its annual financial statements in the press and disclose information on major transactions it signs. JSCs are also required to disclose certain information to their shareholders, including information on share issues, entering into major and interested party transactions, pledges of 10% or more of their assets and their participation in other legal entities.

In addition, JSCs are required to report the results of their share placements to the National Bank on a regular basis until the shares are fully placed.

5.6.4 Mandatory offer requirements

Anyone intending to acquire 30% or more of the shares in a JSC must notify the JSC. Such notification must contain information on the shares to be acquired, their price and certain other information relevant to the proposed acquisition. Following the receipt of such a notice, the JSC has the right to outbid the proposed offer. If the JSC fails to exercise this right and the purchaser continues with the acquisition, within 15 business days from the date of acquisition, the purchaser must offer to purchase the remaining shareholders' shares at a price no lower than the average market price of the JSC's shares. If the remaining shareholders agree to sell their shares, the purchaser has 30 business days to pay.

5.7 Regulation of the securities market

5.7.1 Activities requiring a license

Legal entities that have obtained a valid license from the regulator of the financial markets (currently, the Agency of the Republic of Kazakhstan for the Regulation and Development of the Financial Market ("**Agency**")) may conduct the following activities on the securities market:

- Brokerage
- Dealing
- Custodial activities
- Portfolio management
- Transfer agent activity
- Clearing activity in transactions with financial instruments
- Organization of trade in securities and other financial instruments

5.7.2 Stock exchanges

Until recently, there was only one licensed stock exchange in Kazakhstan — the Kazakhstan Stock Exchange (KASE). The KASE has approximately 228 companies listed on it.

The securities market received a new impetus with the opening of the Astana International Exchange (AIX) of the AIFC.

6 Licenses, permits and notifications

6.1 Introduction

In recent years, Kazakhstan has undertaken a series of major amendments to its national licensing system. The list of activities requiring special licenses has been shortened and the license application process has been simplified by (i) introducing the one-stop-shop principle for interacting with the licensing authorities, (ii) imposing a uniform time frame for issuing licenses, and (iii) implementing an e-license system allowing applicants to obtain licenses online.

On 16 May 2014, Kazakhstan adopted the new Law on Permits and Notifications (“**Law on Permits**”).¹⁹ The Law on Permits specifies which activities require special state control and authorization.

Regulated activities are subject to the following three-level permit system:

- (i) High-risk activities require licenses (first category permits).
- (ii) Medium-risk activities require permits (second category permits).
- (iii) Low-risk activities require notifications to the relevant authorities.

¹⁹ The Law on Permits and Notifications dated 16 May 2014, as amended.

Generally, foreign entities are subject to the same licensing requirements as local entities.

6.2 Applying for a permit

To apply for a permit, an applicant must submit an application together with other documents specified by law. Generally, the application and required documents should be submitted to the relevant authority via public service centers. It is now also possible to submit documents via the e-government portal.²⁰

An applicant must also pay a licensing fee (which varies depending on the type of permit).

A permit should be issued within 15 business days, although a longer period (up to 30 business days or longer in certain limited cases) is allowed for certain activities (e.g., the use of atomic energy and the import and export of products covered by export control rules).

6.3 Consequences of operating without a permit

Operating without a permit (or without submitting the mandatory notification) may result in administrative and criminal punishments (e.g., fines and the forfeiture of revenues).

In addition, operating without a license constitutes formal grounds for the invalidation of any transactions executed without the proper license.

Further, under the Civil Code, operating without the appropriate license could result in compulsory liquidation.

²⁰ Notifications should also be made via public service centers or via the e-government portal.

7 Taxation

7.1 General

On 25 December 2017, Kazakhstan adopted the Tax Code,²¹ which replaced the earlier Tax Code of 10 December 2008. Most provisions of the new Tax Code came into force on 1 January 2018.

The Tax Code purports to simplify tax administration without increasing the overall tax burden on taxpayers and to revise some of the existing tax preferences and benefits. One of the most important new provisions in the Tax Code is the introduction of the principle of good faith. Pursuant to this principle, (i) a taxpayer is presumed to have acted in good faith, (ii) all uncertainties and ambiguities in tax laws will be interpreted in favor of the taxpayer, and (iii) if the taxpayer relied on clarification issued by the tax authority that subsequently was canceled (or amended), the taxpayer would only be liable for the amount of unpaid taxes, without any default interest or penalties (in practice, however, the tax authorities interpret the rule mentioned in (iii) as only being applicable to a few categories of taxpayers).

The statute of limitations is generally three years after the end of the relevant tax period. However, for certain taxpayers (e.g., oil and gas companies or major businesses), the statute of limitations is five years.

7.2 Tax registration

All Kazakhstani and foreign legal entities that carry out activities in Kazakhstan through a permanent establishment (PE) must register with the tax authorities (a PE includes a branch, office, place of management, the provision of services in Kazakhstan for a certain period and an agent with contract-signing authority). In addition, the registration requirement applies in certain other circumstances (e.g.,

²¹ Code of the Republic of Kazakhstan on Taxes and Other Mandatory Payments to the Budget (Tax Code) dated 25 December 2017, as amended.

where a foreign company owns immovable property or opens a bank account in Kazakhstan).

7.3 Taxes

Taxes payable in Kazakhstan include corporate and individual income taxes, VAT, excise tax, subsoil use taxes, social tax, land tax, property tax, vehicle tax, business registration fees, license fees to conduct certain businesses and certain other fees.

7.4 Income tax

7.4.1 Corporate income tax

The corporate income tax rate for tax residents is 20% of their worldwide income.

The tax base is gross annual income after allowable deductions and adjustments. Deductions may be subject to specific limitations (e.g., there are certain restrictions on deducting interest and travel and entertainment expenses). Losses can generally be carried forward for tax purposes for up to 10 years.

A nonresident that has formed a PE in Kazakhstan is liable for 20% corporate income tax on income attributable to the PE. In addition, it would need to pay branch profit tax at a rate of 15% of the difference between the annual taxable income of the PE and the corporate income tax paid to the state budget. The profits tax of a branch may be reduced (usually to 5%) under double tax treaties signed by Kazakhstan.

7.4.2 Withholding tax

A nonresident that does not have a PE in Kazakhstan is generally subject to withholding tax on Kazakhstan-sourced income at the following rates.

Table 2: Withholding tax rates

Item	Rates
Capital gains, dividends, interest and royalties	15%
Service income and other income from Kazakhstani sources of entities registered in countries that have a preferential tax regime	20%
Insurance premiums payable under risk insurance agreements	15%
Insurance premiums payable under risk reinsurance agreements	5%
International transportation services	5%
Service fees and other income	20%

The Tax Code provides certain important tax benefits on the taxation of cross-border transactions.

First, withholding tax will not apply to dividends paid by local companies to foreign shareholders (participants) where (i) as of the date when the dividends are paid, the recipient has owned shares (participatory interests) in the company for more than three years, (ii) the company paying the dividends has not been involved in oil and gas, mining or other subsoil operations during the period for which dividends are paid, and (iii) no more than 50% of the value of such shares (interest) or share capital of the company paying the dividends derives from the property of local mining or oil and gas companies (or other companies classed as subsoil companies in accordance with the applicable legislation). For the purposes of this exemption, companies

that extract underground water and commonly occurring minerals (e.g., sand) for their own needs are not considered subsoil use companies. In addition, the three-year holding period will not be interrupted by a corporate reorganization (e.g., merger) of the shareholder. From 1 January 2021, this exemption from withholding tax only applies if the company declaring such dividends has already paid corporate income tax on its annual income before distributing the dividends.

The above exemption also applies to local mining and oil and gas companies. Thus, dividends paid by mining and oil and gas companies to foreign shareholders (participants) are exempt from the Kazakhstani withholding tax if (i) as of the date when the dividends are paid, the recipient has owned shares (participatory interests) in the company for more than three years, and (ii) within 12 months prior to the dividend payment date, the company has processed at least 50% of extracted minerals using its own processing (enrichment) facilities or facilities owned by its affiliates. From 1 January 2021, this exemption from withholding tax only applies if the company declaring such dividends has already paid corporate income tax on its annual income before distributing the dividends.

Second, a nonresident without a PE in Kazakhstan will not be taxed on capital gains resulting from a sale of shares (participatory interests) in either local or offshore companies if, as of the date when the shares (participatory interests) are sold, (i) the shares (participatory interests) have been owned for more than three years, (ii) the company whose shares are sold is not involved in oil and gas or mining operations (and is not otherwise classed as a subsoil company in accordance with the applicable legislation), and (iii) no more than 50% of the value of such shares (interest) or share capital of the company whose shares are sold derives from the property of local mining or oil and gas companies (or other companies classed as subsoil companies in accordance with the applicable legislation). For the purposes of this exemption, companies that extract underground water and commonly occurring minerals (e.g., sand) for their own needs are not considered

subsoil use companies. In addition, the three-year holding period will not be interrupted by a corporate reorganization (e.g., merger) of a shareholder.

The above exemptions do not apply to foreign shareholders registered in countries with a preferential tax regime (according to a list approved by the Ministry of Finance). Further, the exemptions do not apply if any of the above conditions are not met.

If the exemptions do not apply, generally the 15% withholding tax will be imposed on dividends or capital gain realized from the sale of shares (for shareholders registered in countries with a preferential tax regime, the applicable rate is 20%). The tax must be withheld by the company paying the dividends or the foreign or local purchaser (for a sale of shares). Relevant double tax treaties may provide relief from this tax.

7.4.3 Personal income tax

With certain limited exceptions, individuals' personal income is taxed at a flat rate of 10%. Residents pay income tax on their worldwide income ("residents" are defined as individuals who spend no less than 183 days in Kazakhstan during any consecutive 12-month period). Nonresidents pay income tax on their income from Kazakhstani sources (in certain situations, this tax does not apply).

Employers are required to withhold income tax and pension fund contributions from salary payments to employees and transfer them to the budget (see Section 7.8 below). Pension fund contributions are not withheld from salary payments to nonresidents.

7.5 Double tax treaties

Many categories of nonresidents' income from Kazakhstani sources are exempt from both corporate and individual income taxes under double tax treaties. Some categories of income are taxable under the treaties at rates lower than those established by the Tax Code. Treaty

benefits generally only apply (i) where income from Kazakhstani sources is received by residents of countries with which Kazakhstan has double tax treaties, and (ii) where such income is not related to a Kazakhstani PE formed by such residents.

To date, Kazakhstan has entered into bilateral treaties to avoid double taxation with 55 countries. Below is a table listing these countries and indicating the reduced rates of income tax applicable under the treaties for certain categories of income.²²

Table 3: Double tax treaties

No.	Country	Dividends ²³ (%)	Interest (%)	Royalties (%)	Branch profit tax (%)
1.	Armenia	10	10	10	5
2.	Austria*	5/10 15	10	10	5

²² Please note that the reduction of income tax rates under most treaties is only permissible upon satisfying certain conditions. For example, the income tax on royalties under most treaties may only be reduced if the recipient is the beneficial owner of royalties. Therefore, the relevant treaty and circumstances must be examined in each case to ascertain whether a certain category of income is subject to taxation at a reduced rate.

²³ Under most double tax treaties, the rate of tax on dividends varies depending on the amount of the charter capital (voting stock, interest, etc.) held directly or indirectly by the recipient of dividends. For example, under the treaty with Belgium, the rate of income tax on dividends is 5% of the gross amount of dividends if the beneficial owner of the dividends directly or indirectly holds at least 10% of the charter capital of the company paying the dividends. In all other cases, the dividends will be taxed at a rate of 15%. Similar examples in the table are marked with an asterisk (*). Please note that some treaties require direct holding while others allow the capital to be held either directly or indirectly.

No.	Country	Dividends ²³ (%)	Interest (%)	Royalties (%)	Branch profit tax (%)
3.	Azerbaijan	10	10	10	2
4.	Belarus	15	10	15	5
5.	Belgium*	5/10 15	10	10	5
6.	Bulgaria	10	10	10	10
7.	Canada*	5/10 15	10	10	5
8.	China	10	10	10	5
9.	Croatia*	5/10	10	10	5
10.	Cyprus*	5/10 15	10	10	5
11.	Czech Republic	10	10	10	5
12.	Estonia*	5/25 15	10	15	5
13.	Finland*	5/10 15	10	10	5
14.	France*	5/10 15	10	15	5

No.	Country	Dividends ²³ (%)	Interest (%)	Royalties (%)	Branch profit tax (%)
15.	Georgia	15	10	10	5
16.	Germany*	5/25 15	10	10	5
17.	Hungary*	5/25 15	10	10	5
18.	India	10	10	10	10
19.	Iran*	5/20 15	10	10	5
20.	Ireland*	5/25 15	10	10	5
21.	Italy*	5/10 15	10	10	5
22.	Japan*	5/10 15	10	10	Not specified
23.	Korea*	5/10 15	10	10	Not specified
24.	Kyrgyzstan	10	10	10	10
25.	Latvia*	5/25 15	10	10	5

No.	Country	Dividends ²³ (%)	Interest (%)	Royalties (%)	Branch profit tax (%)
26.	Lithuania	5/25 15	10	10	5
27.	Luxembourg*	5/10 15	10	10	10
28.	Malaysia	10	10	10	10
29.	Moldova*	10/25 15	10	10	5
30.	Mongolia	10	10	10	10
31.	Netherlands*	5/10 15	10	10	5
32.	North Macedonia	5/25 15	10	10	5
33.	Norway*	5/10 15	10	10	5
34.	Pakistan*	12.5/10 15	12.5	15	Not specified
35.	Poland*	10/20 15	10	10	10
36.	Qatar*	5/10 10	10	10	10

No.	Country	Dividends ²³ (%)	Interest (%)	Royalties (%)	Branch profit tax (%)
37.	Romania	10	10	10	15
38.	Russia	10	10	10	10
39.	Saudi Arabia	5	10	10	Not specified
40.	Serbia*	10/25 15	10	10	10
41.	Singapore	5/25 10	10	10	5
42.	Slovakia*	10/30 10	10	10	5
43.	Slovenia*	10/25 15	10	10	5
44.	Spain*	5/10 15	10	10	5
45.	Sweden*	5/10 15	10	10	5
46.	Switzerland*	5/10 15	10	10	5
47.	Tajikistan*	10/30 15	10	10	10

No.	Country	Dividends ²³ (%)	Interest (%)	Royalties (%)	Branch profit tax (%)
48.	Türkiye	10	10	10	10
49.	Turkmenistan	10	10	10	5
50.	Ukraine*	5/25 15	10	10	5
51.	United Arab Emirates*	5/10 15	10	10	5
52.	UK*	5/10 15	10	10	5
53.	US*	5/10 15	10	10	5
54.	Uzbekistan	10	10	10	15
55.	Vietnam	5/70 15	10	10	5

The application of double tax treaties in Kazakhstan usually requires the foreign company to submit a legalized (apostilled) certificate (or a notarized copy thereof) proving its tax residency in the relevant treaty country to its Kazakhstani counterparty on an annual basis.

In addition, from 2021, the OECD Multilateral Instrument²⁴ took effect for Kazakhstan, following which many of Kazakhstan's tax treaties now incorporate stricter tests for applying treaty benefits. For example, it will be impossible to apply treaty benefits to a transaction if one of its principal purposes was to obtain them. Additionally, it may be difficult (if not impossible) to apply treaty benefits where income is paid to a pure holding company.

7.6 VAT

VAT is charged on the sale of most goods and services in Kazakhstan and on the importation of goods into Kazakhstan. The current rate of VAT is 12%. VAT is chargeable on transactions that take place in Kazakhstan, based on the place of transaction rules.

VAT on a sale must be paid by Kazakhstani legal entities, independent contractors and foreign companies that have a branch or a representative office in Kazakhstan, provided that they are registered as payers of VAT. The obligation to register is triggered when the taxable turnover of the taxpayer in Kazakhstan exceeds 20,000 times the MCI (currently KZT 69 million or approximately USD 160,000 in a calendar year). However, it is possible to register as a payer of VAT on a voluntary basis.

VAT on the importation of goods is payable by importers regardless of their VAT registration status. The rate of import VAT is 12% of the customs value of imported products, which includes customs duties and excises. The export of goods is generally subject to zero-rate VAT.

Under the Tax Code, VAT is not imposed on the lease and sale of land underlying residential buildings and residential buildings themselves (with limited exceptions), certain types of financial services, charter capital contributions and the sale of shares

²⁴ Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting.

(participatory interests). Interest payments under financial leases concluded in accordance with the legislation of Kazakhstan are also exempt from VAT.

Effective from 1 January 2018, only certain categories of taxpayers (e.g., the 300 largest taxpayers) are eligible for a VAT refund (i.e., refund of the excess of input VAT over the output VAT). The Tax Code eliminates the right of all other taxpayers to VAT refunds (but they will continue to be able to credit the input VAT against the output VAT).

Starting from 1 January 2022, foreign suppliers of digital content need to register for VAT purposes in Kazakhstan and pay 12% VAT on their supplies to residents of Kazakhstan.

7.7 Customs duties

Kazakhstan imposes customs duties on the import of goods into Kazakhstan at rates that vary depending on the type of imported goods. They are usually charged on the customs value of the goods.

The importation of goods from certain countries (e.g., from Russia) is exempt from customs duties pursuant to international treaties that have been ratified by Kazakhstan, subject to compliance with the treaty conditions. For example, no customs duties apply within the EEU, which currently comprises Kazakhstan, Russia, Belarus, Armenia and Kyrgyzstan. In addition, within the framework of the EEU, member countries have adopted a common customs code with unified customs rules, a common customs tariff setting and, with limited exceptions, the same rates of import customs duties.

Further, on 30 November 2015, Kazakhstan acceded to the WTO. In accordance with its commitments as a WTO member, Kazakhstan applies import customs duties with respect to certain types of goods at rates lower than those established by the common customs tariff. On 14 October 2015, the EEU adopted the list of goods that are subject to

lower customs duties, which is expected to be expanded gradually in accordance with Kazakhstan's WTO commitments.

Goods imported into Kazakhstan under lower customs duties can only be used in the territory of Kazakhstan and cannot be exported to other member states of the EEU. It is possible, however, to import goods included on the list at the rates of the common customs tariff. In this case, the relevant goods will acquire the status of goods of the EEU and, therefore, they will be allowed to be exported to other member states of the EEU.

7.8 Withholding obligations, social taxes and charges

An employer must withhold personal income tax (see Section 7.4.3 above) and pension fund contributions (which are charged at the rate of 10% of salary, but do not apply to nonresident employees who do not permanently reside in Kazakhstan) from salaries payable to its employees. These payments are paid at the employees' expense.

An employer is required to pay social tax for each of its employees (both local citizens and nonresidents) on the salaries and other income payable to them. The social tax applies at a flat rate of 9.5% (to be increased to 11% in 2025).

In addition to the social tax, employers must pay contributions to the Social Security Fund for each employee. These social security contributions must be paid by the employer at a rate of 3.5% (5% from 1 January 2025) of the income payable to employees (capped at KZT 490,000 or USD 1,000). Social security contributions are deductible from the amounts of social tax.

Both the social tax and social security contributions are paid at the employer's expense.

On 1 March 2016, the new Law on Compulsory Social Medical Insurance became effective, under which employers are required to make compulsory contributions to the Social Medical Insurance Fund

for the benefit of their employees. Employers are required to contribute to the fund at the rate of 3% effective in 2022. These payments will be made at the employer's expense.

In addition, contributions to the Social Medical Insurance Fund will have to be withheld by employers from employees' salaries at the rate of 2%.

For calculating these payments to the fund, an employee's salary will be capped at approximately KZT 700,000 or USD 1,500.

7.9 Subsoil use taxes

7.9.1 General

Prior to 1 January 2009, a subsoil user and the state could enter into either a concession-type subsoil use agreement or a production sharing agreement (PSA). The tax treatment of these agreements was different. It is generally no longer possible to enter into a PSA; a concession agreement is the only type of subsoil use agreement that is available. However, earlier PSAs remain in effect.

Prior to signing, a subsoil use contract must be submitted to the tax authorities for review.

7.9.2 Tax stability of subsoil use contracts

Pursuant to the Tax Code, the following subsoil use agreements have been stabilized for tax purposes, provided that they contain a tax stabilization clause: (a) PSAs that were entered into prior to 1 January 2009 and underwent a review by the tax authorities; and (b) subsoil contracts approved by the president of Kazakhstan.

No tax stability is available for all other subsoil use agreements, including almost all concession agreements.

7.9.3 Specific subsoil use taxes

Specific subsoil use taxes in Kazakhstan are as follows.

A Signature bonus

A signature bonus is a one-off payment to the state for the right to use the subsurface. The initial amounts of this tax are determined in the Tax Code based on estimations of reserves, the economic value of the deposit and certain other factors. The final amount of the signature bonus must be set out in the subsoil use contract.

B Reimbursement of historical costs

Subsoil users are supposed to compensate the state for expenses related to geological exploration and the development of deposits. The amount of expenses to be compensated by subsoil users is determined by the state and stated in a confidential agreement to be entered into between the subsoil user and the state.

C Minerals extraction tax

Minerals extraction tax (MET) is generally payable on the average exchange price of the extracted minerals (as quoted by specified publications). The rates of MET currently range from 0% to 18.5% depending on the type of mineral.

For oil and gas companies, the taxable base of MET is generally the average global price of produced crude oil and gas condensate (as quoted by specified publications). The rates of MET for oil and gas companies currently range from 5% to 18% depending on the amount of oil produced. If oil is sold in Kazakhstan for specified purposes (e.g., to local refineries), MET is reduced by 50%.

D Excess profits tax

Excess profits tax is payable annually on the net income under a specific subsoil contract exceeding 25% of cumulative deductions (for corporate income tax purposes) and certain other expenses. The tax rates range on a sliding scale from 0% to 60%. This tax does not apply to mining companies.

E Alternative tax

Certain categories of subsoil users are entitled to pay alternative tax in lieu of MET, the reimbursement of historical costs and excess profits tax. The tax applies in respect of subsoil users carrying out the exploration and production of hydrocarbons on the continental shelf or deep deposits. The rate of the tax ranges from 0% to 30% (of the difference between the gross annual income and allowable deductions) depending on the global oil prices.

F Rent export tax

Rent export tax is payable by exporters of crude oil, gas condensate and coal, except for companies operating under PSAs. The rates of the rent export tax range from 0% to 32% of the global market price of exported oil (as quoted by specified publications).

7.10 Property and land taxes

Legal entities annually pay property tax in Kazakhstan at the rate of 1.5% of the average annual balance sheet value for accounting purposes of the real property (e.g., buildings) they own.

Owners of land pay land tax in Kazakhstan on an annual basis. The rates of land tax depend on the category of a particular land plot, its location and quality.

7.11 SEZs and investment benefits

The government may establish an SEZ²⁵ (based on a recommendation from the Ministry of Industry and Infrastructure Development) with the aim of accelerating the development of Kazakhstani regions and attracting investment and technology to those regions.

²⁵ There are currently 13 SEZs in Kazakhstan.

The SEZ regime generally provides tax benefits to companies carrying out certain eligible types of activity in the territory of the SEZ (including installing computer software, creating information technologies and producing textile and knitted products). The benefits generally include the following:

- An exemption from corporate income tax
- An exemption from land and property taxes
- An exemption from customs duties and levies for certain eligible goods imported into the SEZ that facilitates the aims of the SEZ

Companies operating within the SEZ are required to maintain separate accounting in respect of income generated from eligible types of activities within the SEZ and other non-SEZ-related income. The exemption from corporate income tax and other tax benefits will only apply in respect of income generated from eligible types of activities within the SEZ.

Each SEZ has its own eligible types of activity approved by the government.

The following entities are not eligible for the tax benefits of an SEZ: subsoil users, entities producing excisable goods and certain others.

Companies operating within an SEZ enjoy tax stability, i.e., such companies will be protected from adverse changes in tax legislation that remove or modify any of the benefits discussed above. Tax stability will apply for the duration of an agreement for carrying out operations within the SEZ, but not more than 10 years.

7.12 Benefits for small and medium-sized enterprises

With certain limited exceptions, legal entities with an income not exceeding approximately KZT 73,628,394 or USD 170,515 over a six-month period and fewer than 30 employees are entitled to pay

corporate income tax and social tax at the aggregate rate of 3% of their income.

If the above entities meet the criteria of small business entities (and certain other criteria), they will be exempt from corporate income tax from 1 January 2020 until 1 January 2023.

In some cases, other tax benefits may be available for small and medium-sized entities.

7.13 Transfer pricing

On 5 July 2008, Kazakhstan adopted a transfer pricing law ("**Transfer Pricing Law**"),²⁶ which took effect on 1 January 2009. The Transfer Pricing Law superseded the country's earlier transfer pricing law.²⁷

This Transfer Pricing Law applies to international business transactions and to certain types of domestic transactions. Transfer pricing control applies in Kazakhstan regardless of whether the parties to a particular transaction are related.

If the tax or customs authorities determine that there is a deviation between the transaction price and the prevailing market price, they may adjust the transaction price accordingly, assess unpaid/underpaid taxes and impose fines and penalties.

The Transfer Pricing Law provides for the following methods of determining market price:

- Comparable uncontrolled price method
- Cost-plus method
- Resale price method

²⁶ The Law on Transfer Pricing dated 5 July 2008, as amended.

²⁷ The Law on State Control Over the Use of Transfer Prices dated 5 January 2001, as amended.

- Profit split method
- Transactional net margin method

Taxpayers are required to keep documentation justifying the prices used in international business transactions.

In line with the OECD BEPS Action 13,²⁸ the Transfer Pricing Law contains rules for transfer pricing documentation incorporating a Master File, Local File and a Country-by-Country Report of revenues, profits, taxes paid and certain aspects of economic activity. While country-by-country reporting has been implemented with retroactive effect from 2016 and currently applies to two national companies,²⁹ the requirements in respect of the submission of the Master File and Local File became effective on 1 January 2019. In particular, Kazakhstani members of multinational groups will be required to provide the tax authorities with certain information (using templates for the Master File and Local File) if they have had controlled transactions and their revenue (or the revenue of the group) exceeds certain thresholds.

8 Currency regulations

8.1 Introduction

Kazakhstan's currency, the tenge, was introduced in 1993. Following the devaluation of the tenge in 2009 and 2014, the exchange rate dropped from approximately KZT 120 to approximately KZT 150 per USD 1 in 2009 and from approximately KZT 150 to approximately KZT 184 per USD 1 in 2014. On 20 August 2015, Kazakhstan canceled the trading band of USD 1 = KZT 185 + KZT 13 / KZT - 15, thus allowing the tenge to float freely. This resulted in a one-day drop

²⁸ This is a set of measures prepared by the OECD to combat tax erosion and profit shifting.

²⁹ I.e., the national welfare fund Samruk-Kazyna and the national management holding Baiterek.

of 23% from KZT 197 to KZT 256.26 per USD 1 on 20 August 2015. As of 1 January 2023, the tenge traded at KZT 462.6580 per USD 1.

8.2 Foreign exchange

In general, Kazakhstan's foreign currency regulations are not overly restrictive. The Currency Law³⁰ is the main piece of legislation governing foreign exchange transactions and the National Bank generally implements currency regulation.

8.2.1 Residents

More stringent currency regulations apply to residents than to nonresidents. One of the principal restrictions is that all payments between residents must be in tenge (with certain limited exceptions). Among other things, residents are generally required to deposit any receipts from foreign currency transactions in their accounts at authorized banks and financial institutions in Kazakhstan.

With certain limited exceptions, residents are required to notify the National Bank when opening bank accounts outside Kazakhstan. This requirement does not apply to (i) individuals, (ii) banks, (iii) branches/representative offices of foreign companies, and (iv) participants of the AIFC, which can open bank accounts with foreign banks without any restrictions or the need to notify the National Bank.

In addition, residents must register the following transactions with nonresidents with the National Bank (with certain limited exceptions) if the payment under such transaction exceeds USD 500,000:

- A loan or commercial credit
- Making a security deposit (for currency control purposes, security deposits are considered loans.)

³⁰ The Law on Currency Regulation and Currency Control dated 2 July 2018, as amended.

- Payment for exclusive intellectual property rights; transfers of money and other property to perform obligations under a joint venture agreement; and transfers of assets into a trust (in Russian, траст) and trust management (in Russian, доверительное управление)
- Operations with securities, participatory interest in the equity capital and derivative financial instruments

8.2.2 Nonresident legal entities

For foreign currency purposes, “nonresidents” are defined as foreign legal entities. Foreign exchange regulations are substantially less restrictive for these entities.

Under the Currency Law (effective from 1 July 2019), the definition of “residents” has been expanded to include branches and representative offices of foreign legal entities if they form a PE for tax purposes in Kazakhstan. Branches automatically form a PE under the Tax Code, whereas representative offices typically do not create a PE. Therefore, from 1 July 2019, foreign branches are generally deemed to be currency residents and are unable to transact with local counterparties in foreign currency. As an exception to this rule, branches (and representative offices) of foreign nonfinancial companies (i.e., oil and gas companies) that are deemed to be nonresidents pursuant to their agreements signed with the government prior to 1 July 2019 will continue to be treated as nonresidents.

8.2.3 Individuals

The approach for resident individuals is slightly more relaxed than that for resident legal entities. However, individuals cannot make payments for business-related transactions without opening an account with an authorized local bank. Resident and nonresident individuals may purchase foreign currency on the domestic foreign currency market without limitation. Residents and nonresidents

importing or exporting foreign or local currency (cash) in excess of USD 10,000 (or the equivalent thereof) must submit a customs declaration for the entire amount of money being imported/exported. This requirement does not apply to the import/export of cash within the territory of the EEU, i.e., within the territories of Kazakhstan, Russia, Kyrgyzstan, Belarus and Armenia. In other words, residents and nonresidents may import cash from one EEU country into another EEU country without any limitation and without submitting a customs declaration.

9 E-commerce

The key legislation that regulates business on the internet is the Law on the Regulation of Commerce dated 12 April 2004 and the Rules for Internal Trade approved by the acting minister of the national economy on 27 March 2015. A number of other laws also pertain to the regulation of e-commerce, including the Law on Personal Data and Its Protection dated 21 May 2013 and the Law on Informatization dated 24 November 2015. The main regulator in the area of e-commerce is the Ministry of Trade and Integration, which, among other things, approves regulations on carrying out e-commerce.

Kazakhstani legislation expressly allows contracts to be concluded electronically (except for contracts that require notarial certification or state registration). A contract can be concluded by means of exchanging electronic documents authenticated by a qualified electronic signature (an electronic key registered with a special certifying center) or by exchanging electronic messages.

Generally, the offer and acceptance must contain the essential terms of the contract, while other terms of the contract may be incorporated by reference to a separate electronic document (e.g., terms and conditions, privacy policy, etc.) located in the relevant information system. The party that uploaded such separate document must ensure unrestricted access to that document during the term of the contract.

Currently, no specific rules explicitly govern advertising on the internet. Such advertising is subject to the general rules applicable to other advertising channels, including the prohibition of false/unethical advertisement and rules relevant to the advertisement of particular products (e.g., restricted advertisement of gambling, tobacco and alcohol). Generally, adverts in Kazakhstan must be distributed in Kazakh (and, where necessary, in Russian and/or other languages), but this restriction does not apply to advertising on the internet.

10 Employment

10.1 Introduction

The Labor Code³¹ regulates the employment of nationals and foreign citizens in Kazakhstan.

Under the Labor Code, labor relations are regulated by employment agreements and, if applicable, collective bargaining agreements.

Employment contracts must be in writing and must conform to the minimum prescribed standards.

10.2 Freedom to employ

Generally, foreign and domestic companies may hire employees directly, without the use of employment agencies. However, the Law on Employment of the Population (“**Law on Employment**”)³² requires that the local employment center be notified of the dismissal of staff in certain cases (e.g., staff redundancy). Local employment centers are territorial subdivisions of the Ministry of Labor and Social Protection of the Population.

³¹ The Labor Code of the Republic of Kazakhstan, Law No. 414-V 3PK dated 23 November 2016, as amended.

³² The Law on Employment of the Population dated 6 April 2016, as amended.

10.3 Employer's obligations

An employer must comply with a number of obligations toward its employees, including the provision of a workplace that complies with the regulations. In addition, an employer must insure its employees against work-related accidents.

10.4 Employment term

Employment agreements may be concluded for a fixed or indefinite term. Fixed-term agreements may not be executed for less than one year (except if the work is of a short-term nature, if it is necessary to replace temporarily absent employees or if the employee is hired for a particular project). A fixed-term employment agreement may be extended two times, each for a fixed term of no less than one year. Further extension will make it indefinite-term employment.

An employment agreement may establish a probationary period that may not exceed three months (six months for a number of managing positions). An employment agreement may be terminated by sending the employee a notification stating the reasons for dismissal at any time before the probation ends.

10.5 Dismissal

Kazakhstan does not follow the dismiss-at-will concept and dismissing an employee can be difficult. An exception is CEOs, who can be dismissed by a resolution of the owner (or shareholders) of a company.

An employer has three options to terminate an employment agreement: (i) termination by mutual consent; (ii) termination at the employee's initiative; or (iii) termination at the employer's initiative.

Termination by mutual consent usually requires the employer and employee to execute a termination agreement. Executing a termination agreement helps mitigate the risk of an employee filing a successful claim in court to be restored to their former position.

In the case of termination at the employee's initiative, an employee should give the employer one month's prior written notice.

For termination at the employer's initiative, the Labor Code provides special conditions and restrictions. An employer can only dismiss an employee at its own initiative if there are serious grounds such as habitual absence, theft, repeated disciplinary violations or intoxication. However, some exceptions to this include the liquidation of the employer (this option does not apply to the liquidation of a branch or representative office), staff redundancy, inability to perform the duties required by the position, refusal to accept changes in the conditions of employment proposed by the employer, and disclosure of confidential information relating to the employer. If the reason for dismissal is the liquidation of the employer or staff redundancy, an employer must pay the employees compensation of an average month's wages.

Additionally, an employer is entitled to dismiss an employee who has reached the pension age. Compensation set by the employment contract or collective agreement or act of the employer should be paid to the employee and the employee should be notified at least one month in advance.

10.6 Minimum wage and salary

Generally, an employer and employee negotiate a salary amount. However, a salary cannot be lower than the minimum monthly salary set by the authorities on an annual basis. The minimum monthly salary for 2023 is KZT 70,000 (approximately USD 150).

10.7 Working hours

The regular working week is five days (40 hours). The aggregate amount of permitted overtime is limited to 12 hours a month, overtime on any given day is limited to two hours and the maximum annual overtime hours should not exceed 120 hours. Overtime work, as well as work at night and on official holidays, must be paid for at a rate of at least 150% of the regular wage.

10.8 Holidays

There are nine official holidays in Kazakhstan. The minimum paid annual leave is 24 calendar days (excluding official holidays). Additional vacation days should be provided for (i) employees working in dangerous or hazardous conditions, and (ii) employees who are physically disabled.

10.9 Sick leave

Employees are compensated for temporary illness/incapacity to work up to 15 MCI (approximately USD 115) per month as sick leave compensation, to be paid by the employer.

10.10 Maternity and childcare leave

Maternity leave for up to 126 (or in some cases, 140) days is paid by the Social Security Fund, based on an employee's average monthly salary. An employee is also entitled to three years of unpaid childcare leave. Employers must provide an employee with maternity leave and childcare leave.

10.11 Cost of employment

Employers are required to pay social tax and social security contributions as described in Section 7.8 above.

10.12 Withholding obligations

Employers are obliged to withhold individual income tax and pension fund contributions for their employees (see Section 7.8 above).

10.13 Payment in foreign currency

Salary should be paid in local currency to both local and foreign employees. It is, however, possible to include an indexation formula in the employment agreement to adjust salary paid in local currency to an exchange rate for any other currency.

10.14 Vacancies

Pursuant to the Labor Code, an employer must notify the local labor department of any vacancies within three business days of their opening. The labor department can then send applicable candidates to be interviewed for the positions. The employer must interview these candidates and inform the labor department of its decision within five business days.

10.15 Foreign workers in Kazakhstan

10.15.1 Policy

The Law on Employment and the Rules on Hiring Foreign Workers³³ regulate the use of foreign labor in Kazakhstan. These laws are intended to maximize the employment of Kazakhstani citizens.

10.15.2 Work permits

Generally, employers (including resident legal entities and branches and representative offices of foreign legal entities) engaging foreign employees in Kazakhstan must obtain a work permit for each foreign employee. A business visa does not provide an exception to this rule since a foreign employee with a work permit should have a work visa and not a business visa. Therefore, an employer should only enter into an employment agreement with a foreign employee after obtaining a work permit.

A permit is not required for the following: (i) the heads of representative offices or branches of foreign legal entities and the heads of local companies with 100% foreign participation; (ii) employees who are on business trips in Kazakhstan for a term not exceeding 120 days during one calendar year; (iii) heads of

³³ Order of the Acting Minister of Healthcare and Social Development of the Republic of Kazakhstan No. 559 “On Approval of the Rules and Terms of Issuance and/or Extension of the Permits for Employers to Attract a Foreign Labor Force as well as of Conducting Intra-Corporate Transfers” dated 27 June 2016, as amended.

companies that have entered into contracts with the government for a sum of over USD 50 million or investment contracts in priority areas; (iv) Russian, Belarusian and Armenian citizens; and (v) certain others.

If (i) a foreign entity sends personnel to work for a counterparty based in Kazakhstan for more than 120 days and (ii) the foreign entity does not have a legal presence in Kazakhstan, the local counterparty must obtain the relevant work permits.

Permits are divided into four categories:

1. Category 1: top managers and their deputies
2. Category 2: structural department heads
3. Category 3: managers and highly qualified specialists
4. Category 4: highly qualified workers

Permits are issued to a particular person (as opposed to a position) for one year. Category 1 work permits can be extended an unlimited number of times.

The procedure for obtaining work permits consists of the following steps:

- The employer should submit an application and supporting documents consisting of the following to the local labor department:
 - Information on the ratio of local to foreign employees (which should not be less than 70% local employees to 30% foreign employees among managing employees (director, deputies and heads of departments))
 - Copies of the employee's passport

- Notarized and apostilled copies of the employee's diplomas, certificates of education and other documents confirming their educational level
- Notarized and apostilled copies of the labor record book or other documents confirming the employee's experience in this field, with written confirmation of work experience on paper with the letterhead of the previous employer or other confirmation documents recognized in Kazakhstan
- The local authorities will review the documents within seven business days and decide whether to issue the work permit. By the end of the next business day, the local authorities should notify the employer of their decision.
- If a work permit is granted, within 10 business days, the employer must provide the local authorities with a document confirming payment of the state fee for the issuance of the work permit (up to approximately USD 3,850).
- Within the next two business days, the authorities issue the work permit.

In practice, the process may take longer than required by the law. It is usual for the process to take up to two months.

10.15.3 Foreign labor quotas requirements

Under the Law on Employment and other labor legislation, the number of work permits available for foreign nationals is subject to a quota. The quota for 2023 is 22,260 work permits.

11 Property rights

11.1 Introduction

The Land Code³⁴ permits the private ownership of land. It is relatively favorable to foreign investors, permitting foreign individuals and foreign legal entities to acquire certain interests in land.

11.2 Limitations on land ownership

Kazakhstani law recognizes, among others, the following types of interests in land: right of ownership, right of permanent land use, and right of temporary land use and easements.

Essentially, only Kazakhstani citizens and local legal entities³⁵ may privately own plots of farmland. However, foreign legal entities and foreign citizens can own land designated for industrial and residential use, and they can lease all other categories of land. However, foreign legal entities cannot lease farmland.

The Land Code prohibits the private ownership of certain types of land, e.g., land allocated for specially protected territories and public use in inhabited localities.

Land use rights may be permanent³⁶ or temporary,³⁷ alienable or inalienable, subject to payment or free of charge. A land user may sell, mortgage or otherwise dispose of its land use rights received from the state (limitations apply to farmland). Land use rights may be mortgaged or encumbered in other ways. However, in all cases, the title to land held under land use rights (as opposed to privately owned land) belongs to the state and it cannot be sold or otherwise disposed

³⁴ The Land Code of the Republic of Kazakhstan dated 20 June 2003.

³⁵ Local legal entities with foreign ownership exceeding 50% cannot own farmland.

³⁶ Only state legal entities of Kazakhstan can hold land under the right of permanent use.

³⁷ Temporary land use rights may be short-term (up to five years) or long-term (from five to 49 years).

of by the title holder without the state's consent. However, a land use holder may "buy out" its land use rights from the state and it will then have the right to dispose of its rights to that land plot without the state's prior consent (although it must notify the state about the disposal). In the event of a right holder's liquidation, its legal successor will keep the land use rights until they expire. The holder of the land use rights must pay rent to the state based on a land use agreement (usually on a quarterly basis). Normally, rent is determined based on rates established by the state registry, which depend on the land's category and value.

11.3 Land transfers

Generally, under local law, title to a land plot and title to the structures located on it are inseparable, and one cannot exist without the other.

Most real estate rights and transactions with real estate (including land ownership rights and rights to use land for a period equal to or exceeding one year) must be registered with the registration authorities within the Ministry of Justice.³⁸ Rights to immovable property only come into force after they are registered. If an agreement documenting a transaction is notarized, any party to that agreement can apply for registration or the notary can carry out the registration. If the transaction is not notarized, both parties must appear before the registration authorities. In the former case, the parties usually agree which party will be responsible for registration. If the responsible party fails to register the relevant right, the courts can order it to do so. Failure to register within the period specified in the law triggers administrative sanctions.

³⁸ The Law on State Registration of Rights to Immovable Property and Transactions with Them dated 26 July 2007, as amended.

11.4 Buildings and apartments

Foreign companies can own nonresidential and residential buildings and apartments. Under local law,³⁹ foreign citizens can own nonresidential premises (except for certain strategic objects), and those holding a Kazakhstani residence permit can own both nonresidential and residential premises. Rights to real estate (including buildings and apartments), including rights to use/lease buildings/apartments for a period equal to or exceeding one year and related transactions must be registered with the applicable registration authorities under the Ministry of Justice.

12 Language policy

12.1 General

Under the Constitution and the Law on Languages,⁴⁰ the state language is Kazakh. This is the official language of administration, legislation, court proceedings and record-keeping. However, the Russian language may be used officially on an equal basis with Kazakh.

Written agreements executed between Kazakhstani parties must be in both Kazakh and Russian. Written agreements between a Kazakhstani party and a foreign legal entity or a foreign individual must be in Kazakh and a language chosen by the parties. In practice, Russian is the language of choice used for most contracts and Kazakh is not commonly used. Current government policy, however, is to promote the use of Kazakh.

³⁹ The Law on the Legal Status of Foreigners dated 19 June 1995, as amended.

⁴⁰ The Law on Languages in the Republic of Kazakhstan dated 11 July 1997, as amended.

Letterheads, signs, announcements, advertisements, price lists, price tags and other visual information must be in Kazakh, and, where necessary, may be in Russian and/or other languages.

12.2 Labeling

Under Kazakhstani labeling requirements, importing and selling certain goods without certain minimum information (i.e., name of goods, country of origin, date of production and name of the applicable standard) in both Kazakh and Russian are prohibited.

13 Civil legislation

Kazakhstan is a civil law, not a common law, country. As such, the law is statute-based, not judge-made. The courts do not apply precedents, but interpret and apply the rules of the Constitution, laws, subsidiary legislation and international treaties. International treaties override domestic legislation (except for the Constitution) in the event of discrepancies. Laws are interpreted strictly. Where there is no relevant law governing a specific matter, the courts apply the provisions of analogous laws and, in the absence of any analogous laws, apply the general principles and spirit of the law.

The Civil Code is the cornerstone of civil law in Kazakhstan. It consists of the General Part and the Special Part.

The General Part of the Civil Code regulates legal entities, ownership rights, transactions, securities and obligations. It also guarantees the right to freedom of contract and grants guarantees against arbitrary interference in private matters and freedom of entrepreneurial activity. Under the Civil Code, generally, foreign investors enjoy the same rights and obligations as citizens and legal entities of Kazakhstan, unless otherwise provided by law.

The Special Part of the Civil Code deals with specific types of contracts such as sale and purchase, leases, loans, commission agreements, agency agreements and insurance agreements. In

addition, the Special Part regulates intellectual property, inheritance matters and noncontractual damages, and sets out conflict-of-laws rules.

In addition to the Civil Code, Kazakhstan has specific laws regulating different types of civil law matters (e.g., the Financial Lease Law,⁴¹ the Franchising Law⁴² and the Bankruptcy Law).⁴³ However, in the event of any discrepancies between such laws and the Civil Code, generally, the Civil Code will prevail.

With certain limited exceptions, the Civil Code permits foreign law to govern a contract between a Kazakhstani company and its foreign counterparty. In contrast, Kazakhstani law must govern contracts between two Kazakhstani companies.

14 Banking and insurance

14.1 Description of the banking system

The Law on Banks and Banking Activities⁴⁴ and the Law on the National Bank,⁴⁵ among other laws, regulate the banking industry in Kazakhstan.

Kazakhstan has a two-tier banking system. The National Bank is the first tier and the remaining banks (except for the Development Bank of Kazakhstan, which has special legal status) are the second tier.

The National Bank is the central bank of Kazakhstan. It is an independent legal entity with a charter capital of no less than KZT 20

⁴¹ The Law on Finance Lease dated 5 July 2000, as amended.

⁴² The Law on Complex Business Licenses (Franchises) dated 24 June 2002, as amended.

⁴³ The Law on Rehabilitation and Bankruptcy dated 7 March 2014, as amended.

⁴⁴ The Law on Banks and Banking Activities in the Republic of Kazakhstan dated 31 August 1995, as amended.

⁴⁵ The Law on the National Bank of the Republic of Kazakhstan dated 30 March 1995, as amended.

billion and it reports to the president of Kazakhstan. The president appoints the chair of the National Bank with the consent of the Senate (upper chamber of the Parliament) and the deputy chairs upon the chair's recommendation. The president approves the National Bank's annual reports and has the right to demand any information relating to its activity.

The principal task of the National Bank is to control inflation. The National Bank is empowered to develop and conduct credit and monetary policy, organize the functioning of payment systems, conduct currency regulation and currency control, and ensure the stability of the financial system.

The primary authority for supervising and regulating banks and other financial institutions is the Agency. Among other supervisory functions, the Agency has the following responsibilities regarding banks in Kazakhstan: to issue permits for their creation, issue banking licenses, approve prudential requirements for their activities (e.g., capital adequacy requirements, credit limits and limits on certain types of transactions) and inspect their operations.

As of 1 January 2022, 21 second-tier banks were registered in Kazakhstan, including one state-owned bank, the Housing Construction Savings Bank of Kazakhstan,⁴⁶ one Islamic bank (Al Hilal Bank) and 14 banks with foreign participation (e.g., Citibank Kazakhstan). The regulated capital of all commercial second-tier banks was KZT 5,308,000,000,000 and the assets were KZT 37,622,000,000,000.

14.2 Licensing

All banking activities — including the acceptance of deposits, maintenance of correspondent accounts, cash operations, money

⁴⁶ There is also the state-owned Development Bank of Kazakhstan, which has special legal status. Technically, it is not considered a second-tier bank.

transfers, discounting operations and loans — are subject to licensing by the Agency.

14.3 Standards for banks

The Agency establishes requirements for banks — including minimum capital requirements and capital adequacy requirements — and supervises them. Currently, the minimum amount of share capital and regulatory (own) capital for newly established banks is KZT 10 billion.

Most of the principles elaborated by the Basel Committee on Banking Regulation and Supervision, including the Basel III capital and liquidity requirements, are implemented by the National Bank through its various regulations. Banks prepare their financial statements in accordance with international accounting standards.

The appointment of senior management is subject to the Agency's approval. Senior managers and other bank personnel are also subject to certain mandatory standards.

14.4 Shareholding in banks

Any acquisition of 10% of the voting shares in a Kazakhstani bank requires the Agency's prior approval. Foreign shareholders holding 10% or more of a bank's shares must meet a required minimum rating. Companies established in certain listed countries (e.g., the British Virgin Islands) are prohibited from owning (directly or indirectly) any shares in Kazakhstani banks. Shareholders of a financially weak bank that have 10% or more of the voting shares may be required by the Agency to take certain actions to improve the bank's financial position. Shareholders with 25% or more of the voting shares are obligated to recapitalize the bank if there is a capital shortfall.

Since 16 December 2020, foreign banks have been allowed to operate in Kazakhstan through their branch offices (subject to the local licensing requirements and compliance with certain other conditions). This development did not exist before 16 December 2020,

as foreign banks were not permitted to operate through branches and they were required to set up a local subsidiary to operate in Kazakhstan.

14.5 Deposit guarantee system

All second-tier banks (except Islamic banks) that have a license to accept deposits and to open and maintain individuals' bank accounts must provide collective insurance for individual deposits. This insurance is referred to as the mandatory deposit guarantee system. All Kazakhstani banks that hold a license to accept deposits must participate in the system. However, only a certain amount of individual savings is covered by this system.

14.6 Liquidation and reorganization of banks

Upon a court order or a bank's voluntary decision, banks may be reorganized or liquidated. However, voluntary reorganization or liquidation requires the Agency's permission. If a bank is insolvent, it will be liquidated under specific bank liquidation rules, rather than under the generally applicable bankruptcy legislation.

According to legislation, banks can restructure their liabilities with the Agency's permission and under court supervision. As a result, three Kazakhstani banks (BTA Bank, Alliance Bank and Temir Bank) were successfully restructured in the past.

14.7 Nonbanking activity of banks

Banks may carry out strictly limited types of nonbanking activities, including acting as brokers and dealers. This is also subject to licensing by the Agency.

14.8 Insurance

The main statute regulating the insurance industry in Kazakhstan is the Insurance Law.⁴⁷

Subject to limited exceptions, only a licensed resident insurer can insure the property interests of a legal entity in Kazakhstan and the interests of a Kazakhstani resident individual. The Agency issues licenses for insurance activity and establishes minimum capital requirements and prudential standards for insurers, including solvency and financial stability standards.

Kazakhstani resident insurers may reinsure risks with nonresident reinsurers, either directly or through foreign brokers.

Nonresident insurance (reinsurance) companies may open representative offices without the Agency's approval (although these representative offices cannot carry out any business activity in Kazakhstan). However, they must notify the Agency about opening the office. Since 16 December 2020, nonresident insurance (reinsurance) companies have been allowed to establish branch offices in Kazakhstan if they comply with certain conditions and obtain the Agency's approval. Nonresident legal entities and individuals (except legal entities registered in certain offshore jurisdictions, such as the British Virgin Islands) may own shares in local insurance companies. This restriction does not apply to insurance companies that are subsidiaries of foreign insurance (reinsurance) companies with an international credit rating of BBB or better.

Insurance brokerage is subject to licensing by the Agency, but the activity of insurance agents is not. Special conditions and rules are established for resident and nonresident individuals and legal entities holding 10% or more of the voting shares of a local insurance company.

⁴⁷ The Law on Insurance Activities dated 18 December 2000, as amended.

15 The AIFC

1. On 1 January 2018, the AIFC started operating in Kazakhstan. Essentially, the AIFC is a financial free zone situated in Astana, Kazakhstan's capital. It is modeled on the Dubai International Financial Center and has a separate legal regime based on the principles of English common law.
2. The AIFC was established to further former President Nazarbayev's Plan of the Nation "100 Concrete Steps," designed to implement five institutional reforms to support the country's ambition to join the 30 most developed countries in the world by 2050. Specifically, the purpose of the AIFC is to develop the financial services industry and to create a favorable environment for businesses to operate in.
3. To achieve its purpose, the AIFC offers several important benefits for investors intending to operate within the AIFC. Such benefits include an exemption from corporate income tax (20%) for financial services companies and an exemption from personal income tax (10%) for employees of such companies. Such exemptions will apply until 1 January 2066. In addition, there is a simplified migration and employment regime for foreign individuals, as well as simplified rules regarding currency operations carried out by companies registered in the AIFC.
4. The AIFC has its own judicial system (staffed with international judges), which is independent from the judicial system of the rest of Kazakhstan, and international arbitration center.
5. The AIFC also has its own stock exchange — the AIX. It is intended that the AIX will serve as a platform for the state's major privatization program, i.e., the privatization of large

state-controlled companies will be in the form of IPOs on the AIX.

6. Presently, more than 1,700 companies from 71 countries are registered on the AIFC. Such companies include both financial and nonfinancial companies (e.g., a representative office of the China Development Bank, a branch of China Construction Bank Corporation, a representative office of the Hungarian Export-Import Bank, fintech and consulting firms, and mining/energy companies).
7. Also, the AIFC Rules allow re-domiciliation of companies from more than 55 jurisdictions, and there are several companies that were registered in the AIFC as a result of this procedure.

16 Intellectual property

16.1 Introduction

From 1992 to 1993, Kazakhstan began to implement a national system for registering and protecting intellectual property rights. Intellectual property rights in Kazakhstan include all rights to industrial property (including inventions, industrial designs, utility models, company names, trademarks, service marks, geographical indications and appellations of origin of goods), copyright and related rights, selection achievements and topologies of integrated circuits. Legislation on intellectual property includes, among other things, the Copyright Law,⁴⁸ the Trademark Law,⁴⁹ the Patent Law,⁵⁰ the Law on

⁴⁸ The Law on Copyrights and Related Rights dated 10 June 1996, as amended.

⁴⁹ The Law on Trademarks, Service Marks, Geographical Indications and Appellations of the Origin of Goods dated 26 July 1999, as amended.

⁵⁰ The Patent Law dated 16 July 1999, as amended.

the Protection of the Topologies of Integrated Circuits⁵¹ and the Law on Selection Achievements.⁵²

16.2 State authority for intellectual property rights

The Ministry of Justice (which has a department for intellectual property rights) is the principal government agency regulating matters pertaining to copyrights, inventions, utility models, industrial designs, selection achievements, trademarks, service marks, geographical indications and appellations of origin.

The registration of intellectual property rights is carried out by a specifically designated state-owned entity, which is supervised by the Ministry of Justice — the State Republic Enterprise National Institute of Intellectual Property (“**IP Institute**”).

16.3 International conventions

Since 1993, Kazakhstan has been a party to the Convention Establishing the World Intellectual Property Organization (WIPO), the Paris Convention for the Protection of Industrial Property, the Madrid Agreement Concerning the International Registration of Trademarks and the Patent Cooperation Treaty. On 18 July 1998, Kazakhstan ratified the Eurasian Patent Convention; on 10 November 1998, it became a member of the Berne Convention for the Protection of Literary and Artistic Works; and on 7 June 2000, it became a member of the Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of their Phonograms. In 2002, Kazakhstan acceded to the Trademark Law Treaty, the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks, the Locarno Agreement Establishing an International Classification for Industrial Designs and the Budapest Treaty on the International Recognition of

⁵¹ The Law on the Legal Protection of the Topologies of Integrated Circuits dated 29 June 2001, as amended.

⁵² The Law on the Protection of Selection Achievements dated 13 July 1999, as amended.

the Deposit of Microorganisms for the Purposes of Patent Procedure. On 24 January 2003, the Strasbourg Agreement Concerning International Patent Classification became effective in Kazakhstan. On 12 November 2004, Kazakhstan became a party to the WIPO Performances and Phonograms Treaty and the WIPO Copyright Treaty. On 27 May 2010, Kazakhstan ratified the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks. On 2 May 2011, Kazakhstan ratified the Patent Law Treaty. In December 2015, Kazakhstan officially became a member of the WTO and, accordingly, a party to the Agreement on Trade-Related Aspects of Intellectual Property Rights (Annex 1C to the Marrakesh Agreement Establishing the World Trade Organization dated 15 April 1994).

16.4 Registration

Kazakhstan is a first-to-file jurisdiction and not a first-to-use jurisdiction, meaning it is important to register in Kazakhstan as soon as possible to protect industrial property rights (such as trademarks, inventions, utility models and designs).

16.5 Inventions, utility models, industrial designs and selection achievements

Patent protection is given to an invention if it is new, involves an inventive step and is industrially applicable. A patent for an invention is granted for 20 years. In certain cases, patents can be extended for a term not exceeding five years.

A utility model is granted five years of patent protection if it is new and industrially applicable. This term may be extended for three years.

An industrial design is given 10 years of patent protection if it is new and original. The patent can be extended for five years several times, provided that the total protection period cannot exceed 25 years.

A selection achievement is granted patent protection if it is new, distinct, uniform and stable. The duration of the patent ranges from 25 to 35 years and it may be extended for another 10 years.

Patent owners can assign or license patents to individuals or legal entities. However, any assignment or license agreement must be registered with the IP Institute to be valid.

Infringement of patents entails civil, criminal and administrative sanctions.

16.6 Trademarks, service marks and appellations of the origin of goods

The right to a trademark or service mark is based on registration with the IP Institute, but it may also be protected without national registration under international treaties to which Kazakhstan is a party. Trademark and service mark registration is granted for 10 years and is renewable every 10 years. The assignments or licenses for trademarks and service marks must be registered with the IP Institute to be valid.

Legal protection is given to appellations of the origin of goods based on registration with the IP Institute. A registered owner may not grant licenses for the use of an appellation of the origin of goods.

Geographical indications are granted protection if they identify a product manufactured in certain territory and features of such product relate to the geographical origin. Protection is granted upon registration with the IP Institute.

Violations of trademarks and appellation of origin rights entail civil, criminal and administrative punishments.

16.7 Copyrights and related rights

The Copyright Law protects works of science, literature and art (copyrights), as well as performances, phonograms, and television

and radio broadcasting or cablecast organizations (related rights). Copyright protection is granted to an author without registration or other formalities. An author can assign rights to use their copyrighted work. Copyright applies during an author's lifetime plus 70 years.

16.8 Computer programs and databases

Computer programs and databases are protected under the Copyright Law. The production and distribution of infringing copies of computer programs, unlawful alteration of existing programs and unlawful access to legally protected computer information may give rise to civil and criminal sanctions.

16.9 Protection of intellectual property rights

A number of state authorities protect and enforce intellectual property rights, including courts, customs and justice authorities.

The customs authorities maintain a special register of intellectual property rights. Owners of certain intellectual property objects (e.g., trademarks) can ask the customs authorities to include these objects in this register. This allows the customs authorities to suspend imports of any products bearing those registered objects for 10 business days. The customs authorities then alert the right holder of the import to give it a chance to challenge it or request interim relief. If the owner does nothing in the 10-day period, the customs authorities will lift the suspension.

The justice authorities are responsible for initiating seizures of counterfeit products. Courts are entitled to consider any disputes related to intellectual property rights, award compensation of damages, impose administrative and criminal sanctions, and take other measures aimed at protecting intellectual property rights.

17 Anti-monopoly regulation

17.1 General

There are two main authorities dealing with anti-monopoly issues: the Committee on the Regulation of Natural Monopolies at the Ministry of National Economy (“**Natural Monopolies Committee**”) and the Agency on the Protection and Development of Competition (“**Anti-Monopoly Agency**”), which is supervised directly by the president of Kazakhstan.

The Natural Monopolies Committee and industry-specific regulators (e.g., the Committee for Communications and Information for Telecom Companies) regulate entities operating in industries that are considered natural monopolies. These industries include the following:

- Transportation of oil and oil derivatives via trunk pipelines
- Storage and transportation of natural gas via trunk or distribution pipelines, operation of natural gas pipelines and use of natural gas distribution systems
- Transportation of electrical energy
- Generation, transportation and distribution or supply of heat energy
- Provision of electricity dispatch services
- Services relating to balancing the generation and consumption of electrical energy
- Operation of mainline railways
- Provision of railway services under concession agreements (in the absence of a competing railway)
- Operation of branch railway lines

- Air navigation services, except for international and transit flights
- Airport (with some exemptions) and harbor services
- Leasing duct banks
- Operation of water and sewage systems

The Natural Monopolies Committee maintains the register of natural monopolies and approves natural monopolies' tariffs. Certain asset and share acquisitions involving natural monopolies require the committee's written approval.

In addition, the Natural Monopolies Committee supervises companies operating in publicly important markets (e.g., the retail electricity market, operating centralized electricity trades, the retail gas market, airport services and railway services) and monitors these companies' prices.

The Anti-Monopoly Agency regulates the competitive behavior of companies that are not natural monopolies.

17.2 Dominant position

The Anti-Monopoly Agency is responsible for market analysis and control over companies holding dominant positions in markets.

Under the Entrepreneurship Code,⁵³ a legal entity may be treated as holding a dominant position if its market share equals or exceeds 35% of the relevant market.

In addition to the market share, certain other factors must be taken into account in declaring an entity with a 35% to 50% market share as a dominant entity. Such factors include market powers that enable the entity to fix the prices of goods in the relevant market at its own

⁵³ This code came into force on 1 January 2016 and replaced the Law on Competition dated 25 December 2008.

discretion and generally to determine, for an extended period, the conditions for marketing its goods and to set barriers preventing its competitors from entering the market.

Companies whose market share is below 35% can also be considered dominant in certain cases. For example, each of three companies whose combined market share equals or exceeds 50%, or each of four companies whose combined market share equals or exceeds 70% of the market, can be declared dominant.

17.3 Merger control

The Anti-Monopoly Agency is responsible for enforcing merger control regulations. The following transactions are subject to its oversight:

- (i) Reorganization of a company by way of a merger or absorption
- (ii) Acquisition by a person, company or group of more than 50% of the voting shares in a company in which the acquirer previously had no shares or had less than 50% of the voting shares
- (iii) Acquisition of the main production assets or intangible assets of a company if the total balance sheet value of the transferred assets exceeds 10% of the overall value of the main production assets and intangible assets of the transferring company
- (iv) Acquisition by a person or a company of rights allowing the acquirer to control the business activities of the company or to perform the functions of its managerial body
- (v) Election or appointment of an individual to the boards of directors or management boards of two or more entities

For the transactions in paragraphs (i)-(iii) above, the committee's prior written approval is required. For other transactions (listed in

paragraphs (iv) and (v) above), only the Anti-Monopoly Agency needs to be notified.

The transactions listed above are subject to anti-monopoly clearance/notification if the total value of the worldwide assets or the annual turnover of the companies involved is above 10 million times the MCI (approximately USD 74.1 million).

However, a transaction within one group of companies does not require approval even if the above conditions are met.

The Entrepreneurship Code uses the principle of extraterritoriality of Kazakhstani anti-monopoly rules. This means that the actions of companies and individuals conducted outside Kazakhstan are subject to the anti-monopoly provisions of the Entrepreneurship Code if (i) these actions directly or indirectly affect companies, their shares or their assets in Kazakhstan, or (ii) these actions result in the restriction of competition in Kazakhstan.⁵⁴

17.4 Protection from unfair competition

The Entrepreneurship Code lists the types of activities that constitute unfair competition, including the following:

- Using trademarks or packaging without authorization
- Using the goods of another manufacturer without authorization
- Copying an article's appearance
- Discrediting a competitor
- Advertising flagrantly false, improper or unreliable information

⁵⁴ For example, the merger of two foreign companies, conducted outside Kazakhstan, that requires the Kazakhstani competition authority's approval could be held invalid in Kazakhstan if that approval was not granted.

- Demanding the sale of goods in compulsory combination
- Calling to boycott a seller (supplier)
- Calling to discriminate against a buyer (supplier)
- Calling to break a contract with a competitor
- Bribing a seller's (supplier's) employee
- Bribing a buyer's employee
- Using trade secrets without authorization

17.5 Liability for violating anti-monopoly legislation

Violations of anti-monopoly legislation (including acts of unfair competition, a failure to obtain approval for a merger when required, a failure to obey the competition authorities' orders or monopolistic activity) may entail civil, administrative and criminal sanctions. Abuse of dominance and anti-competitive agreements or actions are punishable by fines of up to 10% of the income received from the illegal activity in addition to the potential confiscation of all such income.

Fines may not be applied in certain circumstances, such as when an offender has informed the Anti-Monopoly Agency of the offense itself and cooperated with any investigations.

18 Product liability

18.1 Product liability

The Civil Code and the Consumer Protection Law⁵⁵ govern product liability.

⁵⁵ The Law on the Protection of Consumer Rights dated 4 May 2010, as amended.

The law obliges sellers and manufacturers to ensure that the products they manufacture and sell comply with quality requirements, and to provide consumers with full and reliable information regarding the products.

If there is a defect in a purchased product, a consumer may select between a refund, a decrease in the purchase price, the elimination of defects free of charge, compensation of expenses for eliminating the defects and the replacement of the product.

In addition, a consumer has the right to claim compensation of losses in connection with the defective product. Such a claim may be submitted within two years from the date of delivery.

If a seller fails to provide full and reliable information regarding a product and such failure results in (i) purchasing a product that does not have the features necessary for the consumer, the consumer has the right to terminate the contract and claim compensation; (ii) the impossibility of using the purchased product for its intended purpose, the consumer is entitled to demand that due information be provided within three days of purchasing the product (if the relevant information is not provided within this period, the consumer is entitled to terminate the contract and claim compensation of losses); and (iii) damage to a consumer's health, safety or property, the consumer will be entitled to claim compensation.

A consumer has the right to require that a purchased product be replaced with a similar product within 14 days of the purchase — no questions asked. If a similar product is not available, the consumer may demand a refund.

In June 2020, the Consumer Protection Law was amended to provide alternatives to litigation to settle consumer rights disputes.

Specifically, if a consumer has problems with a purchased product or service, the consumer is entitled to submit a complaint to the seller. If the seller rejects the complaint or does not respond within 10 calendar

days, a consumer may bring the dispute to the attention of the Ministry of Trade and Integration.

The consumer may also agree with the seller on using alternative dispute resolution mechanisms, such as arbitration, mediators or engaging a consumer association or self-regulatory organization (if the seller is a member of any self-regulatory organizations).

Consumers' complaints are now registered in and can be monitored via the Unified Informational System of Consumer Rights Protection maintained by the Ministry of Trade and Integration.

18.2 Certification

Certain types of products that are manufactured in or that are imported into Kazakhstan must comply with the EEU's and Kazakhstan's standards of quality and must have a certificate of conformity to such standards.

The testing of certain types of products and the subsequent issuance of certificates of conformity to the EEU standards can be performed in any country of the EEU and such certificates are recognized by the other countries of the EEU. Kazakhstan can also recognize certificates of conformity issued in foreign countries based on the relevant international agreements with such countries.

19 Regulation of industry

19.1 Oil and gas

19.1.1 Introduction

Subsoil resources such as oil and gas are the exclusive property of the state. However, rights to use the oil and gas resources may be granted to local and foreign individuals and legal entities based on a subsoil use contract concluded with the Ministry of Energy. Subsoil use rights are granted following different procedures: auction or direct negotiations with the national oil and gas company.

19.1.2 Oil and gas legislation

The primary legislative act regulating the oil and gas industry in Kazakhstan is the Subsoil Code.⁵⁶ However, a number of other legislative acts regulate specific aspects of subsoil use.

The Subsoil Code sets out the basic framework for oil and gas operations in Kazakhstan.

Kazakhstani laws governing the development of natural resources have evolved significantly over the years. Significant amendments were introduced in the old Subsoil Law⁵⁷ and the Oil Law⁵⁸ in 1999, 2004, 2007, 2008, 2010 and 2017. Amendments adopted in 1999 eliminated the licensing requirement for subsoil use operations, giving contractors the right to engage in subsoil use operations by executing a subsoil use contract with the competent body of the government (which, prior to April 2010, was the Ministry of Energy and Mineral Resources). However, under these amendments, all previously issued subsoil licenses remain in effect until they expire, including any extensions granted under legislation in effect at the time of their issuance.

The 2004 amendments to the old Subsoil Law granted the state the preemptive right of acquisition in the event of the direct or indirect transfer of a subsoil use right or shares in a subsoil user. The procedure for the state's preemptive right was regulated in more detail in the 2010 Subsoil Law. Failure to comply with this preemptive right could result in the termination of the subsoil use contract or invalidation of the relevant transaction.

⁵⁶ The Code on Subsoil and Subsoil Use dated 27 December 2017, as amended.

⁵⁷ The Law on Subsoil and Subsoil Use dated 27 January 1996 was canceled in connection with the adoption of the Law on Subsoil Use dated 24 June 2010.

⁵⁸ The Law on Oil dated 28 June 1995 was canceled in connection with the adoption of the Subsoil Law in 2010.

As a result of the 2007 amendments to the old Subsoil Law, the state has the right to demand amendments to the terms and conditions of a contract when the subsoil user's operations result in a substantial change in economic interests (or present a threat to the national security) of Kazakhstan. If a subsoil user does not accept these amendments, the competent governmental body can unilaterally terminate the contract. In addition, the competent body, at the government's initiative, can unilaterally withdraw from a subsoil use contract if the actions of a subsoil user significantly change the economic interests of Kazakhstan and thus create a threat to Kazakhstan's national security. However, these 2007 provisions only apply to "significant and strategic" deposits of natural resources. The current list of "strategic" fields was adopted in 2018. It includes 137 deposits of oil, gas, condensate and uranium, including all of the major oil and gas fields.

Under the 2008 amendments, PSAs were eliminated from the list of contracts that could be executed with the state. To date, only exploration and production arrangements have been allowed (for further details, please refer to Section 18.1.3 below). However, PSAs executed before the adoption of these amendments remain in effect.

The Subsoil Law adopted in 2010 replaced the old Subsoil Law and Oil Law. Among other things, the new 2010 law (i) eliminated combined exploration and production contracts (except for a limited number of exceptions), (ii) provided more detailed procedures for seeking and obtaining waivers of preemptive rights and approval for transfers of subsoil use assets, and (iii) introduced the concept of operatorship.

In 2014, the Subsoil Law was further amended to introduce, among other things, new procedures for awarding exploration rights. Under these procedures, exploration rights for certain unexplored areas could be granted in a simplified procedure without holding a competitive tender.

In 2015, the Subsoil Law was amended to bring it into compliance with the terms on which Kazakhstan joined the WTO (e.g., in connection with preferences to be granted to local suppliers of goods, works and services).

The Gas Law was adopted in 2012.⁵⁹ The Gas Law introduced the general regulation of gas supply, transportation, storage and sales, the status of the national gas operator, the state's priority right and other matters pertaining to gas market regulation.

In 2012, Kazakhstan also adopted a new Main Pipelines Law,⁶⁰ which regulates matters related to construction, exploitation, services and other main oil and gas pipeline issues.

On 27 December 2017, Kazakhstan adopted a new Subsoil Code. The Subsoil Code came into effect six months after the date of its first publication (i.e., on 29 June 2018). The Subsoil Code introduced a number of substantial changes to the regulation of subsoil use areas, including procedures for granting, transferring and terminating subsoil use rights, allocation of powers between regulators, regulation of operational activity and other matters. Previously issued subsoil use contracts and licenses will remain effective, but certain provisions of the Subsoil Code have retrospective effect.

19.1.3 Contracts

The government approved the program on the management of the state subsoil fund (which, among other things, contains information about the territories available for granting and methods by which the subsoil use rights can be granted). Organizations wishing to obtain subsoil use rights for oil and gas deposits should submit an application on initiating an auction to the Ministry of Energy. Unless there are grounds for rejecting an application, the Ministry of Energy should conduct an auction (with such auctions being conducted no

⁵⁹ The Law on Gas and Gas Supply dated 9 January 2012.

⁶⁰ The Law on Main Pipelines dated 22 June 2012.

more than four times per year). The national oil and gas company can apply to obtain subsoil use rights based on direct negotiations.

The Subsoil Code allows the following types of contracts for oil and gas deposits:

- Production contracts
- Exploration and production contracts

The exploration period under exploration and production contracts can be up to six years. For deposits with a complex structure, this term may be up to 18 years, including nine years of initial exploration, six years of assessment and three years of test production.

If natural resources are discovered, the exploration period for deposits that are not considered complex may be extended for an additional three years to assess their commercial value. Another extension for such deposits is possible for another three years for test production purposes with a proportionate decrease of the subsequent production period. Production contracts are concluded for 25 years. A contract for production at a deposit with large and unique reserves may be concluded for up to 45 years. A production agreement may be extended for a period of up to 25 years.

The parties can determine the specific terms of a contract in accordance with applicable laws. Every subsoil use contract must reflect the conditions listed in the Subsoil Code. In addition, subsoil use contracts should reflect the provisions of the Model Subsoil Use Contract.⁶¹ While the general purpose of a model contract is to set forth a framework that can be modified to meet a transaction's specific requirements, the Subsoil Code provides that deviations in model contracts are possible to the extent envisaged by the code.

⁶¹ Order of the Minister of Energy "On the Approval of Model Contracts for Subsoil Use" dated 11 June 2018.

A contract must be registered with the Ministry of Energy. It becomes effective from the date of registration.

19.1.4 Local content requirement

The law requires all oil and gas companies operating in Kazakhstan under licenses or contracts to organize tenders for most goods, works and services that they procure in Kazakhstan, and to give preference to local goods, works and services. Usually, the local content requirements for personnel, goods, works and services (expressed in specific percentages/ratios) must be clearly outlined in a subsoil contract. However, in view of Kazakhstan joining the WTO, it is envisaged that subsoil use contracts executed after 1 January 2015 should not contain any obligations for subsoil users to procure goods from local manufacturers. The requirement for a minimum level of local works and services was retained, but the minimum level cannot exceed 50%.

The new Rules for Purchasing by Subsoil Users and Their Contractors of Goods, Works and Services Used for Operations on Exploration and Production of Oil and Gas and Production of Uranium approved by the Order of the Minister of Energy dated 18 May 2018 replaced previous rules. These rules contain more detailed regulations for buying goods, works and services aimed at supporting local manufacturers.

19.1.5 Exports of oil and gas

Despite Kazakhstan's substantial oil and gas reserves, the production and export of hydrocarbons have been constrained by Kazakhstan's landlocked position and its significant dependence on domestic and Russian transportation infrastructures for export routes.

In general, to gain access to a main pipeline system, Kazakhstani oil producers have to reconcile shipment schedules with those of the national pipeline operator — KazTransOil JSC. Due to the limited capacity of Kazakhstan's pipeline system, access to the pipeline is

granted in proportion to a particular oil producer's share of the total amount of oil to be produced in Kazakhstan in a given year.

There are currently three main operating export pipelines. Two lead to the west through Russia and one leads to China.

Of the pipelines going through Russia, the Atyrau-Samara pipeline connects Kazakhstan to the Russian export network, while the Caspian Pipeline Consortium pipeline connects the Tengiz field with the Russian port of Novorossiysk on the Black Sea (this pipeline is largely privately owned). Russia retains the right to suspend and impose restrictions on the flow of Kazakhstani oil from the Atyrau-Samara pipeline into Russia's transportation network and Russian enterprises generally have priority access to Russian export terminals.

The new Kazakhstan-China pipeline became operational in the middle of 2006. It is 3,000 kilometers long and initially its capacity was up to 10 million tons of oil per year (with the expansion to 20 million tons per year).

An additional export route reportedly under consideration is a subsea, trans-Caspian pipeline connected to the Baku-Tbilisi-Ceyhan pipeline. However, construction of the pipeline has not yet started. In any event, the growing volume of oil production (including Kashagan oil) requires the consideration of additional transportation routes.

19.2 Power

The Kazakhstani electricity market is liberalized, and generators are separated from transmission, distribution and retail supply.

The main players in the power sector are as follows:

- Power-generating organizations (PGOs) (producers or importers of power)
- Power supply organizations (PSOs) (distribution and supply companies)

- Power-transferring organizations (transmission companies)

The Ministry of Energy is the key regulator in the electric power sector. The Natural Monopolies Committee is the key regulator of natural monopolies and regulated markets.

19.2.1 Generation

Thermal power plants account for the largest share of electricity generation. The state-owned company Samruk Energy JSC controls most of the thermal power facilities in Kazakhstan.

Hydroelectric power plants (HPPs) are the second-largest electricity producers in Kazakhstan. Until October 2017, a US power company operated two of the three biggest HPPs located in the East Kazakhstan region under a long-term concession agreement with the government.

There are also a number of combined heat and power plants.

There are currently no nuclear power stations operating in Kazakhstan. The only nuclear power plant (the 350-megawatt plant in Aktau) was shut down in 1999.

Renewables represent a rapidly rising share in Kazakhstan's power sector, mainly due to the recently introduced incentives aimed at stimulating and developing renewable energy sources, which are discussed in more detail below.

Notably, the power sector in Kazakhstan is still subject to special tariff regulations. At present, different types of tariffs apply to PGOs (e.g., maximum tariffs for electricity, maximum tariffs for capacity services, individual tariffs for capacity services and calculated tariffs).

19.2.2 Transmission

Transmission of electricity via electricity networks has been unbundled from the generation, distribution and supply of electricity. Presently,

the state-owned operator of the national grid (JSC KEGOC) and regional operators of regional grids (regional electricity companies) generally carry out transmission. KEGOC is responsible for centralized dispatch management. Power transmission is treated as a natural monopoly activity and is subject to the tariff regulations and other restrictions set forth in the Law on Natural Monopolies.⁶²

19.2.3 Distribution and supply

Distribution is carried out via PSOs. Most of these companies are privately owned. PSO businesses require a special permit (license), which is issued by the local anti-monopoly authorities. As of the date of this publication, around 300 companies have licenses for the distribution and supply of power.

Generally, tariffs of PSOs are not regulated by the government, except in cases where PSOs hold a dominant position in the market.

19.2.4 Tariff regulation

Companies providing services of central dispatch, transmission and distribution of electricity, as well as the generation and distribution of heat, are considered natural monopolies and the regulator sets their tariffs. While electricity generation is not a natural monopoly, the state also regulates generators' tariffs by setting the maximum sales price for generators (it may allow some generators to sell at higher prices on a case-by-case basis).

Previously, the electricity market was an energy-only market, where generators were only paid for the energy they supplied to the market (per kilowatt-hour). In 2019, Kazakhstan introduced a capacity market model and the current single energy tariff is separated into an energy charge and a capacity charge, with a single purchasing agency for capacity. The state sets the maximum prices for electricity and capacity, but it may allow newly built generators and generators

⁶² The Law on Natural Monopolies dated 27 December 2018, as amended.

undergoing modernization to charge higher capacity charges (individual tariffs for capacity services).

It remains to be seen how the capacity market will operate in practice.

19.2.5 Renewable power

The new legal framework recently adopted in Kazakhstan established certain incentives for operating and developing renewable energy sources in Kazakhstan (i.e., wind, solar, geothermal, biomass/biogas power plants and HPPs with a capacity of less than 35 megawatts).

Specifically, according to the Law on Supporting the Use of Renewable Energy Sources dated 4 July 2009, the government guarantees that the fully state-owned company Accounting and Finance Center LLP (AFC) will buy the power produced by renewable power plants based on specially approved fixed tariffs under 15-year power supply arrangements.

The government approved the fixed tariffs in June 2014. They are much higher than the maximum tariffs approved for traditional power plants in Kazakhstan and are subject to annual adjustment for inflation.

However, for projects launched after July 2017, tariffs for the power produced by renewable power plants should be determined as a result of an auction.

To be entitled to execute an agreement with the AFC, the renewable power plant must be registered as such with the Ministry of Energy.

Power plants can only be included on this list after the Ministry of Energy receives technical conditions to connect the power plant to the power grid, evidence of land plot allocation and expert approval of the plant's design documentation. These documents and the statutory documents of the company that owns the power plant should be attached to the application, the template for which was approved by the Ministry of Energy. In this application, among other things, the

power plant must provide information about (i) its capacity, (ii) estimated commencement of power production and operational life, and (iii) technical characteristics of the equipment used by the power plant.

The above scheme makes renewable energy projects more investor-friendly and, currently, a number of major market players and investment institutions are considering investments in this area of the power sector. While the relevant framework was only recently adopted, there are a number of ongoing renewable energy projects in Kazakhstan (mostly solar and wind).

In addition, during 2021-2022, several green hydrogen-production projects were announced in Kazakhstan. Due to the existence of significant water and green power resources, the government is planning the further growth of such projects.

19.3 Telecommunications

The primary statutes regulating the field of telecommunications are the Communications Law,⁶³ the Licensing Law⁶⁴ and the National Security Law.⁶⁵

The National Security Law provides the following restrictions on foreign ownership:

- Foreign individuals and foreign legal entities are prohibited from owning (directly or indirectly) more than 49% of long distance or international telecommunication service providers that, in turn, own terrestrial telecommunication lines (cable buses, optical cable and radio-relay networks) without the government's consensus.

⁶³ The Law on Communications dated 5 July 2004, as amended.

⁶⁴ The Law on Permits and Notifications dated 16 May 2014, as amended.

⁶⁵ The Law on National Security dated 6 January 2012, as amended.

- Foreign individuals and foreign legal entities are prohibited from owning (directly or indirectly) more than 20% of television or radio broadcasting companies.
- Foreign individuals and foreign legal entities with no legal presence in Kazakhstan are prohibited from managing or operating any trunk lines.

International landline, intercity landline, satellite and cellular telecommunication services are subject to mandatory licensing. The Telecommunications Committee of the Ministry of Digital Development, Innovations and Aerospace Industry (“**Telecommunications Committee**”) issues the licenses. Kazakhstan’s Interdepartmental Commission on Radio Frequencies is a local state telecommunication authority responsible for allocating the frequency spectrum. All other telecommunication services are subject to a mandatory notification addressed to the Telecommunications Committee.

The Telecommunications Committee also issues permits to use allocated radio frequencies. Such permits are issued for one year and may be extended annually for any number of additional one-year terms. The use of radio frequencies by telecommunication organizations requires a regular annual payment.

According to the Communications Law, frequencies may be allocated based on a tender. However, the Telecommunications Committee is authorized to allocate frequencies by itself. Frequencies for television and radio broadcasting can only be allocated based on a tender.

The law does not restrict telecommunication companies from sharing frequencies between themselves under frequency-sharing agreements or from constructing and sharing mobile telecommunication networks.

The Tax Code and the Communications Law provide that telecommunication companies pay the annual charge for the use of radio frequencies.

19.4 Construction

Construction activities are heavily regulated in Kazakhstan and they require various permits and approvals. The Law on Construction⁶⁶ is the primary legislative act regulating construction.

Most stages of construction are subject to coordination with and approval from the governmental authorities. These stages are as follows:

- (i) Obtaining a land plot or permit for construction on a land plot
- (ii) Obtaining technical conditions for the use of public utilities
- (iii) Approving and undertaking an expert examination of the construction designs
- (iv) Filing a notification on construction commencement
- (v) Ensuring supervision by the state during the construction process
- (vi) Accepting the construction by signing the commissioning act
- (vii) Conducting the state registration of the completed construction

Noncompliance with the requirements for the approval and coordination of the construction process may result in administrative punishments.

⁶⁶ The Law on Architectural, Town Planning and Construction Activity in the Republic of Kazakhstan dated 16 July 2001, as amended.

Most types of construction activities require licenses in Kazakhstan. The Law on Permits provides a detailed list of construction activities subject to licensing. These activities range from drafting architectural plans to installing, building and repairing structures.

To obtain a license, a company must comply with the requirements set out in the List of Qualification Requirements.⁶⁷ After the license is issued, the governmental authorities verify the license holder's compliance in state inspections. Licenses are obtained from the Construction Committee of the Ministry of National Economy.⁶⁸ A company can obtain a license for only one or a number of activities. A license is issued for an unlimited term and can be suspended or revoked if the holder breaches Kazakhstani law.

19.5 Maritime industry

Although Kazakhstan is considered a landlocked country, it is one of the five littoral countries of the Caspian Sea.

The Shipping Law⁶⁹ primarily regulates the maritime industry in Kazakhstan. The Shipping Law sets out a number of requirements for foreign companies that intend to perform maritime transportation services in Kazakhstan.

First, a foreign company (with very limited exceptions, such as where it is a party to a PSA or a contractor or subcontractor of such party)

⁶⁷ Unified Qualification Requirements for Activities in the Field of Architecture, Urban Construction and Construction approved by the Decree of the Acting Minister of National Economy of the Republic of Kazakhstan dated 9 December 2014.

⁶⁸ Regulations on the Committee for Construction Matters, Housing Maintenance and Utilities and Land Resources Management of the Ministry of National Economy approved by the Decree of the Minister of National Economy of the Republic of Kazakhstan dated 29 September 2014, as amended.

⁶⁹ The Law on Commercial Shipping dated 17 January 2002, as amended.

must create a local subsidiary in Kazakhstan (setting up a local branch or representative office is not sufficient).

Second, a foreign company must register its vessel(s) in Kazakhstan. Kazakhstan has a dual maritime registration system, which means that a vessel can be registered in Kazakhstan either permanently if it is owned by a local company (in limited cases, this can also be a foreign company) or temporarily if the ownership of the vessel is retained by a foreign company and the vessel is chartered by a local company on a bareboat basis.

Each vessel operated in Kazakhstan must have certain documents onboard that are prescribed by Kazakhstani law and international treaties to which Kazakhstan is a party (such as the classification certificate, the certificate of seaworthiness and the certificate allowing it to sail under the flag of Kazakhstan). The technical examination and classification of a vessel must be carried out by a specially designated state-owned entity or by a foreign classification society approved by the relevant state authority.

19.6 Pharmaceuticals

19.6.1 General

A Legislation

The primary law regulating the pharmaceuticals industry at a national level is the Kazakhstani Code on the Health of the Population and System of Healthcare adopted on 7 July 2020, as amended (“**Health Code**”).

In addition, the Agreement on Common Principles and Rules for the Treatment of Medications within the EEU, which was signed on 23 December 2014 and which entered into effect on 6 May 2017, establishes a common market of medications throughout the EEU and governs, among other things, the market authorization, manufacturing, distribution and pharmacovigilance of medications in the EEU.

B Regulation

The regulatory body governing the healthcare system and pharmaceutical market in Kazakhstan is the Ministry of Healthcare (MOH).

19.6.2 Registration of medicines

Various medical products, including medicines, medical devices and medical equipment, must have a valid registration (market authorization) for manufacture, sale or use in Kazakhstan. Before July 2021, medical products could be authorized in Kazakhstan either through the national procedure (to sell and use in Kazakhstan only) or through mutual recognition⁷⁰ or decentralized procedures⁷¹ at the EEU level (to sell and use simultaneously in Kazakhstan and other states of the EEU).

From July 2021, the registration (market authorization) of medicinal products at a national level was superseded by registration at the EEU level.

Registration certificates (market authorizations) issued under the national registration rules are valid until 31 December 2025, unless they expire earlier. Before that, the registration dossier of the relevant products should be brought into compliance with the EEU registration rules.

Certain items are exempt from the registration requirement. For example, medicinal products intended for patients suffering from rare diseases, preventing and/or eliminating the consequences of

⁷⁰ The mutual recognition procedure must be used when a product is authorized sequentially in several member states. A market authorization issued in the first member state (reference member state) only allows the relevant product to be marketed in that member state until the authorization is recognized in other member states.

⁷¹ The decentralized procedure must be used when a product is authorized simultaneously in several member states, provided that one of the member states acts as a reference member state.

emergencies, rendering humanitarian aid and certain others can be imported and sold in Kazakhstan without state registration, but they are subject to one-time import permission. Further medicines prepared in local pharmacies and medicinal substances produced in accordance with international guidelines known in the industry as good manufacturing practices are not subject to registration.

All medicinal products are required to conform to standards on safety, efficacy and quality before they can obtain registration (market authorization). After authorization, every imported batch of medicinal products is subject to a conformity assessment in the form of a declaration of conformity. The importer is responsible for applying for the conformity assessment.

19.6.3 Licensing

Certain pharmaceutical activities require a license from the MOH. These activities include the manufacture of pharmaceuticals, manufacture of medical devices, pharmaceutical production, and retail and wholesale of pharmaceuticals, as well as the import and export of certain medical products. However, some activities (including the retail and wholesale of medical devices) are subject to a simple notification requirement and do not require a license.⁷²

Only pharmacies can sell medicines and medical products on the retail market.

19.6.4 Promotion

Advertising or promoting medicines is subject to certain restrictions specified in the Health Code and should be preapproved.

Specifically, companies are not allowed to advertise medicinal products without first having submitted the relevant advertising material to the National Center for Expert Examination of Medicines,

⁷² The MOH must be notified before these activities can be started.

Medical Devices and Medical Equipment for mandatory review and approval.⁷³

Further, the following activities are prohibited under the Health Code:

- (i) Advertising medicines, healthcare products, medical devices, dietary supplements and preventive means not registered in Kazakhstan
- (ii) Advertising prescription medicines in the mass media
- (iii) Distributing samples of prescription medicines for the purpose of advertising and promotion
- (iv) Engaging children for advertising medicines and medical products not intended for children
- (v) Advertising medicines on public transport and in organizations not related to their intended purpose, use and delivery — with the exception of advertising medicines, medical devices, medical equipment and medical services at scientific and professional events (e.g., congresses, medicinal and pharmaceutical conferences and symposiums)
- (vi) Advertising on outdoor visual advertisements, such as billboards, display panels, event posters and other permanent items
- (vii) Advertising medicines, healthcare products and medical devices on a prescription form
- (viii) Engaging healthcare professionals authorized to administer medicines for distribution purposes (certain exceptions apply)

⁷³ The relevant procedure is detailed in the Rules on Advertising Medicines, Medical Devices and Medical Equipment as approved by the Order of the Minister of Healthcare of the Republic of Kazakhstan No. ҚР ДСМ-288/2020 dated 20 December 2020.

- (ix) Advertising the method of treatment for sexually transmitted, oncological, mental and dangerous infective diseases, HIV/AIDS, tuberculosis and diabetes
- (x) Referring to a recommendation by scientists, healthcare professionals or government officials who, because of their special (celebrity) status, could encourage the consumption or prescription of medicinal products
- (xi) Representing medicinal products or medical services as unique, the safest and the most effective
- (xii) Suggesting that the safety or efficiency of the medicinal product is due to the fact that it is natural
- (xiii) Guaranteeing the efficiency of medicinal products and the absence of adverse effects

19.6.5 Ethical standards applicable to the promotion of medicines

The Health Code provides certain general standards for ethical business practices with regard to the promotion of pharmaceutical products and medical devices. In addition, a number of specific rules for the ethical promotion of pharmaceutical products and medical devices to healthcare professionals and pharmacies are set forth in the relevant regulations.⁷⁴

Specifically, these include the following:

- Pharmaceutical and medical device companies are now banned from visiting healthcare professionals and pharmacists for the purposes of promoting their products during healthcare professionals' and pharmacists' working hours.

⁷⁴ The Order of the Minister of Healthcare of the Republic of Kazakhstan No. ҚР ДСМ-294/2020 "On Approval of the Rules of Ethics in the Promotion of Medicinal Products and Medical Devices" dated 21 December 2020.

- Pharmaceutical and medical device companies are allowed to promote their products during professional meetings, congresses, symposiums or daily doctors' meetings (however, daily doctors' meetings require written approval from the head of the medical institution 10 days in advance).
- Donations and grants that support the scientific research and sponsorship of healthcare professionals to attend training or professional events is generally allowed, provided that healthcare professionals are not expected to prescribe or in any manner promote the sponsor's products.

19.6.6 Price regulation

Most pharmaceutical products registered and sold in Kazakhstan are subject to state price regulation. Specifically, state price regulation applies to pharmaceutical products and medical devices that are procured by the state for the purposes of statutory free-of-charge medical assistance and compulsory health insurance programs. Outside the scope of state procurement, state price regulation also applies to wholesale and retail prices of pharmaceutical products according to the list approved by the MOH.⁷⁵ State price regulation is effected through the following measures:

- Registering the manufacturer's price
- Establishing maximum wholesale and pharmacy markups
- Establishing maximum (capped) wholesale and pharmacy prices (where prices and markups apply to one retail package of the relevant product)

⁷⁵ The Order of the Minister of Healthcare of the Republic of Kazakhstan No. ҚР ДСМ-150 "On Approval of the List of Pharmaceutical Products that are Subject to the Price Regulation for Wholesale and Retail" dated 1 December 2022.

For the purposes of state procurement, prices are regulated separately and regulation measures include the following:

- Registering the manufacturer's price
- Establishing markups for the state procurements
- Establishing a maximum (capped) price for medicinal products by their trade names
- Establishing a maximum (capped) price for medicinal products by their international nonproprietary names (hospitals can purchase the pharmaceuticals at these maximum prices)

20 The judicial system and dispute resolution

20.1 Judicial reform

During the 1990s, Kazakhstan's judicial system was extremely weak and ineffective. Courts, particularly at the local level, were not given sufficient resources by the state and judges were poorly trained and underpaid. This resulted in many worrying court decisions (particularly on complex commercial matters), as well as allegations of corruption.

The government began a program of serious judicial reform in 2000, which has improved the country's judicial system. These improvements include forming the Judicial Administration Committee under the Supreme Court, establishing a judicial ethics commission, increasing judicial salaries, raising minimum qualifications for judges and forming specialized courts. While many problems persist, top officials of the Presidential Administration, the Supreme Court and the Ministry of Justice appear dedicated to continuing the program of judicial reform, and particularly dedicated to increasing the independence of the courts, improving the qualifications of judges and providing greater resources to local courts.

In continuation of this judicial reform, from 2014 to 2015, additional measures were introduced to decrease the number of court cases

considered by the courts (which will have a positive impact on the quality and judicial technique of the judgments) and to make the court system more transparent and simple. The measures included introducing (i) a detailed dispute settlement procedure, (ii) a simplified court procedure, which allows courts to resolve disputes without conducting formal court hearings, and (iii) state duty for filing appeals against judgments of 1.5% of the claimed sum for the cassation stage of review. The total number of court instances was also decreased from four to three, together with some other measures described below.

20.2 Court structure and competence of Kazakhstani courts

The basic provisions regulating the structure and activities of the judiciary are stated briefly in the Constitution and more extensively in the Law on the Judicial System,⁷⁶ the Civil Procedural Code,⁷⁷ the Administrative Process Code⁷⁸ and the Criminal Procedural Code.⁷⁹

The Kazakhstani court system consists of three levels: the Supreme Court, local regional courts and courts with equivalent regional court status (e.g., the Almaty City Court, the Astana City Court and the Shymkent City Court), and local city and district courts.

District (city) courts are usually courts of first instance and they hear most civil cases. Regional courts (and city courts that are equivalent to regional courts) function as courts of appeal for district court decisions.

⁷⁶ The Constitutional Law on the Judicial System and the Status of Judges in the Republic of Kazakhstan dated 25 December 2000.

⁷⁷ The Civil Procedural Code of the Republic of Kazakhstan dated 31 October 2015.

⁷⁸ The Administrative Process Code of the Republic of Kazakhstan dated 29 June 2020.

⁷⁹ The Criminal Procedural Code of the Republic of Kazakhstan dated 4 July 2014.

The Supreme Court is the highest court in Kazakhstan. It acts as the court of final appeal with regard to cases heard by the lower courts and as a court of original jurisdiction for certain categories of disputes (i.e., cases challenging actions or decisions of the Central Election Committee). There are several bodies in the Supreme Court, including the Plenary Meeting of the Supreme Court and the Civil and Criminal Collegia. The Plenary Meeting issues binding interpretations of existing legislation. The Cassation Collegium examines verdicts already in force.

As part of the program of judicial reform, the government established specialized interdistrict courts that have the status of local city and district courts. These include economic courts (which hear disputes where the parties are legal entities or sole proprietors), administrative courts (which hear claims challenging decisions of the state authorities and officials), courts on administrative offenses (which hear cases on administrative offenses), juvenile courts (which have jurisdiction in cases involving minors) and criminal courts (which have jurisdiction over criminal cases).

In addition, since 2021, Astana City Inter-District Economic Court and Astana City Inter-District Administrative Court have exclusive jurisdiction for the resolution of disputes involving investors and their local subsidiaries.

In 2015, the Constitutional Law on the Astana International Financial Centre was adopted.⁸⁰ This law provides, among other things, for the institution of the AIFC Court, which resolves (i) disputes between the center's participants (companies registered on AIFC territory), (ii) disputes about transactions conducted in the AIFC and based on AIFC law, and (iii) disputes referred to the AIFC Court by the parties concerned.

⁸⁰ The Constitutional Law on the Astana International Financial Center dated 7 December 2015.

The AIFC Court considers disputes based on English procedural law principles. The judgments issued by this court are directly enforceable in Kazakhstan.

In addition to the above, after the relevant amendments were made to the Constitution in 2022, the Constitutional Court was established. The jurisdiction of this court covers issues relating to the election of the members of the Parliament and the president of the Republic of Kazakhstan, the interpretation of the Constitution and the consideration of whether laws comply with the Constitution.

20.3 Judges

The president appoints district, specialized interdistrict and regional court judges based on the Supreme Judicial Council's recommendation. The Senate appoints Supreme Court judges from among the nominees that the president has selected based on the Supreme Judicial Council's recommendation.⁸¹

The Supreme Judicial Council is an independent body that selects candidates for positions as Supreme Court judges as well as judges of regional courts on a competitive basis and recommends them for appointment. The Supreme Judicial Council consists of a chair (appointed by the president), chairs of the constitutional court and the Supreme Court, the general prosecutor, the minister of justice, deputies delegated by the Senate, judges and other persons appointed by the president.

Judges are appointed for life. The chairs of district and regional courts and the Supreme Court, as well as the chairs of the collegia of a region, are appointed for five-year terms.

⁸¹ The Law on the Supreme Judicial Council of the Republic of Kazakhstan dated 4 December 2015 determines the status, procedure for formation and organization of the activity of the Supreme Judicial Council and the Qualification Collegium of Justice.

The AIFC determines the procedure for appointing judges of the AIFC Court. Under the AIFC Rules, the president of Kazakhstan will appoint the judges of the AIFC Court upon the governor of the AIFC's proposal.

As of the date of this publication, the AIFC Court judge panel consists of nine judges headed by Chief Justice Lord Mance.

20.4 Alternative dispute resolution

20.4.1 Arbitration

Although Kazakhstan has been a party to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards since 1995, a foreign company's ability to have a foreign arbitral award enforced in Kazakhstan remains questionable. It is generally believed among foreign investors that, for a variety of historical and cultural reasons, Kazakhstani courts may be reluctant to fully enforce an award in favor of a foreign party against the government or an influential Kazakhstani company.

Further, Kazakhstani legislation delineating the jurisdiction of local courts over cases concerning the enforcement of foreign arbitration awards is still contradictory.

In Kazakhstan, the Law on Arbitration mainly governs arbitration proceedings.⁸²

The Law on Arbitration applies to both (i) disputes involving foreign parties and (ii) disputes between residents of Kazakhstan, which are permitted to be resolved by arbitration courts in Kazakhstan. These arbitration courts are not state courts but are various private arbitration tribunals roughly analogous to private arbitration tribunals in Western countries.

⁸² The Law on Arbitration dated 8 April 2016.

Generally, this law is in line with the main principles of the UNCITRAL Model Law and it regulates every stage of the arbitration proceedings. The law also provides a mechanism for challenging and enforcing these awards in state courts.⁸³

However, the Law on Arbitration sets forth several restrictions for the settlement of arbitration disputes involving the state authorities and state companies. It also prohibits arbitration for (i) disputes involving natural monopolies and their customers, (ii) disputes arising from nonpecuniary relations connected with an individual's health or safety, the sanctity of personal and family secrets and a person's right to their name, and (iii) disputes relating to insolvency or bankruptcy.

The law also prohibits state bodies, state enterprises, banks, companies holding dominant positions and natural monopolies from establishing arbitration courts.

The grounds for setting aside and for refusing to enforce arbitral awards issued in Kazakhstan are similar to the relevant provisions of Article V of the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. However, Kazakhstani law adds some new grounds for setting aside or refusing to enforce arbitral awards issued in Kazakhstan. Additionally, Kazakhstani courts can postpone the enforcement of foreign and domestic arbitral awards.

In Kazakhstan, arbitration is not a popular means of dispute resolution; however, given the recent amendments to the Civil Procedural Code, we expect that parties will be more willing to subject their disputes to arbitral tribunals rather than state courts. Hence, arbitration should become more popular in the near future.

In confirmation of which, a new international arbitration institution — the International Arbitration Center (IAC) of the AIFC — was launched

⁸³ Rules relating to the enforcement of domestic and foreign arbitral awards are set forth in the Civil Procedural Code as well.

in 2017. The AIFC Arbitration Regulations are based on the UNCITRAL Model Law and are more liberal than the Kazakhstani domestic rules. The IAC of the AIFC handles all types of commercial disputes between local and foreign companies. In addition, it provides services related to the administration of ad hoc arbitration proceedings. Arbitral awards issued under the 2018 IAC Arbitration and Mediation Rules may be enforced in Kazakhstan via the AIFC Court.

20.4.2 Mediation and other alternative dispute resolution mechanisms

In 2011, Kazakhstan adopted the Law on Mediation.⁸⁴ Under the Law on Mediation, parties have the right to resolve the following types of disputes through mediation if they agree to do so: (i) civil, labor, family and other types of disputes involving individuals and legal entities; and (ii) disputes concerning certain minor criminal offenses and misdemeanors. Mediation cannot be used for disputes involving state organizations or incapacitated persons. However, from July 2021, mediation can be used to settle disputes relating to the challenge of actions/decisions of the state authorities that are considered by administrative courts.

Under the Law on Mediation, parties have the right to execute a mediation agreement at any time prior to or after the initiation of a legal action. If the parties execute a mediation agreement during civil court proceedings, the court will suspend the trial until the end of mediation. If the parties resolve the dispute through mediation and execute a settlement agreement, the court proceedings will be terminated.

Generally, mediation procedures must be completed within 30 calendar days (or 60 calendar days at the parties' request). If mediation results in a settlement, the parties must execute an agreement identifying (i) the parties and subject of the dispute, (ii) the

⁸⁴ The Law on Mediation dated 28 January 2011.

mediator involved, and (iii) the agreed settlement terms (including the consequences for any failure to comply with this arrangement).

If one of the parties refuses to comply with the executed settlement agreement, the other party can seek to enforce the agreement in a state court.

Further, in 2015, a participatory procedure was introduced into the Civil Procedural Code. This procedure involves negotiations between parties and their counsel held during court proceedings before the judgment is issued. The procedure ends with a binding agreement to be approved by the court as a settlement agreement.

20.5 Recognition and enforcement of court judgments

20.5.1 Enforcement of domestic court judgments

Enforcement of domestic court judgments is handled by private court marshals or state court marshals (bailiffs) of the Ministry of Justice (if the enforcement involves the state or state companies, natural monopolies or companies holding a dominant position in the market).

This activity is regulated by legislation, including the Law on the Court Marshals Service.⁸⁵ Under this law, court marshals (bailiffs) have expansive powers, and they can search for a debtor's assets and auction them off. Auction proceeds are then used to implement the judgment.

There are both state and private court marshals (bailiffs).

Private court marshals act under a special license from the Ministry of Justice. In general, they have the same powers and authorities as state court marshals, with several exceptions, including the right to

⁸⁵ The Law on Enforcement Proceedings and the Status of Court Marshals (Bailiffs) dated 2 April 2010.

conduct enforcement proceedings against the state and organizations, 50% of which belongs to the state and its affiliates.

State court marshals are usually overloaded with work, and working closely with the court marshals' (bailiffs') office is crucial for facilitating expedient enforcement.

20.5.2 Recognition and enforcement of foreign court judgments

Kazakhstani courts will enforce a foreign court judgment based on a treaty between Kazakhstan and the relevant foreign country or the principle of reciprocity.

Kazakhstan has entered into several bilateral and multilateral treaties to facilitate the recognition and enforcement of foreign court judgments.⁸⁶ However, none of those treaties is with Western European or North American countries.

21 The environment

21.1 Introduction

The Environmental Code⁸⁷ regulates environmental protection in Kazakhstan. The Environmental Code was adopted only recently (on 2 January 2021) and entered into force on 1 July 2021. It is generally believed to be close to international standards of environmental regulation.

21.2 Regulatory bodies

The Ministry of Ecology and Natural Resources is the principal state authority for environmental protection. It issues environmental permits

⁸⁶ Treaties on the enforcement of court judgments were concluded with, among others, certain CIS countries, North Korea, Lithuania, Pakistan, China, Mongolia and Türkiye.

⁸⁷ Environmental Code of the Republic of Kazakhstan, Law No. 400-VI, dated 2 January 2021.

and licenses, and establishes limits for environmental emissions among other things.

The tax authorities are responsible for collecting payments for environmental contamination and emissions.

21.3 General environmental requirements

Individuals and legal entities that affect the environment are subject to state oversight. The Ministry of Ecology and Natural Resources exercises this oversight by organizing state environmental inspections.

Various aspects of business activity are subject to environmental requirements. For example, a positive state environmental expert evaluation must be obtained before certain types of projects that may harm the environment begin. In particular, the Environmental Code provides for (i) the list of activities that are subject to a mandatory assessment of the environmental impact, and (ii) the list of activities that could fall under the requirement to conduct an assessment of the environmental impact as a result of screening the activity.

Enterprises engaged in potentially environmentally hazardous activities must obtain environmental insurance.

Violations of state environmental requirements entail civil, administrative and criminal liability for individuals and legal entities.

21.4 Environmental authorizations

Under the Environmental Code, all industrial facilities/activities, depending on the level of impact on the environment, are divided into four categories. Activities that have the highest level of environmental impact (e.g., certain types of power production, manufacture and processing of metals, chemical industry, etc.) are included in category I. Activities with the lowest level of environmental impact are included in category IV.

All individuals and legal entities that have a negative impact on the environment in the course of operating facilities of categories I and II must obtain an ecological permit from the regulator, its local subdivisions or local executive authorities (depending on the type of relevant facilities and area of activities). Under the Environmental Code, there are two types of environmental permits:

- (i) Ecological permits for impact
- (ii) Complex ecological permits

Complex ecological permits are mandatory for facilities of category I and could be issued subject to compliance with the best environmental techniques. Ecological permits for impact are mandatory for facilities of category II and are issued until the relevant technologies used by a holder change, but for no more than 10 years. Entities that operate facilities falling under category III must submit a declaration on the environmental impact.

In addition, separate environmental licenses are required for individuals and legal entities involved in the following:

- Environmental design or standardization for facilities of category I
- Activity on the processing, disposal, utilization and destruction of dangerous waste

The above-mentioned licenses can be issued subject to compliance with certain requirements set out by legislation.⁸⁸

21.5 Climate change

After approximately 10 years of debate, Kazakhstan ratified the Kyoto Protocol to the United Nations Framework Convention on Climate

⁸⁸ Order of the Minister of Ecology, Geology and Natural Resources No. 245 “On Approval of Qualification Requirements Applicable to Licensed Activity in the Area of Environmental Protection” dated 12 July 2021.

Change, effective for Kazakhstan on 17 September 2009. In addition to participating in worldwide efforts to counter global warming, this move was designed to further a number of economic objectives, including attracting investment through the protocol's flexible mechanisms, particularly emissions trading. In connection with the Kyoto Protocol's ratification, Kazakhstan has taken some steps to establish its own greenhouse gas emissions trading system by amending legislation. Further, on 2 August 2016, Kazakhstan signed the Paris Agreement within the framework of the United Nations Framework Convention on Climate Change. The Paris Agreement was ratified on 4 November 2016.

A number of amendments were introduced to the Environmental Code in the area of greenhouse gas emissions in April 2016 in connection with the then-planned accession to the Paris Agreement. Among other things, the amendments suspended, until 1 January 2018, provisions of the Environmental Code that prohibit greenhouse gas emissions without obtaining a quota and regulate the trading of emission quotas. Previously issued quotas and the trading of quotas were also suspended. The relevant provisions of the Environmental Code, including the changes made in April 2016, resumed their application on 1 January 2018.

21.6 Further development

Currently, the Environmental Code has separate chapters regulating climate change matters. Among other things, the Environmental Code aims to reduce the country's greenhouse gas emissions by 15% of the level of 1990 by 31 December 2030.

To achieve this goal, the Environmental Code includes mechanisms such as establishing quotas for greenhouse gas emissions, approving the national budget regarding greenhouse gas emissions and establishing a system on trading greenhouse gas quotas.

22 Procurement

22.1 State procurement

Procurement of goods, works and services by Kazakhstani state agencies, state enterprises and private legal entities where the state owns at least 50% of the shares (or a 50% participatory interest) and their affiliates is subject to special regulation under the Law on State Procurement.⁸⁹ The Law on State Procurement expressly excludes from its remit national management holding companies, national holding companies, national management companies, national companies, their affiliates, the National Bank, its subordinate entities, entities forming its structure, entities where the National Bank holds 50% of shares or more and their affiliates. These entities must purchase goods, works and services under separate procurement rules (such as the procurement rules approved by Samruk-Kazyna and procurement rules approved by the National Bank). However, such procurement rules are similar to the state procurement rules in most respects.

Generally, state procurement can only be carried out through a tender. A special commission formed by the purchaser organizes tenders. The tender process consists of several stages (including the publication of a tender announcement and review of bids) and is completed with the conclusion of a state procurement contract with the winner of the tender. Currently, the authorized body for state procurement is the Ministry of Finance. Among other functions, this regulator maintains a register of entities that must comply with state procurement rules.

22.2 Procurement in subsoil use operations

Similar restrictions for the purchase of goods, works and services apply to companies engaged in oil and gas and mining activities. In particular, subsoil use companies must conduct a public tender to

⁸⁹ The Law on State Procurement dated 4 December 2015, as amended.

purchase the goods, works and services necessary for their operations. In certain cases (e.g., if a purchaser needs to buy goods from a supplier from which it purchased earlier to ensure unification with earlier purchased goods), the Procurement Rules⁹⁰ allow purchases to be made without a tender.

The law usually obliges subsoil users to give preferences to local companies that qualify as local manufacturers of works and services. However, some of these preferences were removed in connection with Kazakhstan joining the WTO.

22.3 Procurement rules applicable to natural monopolies

Legislation provides special procurement rules for entities operating within a natural monopoly. According to the Law on Natural Monopolies, natural monopolies must comply with such special procurement rules if their tariffs for the relevant regulated services have been approved based on the expense method. Under the general rules, in such case, purchases should only be made through an open tender with the possibility of using other methods of procurement for goods, services and works (e.g., purchase from one source) if this is directly provided by law.

22.4 Samruk-Kazyna procurement rules

Under the Law on the National Welfare Fund,⁹¹ Samruk-Kazyna and the companies in which it owns 50% or more of the shares, either

⁹⁰ Rules for Purchasing by Subsoil Users and Their Contractors of Goods, Works and Services Used for Operations on Exploration and Production of Oil and Gas and Production of Uranium approved by the Order of the Minister of Energy dated 18 May 2018; Rules for Purchasing by Subsoil Users and Their Contractors of Goods, Works and Services Used for Operations on Production of Hard Minerals approved by the Order of the Minister of Investments and Development dated 21 May 2018.

⁹¹ The Law on the National Welfare Fund dated 13 February 2009, as amended.

directly or indirectly, must comply with a special procurement law — the Law on Procurement by Quasi-State Entities.⁹²

22.5 Other procurement rules

Certain other state entities and state-owned companies are subject to their own procurement rules. For example, as mentioned above, the National Bank and its subordinate and affiliated entities are subject to separate procurement rules approved by the National Bank.⁹³ Further, procurement of pharmaceuticals within the guaranteed free medical care conducted by SK-Pharmacia LLP and public healthcare institutions is governed by the Pharmaceutical Procurement Rules.⁹⁴

23 Compliance with anti-corruption regulations

23.1 General

The main components of Kazakhstan's anti-corruption legislation are the anti-bribery provisions of the Criminal Code,⁹⁵ the Anti-Corruption Law,⁹⁶ the State Service Law⁹⁷ and the Administrative Code.⁹⁸

⁹² The Law on Procurement by Certain Entities of the Quasi-State Sector dated 8 June 2021.

⁹³ Rules for Purchasing Goods, Works and Services by the National Bank, Its Subordinate Entities, Entities Forming Its Structure, Legal Entities 50% or More Shares in Which Are in Ownership or Trust Management of the National Bank and Their Affiliates approved by the Resolution of the Management Board of the National Bank dated 27 August 2018.

⁹⁴ Rules for Organizing and Conducting Purchases of Pharmaceuticals, Medical Devices and Specialized Medical Products within the Framework of Guaranteed Free of Charge Medical Assistance, Additional Medical Assistance for Persons in Pretrial Detention Centers and Penitentiary Institutions at the Expense of the State Budget or within the Framework of Mandatory Social Medical Insurance, Pharmaceutical Services No. 375 dated 4 June 2021.

⁹⁵ The Criminal Code of the Republic of Kazakhstan dated 3 July 2014.

⁹⁶ The Law on Combating Corruption dated 18 November 2015.

⁹⁷ The Law on State Service dated 23 November 2015.

⁹⁸ The Code on Administrative Violations of the Republic of Kazakhstan dated 5 July 2014.

Kazakhstan's anti-corruption legislation identifies several crimes of corruption, among the most serious of which are the provision and receipt of bribes to government officials. These crimes are interrelated and usually cannot be committed without one another. Kazakhstan's anti-corruption legislation also penalizes commercial bribery of managers of private companies (e.g., kickbacks).

Kazakhstan does not have anti-bribery regulations with extraterritorial application similar to the US Foreign Corrupt Practices Act or the UK Bribery Act. However, Kazakhstan's anti-bribery regulations can apply to bribery of foreign officials committed outside Kazakhstan if a bribe-giver was not punished in the country where the bribery was committed.

While enforcing the anti-corruption legislation is still one of the government's top priorities, prosecution for corruption offenses is limited. In most cases, anti-corruption legislation is not enforced against high-level officials.

In Kazakhstan, bribery of government officials committed by physical persons, as well as commercial bribery, is punishable under the Administrative Code and Criminal Code by fines, imprisonment for up to 15 years with confiscation of property and other sanctions. However, currently in Kazakhstan, only individuals (not legal entities) are subject to criminal liability.

For bribery of government officials, legal entities are subject to administrative punishment. Legal entities may be penalized by a monetary penalty amounting to approximately USD 5,300 or by double the initial penalty for repeated violations.

23.2 Government officials

Generally, Kazakhstan's anti-bribery restrictions apply to government officials, namely to "individuals carrying out state functions and persons equated to them." Such government officials include officials carrying out state functions on behalf of centralized state agencies,

local municipal bodies and the armed forces, and the following government officials:⁹⁹

- Members of the Parliament and local legislatures
- Judges
- Government officials of law enforcement agencies and special services
- Individuals elected or appointed to local executive bodies
- Managers of wholly owned state entities or quasi-state entities (i.e., entities affiliated with the state)
- Persons authorized to make decisions on the organization and conduct of public tenders
- Persons responsible for selecting and implementing projects financed by the state budget or the Kazakhstan National Fund

Accordingly, providing benefits to the above officials is generally prohibited in Kazakhstan. It may amount to a criminal or administrative offense if the benefits were provided in exchange for or in connection with the state functions of the relevant officials.

In Kazakhstan, criminal or administrative liability may apply irrespective of whether the relevant bribe-giver is a local or foreign entity.

23.3 Facilitating payments and hospitality

Kazakhstani anti-corruption laws do not provide any specific exceptions for facilitating payments (e.g., modest payments to a public official to influence that official to perform an act they are legally

⁹⁹ Please note that the list is not exhaustive.

required to perform) or gifts provided in accordance with the generally accepted norms of courtesy and hospitality.

Thus, generally, providing such facilitating payments or gifts may lead to liability under the Criminal Code or Administrative Code. There are certain limited exceptions to this general rule. For instance, in certain cases, government officials may be allowed to accept invitations to participate in international scientific, professional and other similar forums at the expense of organizations. During such forums, the officials are not permitted to accept certain limited gifts (benefits).

Previously, under the Civil Code, simple gifts of minor value (not exceeding USD 70) were acceptable if no corrupt intent was involved (i.e., if gifts were not provided in exchange for the fulfillment by the state servant of their official state functions). However, in 2020, the Civil Code was amended to eliminate this rule. Thus, public officials are no longer allowed to accept any gifts or benefits (irrespective of their nature or value).

Family members of public officials are also prohibited from receiving gifts (or other benefits or services) if such gifts are provided in exchange for the fulfillment by the public official of their state functions. For such purposes, “family members” include the official’s spouse, parents, children (including children over the age of majority, i.e., 18 years old) and dependents permanently residing with the official.

24 Personal data

24.1 General

The Law on Personal Data and Protection Thereof dated 21 May 2013, as amended (“**Personal Data Law**”), and certain regulations adopted further to the Personal Data Law regulate the processing of personal data in Kazakhstan.

The Personal Data Law applies to all individuals, organizations (whether private or state-owned) and state authorities engaged in the collection, processing and disclosure of data within Kazakhstan.

The Personal Data Law also applies to transnational companies with subsidiaries, branches or representative offices in Kazakhstan that process the personal data of their employees, contractors and customers at a central location abroad.

24.2 Definition of “personal data”

“Personal data” is defined as any information (in a paper, electronic or other tangible form) relating to an identified or identifiable natural person (“**Data Subject**”).

Thus, under the Personal Data Law, personal data includes a person’s name, identification card (passport) details, date of birth, address, family, education, profession, income and other information by reference to which the person can be identified and separated from other persons.

24.3 Basic requirements for data processing

The main requirements of the Personal Data Law can be summarized as follows:

- (a) With the exceptions listed in paragraph (f) below, personal data may only be collected, processed and disclosed with the Data Subject’s prior written consent.
- (b) An organization should clearly define the purposes for which it collects, processes and discloses personal data.
- (c) Repeated consent from the Data Subject is required for the disclosure of personal data if there has been a change in the purpose for which the data was originally collected.

- (d) A Data Subject may generally withdraw their consent to the use, processing and disclosure of personal data at any time, but such withdrawal should not breach existing legislation.
- (e) Personal data may be collected, processed and disclosed without the Data Subject's consent in specific cases provided in the Personal Data Law, including in the case of law enforcement agencies carrying out their activities, state authorities using the personal data (which must be depersonalized) for statistical purposes, disclosure of personal data when this is required by legislation, etc.
- (f) An organization holding personal data may provide access to such data to third parties in accordance with the terms and conditions of the Data Subject's consent given to such organization pursuant to paragraph (a) above.
- (g) An organization must appoint at least one personal data officer responsible for ensuring compliance with the requirements of the Personal Data Law.
- (h) An organization must refuse to provide access to personal data to third parties if such third parties do not agree or cannot ensure the use and processing of personal data in accordance with the requirements of the Personal Data Law.
- (i) A Data Subject has the right to request access to their personal data previously collected by an organization, i.e., request information on how the organization has used the personal data, the list of third parties to whom the organization has disclosed the personal data, etc.

24.4 Transborder flow of personal data

Personal data may only be transferred to countries outside Kazakhstan if they guarantee the protection of personal data. Thus, in principle, personal data may be transferred to countries outside

Kazakhstan if such countries have appropriate legislation guaranteeing personal data protection. To date, it is unclear how it will be determined if a particular country has adequate personal data protection legislation.

There are a limited number of exceptions to this rule: Specifically, personal data may be transferred to a country that does not guarantee the protection of personal data if, among other things, the Data Subject has specifically consented to the transfer of personal data, or if the transfer of data is required as a matter of law as a result of overwhelming public interest or to protect the legal rights or health and safety of citizens, etc.

Telecommunication operators are prohibited from transferring information about their subscribers (e.g., mobile users) abroad, except in cases when the operator provides services to subscribers traveling outside of Kazakhstan.

24.5 Localization requirement

Under the Personal Data Law, personal data must be stored by data owners, operators and third parties in a database situated in Kazakhstan (the localization requirement).

24.6 Consequences of noncompliance

It is an administrative and criminal offense to collect, process and disclose personal data without the Data Subject's consent or otherwise in breach of the Personal Data Law. The penalties for such an offense include financial penalties (generally, penalties of up to approximately USD 6,945 for organizations and USD 34,726 (or corrective works) for officers of organizations).

In addition, an individual who suffers harm as a result of an organization breaching the Personal Data Law may have the right to take civil action against said organization and seek damages.

A nighttime cityscape with numerous illuminated buildings and streets, viewed from an elevated perspective. The lights create a warm, golden glow against the dark blue night sky.

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